

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 12 June 2015,

by **Theo van Seggelen** (Netherlands), DRC judge,

on the claim presented by the player,

Player A, from country B

as Claimant

against the club,

Club C, from country D

as Respondent

regarding an employment-related dispute
between the parties in connection with overdue payables

I. Facts of the case

1. On 1 February 2013, the player from country B, Player A (hereinafter: *Claimant*), and the club from country D, Club C (hereinafter: *Respondent*) signed an employment contract valid as from the date of signature until 31 December 2013.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant *inter alia* the following amounts:
 - a. EUR 50,000 as bonus payment payable in two instalments of EUR 25,000 on *"the date of receipt of the international transfer certificate of the player"* and on 15 July 2013 respectively;
 - b. EUR 7,000 as monthly salary payable *"the day 15 of the following month"*.
3. By correspondence dated 15 April 2015, the Claimant put the Respondent in default of payment of EUR 39,000, corresponding to part of the bonus as well as his salaries of (part of) September, October, November and December 2013, setting a time limit of ten days in order to remedy the default.
4. On 29 April 2015, the Claimant lodged a claim against the Respondent in front of FIFA asking that the Respondent be ordered to pay to him overdue payables in the amount of EUR 39,000 corresponding to part of the bonus as well as his salaries of (part of) September, October, November and December 2013.
5. The Claimant further asked to be awarded interest of 5% *"per year as from the date of each amount was due until the date of effective payment"*.
6. Additionally, the Claimant requested that the Respondent be ordered to *"repay to the Claimant for all the amounts spent in this claim, including those referring to possible trips abroad, if necessary, translation costs, remittance of documents by posts as well as those paid to attorneys, at a 20% (twenty per cent) rate on the due amount..."*
7. In spite of having been invited to do so, the Respondent has not replied to the claim.

II. Considerations of the DRC judge

1. First of all, the DRC judge analysed whether he was competent to deal with the matter at hand. In this respect, he took note that the present matter was submitted to FIFA on 29 April 2015. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber

(edition 2015; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. art. 21 of the *Procedural Rules*).

2. Subsequently, the DRC judge referred to art. 3 par. 2 and par. 3 of the *Procedural Rules* and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b of the *Regulations on the Status and Transfer of Players* (edition 2015), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from country B and a club from country D.
3. Furthermore, the DRC judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the *Regulations on the Status and Transfer of Players* (edition 2015), and considering that the present claim was lodged on 29 April 2015, the 2015 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the DRC judge and the applicable regulations having been established, the DRC judge entered into the substance of the matter. In this respect, the DRC judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the DRC judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.
5. Having said this, the DRC judge acknowledged that the Claimant and the Respondent signed an employment contract valid as of 1 February 2013 until 31 December 2013, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, EUR 50,000 as a bonus as well as EUR 7,000 as a monthly salary.
6. Subsequently, the Claimant lodged a claim against the Respondent in front of FIFA, maintaining that the Respondent has overdue payables towards him in the total amount of EUR 39,000 corresponding to part of the bonus, as well as his salaries of (part of) September, October, November and December 2013.
7. In this context, the DRC judge took particular note of the fact that, on 15 April 2015, the Claimant put the Respondent in default of payment of the aforementioned amount, setting a time limit of ten days in order to remedy the default.
8. Consequently, the DRC judge concluded that the Claimant had duly proceeded in accordance with art. 12bis par. 3 of the *Regulations*, which stipulates that the creditor (player or club) must have put the debtor club in default in writing and

have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

9. Subsequently, the DRC judge took into account that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. In this way, the DRC judge considered that the Respondent renounced its right to defence and thus accepted the allegations of the Claimant.
10. Furthermore, as a consequence of the aforementioned consideration, the DRC judge concurred that in accordance with art. 9 par. 3 of the Procedural Rules he shall take a decision upon the basis of the documents on file, in other words, upon the statements and documents presented by the Claimant.
11. Having said this, the DRC judge acknowledged that, in accordance with the employment contract provided by the Claimant, the Respondent was obliged to pay to the Claimant EUR 50,000 as a bonus and a monthly salary of EUR 7,000.
12. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had substantiated his claim pertaining to overdue payables with sufficient documentary evidence.
13. On account of the aforementioned considerations, the DRC judge established that the Respondent failed to remit the Claimant's remuneration in the total amount of EUR 39,000 corresponding to part of the bonus as well as his salaries of (part of) September, October, November and December 2013.
14. In addition, the DRC judge established that the Respondent had delayed a due payment for more than 30 days without a *prima facie* contractual basis.
15. Consequently, the DRC judge decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent is liable to pay to the Claimant overdue payables in the total amount of EUR 39,000.
16. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC judge decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on each of the relevant payment(s) as of the day following the day on which the relevant payment(s) fell due, until the date of effective payment.
17. In continuation, taking into account the consideration under number II./14 above, the DRC judge referred to art.12bis par. 2 of the Regulations which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.

18. The DRC judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the Respondent. Bearing in mind that the Respondent did not reply to the claim of the Claimant, the DRC judge decided to impose a fine on the Respondent in accordance with art. 12bis par. 4 lit. c) of the Regulations. Furthermore, taking into consideration the amount due of EUR 39,000, the DRC judge regarded a fine amounting to CHF 5,000 as appropriate and hence decided to impose said fine on the Respondent.
19. In this connection, the DRC judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.
20. Finally, the DRC judge decided to reject the Claimant's claim pertaining to legal and procedural costs in accordance with art. 18 par. 4 of the Procedural Rules and the DRC's respective longstanding jurisprudence in this regard.

III. Decision of the DRC judge

1. The claim of the Claimant, Player A, is partially accepted.
2. The Respondent, Club C, has to pay to the Claimant, within 30 days as from the date of notification of this decision, overdue payables in the amount of EUR 39,000, plus interest at the rate of 5% *p.a.* until the date of effective payment as follows:
 - a. 5% *p.a.* on the amount of EUR 15,000 as from 16 July 2013;
 - b. 5% *p.a.* on the amount of EUR 3,000 as from 16 October 2013;
 - c. 5% *p.a.* on the amount of EUR 7,000 as from 16 November 2013;
 - d. 5% *p.a.* on the amount of EUR 7,000 as from 16 December 2013;
 - e. 5% *p.a.* on the amount of EUR 7,000 as from 16 January 2014.
3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
4. Any further claim lodged by the Claimant is rejected.
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 DRC judge of every payment received.

6. The Respondent is ordered to pay a fine in the amount of CHF 5,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA to the following bank account with reference to case nr.:

UBS Zurich
Account number 366.677.01U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A

Note relating to the motivated decision (legal remedy):

According to article 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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne
Switzerland
Tel: +41 21 613 50 00
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e-mail: info@tas-cas.org
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For the DRC judge:

Jérôme Valcke
Secretary General

Encl. CAS directives