

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 10 June 2004,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Theo van Seggelen (Netherlands), member

Philippe Piat (France), member

Mario Gallavotti (Italy), member

Jean-Marie Philips (Belgium), member

on the claim presented by

the player, X,

as Claimant

against

the club Y,

as Respondent

regarding a contractual dispute between the player and the club,

Facts of the case

- The player X and the club Y signed an employment contract valid for the duration of two seasons: 2003/04 and 2004/05.
- According to this contract, inter alia, the player is entitled to a monthly salary of USD ..., bonuses, one air ticket per season, a car, and accommodation.
- The contract does not indicate any financial details as regards bonuses payable to the player.
- Furthermore, in accordance with clause 3 of this contract the player is entitled to a signing-on fee of USD ... payable in the following four instalments:
 - USD ... in July 2003
 - USD ... in September 2003
 - USD ... in December 2003
 - USD ... in March 2004
- According to article 12 of the same contract, if the player requests the termination of the contract within its period of validity, he shall pay to the club two months' salary and return the signing-on fee on a pro rata basis.
- Article 13 stipulates that if the club requests the termination of the contract within its period of validity, the club will pay to the player two months' salary.
- On 16 February 2004 the player turned to FIFA claiming that the club Y unilaterally breached the employment contract given that the club had failed to fulfil the following contractual obligations:
 - Salaries for October, November, December 2003 + January 2004 USD ...
 - Instalments of the signing-on fee due in September and December 2003 USD ...
 - Air ticket for his family in order to join him in the country of Y*
 - A car
 - Accommodation
- *The employment contract does not contain any clause according to which the club would be liable to provide air tickets for the player's family.
- In addition, in the light of the club's breach of the employment contract the player claims payment of the following monies/items:
 - Two months' salary cf. employment contract USD ...
 - Air ticket + exit visa in order for the player to leave the country
 - Payment of all his rights until the last day he stays in the country of Y inasmuch he is unable to leave
- The player also asked for FIFA's intervention in order for him to obtain his passport, which according to Mr. X was illegally retained by the club, and to immediately return to his home country.

- On 24 January 2004, the player asked the national association of club Y to assist him in this matter.
- On 19 February 2004, the FIFA administration invited the club Y to present its reply to the player's claim within the next 7 days.
- On 9 March 2004, having received no reply from the club and taking into consideration the above-mentioned information, the FIFA administration authorised the player to return to his home country, as per his wish, and to sign on with the club of his choice.
- In addition, in the light of the player's claim pertaining to his passport and exit visa, the club Y was urged to enable the player to depart from the country of Y.
- On 16 March 2004, the national association of club Y informed the FIFA administration that the player did not accept the offer made by its club (no details were provided) and that the player X decided to stay in the country of Y until the case would have been settled by the DRC.
- In addition, according to the same association, the issuance of the player's exit visa and air ticket was guaranteed.
- The player asserts that the club only offered him to pay the amount of USD ..., whereas the club allegedly owes him the amount of USD ... (6 monthly salaries for October 2003 until March 2004 (USD ...) + two months' salary for breach of contract (USD ...) + signing-on fee instalments falling due in September & December 2003 and in March 2004 (USD ...) and an air ticket (USD ...).
- No comments and/or documentation have been received from club Y in respect of the player's financial claim.
- According to the national association of club Y, the player left the country of Y on 24 March 2004 with an exit visa and air ticket provided by the club.

Considerations of the Dispute Resolution Chamber

The members of the Chamber confirmed that in accordance with Article 42 of the FIFA Regulations for the Status and Transfer of Players (edition September 2001) it is competent to deal with the present matter.

As established in Article 42 §1(b) of the Regulations, it is the duty of the Dispute Resolution Chamber to determine whether one of the parties has committed a unilateral breach of contract without just cause.

The members of the Chamber duly noted that the club Y has not presented any comments on the player's financial claim, nor has it submitted any documentary evidence demonstrating that it has paid to the player the monies which according to the player X remain outstanding.

Consequently, the player's claim not having been refuted by Y, the Chamber agreed that the allegations put forward by Mr. Cesar dos Santos must be considered as confirmed.

The Chamber noted that on the date of receipt of the player's claim, on 16 February 2004, Y had not paid the player's monthly salary for over a four months' period of time and two out of the four instalments pertaining to the signing-on fee remained unpaid. Therefore, the members of the Chamber concurred that Y has seriously neglected its financial obligations towards the player in question.

In the light of the above, the club is found to have committed a unilateral breach of the employment contract without just cause. Consequently, in addition to the monies which have remained unpaid until and including the month in which the player could leave and has left the club, i.e. from October 2003 until and including March 2004, the player is entitled to receive compensation for breach of contract.

As regards the award of financial compensation in favour of the player, the Chamber took into account that the relevant employment contract includes a clause pertaining to monies payable to either party in the event of the early termination of the employment contract. Both parties having duly signed the employment contract, and thus having agreed on such clause, and the relevant clause being reciprocal, the Chamber agreed that the amount of money stipulated in the contract shall be taken into consideration when establishing the financial compensation to be paid by the club to the player. In addition, in the case at hand, the player explicitly refers to the said contractual clause and the related amount of compensation, i.e. two months' salary.

In the light of the above, X is entitled to receive the amount of USD ... in payment of outstanding salaries. Furthermore, the player is entitled to receive the outstanding instalments of the signing-on fee, i.e. September 2003, December 2003, and March 2004, to the amount of USD With respect to the amount of compensation owed to the player X, the Chamber maintained that the club Y is liable to pay an amount of money equalling 2 months' salary, i.e. USD

The Chamber decided that the player's claim pertaining to a car and accommodation cannot be taken into consideration. Furthermore, X's claim relating to air tickets for his family must equally be rejected due to the lack of a contractual obligation on the part of the club. Furthermore, the club having provided the player with his return ticket to the player's home country, the Chamber also rejected the player's claim for payment of the amount of USD ... for an air ticket.

Finally, the Chamber confirmed the above-mentioned provisional decision, which was passed by the FIFA administration on 9 March 2004.

Decision of the Dispute Resolution Chamber

1. The claim of the Claimant is partially accepted.
2. The Respondent has to pay the amount of USD ... to the Claimant.
3. The amount due to the Claimant has to be paid by the Respondent within 30 days as from the date of notification of this decision.
4. In the event that the debt of the club Y is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the aforementioned deadline.
5. If the sum of USD ... is not paid within the aforementioned deadline, the present matter shall be submitted to the FIFA Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.
6. The provisional decision passed by the FIFA administration on 9 March 2004 is confirmed.
7. According to art. 60 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 10 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:

Urs Linsi
General Secretary

Enclosed: CAS directives