

Decision of the Dispute Resolution Chamber (DRC) judge

passed on 3 July 2015,

by **Philippe Diallo** (France), 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 11 May 2013, the player from country B, Player A (hereinafter: *Claimant*), and the club from country D, Club C (hereinafter: *Respondent*) signed an employment contract (hereinafter: *the contract*) valid as from 1 July 2013 until 30 June 2014.
2. On the same date, the parties concluded a document titled "*The appendix No. 2 to the contract*" (hereinafter: *the appendix*) which governed the financial aspects of the contract and according to which the Respondent undertook to pay to the Claimant, *inter alia*, the following amounts:
 - a. USD 110,000 as total salary payable in 11 monthly instalments of USD 10,000 "*for the term from 01.07.2013 till 30.05.2014*";
 - b. USD 30,000 payable on 30 December 2013.
3. By correspondence dated 26 May 2015, the Claimant put the Respondent in default of payment of USD 50,000, corresponding to "*two unpaid salaries total of [USD 20,000] and sign-on fee [of USD 30,000]*", setting a time limit of ten days in order to remedy the default.
4. On 15 May 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 USD 50,000 corresponding to his salaries of January and June 2014 as well as "*the sign-on fee*" payable on 30 December 2013.
5. 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 15 May 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 15 May 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 July 2013 until 30 June 2014 as well as an appendix which governed the financial aspects of the contract and whereby the Respondent undertook to pay to the Claimant, *inter alia*, USD 30,000 on 30 December 2013 as well as USD 10,000 as a monthly salary “for the term from 01.07.2013 till 30.05.2014”.
6. Subsequently, the DRC judge noted that 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 USD 50,000 corresponding to the amount due on 30 December 2013, as well as his salaries of January and June 2014.
7. In this context, the DRC judge took particular note of the fact that, on 26 May 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 appendix provided by the Claimant, the Respondent was obliged to pay to him USD 30,000 on 30 December 2013 as well as USD 10,000 as a monthly salary “for the term from 01.07.2013 till 30.05.2014”.
12. Taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had only partially substantiated his claim pertaining to overdue payables with pertinent documentary evidence. That is, there is no contractual basis relating to the Claimant’s claim pertaining to the salary of June 2014 as the appendix clearly provides that the salary of the Claimant would be payable “for the term from 01.07.2013 till 30.05.2014”. Consequently, the DRC judge decided to reject this part of the Claimant’s claim relating to his alleged salary of June 2014.
13. On account of the aforementioned considerations and the documentary evidence provided by the Claimant, the DRC judge established that the Respondent failed to remit the Claimant’s remuneration in the total amount of USD 40,000 comprised of the amount of USD 30,000 due on 30 December 2013 and his salary of January 2014 in the amount of USD 10,000.
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 USD 40,000.
16. Moreover, the DRC judge decided that any further request filed by the Claimant is rejected.
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 further established that in 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 and that the Respondent has previously been found by the Dispute Resolution Chamber to have neglected its contractual obligations towards players, 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 USD 40,000, the DRC judge regarded a fine amounting to CHF 10,000 as appropriate and hence decided to impose said fine on the Respondent.
19. In this respect, 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.

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 USD 40,000.
3. In the event that the amount due to the Claimant is 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.
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 10,000. 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:

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For the DRC judge:

Jérôme Valcke
Secretary General

Encl. CAS directives