Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 22 July 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Theo van Seggelen (Netherlands), member
John Newman (USA), member
Ivan Gazidis (England), member
Guillermo Saltos Guale (Ecuador), member

on the claim presented by the player,

Z,

as *Claimant*

against the club,

D FC,

as *Respondent*

regarding an employment-related dispute between the parties

I. Facts of the case

1. The player, Z (hereinafter: *player* or *Claimant*) and the club, D FC (hereinafter: *club* or *Respondent*) signed an employment contract valid as from 15 July 2008 until 31 May 2009.

2. The employment contract does not bear any date of signature and the final clause referring to the date of signature and the date on which the contract becomes *"operative"* has not been filled out.

3. The employment contract does bear the signature of the player and the club's vice-president, whereas the space for the signature of the club president has remained blank.

4. According to the employment contract, the player was to receive a *"basic bonus/premium"* of EUR 3,200 per month. In addition, the player would receive a *"bonus"* of EUR 100. The contract stipulates that *"the player's monthly bonus will always be paid as additional/subsequent payment until the 15th day of the following calendar month, ... "*. The contract further includes that the player is entitled to receive a collective premium after matches won.

5. The relevant International Transfer Certificate (ITC) was issued by the H Football Federation on behalf of the S Football Association on 18 July 2008.

6. On 20 March 2009, the player lodged a claim against the club in front of FIFA maintaining that the club had acted in breach of the employment contract. Therefore, the Claimant asks to be awarded payment of the following monies:

   a. Remainder of the July to August 2008 salaries in the amount of EUR 100 (1,5 months: EUR 4,800 minus EUR 4,700 received);
   b. Salaries of September, October, November 2008 totalling EUR 9,600;
   c. Match bonuses in the amount of EUR 900 (7 line-up bonuses x EUR 100 plus 1 victory bonus x EUR 200);
   d. 5% interest over the outstanding amounts as of *15.10.2008;*
   e. Compensation for breach of contract amounting to EUR 29,800;
   f. 5% interest over the amount of compensation as of *01.04.2009*;
   g. Compensation for direct financial damages and moral damages in the amount of EUR 5,000.

7. The Claimant confirms having received in total the amount of EUR 4,700 from the Respondent and explains that he duly rendered his services to the club until 31 October 2008.

8. The Claimant further points out that he participated in two Superliga matches in July and August 2008 and in five matches of the B team as from July 2008 until the end of September 2008.

9. According to the Claimant, in September 2008, the Respondent told him that it did not intend to respect its contractual obligations and advised him not to attend training and leave the club.

10. On 31 October 2008, the Claimant asked the Respondent in writing to explain the situation and to pay his salary for September as well as the match bonuses.

11. His salary for September, October, and November 2008 having remained unpaid and the Respondent constantly advising him not to attend training and leave the club, on 25 November 2008, the Claimant informed the Respondent in writing that he considered the employment contract to have been unilaterally terminated at the club's fault.

12. In February 2009, the club informed the player that it considered not to be contractually bound to the player, as the club president did not sign the employment contract.

13. The Claimant rejects such argument in the light of his transfer to the club as a professional player and his participation in two matches for the first team and five matches in the B team. He further emphasises that he was paid the total amount of EUR 4,700 by the club and that the contract bears the signature of the club's vice-president.

14. In reply to the claim, the Respondent explains that after his registration for the club, the player was given a draft employment contract for his perusal with the instruction that in order for the contract to be valid it must be in accordance with the *"directive for registration of professional contracts"* issued by the S Football Association.

15. The Claimant then raised further requirements regarding his wage, which was not accepted by the Respondent and therefore, the club president did not sign the contract.

16. The Respondent submits that the contract does not meet the requirements set out by the aforementioned *"Directive"*, which, *inter alia*, states that the professional contract shall contain the date of its execution, the signature of the player and two club officials (regardless of whether two signatures are required by law or not) and the seal of the club. According to the club, therefore, the contract could not be sent to the S Football Association for registration in accordance with the said

"Directive", which is the condition for the contract to become legally effective within the S Football Association.

17. Consequently, the Respondent holds that the contract did not become legally effective between the parties to the dispute.

18. The Respondent admits that the player was involved in the club's sporting activities as an amateur player within the A team and due to his insufficient performance he was included in the B team. Being an amateur player, he did not have any claim for a financial remuneration.

19. According to the Respondent, the monies remitted by the Respondent to the Claimant were an advance for his social welfare, i.e. accommodation and food.

20. The Respondent points out that the Claimant was informed by the club that no contract would be concluded with him, whereafter he left. Furthermore, the club's request to appear at a meeting with the club management remained unanswered by the player as he could no longer be contacted at his address.

21. The Respondent submits that the information presented by the Claimant was not acquired from the official website of the club, but from an illegal website with the owner of which the club has been in litigation. Therefore, according to the Respondent, the documentation submitted by the Claimant is legally irrelevant.

22. The Claimant informed FIFA that he has been registered as an amateur player with a third division club in country H since November 2008.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 20 March 2009, thus after 1 July 2008. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. article 21 par. 2 and 3 of the Procedural Rules)

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2009) the Dispute Resolution Chamber is competent to deal with the

matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.

3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2009 and 2008), and considering that the present claim was lodged on 20 March 2009, the 2008 edition of the said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber acknowledged that the Claimant and the Respondent signed an employment contract setting out a period of validity as from 15 July 2008 until 31 May 2009, in accordance with which the Claimant was to receive *inter alia* a monthly payment of EUR 3,200. The Claimant maintains that the Respondent is to be held liable for the early termination of the employment contract towards the end of November 2008 by having failed to remit his remuneration as of September 2008 and by having informed him, as from September 2008, that the Respondent did not intend to respect its obligations and advised him to leave the club.

5. In this respect, the members of the Chamber took note of the Claimant's default notice dated 31 October 2008 addressed to the Respondent and of his correspondence dated 25 November 2008, by means of which the Claimant informed the Respondent in writing that he considered the employment contract to have been unilaterally terminated at the club's fault.

6. The Chamber noted that according to the Respondent, who fully rejects the claim put forward by the Claimant, no legally binding employment contract had come into effect between the Claimant and the Respondent in the light of the rules laid down in the *"Directive for registration of professional contracts"* issued by the S Football Association. The Claimant, for his part, has rejected such argument.

7. In this context, the Chamber, first and foremost, focussed its attention on the question as to whether a legally binding employment contract had been concluded by and between the Claimant and the Respondent. In the affirmative, the Chamber will have to establish as to whether the relevant employment contract was breached and, if so, which party is to be held liable for breach of contract and which are the consequences thereof.

8. Having stated the aforementioned, the Chamber wished to highlight that in order for an employment contract to be considered as valid and binding, apart from the

signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration. After careful study of the contract presented by the Claimant, the Chamber concluded that all such essential elements are included in the pertinent employment contract, in particular, the fact that the contract establishes that the Claimant has to render his services towards the Respondent, which in counterpart has to pay to the Claimant a monthly remuneration.

9. The Chamber then reverted to the argument of the Respondent relating to the lack of signature of the club president and the *"Directive"* issued by the S Football Association. In this respect, the Chamber emphasised that the employment contract does bear the signature of the club's vice president. What is more, the employment contract does not refer whatsoever to the *"Directive"* of the S Football Association or to any (other) condition precedent, if, in the opposite case, at all to be considered valid in the light of the Regulations, in connection with the entry into force of the employment contract. Furthermore, the DRC emphasized that, as a general rule, the homologation and/or registration of an employment contract at a federation does not constitute a condition for its validity.

10. Therefore, the Chamber concurred that by having obtained the signature of the club's vice president on the pertinent employment contract, the Claimant may accurately have relied on having entered into a valid and legally binding employment contract with the Respondent.

11. All in all, on account of the above, the members of the Chamber rejected the Respondent's arguments in this connection and concluded that a valid and legally binding employment contract had been entered into by and between the Claimant and the Respondent.

12. As a matter of fact, the members of the Chamber felt confirmed in such conclusion in the light of the circumstance that the Claimant had obviously rendered his services to the club and had received monies totaling EUR 4,700 from the Respondent in exchange thereof. The Chamber was not convinced by the position of the Respondent, who pointed out that the Claimant had been involved in the club's sporting activities as an amateur player and that the monies it remitted to the Claimant were an advance for his "social welfare". In this respect, the Chamber, whilst underlining the absence of any evidence corroborating the Respondent's position (cf. art. 12 par. 3 of the Procedural Rules), wished to highlight that on the basis of art. 2 of the Regulations, which deals with the status of players, i.e. amateur and professional players, the aforementioned amount of EUR 4,700, which relates to the period of time as from mid-July 2008 to August 2008, is to be considered to

largely exceed the expenses incurred for the player's footballing activity. Finally, the Chamber drew the attention to the fact that an International Transfer Certificate (ITC) was issued by the H Football Federation in favour of the S Football Association on 18 July 2008. In this respect, the Chamber referred to the administrative procedure governing the transfer of players between associations as set out in Annexe 3 of the Regulations, which stipulates that an ITC shall be issued by the former association upon request by the new association (if the conditions for the issuance of an ITC are met). The new association, though, shall only make such ITC request after receipt of the relevant application from the new club, which application shall be accompanied by a copy of the contract between the new club and the player.

13. Having established that a valid and legally binding employment contract had been in force between the Claimant and the Respondent, the Chamber went on to analyse as to whether such contract had been breached and, in the affirmative, which party is to be held liable for breach of contract.

14. In doing so, the Chamber took into account that, according to the Claimant, his salaries as from September 2008 had remained unpaid and the Respondent had repeatedly informed him that it did not intend to respect its obligations and even advised him to leave to club. The members of the Chamber noted that the Respondent, which merely bases its defence on denying the legal effects of the pertinent employment contract, has not contested such particular allegations. It also appears that the Respondent had not reacted to the Claimant's default notice dated 31 October 2008, which is why the Claimant, by letter dated 25 November 2008, informed the Respondent that he considered the employment contract to have been unilaterally terminated at the club's fault.

15. On account of the above circumstances, the Chamber established that the Respondent had obviously no longer been interested in the Claimant's services by failing to remit his salaries without any valid reason during a considerable amount of time (3 months) and advising him to leave the club, which conduct constitutes, in line with the long-lasting jurisprudence of the Chamber, a clear breach of contract. Accordingly, the Chamber concurred that the Claimant had just cause to unilaterally terminate the employment contract on 25 November 2008.

16. Having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the Chamber focussed its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of

contract in addition to any outstanding payments on the basis of the relevant contract.

17. First of all, the Chamber reverted to the Claimant's financial claim, which includes outstanding remuneration of EUR 9,700 as from mid-July 2008, i.e. EUR 100 pertaining to the months of July and August 2008 and EUR 9,600 relating to the monthly remuneration as of September 2008 until November 2008 in accordance with the employment contract. The members of the Chamber recalled that the Respondent failed to demonstrate that it had in fact paid such remuneration and did not even try to do so. In addition, the Claimant asks to be awarded payment of various match bonuses in the total amount of EUR 900 (7 x EUR 100 and 2 x EUR 200). The Chamber noted, however, that the pertinent employment contract does not specify any match bonus amounts apart, possibly, from a "bonus" of EUR 100, which "bonus" is included in the contract without any further indications as to its quality, the conditions under which or frequency with which such "bonus" would be payable. Consequently, the Chamber decided that the player's claim for payment of match bonuses could not be upheld.

18. Consequently, taking into account the documentation remitted by the Claimant to substantiate his claim and the fact that the employment contract was considered terminated as of 25 November 2008, the Chamber decided that the Respondent is liable to pay to the Claimant the amount of EUR 9,700 relating to payments due to the Claimant as from mid-July 2008 up to and including November 2008 in accordance with the employment contract.

19. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% *p.a.* on each of the monthly payments.

20. In continuation, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

21. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by

means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

22. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract until 31 May 2009, taking into account that the player's remuneration until November 2008 is included in the calculation of the outstanding remuneration (cf. no. II./18. above). Consequently, the Chamber concluded that the amount of EUR 19,200 (i.e. salary as from December 2008 until May 2009) serves as the basis for the final determination of the amount of compensation for breach of contract.

23. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Dispute Resolution Chamber, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

24. The Chamber noted that the Claimant had been registered as an amateur with a third division club in H since November 2008 and, thus, had not signed any other employment contract (cf. also art. 2 par. 2 of the Regulations).

25. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the amount of EUR 19,200 to the Claimant as compensation for breach of contract.

26. Finally, the Dispute Resolution Chamber held that the Claimant's claim for legal costs is rejected in accordance with art. 15 par. 3 of the Procedural Rules and the Chamber's respective longstanding jurisprudence.

27. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Z, is partially accepted.

2. The Respondent, D FC, has to pay to the Claimant outstanding remuneration in the amount of EUR 9,700 within 30 days as from the date of notification of this decision.

3. Within the same time limit, the Respondent, D FC, has to pay default interest of 5% *p.a.* on the following partial amounts until the effective date of payment to the Claimant as follows:

   - on EUR 3,300 as of 16 October 2008;
   - on EUR 3,200 as of 16 November 2008;
   - on EUR 3,200 as of 16 December 2008.

4. The Respondent, D FC, has to pay to the Claimant the amount of EUR 19,200 as compensation for breach of contract within 30 days as from the date of notification of this decision. In the event that this amount of compensation is not paid within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the above-mentioned time limit until the date of effective payment.

5. In the event that the above-mentioned amounts due to the Claimant are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and decision.

6. Any further request filed by the Claimant is rejected.

7. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

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Note relating to the motivated decision (legal remedy):

According to art. 63 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
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Tel: +41 21 613 50 00 / Fax: +41 21 613 50 01
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For the Dispute Resolution Chamber:

Markus Kattner
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Encl.: CAS directives