

# **Decision of the Dispute Resolution Chamber (DRC) judge**

passed on 1 October 2015,

by **Philippe Diallo** (France), DRC judge,

on the claim presented by the player,

**Player A**, Country B,

*as Claimant*

against the club,

**Club C**, Country D

*as Respondent*

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

## I. Facts of the case

1. On an unknown date, the Player of Country B, Player A (hereinafter: *Claimant*), and the Club of Country D, Club C (hereinafter: *Respondent* or *Club C*) signed an employment contract valid as from 1 August 2014 until 31 May 2015.
2. In accordance with the employment contract, the Respondent undertook to pay to the Claimant a fixed-remuneration, broken-down as follows:
  - USD 25,000 net as sign-on fee;
  - USD 8,000 net as lump-sum payment due on 15 October 2014;
  - USD 11,000 net as monthly salary.
3. The contract also provides for the following bonuses:

*"(...) B) After 9<sup>th</sup> tour of the Premier League:*

  1. *In case "Club C" stays in first three position in premier league standing In the meeting with competing teams, the reward amount shall be in case of a Club's win 2000 USD, in case of a draw 1000 USD*
  2. *In case "Club C" stays in 4, 5 and 6 position in premier league standing In the meeting with competing teams, the reward amount shall be in case of a Club's win 1500 USD, in case of a draw 500 USD*
  3. *In case "Club C" stays in 7, 8 and 9 position in premier league standing In the meeting with competing teams, the reward amount shall be in case of a Club's win 1000 USD, in case of a draw no reward is shall be provided.*
  4. *In case "Club C" stays in 10 position in premier league standing In the meeting with competing teams no reward is shall be provided".*

The contract further stipulates that:

*" - the 11 players in the start crew of the team shall be paid 100% of reward amount.*

*- Players on the spare bench, but performing on the field afterwards during the first half game shall be paid 100% of the reward amount.*

*- Players on the spare bench, but performing on the field afterwards during the second half game shall be paid 50% of the reward amount.*

*- Players on the spare bench, and not performing on the field afterwards during the game shall be paid 30% of the reward amount".*

4. By correspondence dated 26 June 2015, the Claimant put the Respondent in default of payment of the total amount of USD 45,950 (detailed in point I. 5 below), setting a time limit of 10 days in order to remedy the default.
5. On 13 July 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 amounting to USD 45,950 corresponding to the following amounts:

- USD 44,000 as salary from February through May 2015;
  - USD 750 as bonus for *“participating in the second half of the match won against Club E”* on 18 March 2015;
  - USD 450 as bonus for *“being named in the match day squad against Club F”* for 1 April 2015;
  - USD 750 as bonus for *“participating in the game against Club G”* on 13 April 2015 and *“which lead to the qualification of the Club to the semi-finals of the national cup competition”*.
6. The Claimant further asks to be awarded interest of 5% *p.a.* as of the respective due date of each payment as well as the payment of legal fees.
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 13 July 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 of Country B and a Club of 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 (2015), and considering that the present claim was lodged on 13 July 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 from 1 August 2014 until 31 May 2015, in accordance with which the Claimant was entitled to receive from the Respondent, *inter alia*, a sign-on fee of USD 25,000, a lump-sum payment of USD 8,000 due on 15 October 2014 and a monthly salary of USD 11,000, as well as bonuses.
6. In continuation, the DRC judge took note 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 45,950 corresponding to the amount of USD 44,000 as salary from February through May 2015 as well as USD 1,950 as bonuses.
7. In this context, the DRC judge took particular note of the fact that, on 26 June 2015, the Claimant put the Respondent in default of payment of the aforementioned amounts, setting a deadline of 10 days in order to remedy the default.
8. Consequently, the DRC judge concluded that the Claimant had 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 already 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 a monthly salary of USD 11,000 as well as bonuses.
12. In this respect, and taking into account the documentation presented by the Claimant in support of his petition, the DRC judge concluded that the Claimant had not fully substantiated his claim pertaining to overdue payables with pertinent documentary evidence in accordance with art. 12 par. 3 of the Procedural Rules. That

is, there is no contractual basis relating to the Claimant's claim pertaining to the bonus of USD 750 relating to "the qualification of the Respondent in the semi-finals of the national cup". Consequently, the DRC judge decided to reject this part of the Claimant's claim.

13. In continuation, 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 salary in the total amount of USD 44,000 corresponding to his salary from February through May 2015, as well as the amount of USD 1,200 as bonuses. In this regard, the DRC judge wished to underline that the Claimant's salary for May 2015 in the amount of USD 11,000 does not fall into the scope of art. 12bis of the Regulations, in the light of the circumstance that the salary of May 2015 was included in the relevant default notice of 26 June 2015, whereas, at that time, the May 2015 salary had not yet been overdue for 30 days. However, it has remained undisputed that the relevant amount was not paid by the Respondent. Therefore, the DRC judge decided that the amount of USD 11,000 as salary for May 2015 will be added to the amounts due as overdue payables.
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 34,200 and the outstanding salary for May 2015 in the amount of USD 11,000.
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 the amount of USD 45,200, as of the due date of each payment until the date of effective payment.
17. Furthermore, as regards the claimed legal expenses, the DRC judge referred to art. 18 par. 4 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the DRC judge decided to reject the Claimant's request relating to legal expenses.
18. Moreover, the DRC judge decided that any further request filed by the Claimant is rejected.
19. 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.

20. 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 of USD 34,200 due as overdue payables, the DRC judge regarded a fine amounting to CHF 5,000 as appropriate and hence decided to impose said fine on the Respondent.
21. 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.

### **III. Decision of the DRC judge**

1. The claim of the Claimant is partially accepted.
2. The Respondent 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 34,200 plus interest at the rate of 5% *p.a.* until the date of effective payment as follows:
  - a. 5% *p.a.* as of 1 March 2015 on the amount of USD 11,000;
  - b. 5% *p.a.* as of 1 April 2015 on the amount of USD 11,750;
  - c. 5% *p.a.* as of 1 May 2015 on the amount of USD 11,450.
3. The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 11,000 plus interest at the rate of 5% *p.a.* as from 1 June 2015 until the date of effective payment.
4. In the event that the aforementioned amounts due to the Claimant are 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.
5. Any further request filed by the Claimant is rejected.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the DRC judge of every payment received.

7. 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:

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

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**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  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the DRC judge:

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Markus Kattner  
Acting Secretary General

Encl: CAS directives