

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 16 July 2009,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Mario Gallavotti (Italy), member
Joaquim Evangelista (Portugal), member

on the claim presented by the player,

T,

as Claimant

against the club,

FC K,

as Respondent

regarding an employment-related contractual dispute
between the player and the club.

I. Facts of the case

1. On 4 December 2007, the B player T (hereinafter: *the player*) unilaterally terminated his contract of employment with his former club FC N, (hereinafter: *the FC N*), by means of a termination notice sent to the FC N. The player referred to a clause in the employment contract, which states that it is the employer's responsibility to pay the agreed salary and, in the event that the employer does not pay two consecutive instalments, the player is entitled to terminate the employment agreement with no further notice. The player lodged a claim in front of FIFA for payment of contractually agreed payments. The respective labour dispute was pending when the player started negotiations with other clubs in order to establish a new employment relationship.
2. On 3 September 2008, the player and the G Football Club FC K (hereinafter: *the club*) entered into an employment contract valid as from 3 September 2008 until 30 June 2009.
3. According to article 4.1 of the employment contract, the player is entitled to receive a monthly salary of EUR 800 at the end of each month. According to article 4.4 of the employment contract, the player shall receive the total amount of EUR 42,000, tax free and payable in 8 instalments, EUR 5,250 each, monthly due from 1 October 2008 until 1 May 2009. As bonuses and other benefits, it was agreed that he will get a Christmas bonus in the amount of one monthly salary, an Easter bonus are concerned and holiday benefits in the amount of half a monthly salary each, a used car, a return ticket to B for the family, as well as a rent allowance of EUR 500 per month.
4. On 17 October 2008, the player sent a letter of complaint to the club. He stated having continuously offered his services to the club and asked the club to either provide him with work or to declare the contract terminated. Furthermore, the player asked for outstanding salary payments for September 2008 and October 2008, by 31 October 2008 at the latest.
5. On 20 October 2008, the player returned to B.
6. On 21 October 2008, the player filed a claim against the club in front of FIFA and argued that the G club had terminated the contract without just cause during the protected period. The player claimed unpaid amounts from 1 September 2008 to 17 October 2008 as follows:
 - EUR 1,238.71 for basic monthly salary (i.e. EUR 800 + EUR 438.71);
 - EUR 8,129.03 for extra monthly salary (i.e. EUR 5,250 + EUR 2,879.03);
 - EUR 1,000 for outstanding apartment rent for September 2008 and October 2008 (i.e. 2 x EUR 500).

7. Furthermore, the player claimed financial compensation in the total amount of EUR 62,108.86 as of 17 October 2008 which is allegedly composed as follows:
 - Basic salary: EUR 361.29 (18 until 31 October 2008), EUR 800 (Christmas allowance), EUR 400 (Easter allowance), EUR 400 (holiday allowance), EUR 6'400 (i.e. 8 x EUR 800 for November 2008 until June 2009);
 - Extra salary, grossed up with the applicable tax rate at 37%: EUR 2'360.97 (18 until 31 October 2008), 6 x EUR 5'250 (November 2008 until June 2009);
8. Moreover, the player claimed the amount of EUR 4,700 for loss of benefits such as apartment rent for the remainder of the contract (8 x EUR 500) and air fare for his family (i.e. wife and child, 2 x EUR 350), additional compensation of six monthly salaries for sporting damages in the amount of EUR 44,800 (10 x EUR 800 basic salary and 8 x EUR 5,250 extra salary grossed up with applicable tax rate at 37%) and interest of 5% since 18 October 2008 on all claimed amounts.
9. Equally, the player asked that sporting sanctions be imposed on the club.
10. In support of his position, the player argued that the club never registered him with the G Football Federation, justifying such non-registration with the argument that only unemployed players were allowed to be registered with the G Football Federation outside the registration period during a certain period of time (cf. point I.18. regarding the club's position).
11. According to the player, the president of the club held a meeting with him on 16 October 2008 and told him that he had misled the club by supplying untrue information about his former contractual situation with the FC N, arguing that there seemed to be an ongoing labour relationship between the player and the FC N. Therefore, the player could apparently not be registered with the G Football Federation. The club's president allegedly stated that the club was no longer interested in the services of the player and that on these grounds, the club considered the contract null and void. According to the player, he was asked to leave the club immediately, but he did not receive a written statement in this regard.
12. Furthermore, according to the player, the club had been fully informed about the ongoing contractual dispute before signing the contract and it had been provided with correspondence and the reasons that lead to the termination of the contract with his former club.
13. To conclude his argumentation, the player stated that, on 17 October 2008, he went to training, but the club's manager allegedly told him that he was no longer welcome on the club's training ground. The manager allegedly also explained to him that the employment contract was considered invalid, as, in the club's opinion, and based on the decision of the G Football Federation, he was

not an unemployed player and the registration of such players during the season is not allowed in G.

14. On 23 October 2008, the Transfer Committee of the G Football Federation decided that it could not register the player as an unemployed player, based on the facts that there was an ongoing labour dispute between the player and his former FC N.
15. On 31 October 2008, the labour dispute between the player and his former FC N (cf. point I.1.), was decided by the Dispute Resolution Chamber and the claim was fully accepted in favour of the player, establishing that due to non-compliance with the financial obligations by the FC N, the player had terminated the contractual relationship with just cause as of 4 December 2007.
16. In its reply, submitted via the G Football Federation on 21 November 2008, the club requested that the player's allegation regarding the valid conclusion of the employment contract shall be rejected.
17. In this respect, the club emphasised on the one hand that, according to the G Regulations, clubs are allowed to register unemployed players even if the registration period has ended i.e. outside the registration period during a certain period of time. According to the club, the exceptional registration period for unemployed players started from the end of the regular registration period on 1 September 2008 and ended on 15 September 2008, provided that unemployed players were contractually bound until 30 June 2008 at a maximum.
18. On the other hand, the club argued that the player allegedly misled the club about his status, i.e. the status of his previous labour relationship with the FC N, and did not inform it about the pending labour dispute at the time of concluding the new employment contract. Furthermore, as the termination of the previous contract could not be confirmed on time, the Transfer Committee of the G Football Federation decided on 23 October 2008 not to register the player for its affiliated club outside the registration period as an unemployed player. In view thereof, the club considered the player a "lost investment".
19. Consequently, the club asked that the contract be declared null and void due to the "illegal and unconventional" behaviour of the player.
20. With regard to the eventuality that the Dispute Resolution Chamber might consider that the employment contract between the player and the club was validly concluded and came into force, the club argued that the player had breached said employment contract.
21. In this respect, the club claimed that the player caused trouble within the team, showed unprofessional and disobeying behaviour and finally abandoned the

team on 20 October 2008 without previously informing the club. On account of the above, the club is of the opinion that the player terminated the contract without just cause and therefore breached the contractual relationship as of 20 October 2008. In view of the above, the club asked for payment of compensation in the total amount of EUR 38,000 from the player.

17. According to the club, the amount of EUR 38,000 is composed of the following expenses:
- EUR 5,000 fees paid to the G Football Federation;
 - EUR 5,000 paid by cheque;
 - EUR 3,000 paid for living costs;
 - EUR 25,000 for loss incurred, because no other replacement player was hired.

No documentary evidence nor any further specification was provided in this regard.

22. On 1 December 2008, the player reminded the club to be reinstated and to pay the outstanding salaries until 15 December 2008 at the latest.
23. On 10 December 2008, the club sent a statement to the G Football Federation and to the player, declaring that the contractual relationship does no longer exist. In particular, it argued that the player left the FC N in an "unclear situation" and that, by decision of 23 October 2008, the Transfer Committee of the G Football Federation established that it could not register the player as an unemployed player.
24. On 30 December 2008, the player terminated the employment contract as per 2 January 2009.
25. In his reply to the club's position and counter-claim, the player adhered to his claim and contested the arguments brought forward by the club and rejected the counter-claim.
26. First of all, the player insisted on the fact that the club had been informed about the contractual dispute between him and the FC N. Secondly, the player contested the allegations of the club accusing him of unprofessional behaviour and pointed out that the club carried the burden of proof, whereas no such evidence was provided.
27. With regard to the decision taken by the Transfer Committee of the G Football Federation on 23 October 2008, the player claimed that such a decision had to be considered "*null and void*" because the minimum requirements of a formal decision are not met as follows:

- Decision is not printed on official forms and does not bear a stamp;
 - The names of the parties and legal representative are not indicated;
 - The claim / motion submitted by the parties are not set forth;
 - No brief description of the case provided;
 - Decision is hardly motivated;
 - No evidence is taken and the evaluation of the evidence is not disclosed;
 - Decision does not bear the name and the signature of the President
28. Finally, the player informed FIFA that he found a new club, FC M, and signed an employment contract on 16 January 2009, valid from 16 January 2009 until 30 June 2010, according to which the player is entitled to receive a monthly salary of EUR 783 at the end of each month.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber 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 21 October 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. art. 18 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 the Dispute Resolution Chamber (hereinafter: *the Regulations*) is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a B player and a G 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 (edition 2009), and considering that the present claim was lodged on 21 October 2008, the previous version of the Regulations (edition 2008) is applicable to the matter at hand as to the substance.
4. In continuation, and entering into the substance of the present matter, the members of the Chamber started by acknowledging the established facts of the case and the arguments of the parties as well as the documentation contained in the file. In this respect, in view of the circumstances of the present case, the Chamber deemed that the following issues had to be addressed:
 - I. Was a valid employment contract concluded between the parties involved?

- II. Was the employment contract terminated with or without just cause and which party is to be held responsible for such breach?
- III. What are the consequences in the event of a breach of contract?

5. With regard to the first issue, the members of the Chamber decided to first of all focus on the employment contract and analyse its content in order to evaluate if such contract had validly been concluded. In this regard, it was acknowledged that the player and the club had signed an employment contract on 3 September 2008, valid from 3 September 2008 until 30 June 2009. In accordance with the employment contract, the player was *inter alia* entitled to a monthly salary of EUR 800, eight monthly instalments in the amount of EUR 5,250 each and further bonuses and benefits. Therefore, the members of the Chamber acknowledged that the employment contract contains all basic elements of such a kind of contract, i.e. a definition regarding the duration, the duties of both parties, financial compensation for the services of the player and, among other, the valid signature of both parties involved.
6. Furthermore, the members of the Chamber took note of the club's position that the employment contract had not been validly concluded, as the player had not been registered with the G Football Federation as an unemployed player outside the registration period.
7. In this regard, the Chamber took note of the argumentation of the club, according to which the player had allegedly misled the club about his status, in other words, about the status of his previous labour relationship with the FC N and not informed it about the pending labour dispute at the time of concluding the new employment contract. Furthermore, as the termination of the previous contract could not be confirmed on time, the Transfer Committee of the G Football Federation decided on 23 October 2008 not to register the player for its affiliated club outside the registration period as an unemployed player.
8. The Chamber took note that, on account of the above, the club contested the validity of the employment contract concluded between it and the player and asked that the contract shall be declared null and void due to the "illegal and unconventional" behaviour of the player.
9. In this regard, the Chamber referred to its well-established jurisprudence and emphasised that the validity of an employment contract does not depend on the official validation or registration of the employment contract nor on the registration of the player with the respective association.
10. Consequently, the members of the Chamber decided that the parties involved concluded a valid employment contract.

11. In continuation, and turning its attention to the second issue as to the termination of the employment contract, the Chamber took into account the facts and allegations of both parties involved.
12. The Chamber first of all noted that the player claimed not having received any financial compensation, i.e. salary and instalments, since the signature of the employment contract and that that the club had been reminded several times to pay the outstanding amounts.
13. In this regard, the Chamber noted that the player requested payment of the allegedly outstanding amounts from 1 September 2008 until 17 October 2008 in the amount of EUR 10,367.74, financial compensation as of 17 October 2008 in the amount of EUR 62,108.86, loss of benefits such as apartment rent for the remainder of the contract and a flight ticket his family in the amount of EUR 4,700, interest of 5% on all claimed amounts accrued since 18 October 2008, an additional compensation for sporting damages in the amount of EUR 44,800 and sporting sanctions be imposed on the club.
14. Turning its attention again to the position of the club, the Chamber took note that, alternatively, in the event that the validity of the employment contract should be confirmed, the club invoked a breach of contract by the player. In this respect, the club claimed that the player caused trouble within the team, showed unprofessional and disobeying behavior and finally abandoned the team on 20 October 2008, without previously informing the club. In view thereof, the Chamber took note that according to the club, the player terminated the employment contract without just cause as of 20 October 2008, in other words, the player allegedly committed a breach of contract on that date.
15. In this regard, the Chamber acknowledged that the club, in view of the above circumstances, formally terminated the contract with the player on 10 December 2008 by sending a statement to the G Football Federation and the player (cf. point I.23.).
16. Therefore, and taking into account that the date of the formal termination of the contract was not contested by the player, the Chamber concluded that the contract had been officially terminated on 10 December 2008.
17. In this context, the Chamber noted that the club claimed to be reimbursed in a total amount of EUR 38,000 for allegedly occurred financial expenses from the player, however without providing any documentary evidence regarding these expenses for fees paid to the G Football Federation in the amount of EUR 5,000, an unspecified cheque in the same amount, living costs in the amount of EUR 3,000 and a loss incurred in the amount of EUR 25,000 and without providing further details.

18. In view of the principle of the burden of proof, which is a basic legal principle in every legal system, a party to a procedure is obliged to provide evidence proving its allegations presented in a legal action if it wishes to use them as the basis for its position. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (cf. art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber; hereinafter: the Procedural Rules).
19. Consequently, the Chamber considered that due to lack of evidence and groundlessness of its assumptions and allegations, the club's request for a financial compensation could not be taken into consideration.
20. Then, the Chamber turned its attention to the allegation of the player according to which the club did not pay its outstanding financial obligations since the beginning of the contractual relationship. In this regard, the Chamber acknowledged that the club did not contest its failure to fulfil its financial obligations towards the player as established in the employment contract.
21. In continuation, the Chamber pointed out that the persistent failure of a club to comply with its financial obligations towards a player without just cause, is generally to be considered as an unilateral breach of an employment contract.
22. On account of this principle, the Chamber concluded that the behaviour of the club, i.e. the non-payment of salaries and instalments during the execution of the contract until its termination on 10 December 2008 has to be considered a persistent failure of the club to comply with its financial obligations and therefore a serious infringement of the employment contract, which led to the termination of the contractual relationship at a later stage.
23. Consequently, such wrong conduct and non-fulfilment of its contractual obligations had to be considered an unjustified breach of contract by the club.
24. However, the Chamber decided not to analyse the financial aspect of the contractual litigation only, but to analyse further facts and allegations of the parties in order to achieve a balanced decision with regard to the question whether the responsibility for the termination of the contract had to be held exclusively by the club or not.
25. As a consequence, the Chamber considered the player's departure on 20 October 2008, which was an undisputed fact.
26. In this regard, the members of the Chamber took note that on 17 October 2008, after not having received any financial compensation, the player had set the club a deadline until 31 October 2008 in order to fulfil its financial obligations regarding one salary payment in the amount of EUR 800, due on 1 October 2008,

and one instalment in the amount of EUR 5,250, due on 2 October 2008. However, the Chamber noted that the player didn't wait until the time limit imposed on the club had expired, but left the club as early as on 20 October 2008.

27. Furthermore, the Chamber considered that the player asserted not having left the club voluntarily, but that he was orally put under pressure from the club. In this respect, the members of the Chamber took note that according to the player, he had allegedly been wrongfully accused of misleading the club regarding a registration under exceptional conditions i.e. as an unemployed player outside the registration period. Moreover, the player alleged having been informed orally by the club's representatives that he was no longer welcome on the training ground nor in the club and that the contract was considered to be invalid.
28. In this respect, the Chamber noted that the player was not in a position to submit any documentary evidence in support of his position.
29. Consequently, the Chamber decided that the player had left the club prematurely i.e. only after the non-payment of one monthly salary and one instalment and was therefore to be held at least to some extent responsible for the termination of the contractual relationship and for any breach of contract committed.
30. Finally, the Chamber focused on the termination of the contractual relationship by the club on 10 December 2008. In this respect, the Chamber took into consideration that according to the club, the contract had been terminated because of unprofessional and disobeying behaviour of the player and because the later allegedly left the club on 20 October 2008 without informing the club thereof.
31. However, with regard to the reasons for the termination of the contractual relationship, the Chamber took note that the club was not in a position to provide any documentary evidence in support of his position i.e. a proof regarding the misconduct of the player or any possible written warning in this respect.
32. In view of the above, the Chambers stressed again that the contractual relationship was terminated unilaterally by the club on 10 December 2008 without just cause, particularly taking into account the club's failure to fulfil its contractual financial obligations, which led to a serious disruption of the contractual relationship and to the departure of the player.
33. Nevertheless, after long deliberations and taking into account the above as well as all submissions made by both parties in this respect, the Chamber came to the

conclusion that the conduct of both parties led to the termination of the relevant employment contract on 10 December 2008 and that none of the parties can be held exclusively responsible for the breach of the relevant employment contract. As a result, the Chamber unanimously decided that the breach of contract occurred due to the behaviour of both parties.

34. In this respect, the Chamber once again emphasised that the event giving rise to the underlying contractual dispute was the non-payment of the financial duties by the club, which was *conditio sine qua non* for the further sequence of events.
35. The Chamber therefore concluded that the club had to be held mainly responsible for the breach of the employment contract.
36. In continuation, and with regard to the third issue, the Chamber focused on the consequences of the breach of contract in question.
37. In this respect, the Chamber first of all decided that in accordance with art. 17 par. 1 of the Regulations and the constant jurisprudence of the Dispute Resolution Chamber, the club is liable to pay all outstanding monies due under the relevant employment contract until the date on which the labour relationship was terminated, i.e. until 10 December 2008. Furthermore, the Chamber decided that the player is entitled to receive from the club an amount of money as compensation for the breach of contract.
38. With regard to the outstanding payments, the Chamber determined that until the date of the termination of the relevant employment contract, i.e. until 10 December 2010, salaries and instalments in the amount of EUR 18,150 (3 x EUR 800, 3 x EUR 5,250) have not been paid by the club. Therefore, the Chamber decided that the club has to pay the outstanding salaries and instalments in the total amount of EUR 18,150 with an interest of 5% on the respective amounts due to the player.
39. In continuation the Chamber established that the club in accordance with art. 17 par. 1 of the Regulations is also liable to pay compensation for damage suffered by the player as a consequence of the early termination of the contract due to the breach of contract committed by the club.
40. In this regard, and in order to calculate the amount of compensation to be paid by the club, the Chamber took into consideration the rest value of the relevant employment contract, i.e. the salaries for the months of December 2008 until the end of June 2009 (7 x EUR 800) as well as the instalments (5 x EUR 5,250). Furthermore, the Chamber took note that the player had signed a new employment contract with the G club, FC M, valid from 16 January 2009 until 30 June 2010 for a monthly remuneration of EUR 783. In this respect, the Chamber decided that the remuneration received according to the new employment

contract (EUR 404.10 for the month of January 2009 plus 5 x EUR 783 from the months of February until the end of June 2009) had also to be taken into account. Finally, the Chamber was eager to emphasise that the player was partially liable for the termination of the contract with the club.

41. As a result of all the above, the Chamber came to the conclusion that it was reasonable to award the player compensation for the breach of contract committed by the club in the amount of EUR 10,000.
42. Moreover, and turning its attention to the player's request regarding further contractual benefits, the Chamber referred to art. 12 par. 3 of the Procedural Rules, in accordance with which a party deriving a right from an alleged fact shall carry the burden of proof. In this respect, the Chamber took note that the Claimant did not provide any documentary evidence besides the employment contract in order to prove that he was entitled to receive compensation regarding the apartment rent, flight tickets for the family and sporting damages. In this respect, the Chamber considered that all the above-mentioned demands are covered by the compensational payment in the amount of EUR 10,000.
43. In conclusion, the Dispute Resolution Chamber decided that the club must pay to the player outstanding remuneration in the amount of EUR 18,150 plus default interest at a rate of 5% of the due date of the relevant payments and compensation for breach of contract in the amount of EUR 10,000. In this respect, the Chamber determined that any further claims of the player are rejected. Therefore, the Chamber established that the player's claim is partially accepted.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, the player T, is partially accepted.

2. The Respondent, FC K, has to pay to the Claimant **within 30 days** as from the date of notification of this decision the amount of EUR 18,150, plus interest at 5% p.a. on the following amounts and as of the following dates:

on EUR 6,050 as of 18.10.2008;
on EUR 800 as of 1.11.2008;
on EUR 5,250 as of 2.11.2008;
on EUR 800 as of 1.12.2008;
on EUR 5,250 as of 2.12.2008.
3. In addition, the Respondent has to pay to the Claimant the amount of EUR 10,000 **within 30 days** as from the date of notification of this decision. In the event that this amount 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.
4. Any further request of the Claimant is rejected.
5. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2 and 3 are not paid by the Respondent within the stated deadlines, the present matter shall be submitted upon request to the FIFA Disciplinary Committee for its consideration and decision.
6. 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.

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

1012 Lausanne
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Tel: +41 21 613 50 00
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For the Dispute Resolution Chamber:

Markus Kattner
Deputy Secretary General

Encl. CAS directives