Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 2 November 2007,

in the following composition:

Mr. Slim Aloulou (Tunisia), Chairman
Mr. Mohamed Mecherara (Algeria), member
Mr. Essa M. Saleh Al-Housani (U.A.E.), member
Mr. Gerardo Movilla (Spain), member
Mr. John Didulica (Australia), member

on the claim presented by the club

P

as "*Claimant/Counter-Respondent*",

against the player

R
represented by lawyer

as "*Respondent/Counter-Claimant*",

and involving the club

Z
represented by lawyer

as "*Respondent*",

regarding a contractual dispute arisen between the club P and the player R as well as the inducement to breach of contract by the player's new club.

I. Facts of the case

1. On 10 January 2005, the player R signed an employment contract with the club P valid until 31 December 2008.

2. The aforementioned employment contract stipulates the following payments:
   - point 3: a monthly salary of EUR 800 and a Christmas bonus (one salary), an Easter bonus (half a salary) and a vacation bonus (same as Easter bonus).
   - point 4: states special bonuses in accordance with internal regulations.
   - point 5: other amenities (house, car, etc.) and two flight tickets to E per year.
   - point 6 b): the player will receive the total amount of EUR 1,015,228.48 payable in 20 instalments starting the first one on 30 January 2005 and finishing the last one on 30 September 2008.

3. On 11 March 2005 and in a different procedure involving club Z, the Dispute Resolution Chamber decided that the player R has committed an unilateral breach of the employment contract signed with Z on 17 May 2003 without just cause. The player was condemned to pay to Z the amount of USD 250,000 as compensation for the aforementioned breach of contract.

4. On 10 May 2005, the player R and club P signed an "*Amendment*" to the employment contract signed on 10 January 2005 stipulating in its point 3 A) that P would pay to the player R the total amount of EUR 831,218.32 in 20 instalments with the following payment plan: 1) EUR 25,380.74 on 14 April 2005; 2) EUR 31,725.89 on 15 April 2005; 3) EUR 31,725.89 on 15 May 2005; 4) EUR 38,071.07 on 30 August 2005; 5) EUR 38,071.07 on 30 October 2005; 6) EUR 69,796.95 on 30 January 2006; 7) EUR 38,071.07 on 30 March 2006; 8) EUR 38,071.07 on 30 May 2006; 9) EUR 38,071.07 on 30 August 2006; 10) EUR 38,071.07 on 30 October 2006; 11) EUR 69,796.95 on 31 January 2007; 12) EUR 38,071.07 on 30 March 2007; 13) EUR 38,071.07 on 30 May 2007; 14) EUR 38,071.07 on 30 August 2007; 15) EUR 38,071.07 on 30 October 2007; 16) EUR 69,796.95 on 31 January 2008; 17) EUR 38,071.07 on 30 March 2008; 18) EUR 38,071.07 on 30 May 2008; 19) EUR 38,071.07 on 30 August 2008 and 20) EUR 38,071.07 on 30 September 2008.

5. P informed FIFA that on 14 April 2006 the player R left for 10 days of holidays in his country of origin. This absence had been authorized by the club P. After expiring of the relevant holiday period the player R did not come back to G. Therefore the player R was absent without justification since 25 April 2006.

6. On 14 August 2006, the player R informed FIFA through the E Football Association (EFA) that during his holidays in E, he was called for the military service and that based on mandatory domestic law, he is obliged to stay in his country for 3 years. Therefore, he requested FIFA's assistance in order to terminate his contract with the club P based on "*force majeure*".

7. EFA informed that the player R was undergoing obligatory military service as from 29 July 2006 until 1 November 2009.

8. On 30 November 2006, the player R and the club Z signed an employment contract valid as from 1 January 2007 until 31 December 2011, for five sporting seasons. This contract stipulates a total amount of E Pounds (EP) 4,244,300.

9. On 27 February 2007, the Single Judge of the Players´ Status Committee authorized the EFA to provisionally register the player R with its affiliated club Z with immediate effect.

10. On 22 March 2007, P lodge a complaint at FIFA against the player R and the club Z for unilateral breach of contract without just cause within the so-called protected period, in accordance with the art. 17 of the Regulations for the Status and Transfer of Players (hereinafter: the Regulations).

11. Based on the alleged unjustified breach of the relevant employment contract, P requests the amount of EUR 4,000,000 as damage compensation against the player R and Z taking in consideration the following elements:
    a. that they paid EUR 576,473.59 because of the player R;
    b. that the duration of the relevant employment contract is 4 years;
    c. that the total amount involved in the entire period of the employment contract, i.e. until 31 December 2008, is EUR 831,218.32;
    d. that they have to look for another player for replacement;
    e. that the player R participated for P in the G Championship (27 times), the G Cup (1 time), and the UEFA Cup (4 times). Due to this participation and P´s education and training the player R was known in Europe and his value was increased 4 times indicating a market price of EUR 4,000,000;
    f. that many teams were interested in the player R, such as, the Dutch club AZ and two more E clubs. However P did not concluded the relevant transfer with any team. P submitted to FIFA an authorization dated 17 July 2006 for negotiating the transfer of the player R to the club AZ for an amount of EUR 1,500,000;
    g. that after the good performance of the player in G, he was called for playing in the E Olympic team increasing even more his value.

12. P stated that they paid the total amount of EUR 576,473.59 gross divided in the following manner:
    - based on the Dispute Resolution Chamber decision dated 11 March 2005, the player R and P were jointly responsible in paying to Z the amount of USD 250,000. P paid that amount accordingly;
    - the employment contract signed between the player R and P obliges the latter to pay to the player the total amount of EUR 831,218.32. Until 22 March 2007 (date of the present claim) P paid to the player R the amount of EUR 290,316.59;
    - furniture and rent of player R´s house EUR 17,744.20, in accordance with the point 5 of the financial terms of the relevant employment contract;
    - player representative's fee, EUR 60,000.

13. Regarding the sporting sanction, P requests a restriction of four months in player´ R eligibility to play in any official football matches in accordance with the art. 17

par. 3 of the Regulations. In addition and taking in consideration the antecedents and recurrence of the player R in terminating employment contracts without just cause, P requests the imposition of an exceptional sport sanction of 6 months restriction to play.

14. On 16 April 2007, the player R and Z rejected P's claim stating that the player did not breach the employment contract dated 10 January 2005 and the player filed a counterclaim against the G club. Moreover, Z stated that it did not instigate the player R to breach the contract with the G club.

15. In particular, the player R stated:
    - based on the financial obligations established in the relevant employment contract, P did not fully fulfil them. P had to pay to him the amount of EUR 425,236.56 that includes the following points:
        a) EUR 139,593.91, 2 first instalments in accordance with the point 6 b) of the employment contract (EUR 101,522.84 + EUR 38,071.07);
        b) EUR 272,842.65, 7 first instalments in accordance with the point 3 A) of the Amendment of the employment contract;
        c) EUR 12,800, 16 monthly salaries (as from 1 January 2005 until 24 April 2006).
    - that P breached the employment contract with the player R since it owes him the amount of EUR 142,419.97 (EUR 425,236.56 – EUR 282,816.59, amounts paid by P as salaries and instalments agreed on the amendment) and therefore the latter was entitled to terminate the relevant contract for just cause in accordance with the art. 14 of the Regulations.
    - that he acted in perfect good faith since he requested FIFA assistance to solve this matter before signing any employment contract with a new club. After 9 months without playing and without any contact from P, he decided to request FIFA to allow him to sign a contract with Z.
    - that the Single Judge of the Players´ Status Committee expressly stated that there were conclusive evidences about the existence of mandatory law justifying the impossibility of the player R to leave E.
    - that the claim of damage compensation made by P is unjustified since it did not submit evidences about the market value of the player. The amount offered by P to the club AZ was too high and for this reason the transfer was not concluded. On the other hand, P offered on 21 July 2006 to transfer the player R to Al for an amount of EUR 600,000 and the Al club accepted it.

16 Z specifically stated that it also acted in good faith and proof of that, it is that on 11 September 2006 it contacted P offering to receive the player R on a loan basis for the sport season 2006/2007 and offered the amount of EUR 100,000.

17 The player R stated that P shall pay a compensation of EUR 334,030.13 for the cited breach in accordance with the art. 17 of the Regulations composed of the following amounts:

- EUR 7,600, monthly salary (EUR 800) x 9 and a ½ months, as from 25 April 2006 until 14 February 2007 (date in which the Single Judge authorized EFA to register the player).
- EUR 184,010.16 (4 instalments agreed in the Amendment, numbers 8 to 11);
- EUR 142,419.97, amount owed by P (EUR 425,236.56 – EUR 282,816.59).

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Chamber analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 22 March 2007, as a consequence the Chamber concluded that the revised Rules Governing Procedures (edition 2005) on matters pending before the decision making bodies of FIFA are applicable to the matter at hand.

2. With regard to the competence of the Chamber, art. 3 par. 1 of the above-mentioned Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of arts. 22 to 24 of the current version of the Regulations for the Status and Transfer of Players (edition 2005). In accordance with art. 24 par. 1 in combination with art. 22 (a) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on employment-related disputes between clubs and players in relation to the maintenance of contractual stability if there has been an International Transfer Certificate (ITC) request and if there is a claim from an interested party in relation to such ITC request, in particular regarding its issuance, regarding sporting sanctions or regarding compensation for breach of contract.

3. As a consequence, the Dispute Resolution Chamber (DRC) is the competent body to decide on the present litigation involving a G club, an E player and an E club regarding a claim in relation to the maintenance of contractual stability in connection with the international transfer of the player in question.

4. Subsequently, the members of the Chamber analyzed which edition of the Regulations for 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 for the Status and Transfer of Players (edition 2005) and, on the other hand, to the fact that the relevant contract at the basis of the present dispute was signed on 10 January 2005 and the claim was lodged at FIFA on 22 March 2007. In view of the aforementioned, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players (edition 2005, hereinafter: the Regulations) are applicable to the case at hand as to the substance.

5. In continuation, and entering into the substance of the matter, the members of the Chamber started by acknowledging that the player R and P signed an employment contract on 10 January 2005 valid until 31 December 2008.

6. Moreover, the members of the Chamber took duly note that the player R and P agreed that the player R left G on 14 April 2006 for holidays to E with a fixed return date for 25 April 2006, and that the player R stayed in E not returning to G.

7. At this stage, the members of the Chamber pointed out that the parties involved have clear antagonistic positions with respect to the subsequent events surrounding the matter at stake. On the one hand, the player R and Z deem that the player could not return to G due to "*force majeure*" since the military service duties in E and mandatory national law impede him to leave the country during three years. On the other hand, P deems that the player R breached unilaterally the relevant employment contract without just cause.

8. In continuation, the members of the Chamber focused their attention to the decision of the Single Judge dated 27 February 2007, and while emphasizing that it obviously was without prejudice to the decision to be taken as to the substance of the contractual dispute between the player and P, they agreed with the Single Judge's conclusion that it appears clearly that based on E law, the military service is compulsory and during its process the E citizens are restricted from leaving the country. In this respect, the members of the Chamber remarked the content of the E Constitution and different articles of the E National Service Law.

9. However, the members of the Chamber after analyzing the aforementioned antagonistic positions of the player and P concluded that even though the player R was impeded to leave his country for 3 years due to military services duties, this restriction cannot justify the behaviour of the player since when he signed the relevant employment contract with P, he was committing himself as a professional football player for 4 years to the G club, despite being well aware of his obligations in accordance with national E legislation.

10. In this respect, the deciding authority was eager to emphasize that the player had deliberately chosen to travel to E in April 2006 despite having had to know about the imminent risk related to his military duties. Furthermore, and even more importantly the Chamber stressed that the player only assumed military duties on 28 July 2006, as confirmed by the EFA, while he was expected to travel back to G already on 25 April 2006. Thus, the members of the Chamber had to conclude that the player remained in E without authorisation for 3 months without undergoing military services duties.

11. Moreover, the Chamber remarked that apart from the player R´s impossibility to leave E during his military service duties, in addition, he signed a labour contract with a new club i.e. Z, during the validity of his previous employment contract with P.

12. At this stage the members of the Chamber deemed appropriate to point out that players and clubs have the obligation to honour the employment contracts that they celebrate. Therefore, each party has to act with due diligence reassuring in the best possible way the fulfilment of his/her part of the obligations assumed in the relevant labour contract.

13. Therefore, the members of the Chamber deemed that when the player R left G on 14 April 2007 he was acting at least negligently since he was personally assuming a risk regarding the fulfilment of the employment contract concluded with P on 10 January 2005, due to the fact that he should have known the military obligations in his country and should have taken the necessary precautions in this respect.

14. In addition, the members of the Chamber deemed appropriate to consider the player R´s allegation regarding "*force majeure*". In this respect, the members of the Chamber, in first place, clarified the concept of this legal institute and stated that, as a general rule, it is applicable to unpredictable situations, facts or circumstances that are extraordinary and unexpected such as, a natural disaster or an earthquake.

15. Consequently the members of the Chamber concluded that, the player R cannot allege "*force majeure*" regarding an obligation based on domestic law of his country, since he, as an E citizen, has the responsibility to know his civil obligations and that it is something completely foreseeable.

16. Therefore, the Chamber concluded that even though the player R was impeded to leave E once he was called up for the E authorities, he could acted more diligently thinking in first place in the obligations assumed with P in the relevant employment contract and previewing, when he left G for holidays, about the possibility of his recruitment for military service duties.

17. On account of the above, the Chamber was of the unanimous opinion that the player had no just cause to unilaterally terminate his contract with P on the basis of his duties related to the military service.

18. In continuation the members of the Chamber focussed their attention to the player R´s allegation regarding breach of the relevant employment contract by P. In this respect, the members of the Chamber took note that the player R alleged that based on the contractual obligations to the date of his departure P should have paid to him EUR 425,236.56, that he effectively received EUR 282,816.59 and therefore that P owes him EUR 142,419.97. Therefore the player R deemed that he was entitled to terminate the relevant employment contract with P with just cause.

19. In this respect the members of the Chamber took note, that the player R never made a formal request or lodged any complaint for outstanding remuneration against P since he left G on 14 April 2006, and that he only invoked a breach of contract based on alleged outstanding amounts on 16 April 2007 following the G's club claim and answering FIFA's request for his position in this matter, i.e. more than two years after the amounts, allegedly became due. Furthermore, the deciding authority was eager to emphasize that when leaving the G club the player did not claim before P that this fact constituted the reason why he left the club. At that time, his only argument was related to the military service and "*force majeure*". Same goes for the time when he first approached FIFA on 14 August 2006.

20. Equally, the Chamber remarked that the claimed allegedly outstanding amounts corresponds to the first two instalments due to the player on the basis of the originally signed employment contract between the player and P. Furthermore, it was acknowledged that P´s allegation to have paid the compensation due to Z primarily by the player and on joint responsibility also by P, i.e. USD 250,000, on the basis of the decision of the Chamber of 11 March 2005, had not been disputed by the player. Finally, the deciding authority remarked that the Amendment to the employment contract had been signed between P and the player after the decision of the Dispute Resolution Chamber on the compensation due to Z and after having the player, based on the relevant decision, been suspended for 4 months on his eligibility to play for P.

21. Considering the aforementioned elements, the Chamber deemed that the player had initially accepted that the remuneration based on the originally concluded employment contract be reduced in exchange for the G club paying the due compensation to Z and having to renounce to the player's services for 4 months. Only when being confronted with the G club's claim he tried to make use of this aspect in order to have another justification for his early departure since he should return on 25 April 2006. Yet, the chamber considered this argumentation as invalid and not comprehensible.

22. In view of the foregoing, the members of the Chamber concluded that the player R terminated the relevant employment contract concluded with P without just cause during the protected period.

23. In continuation, the Chamber turned its attention to the consequences of the premature termination of the employment contract by the player R.

24. In this respect, the members of the Chamber reiterated that the parties signed an employment contract on 10 January 2005 valid until 31 December 2008.

25. Furthermore and bearing in mind the considerations of the points II. 7. to 22. above the Chamber reiterated that the player R had no just cause to prematurely terminate the labour relationship and thus, breached the employment contract during the protected period.

26. As a result, the Chamber concluded that in accordance with art. 17 par. 1 of the Regulations the player R is liable to pay compensation to the club P for the breach of the relevant employment contract without just cause.

27. To this regard, the Chamber referred to art. 17 par. 1 of the Regulations, in particular to the non-exhaustive enumeration of objective criteria for the calculation of the compensation due, and took "*inter alia*" into account the remuneration due to the player under the employment contract signed between him and the G club, the other amounts agreed by the parties on the amendment of the employment contract; the time remaining on the said employment contract, as well as the fact that the contract had been breached during the protected period.

28. In addition, the Chamber took into account that even though the player R should have acted in a more diligent way, it is unquestionable that the player was impeded from leaving E based on domestic legislation and that this circumstance was corroborated by the EFA. Therefore it will have to be taken into consideration when calculating the compensation due as a mitigating circumstance.

29. In view of the above, the Chamber deemed that the amount of EUR 990,000 is a reasonable and justified amount to be paid by the player R to P as compensation for the breach without just cause of the relevant employment contract during the protected period.

30. In light of the above, the members of the Chamber decided that the player R breached the employment relation with P without just cause during the protected period and that the player has to pay to the G club the amount of EUR 990,000 as compensation for breach of contract within the second contractual year.

31. Then, the members of the Chamber turned to the question of the sporting sanctions to be imposed on the player in accordance with art. 17 par. 3 of the Regulations.

32. In this respect, the Chamber referred in principle to the basic restriction of four months on the player's eligibility to participate in any official football matches in case of an unjustified breach of contract by a player during the protected period. Moreover, the Chamber recalled the fact that the breach occurred during the protected period, since it occurred during the second year following the entry into force of the relevant employment contract.

33. In addition, the Chamber emphasized that this is the second time that the player in question is recognised by the Dispute Resolution Chamber as to have breached an employment contract during the protected period. Therefore the Chamber concluded that the fact that the player R is a repeat offender should be taken into account.

34. In view of the above and considering the aggravating circumstances existing in this case, the members of the Chamber decided that the player had to be sanctioned with a restriction of six months on his eligibility to participate in any official football matches. This sanction shall take effect as of notification of the present decision.

35. Finally, the Chamber referred to art. 17 par. 2 of the Regulations and concluded that the player's new club, Z, shall be jointly and severally liable for the payment of the compensation of EUR 990,000 payable by the player R for the breach of contract to the P. However, Z cannot be considered guilty to have induced the player to breach the employment contract with P, since the contract with Z was signed in November 2006, only, following the player having invoked "*force majeure*" for not being able to leave E and having claimed to have had to seek for a new employment in E under such circumstances.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, P, is partially accepted.

2. The counter-claim submitted by the Respondent/Counter-Claimant, Mr. R is rejected.

3. The player, Mr. R, is ordered to pay the amount of EUR 990,000 to P, **within 30 days** as of notification of the present decision.

4. The club Z is jointly and severally liable for the payment of the above-mentioned amount to P.

5. Any other financial claim of the parties is rejected.

6. If the above-mentioned amount is not paid within the stated deadline an interest rate of 5% per year will apply as of expiry of the said time limit.

7. In case of non-compliance with the present decision within the relevant time frames, the matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.

8. P, is directed to inform the player R and the club Z, directly and immediately of the account number to which the remittance is to be made, and to notify the Dispute Resolution Chamber about the receipt of any payment.

9. A restriction of six months on his eligibility to play in official matches is imposed on the player R. This sanction shall take effect as from notification of the present decision.

10. According to art. 61 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:

Markus Kattner
Deputy General Secretary

Encl.: CAS directives