Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 29 July 2016,

in the following composition:

Geoff Thompson (England), Chairman
Santiago Nebot (Spain), member
John Bramhall (England), member
Guillermo Saltos Guale (Ecuador), member
Wouter Lambrecht (Belgium), member

on the matter between the player,

Player A, country B

as *Claimant*

and the club,

Club C, country D

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 6 August 2015, the player from country B, Player A (hereinafter: *the Claimant*), born on 8 July 1988, concluded an employment contract (hereinafter: *the contract*) with the club from country D, Club C (hereinafter: *the Respondent*), valid as from 10 August 2015 until 31 May 2016.

2. According to article 3 of the contract, the Claimant was entitled to a total remuneration in the amount of USD 65,000, payable as follows:
   - USD 13,000, *"after passing the medical and technical tests"* and the release of the International Transfer Certificate (ITC) and the Claimant's registration before the Football Federation of country D;
   - USD 12,000, in *"the beginning of the second round for the season"*;
   - USD 5,000, in *"the end of the season"*;
   - USD 35,000, payable *"at a rate of pay basic salaries ($ 3500) for each month during the contract period".*

3. Moreover, article 8.4 of the contract obliged the Respondent to provide the Claimant with *"a ticket and go back home to him and his wife and son".*

4. In addition, article 5 of the contract stipulated the following:
   "1. Any incapacity or sickness shall be reported by the [Claimant] *to the* [Respondent] *immediately and the* [Respondent] *shall keep a record of any incapacity. The* [Claimant] *shall submit promptly to such medical examinations as the* [Respondent] *may reasonably require and shall undergo, at no expense for him, such treatment as may be prescribed by the medical adviser of the* [Respondent] *in order to restore the* [Claimant] *to fitness. The* [Respondent] *subject to its available resources shall endeavor arrange promptly such prescribed treatment and shall ensure that such treatment is undertaken and completed without expense to the* [Claimant] (…).
   (…)
   In the event that the [Claimant] *shall become incapacitated by reason of sickness or injury for a period exceeding six months, established by independent medical examination, the* [Respondent] *shall be entitled to terminate this Contract upon one month's written notice to the* [Claimant]. [Respondent] *without incurring any financial obligations of salaries and contracts and other instructions".*

5. Besides, article 11 of the agreement stipulated the following:
   "the parties shall be entitled to any compensation as a result of termination of the contract of the following amounts (…)
   To the [Respondent]*: (90000$)*

To the [Claimant] *(two months salary).”*

6. Furthermore, article 13.7 of the agreement stipulated the following: *“It is subject to the* [Claimant] *medical examination comprehensive report on the injury that he suffered last season with the* [Respondent] *in the event proved the presence of infection is considered the contract null and void, as the* [Claimant] *recognizes fully that the injury he sustained last season may Chava them and there are no do any chronic injuries recognition If proven to the contrary the* [Respondent] *has the right to terminate the contract with the* [Claimant] *not to claim compensation.”*

7. On 16 November 2015, the Claimant lodged a claim before FIFA against the Respondent for breach of contract without just cause during the protected period, and requested the payment of the following amounts:
   - USD 14,750, plus 5% interest *p.a.* as from 26 September 2015, corresponding to outstanding salaries (*i.e.* sign-on fee and unpaid portion of the September 2015 salary);
   - USD 48,625, plus 5% interest p.a. as from 26 September 2015, corresponding to compensation for breach of contract without just cause;
   - USD 21,000, corresponding to *“specificity of sport”*;
   - USD 1,083.12, corresponding to expenses for a returning flight ticket from country D to country B.

8. In addition, the Claimant requested the imposition of sporting sanctions against the Respondent consisting in a *“four months suspension”*.

9. According to the Claimant, on 24 September 2015, the Respondent hired another foreign player besides himself, and consequently, it was obliged to de-register one of the foreign players.

10. Subsequently, the Claimant explained that, on 26 September 2015, the Respondent delivered him a letter in which it informed him that, in view of the *“existence of a previous injury through medical examination”,* the Respondent decided to terminate the contract on the grounds of art. 13.7 of the contract (cf. point I.6 above).

11. In view of the above, the Claimant explained that, on 8 October 2015, he sent a notification to the Respondent, by means of which he denied the existence of any injury and explained that the clause invoked by the Respondent is unquestionably “*potestative*” and violates the principle of good faith. According to the contents of said letter, the Claimant held that the reason behind this termination is that he

was de-registered from the Football Federation of country D since the Respondent had more than the allowed number of three foreign players in its squad.

12. In reference to the execution of the contract, the Claimant explained that the Respondent only paid him the amount of USD 3,376.

13. In its reply, the Respondent considered that the Claimant's claim is *"full of fallacies"* and consequently requested to dismiss it.

14. In this regard, the Respondent considered that it was entitled to terminate the contract in accordance with the stipulations contained in article 13.7 of the contract and that the Claimant was entitled to compensation, following art. 11 of the contract, for *"just two months and no more"*.

15. In particular, the Respondent considered that there was sufficient evidence in order to prove that the Claimant was already injured from the previous season. In this regard, the Respondent attached a medical report from the *"Hospital E"*, dated 28 September 2015, which, *inter alia*, included the following:
"IMPRESSION:
**Hypointense signal intensity with irregularity of anterior talofibular ligament on PDFS sequence – Likely Chronic ligament sprain.*
** No other abnormality detected"*

16. In addition, the Respondent attached to its reply a series of payment slips written mainly in Arabic, without further explanation about their relevance to the case. The amounts specified in said payment slips are stated as follows:
(1) *"Eight hundred from part of first advance"* [stated as "1800" in numbers];
(2) *"One thousand seven hundred " as "advance"* [stated as "1700" in numbers];
(3) *"nine hundred "* [stated as *"900"* in numbers];
(4) *"one thousand eighty " as "advance from contract"*

17. In his *replica*, the Claimant argued that the Respondent's approach to his dismissal is not compatible with FIFA Regulations. In particular, the Claimant considered that in any case, the Respondent had no right to terminate the contract on the basis of an alleged chronic disease, since the contract was already in force. Moreover, the Claimant argued that the clause 5 of the contract (cf. point I.4 above) shall be deemed as *"null and void"*.

18. In reference to the payment slips provided by the Respondent, the Claimant considered that they are *"amateurish and crooked"*, and provided a copy of an expertise elaborated by the agency of country B "*agency F"*, according to which the referred payment slips have a *"high probability"* of being manipulated. In

view of the above, the Claimant considered that the Respondent provided falsified evidence, and that this should have disciplinary consequences.

19. Despite being requested to do so, the Respondent failed to provide its final comments.

20. Finally, and after being invited to do so, the Claimant informed FIFA that he remained unemployed between 26 September 2015 and 8 January 2016 when, he concluded a new contract with the club from country G, Club H, valid as from the date of signature until 31 May 2016. According to this contract, the Claimant was entitled to a sign-on fee in the amount of USD 7,000, plus a monthly salary in the amount of USD 4,000.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 16 November 2015. Consequently, the 2015 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the 2015 edition of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players, (edition 2016) the Dispute Resolution Chamber 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. The competence of the Chamber having been established, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2015 and 2016), and considering that the present matter was submitted to FIFA on 16 November 2015, the 2015 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

4. Having established the foregoing, and entering into the substance of the matter, the Chamber continued by acknowledging the above-mentioned facts as well as

the documentation contained in the file in relation to the substance of the matter. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence which it considered for the assessment of the matter at hand.

5. In this respect, the Chamber acknowledged that the parties to the dispute had signed a valid employment contract on 6 August 2015, valid as from 10 August 2015 until 31 May 2016.

6. Subsequently, the Chamber noted that the Claimant lodged a claim against the Respondent maintaining that the latter had unilaterally terminated the employment contract on 26 September 2015, in view of the *"existence of a previous injury through medical examination"* and on the grounds of art. 13.7 of the contract (cf. point I.6 above). Consequently, the Claimant asks to be awarded his outstanding dues as well as the payment of compensation for breach of the employment contract.

7. In this respect, the members of the Chamber took not of the Claimant's argument, according to which the aforementioned art. 13.7 of the contract is *"potestative"* and violates the principle of good faith.

8. Conversely, the members of the Chamber took note of the Respondent's argument, according to which it was entitled to terminate the contract in accordance with the stipulations contained in its art. 13.7 considering that the player was already injured from the previous season.

9. Considering the foregoing, the Chamber examined the question as to whether the contract had been terminated by the Respondent with or without just cause.

10. In this context, the Chamber turned its attention to art. 13.7 of the employment contract, which was invoked by the Respondent in the termination letter of 26 September 2015.

11. As stated above, according to art. 13.7 of the employment contract *"It is subject to the* [Claimant] *medical examination comprehensive report on the injury that he suffered last season with the* [Respondent] *in the event proved the presence of infection is considered the contract null and void, as the* [Claimant] *recognizes fully that the injury he sustained last season may Chava them and there are no do any chronic injuries recognition If proven to the contrary the* [Respondent] *has the right to terminate the contract with the* [Claimant] *not to claim compensation."*

12. In this respect, the Chamber held that, in principle, it could not accept said article as being valid, as it provides for a unilateral termination right to the benefit of the Respondent. In addition to the unilateral character of art. 13.7 of the contract, the application of said article appears to be linked to the Claimant's medical condition, which, in accordance with the Chamber's constant jurisprudence, in itself cannot be considered a valid reason to terminate an employment contract. Therefore, the Chamber decided that the art. 13.7 of the contract could not legitimately be invoked to terminate the contractual relation with the Claimant. Consequently, the Chamber rejected the Respondent's argument in this respect.

13. For the sake of completeness, the Chamber wished to emphasise that on the basis of art. 18 par. 4 of the Regulations and the Chamber's respective jurisprudence, a club wishing to employ a player has to exercise due diligence and carry out all relevant medical examination prior to entering into an employment contract with a player.

14. In particular, the members of the Chamber noted from the documentation on file that the Claimant had been medically checked after the signature of the contract by and between the parties, and that it appears that the Claimant never misled the Respondent in relation to his health condition. Thus, the members of the Chamber understood that the Respondent concluded the contract with the Claimant at its own risk.

15. In view of the aforementioned, the Chamber stated that the unilateral termination of the employment contract on 26 September 2015 by the Respondent constitutes a breach of contract without just cause.

16. Subsequently, the members of the Chamber noted that, according to the clause 3 of the contract, the Respondent committed, inter alia, to pay to the Claimant the amount of USD 13,000, *"after passing the medical and technical tests"* and the release of the International Transfer Certificate (ITC) and the Claimant's registration before the Football Federation of country D, as well as a monthly salary in the amount of USD 3,500 per month.

17. In this respect, the DRC took into consideration that according to the Claimant, the Respondent had failed to pay his remuneration in the total amount of USD 14,750, corresponding to the amount of USD 13,000 stipulated in clause 3 of the contract, as well as the unpaid portion of his salary of September 2015 (*i.e.* 1,750). Consequently, the Claimant requested to be awarded with the payment of the total amount of USD 14,750.

18. Moreover, the DRC noted that the Respondent, in its defense, attached a series of receipts written mainly in Arabic without any further explanation.

19. In this respect, the DRC recalled the basic principle of burden of proof, as established in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

20. In this context, the DRC noted that the Respondent did not provide a fully translated and comprehensive version of the documents in support of its allegation that it fulfilled its obligations. In view of the foregoing and taking into consideration art. 9 of the Procedural Rules, the DRC recalled that, as a principle, it cannot not take into account documents which were not translated into an official FIFA language.

21. In addition, the members of the Chamber also observed that the aforementioned receipts were unsigned by the Claimant and that there was no other evidence to prove that they have ever been received by the latter.

22. In view of the above, the DRC unanimously decided that said documents are not an acceptable evidence and, consequently, could not be considered as a legitimate basis to prove that the Respondent fulfilled its obligations.

23. Therefore, the Chamber considered that the Respondent had not sufficiently substantiated its defense, as it did not present conclusive documentary evidence which could corroborate that the outstanding remuneration established in art. 3 of the contract was paid.

24. Notwithstanding the above, and in reference to the unpaid portion of his salary of September 2015 (*i.e.* USD 1,750), the members of the Chamber observed that, at the date of the termination of the contract, *i.e.* 26 September 2015, and in the absence of any other specific stipulation, said monthly salary had not yet fallen due. Consequently, the members of the Chamber unanimously decided to reject the Claimant's request in this respect, notwithstanding its possible consideration as compensation (cf. point II. 31 below).

25. In view of all the above and, in particular, taking into account that the Respondent did not provide sufficient evidence about the payment of the relevant outstanding remuneration,the DRC decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Respondent must fulfil its contractual obligations towards the Claimant and is to be held liable to pay the Claimant the amount of USD 13,000, in view of the outstanding amount specified in art. 3 of the contract.

26. Subsequently, the Chamber observed that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to the outstanding salaries on the basis of the relevant employment contract.

27. In continuation, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

28. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the members of the Chamber noted that, indeed, article 11 of the contract stipulated a compensation clause, which was drafted as follows:
"the parties shall be entitled to any compensation as a result of termination of the contract of the following amounts (…)
To the [Respondent]*: (90000$)*
To the [Claimant] *(two months salary).*

29. The members of the Chamber agreed that this clause is clearly drafted to the benefit of the Respondent, *i.e.* it contravenes the general principle of proportionality and the principle of equal treatment as it grants exorbitant rights to the Respondent in comparison to the rights granted to the Claimant. In this regard, it can be noted that said clause entitled the Claimant to approximately only 10% of the total value of the contract while at least 8 months of residual duration were expected at the date of its termination. Conversely, the members of the Chamber observed that the aforementioned clause entitled the Respondent to more than 140% of the total value of the contract. Consequently, and in view of the general principle of proportionality and of the principle of equal treatment, the members of the Chamber unanimously agreed that said clause cannot be taken into consideration in the determination of the amount of compensation.

30. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The

Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.

31. Bearing in mind the foregoing as well as the claim of the Claimant, the Chamber proceeded with the calculation of the monies payable to the Claimant under the terms of the employment contract until 31 May 2016 (*i.e.* the original date of termination of the contract). In this regard, the members of the Chamber observed, as detailed above, that under article 3 of the contract, the Claimant would have earned the amount of USD 46,750 (i.e. USD 29,750 as salaries payable until 31 May 2016, plus USD 12,000 for the payment due in *"the beginning of the second round of the season"* and USD 5,000 for the payment due *"in the end of the season"* [cf. point I.2 above]).

32. Consequently, the Chamber concluded that the amount of USD 46,750 serves as the basis for the determination of the amount of compensation for breach of contract.

33. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Claimant's general obligation to mitigate his damages.

34. In this regard, the DRC remarked that, after the termination of the contract by the Respondent, the Claimant had concluded a new employment with the club from country G, Club H, which ran as from 8 January 2016 until 31 May 2016. In particular, the members of the DRC observed that, accordingly, the Claimant would have earned the total amount of USD 27,000 from said contract.

35. As a result of the difference between the above-mentioned amounts, the members of the Chamber highlighted that the amount due by the Respondent as compensation corresponds to USD 19,750.

36. In conclusion, for all the above reasons, the Chamber decided to partially accept the Claimant's request and that the Respondent must pay to the Claimant the amount of USD 19,750 as compensation for breach of contract without just cause, which is considered by the Chamber to be a reasonable and justified amount as compensation.

37. In addition, taking into account the Claimant's request as well as the constant practice of the Dispute Resolution Chamber, the DRC decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the outstanding remuneration as from the date of the termination of the contract, and 5% interest *p.a.* on the compensation as of from the date of the claim.

38. Moreover, as regards the Claimant's claim pertaining to air tickets, the members of the DRC observed that, in accordance with article 8.4, the Claimant was indeed entitled to *"a ticket and go back home to him and his wife and son"*.

39. In this regard, the members of the Chamber observed that the Claimant alleged that he had to bear the relevant ticket costs to return to his home country for the amount of USD 1,083.12 and that, in accordance with art. 12 par. 3 of the Procedural Rules, the Claimant supported said allegation with documentary evidence. Moreover, the members of the Chamber noted that the Respondent did not contest the Claimant's allegations in relation to the air tickets, nor the documentary evidence provided by the Claimant in this regard.

40. In view of the above, the Chamber decided that the Respondent must pay, in accordance with the principle of *pacta sunt servanda*, the amount of USD 1,083.12 to the Claimant, corresponding to the air ticket costs incurred by the latter for his return to his home country.

41. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. Decision of the Dispute Resolution Chamber

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, outstanding remuneration in the amount of USD 13,000, plus 5% interest *p.a.* as from 26 September 2015 until the date of effective payment.

3. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 19,750 plus 5% interest *p.a.* as from 16 November 2015 until the date of effective payment.

4. In the event that the amounts set forth in points 2. and 3. plus interest 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. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, additional compensation for breach of contract in the amount of USD 1,083.12.

6. In the event that said sum is not paid 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.

7. Any further claim lodged by the Claimant is rejected.

8. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points 2. , 3. and 5. are to be made and to notify the Dispute Resolution Chamber of every payment received.

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Note relating to the motivated decision (legal remedy):

According to art. 58 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 (CAS)
Avenue de Beaumont 2
CH-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 Dispute Resolution Chamber:

Marco Villiger
Deputy Secretary General

Enclosed: CAS directives