Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 August 2013,

in the following composition:

Geoff Thompson (England), Chairman
John Newman (USA), member
Damir Vrbanovic (Croatia), member

on the claim presented by the player,

Player A, from country S,

as *Claimant*

against the club,

Club F, from country T

as *Respondent*

regarding an employment-related dispute arisen between the parties

I. Facts of the case

Facts relating to the preliminary issue of the competence of the Dispute Resolution Chamber:

1. On 30 August 2010, the player A (hereinafter: *player* or *Claimant*) and the club F (hereinafter: *club* or *Respondent*) signed an employment contract, in accordance with which any dispute in respect of the contract shall be governed by the FIFA regulations.

2. On 31 August 2010, the parties signed an additional agreement, which does not contain any jurisdiction clause.

3. The club contested the competence of FIFA to deal with the present matter, since, according to the club, the Football Association of country T has an independent arbitration body to deal with the matter, *i.e.* the Dispute Resolution Chamber of the Football Association of country T.

4. In this regard, the Football Association of country T provided the 2005 edition of the "Regulations for the registration and transfer of football players (2005)" (in force since 15 June 2005) relating *inter alia* to the deciding body under the Football Association of country T, in accordance with which the Football Association of country T "Dispute Resolution Chamber" consists of five members (chairman, vice-chairman, three members). The chairman, vice-chairman and one member are elected by the Executive Committee of the Football Association of country T and two members are elected by the Football Players' Association of country T. Furthermore, according to said Regulations, the appeal body is the "Disciplinary Authority of the Football Association of country T".

5. The player, for his part, insists that FIFA's Dispute Resolution Chamber deals with the present matter.

Facts relating to the substance of the matter:

6. The employment contract signed between the parties on 30 August 2010 was valid during 19 months until 31 May 2012.

7. In accordance with the employment contract, for both the 2010-11 and the 2011-12 season, the player was to receive the amount of EUR 17,000 per season. During the 2010-11 season this amount was payable in 9 equal monthly instalments of EUR 1,889 each, as from 31 September 2010 until 31 May 2011.

8. The additional agreement signed between the parties on 31 August 2010 stipulates that the player was entitled to receive *inter alia* the amount of EUR 64,000 during the 2010-11 season, payable in 9 instalments of EUR 7,111 each as from 31 September 2010 until 31 May 2011, and the total amount of EUR 73,000 as salary for the 2011-12 season.

9. The agreement further entitles the player to receive an accommodation allowance of up to EUR 600 per month and 1 return family ticket to country S per year.

10. Articles 1.b, 1.g, and 1.i of the employment contract deal with the player's obligations towards the club, his cooperation with the coach and co-players, obedience of internal regulations and instructions, behaving professionally.

11. Article 3.b of the contract stipulates *inter alia* that if the player disobeys, neglects or refuses to carry out or comply with the club's instructions, is absent without justification, the club may dismiss the player from work by giving him written notice.

12. Article 3.c of the contract sets forth that in case of violation of the contractual terms the *"innocent"* party has the right to terminate the contract and claim damages.

13. On 17 May 2011, the club terminated the employment contract and the agreement in writing due to the player's alleged breach of contract. In the letter of termination, the club refers to articles 1(b), (g) and 9 (i) and 3 (b) and (c) of the employment contract. In addition, according to said letter, the club imposed a fine upon the player corresponding to two months' salary due to his alleged contractual violations.

14. On 22 July 2011, the player lodged a claim in front of FIFA against the club maintaining that the club had terminated the employment contract and the agreement without just cause and, therefore, he asked to be awarded payment of the following monies:

    a. EUR 9,000 (salary for May 2011 under both contracts);
    b. EUR 1,200 (rental allowance for April and May 2011 under the agreement);
    c. EUR 6,000 (one family return air ticket (country S) for the 2010-11 season for himself and 3 family members);

d. EUR 75,000 (compensation for breach of contract: salaries for the 2011-12 season amounting to EUR 90,000 minus the amount of EUR 15,000 under his new employment contract).

15. The player explains that he received the termination letter on 6 June 2011, at which time his salary for May 2011 and the accommodation allowance for April and May 2011 had remained unpaid in addition to the amount of EUR 6,000 relating to the air ticket.

16. As to the substance of the matter, the club holds that according to the employment contract and national legislation of country T, it had the legal right to terminate the contract at any time between the first six months of the contractual duration since this period was considered and agreed to be a probation period. In this respect, the club refers to a paragraph 12 of the employment contract

17. The club further refers to articles 1.b, 1.g, 1.i, 3.b and 3.c of the employment contract and points out that the player, although his employment contract ended on 17 May 2011, had left without any notice and did not appear for training until the end of the season. In light of the player's *"gross misconduct deserting the programme of employment"*, the club decided to terminate the contract with immediate effect after having imposed a fine of two months' salary, allegedly in accordance with the internal club regulations, upon the player for the training sessions that he had failed to attend without valid reason.

18. For these reasons, the club holds that the player's claim shall be rejected and that he is not entitled to any compensation. Alternatively, the club points out that the player has not demonstrated any actions in order to mitigate his loss, in particular, since he was eligible to register with another club after 31 May 2011.

19. On 25 June 2011, the player signed an employment contract with another club from country T valid as from 4 July 2011 until 20 May 2012 in accordance with which the player was entitled to receive EUR 15,000 for said period of time.

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 22 July 2011. 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. 21 par. 2 and par. 3 of the Procedural Rules).

2. With regard to the competence of the Dispute Resolution Chamber, art. 3 par. 1 of the Procedural Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2012). In accordance with art. 24 par. 1 and par. 2 in combination with art. 22 lit. b) of the aforementioned Regulations, the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from country S and a club from country T.

3. However, the DRC acknowledged that the Respondent contested the competence of FIFA's deciding body alleging that the Football Association of country T has an independent arbitration body to deal with the matter, *i.e.* the Dispute Resolution Chamber of the Football Association of country T.

4. The Chamber noted that the Claimant, for his part, rejected such position and insisted that FIFA has jurisdiction to deal with the present matter.

5. In this respect, first and foremost, the Chamber outlined that neither the employment contract nor the additional agreement contain a jurisdiction clause in general or, in particular, referring to national dispute resolution.

6. Notwithstanding the above, even if the contracts at the basis of the present dispute would have included such arbitration clause in favour of national dispute resolution, the DRC emphasised that in accordance with art. 22 lit. b) of the 2012 edition of the Regulations on the Status and Transfer of Players the Chamber is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level

within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the DRC referred to FIFA Circular no. 1010 dated 20 December 2005. In this regard, the DRC further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

7. In this context, the DRC wished to stress that the Respondent was unable to prove that, in fact, the Football Association of country T "Dispute Resolution Chamber" meets the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, in FIFA Circular no. 1010 as well as in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations.

8. In this respect, the Chamber referred to the jurisprudence of the Dispute Resolution Chamber, which already, on several occasions, established that the Football Association of country T "Dispute Resolution Chamber" does not meet the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

9. In view of all the above, the DRC established that, in line with the constant jurisprudence of the Dispute Resolution Chamber, the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the DRC is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

10. Subsequently, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2012 and 2010) and, on the other hand, to the fact that the present claim was lodged on 22 July 2011. The Dispute Resolution Chamber concluded that the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

11. 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 started by acknowledging the above-mentioned facts as well as the arguments and the documentation submitted by the parties.

12. The members of the Chamber then turned to the claim of the Claimant, who maintained that the Respondent had terminated the employment contract and

the agreement without just cause and that, consequently, the Respondent is liable to pay *inter alia* compensation for breach of contract.

13. Subsequently, the Chamber noted that the Respondent rejected the Claimant's claim in its entirety alleging that the employment relation was subject to a probation period and that the Claimant acted in violation of his contractual obligations.

14. The members of the Chamber highlighted that the underlying issue in this dispute, considering the diverging position of the parties, was to determine as to whether the employment contract and the agreement had been terminated by one of the parties with or without just cause. The Chamber also underlined that, subsequently, if it were found that the employment contract and the agreement were terminated without just cause, it would be necessary to determine the consequences for the party that was responsible for the early termination of the contractual relation.

15. Having said that, the Chamber recalled that, on 17 May 2011, the Respondent terminated the employment contract in writing invoking alleged violations by the Claimant of his contractual obligations and invoking an alleged probation period.

16. In this regard, the Chamber observed that the Respondent *inter alia* held that the Claimant had left without giving notice and failed to appear at training until the end of the 2010-11 season, even though it terminated the employment contract and the agreement on 17 May 2011.

17. In this respect as well as with regard to the contractual clauses referred to by the Respondent in its letter of termination of 17 May 2011, the members of the Chamber deemed it appropriate to recall the general principle of burden of proof stipulated in art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, and pointed out that the Respondent did not submit any documentary evidence in support of its allegations, *i.e.* in support of the allegation that the Claimant would have acted in breach of articles 1(b), (g) and 9 (i) and 3 (b) and (c) of the employment contract. In this respect, and on a side note, the Chamber wished to point out that no article 9 (i) appears to be included in the employment contract on file. Furthermore, the Chamber was eager to underline that the Respondent failed to present proof of any previous warnings addressed to or disciplinary proceedings against the Claimant. What is more, in its defense, the Respondent has not even claimed to have previously warned the Claimant or opened

disciplinary proceedings against him. In this context, the members of the Chamber highlighted that even the fine of two monthly salaries was imposed upon the Claimant by the Respondent in the letter of termination only.

18. Regardless of the preceding consideration and referring to the allegations of the Respondent with respect to the conduct of the Claimant, which were not proven as stated above, the members of the Chamber were eager to emphasise that only a breach or misconduct which is of a certain severity would justify the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio.*

19. In continuation, the members of the Chamber turned their attention to the argument of the Respondent relating to the alleged probation period during the first six months of the employment relation and during which period of time the Respondent allegedly could terminate the employment contract at any moment. In this regard, the Chamber noted that the Respondent *inter alia* refers to a paragraph 12 of the employment contract. However, the Chamber noted that the neither the employment contract nor the agreement on file contains any such paragraph 12 or any other clause relating to a probation period and, consequently, the Chamber unanimously agreed that this argument of the Respondent must be rejected. In addition, for this reason, the Chamber emphasized that there was no necessity to further analyse the question as to whether any such probation period clause in player contracts could be considered lawful.

20. In view of all of the above, the Chamber was of the unanimous opinion that the Respondent did not have a valid reason to prematurely terminate the employment contract and the agreement on 17 May 2011. Consequently, the Chamber decided that the Respondent had terminated the employment contract and the agreement without just cause.

21. Prior to establishing the consequences of the breach of contract without just cause by the Respondent in accordance with art. 17 par. 1 of the Regulations, the Chamber held that it had to address the issue of any unpaid remuneration when the employment contract and the agreement were terminated by the Respondent on 17 May 2011.

22. Indeed, according to the Claimant, the Respondent had failed to pay his salaries falling due as from May 2011 on the basis of both contracts in addition to the accommodation allowances for April and May 2011 and one family return air ticket. The Respondent, for its part, had not contested such claim. Therefore, and bearing in mind that the remuneration and accommodation allowance for May 2011 had not yet fallen due when the Respondent terminated the employment relation, the Chamber decided that, in virtue of the principle *pacta sunt servanda,* the Respondent is liable to pay to the Claimant the amount of EUR 600 relating to accommodation for April 2011 as well as the return family air ticket, which was contractually agreed upon between the parties, in the amount of EUR 6,000, which amount was confirmed as reasonable by FIFA Travel.

23. Having established the above, the Chamber turned its attention to the question of the consequences of the unilateral termination of the employment contract and the agreement by the Respondent without just cause on 17 May 2011.

24. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive compensation from the Respondent for the termination of the employment contract and the agreement without just cause in addition to the aforementioned total amount of EUR 6,600.

25. 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.

26. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent contracts contain 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. The members of the Chamber assured themselves that no such compensation clause was included in the contracts at the basis of the matter at stake.

27. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations.

The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.

28. In order to estimate the amount of compensation due to the Claimant in the present case, the members of the Chamber first turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and the new contract in the calculation of the amount of compensation.

29. In accordance with the contracts signed by the Claimant and the Respondent, which were to run for thirteen months more, *i.e.* until 31 May 2012, after the breach of contract occurred, the Claimant was to receive remuneration amounting to EUR 99,600, *i.e.* monthly instalments and rental payments as of May 2011 until May 2012. Consequently, the Chamber concluded that the amount of EUR 99,600 serves as the basis for the final determination of the amount of compensation for breach of contract.

30. The Chamber then took due note of the employment situation of the Claimant after the termination of the contracts with the Respondent and of the relevant new employment contract that he had entered into. It was duly noted that, on 25 June 2011, the player and the club M, signed an employment contract valid as from 4 July 2011 until 20 May 2012, in accordance with which the player was to receive the amount of EUR 15,000 for said contractual duration.

31. Consequently, bearing in mind art. 17 par. 1 of the Regulations and in accordance with the constant practice of the Dispute Resolution Chamber as well as the general obligation of the player to mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.

32. 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 84,600 as compensation for breach of contract to the Claimant.

33. In conclusion, the Dispute Resolution Chamber decided that the Respondent has to pay EUR 6,600 to the Claimant relating to the contractual remuneration due prior to the unilateral termination of the relevant contracts as well as EUR 84,600 as compensation for the unjustified breach of the contracts by the Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player A, is admissible.

2. The claim of the Claimant is accepted.

3. The Respondent, club F, has to pay outstanding remuneration in the amount of EUR 600 plus the amount of EUR 6,000 related to air tickets to the Claimant within 30 days as from the date of notification of this decision.

4. The Respondent has to pay compensation for breach of contract in the amount of EUR 84,600 to the Claimant within 30 days as from the date of notification of this decision.

4. In the event that the amounts due to the Claimant are not paid by the Respondent within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. 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. 67 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:

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For the Dispute Resolution Chamber:

Jérôme Valcke
Secretary General

Encl.: CAS directives