

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 4 October 2013,

in the following composition:

Geoff Thompson (England), Chairman
Takuya Yamazaki (Japan), member
Theodoros Giannikos (Greece), member

on the claim presented by the player,

Player S, from country G

as Claimant

against the club,

Club H, from country I

as Respondent

regarding an employment-related dispute arisen between the parties

I. Facts of the case

1. On 2 May 2012, Player S, from country G (hereinafter: *player* or *Claimant*), and Club H, from country I (hereinafter: *club* or *Respondent*), signed an employment contract (hereinafter: *contract*) according to which the player "*will play in Club H in the football seasons 2012/2013 & options for the seasons 2013/2014*".
2. According to the contract, the player was, *inter alia*, entitled to receive from the club for the 2012/2013 season the amount of USD 90,000 as well as a return flight ticket, to be paid in currency of country I.
3. Furthermore, the contract states that the club "*will have an option for the season 2013/2014*".
4. On 14 January 2013, the Claimant lodged a claim with FIFA against the Respondent claiming the total amount of USD 230,000, made up of USD 180,000 as compensation relating to the non-execution of the contract and USD 50,000 as "*compensation for the future and present damage*". In this respect, the Claimant maintains that he signed a contract for two seasons, *i.e.* the 2012/2013 season and the 2013/2014 season.
5. The Claimant explained that in mid-June 2012, the Respondent had resumed trainings for the 2012/2013 season. According to the Claimant, the Respondent was obliged to take care of all the necessary documents (work permit and entry visa) and a flight ticket for the Claimant. However, the Respondent allegedly did not fulfill its obligations. The Claimant stated that his agent, who co-signed the contract, several times approached the Respondent's president in order to receive the required documents for the Claimant, *i.e.* the entry visa, the work permit and the flight tickets. The Respondent's officials allegedly told the agent that they were working on the issuance of the required documents and that the agent and the Claimant should wait for a few more days.
6. According to the player, the club hired a new coach in the meantime and the club told his agent that the new coach possibly wanted to check the player as well.
7. Allegedly at the beginning of September 2012, the player asked his agent to arrange for a letter of termination of the contract or for any other official response from the club, in order to find a solution. However, neither the agent nor the player received any response from the club's representatives. The player indicated that he stayed in country G and never went to country I since the club had not provided him with any documents or flight tickets.

8. In spite of having been invited by FIFA to do so, the Respondent has failed to respond to the Claimant's claim within the investigation phase of the proceedings. The Respondent only submitted a position after the investigation of the present matter had already been concluded twice.
9. According to the Claimant, on 18 September 2012, he concluded an employment contract with the Club B, from country G, valid for two years as from the date of first registration of the player, according to which he was entitled to receive currency of country G 40,000 as "*signing on fee*", to be paid "*annually in advance proportionally*" and currency of country G 500 as monthly salary.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 14 January 2013. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2012; hereinafter: *Procedural Rules*) are applicable to the matter at stake (cf. art. 21 par. 2 and 3 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 and par. 2 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012), 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 country G player and an country I club.
3. Furthermore, the Chamber analysed which regulations 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 (edition 2012), and considering that the present claim was lodged on 14 January 2013, the 2012 edition of said Regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, the Chamber started by acknowledging the abovementioned facts of the case as well as the documentation contained in the file.
5. In this respect, the DRC acknowledged that on 2 May 2012, the Claimant and the Respondent had signed an employment contract setting out a period of validity for the

2012/2013 season, in accordance with which the Claimant was entitled to receive, *inter alia*, the amount of USD 90,000 in currency of country I, as well as an option to extend the contract for the 2013/2014 season.

6. In continuation, the Chamber noted that the Claimant maintained that the Respondent was to be held liable for the non-execution of the employment contract by not having provided the necessary documents, *i.e.* work permit, entry visa and flight ticket, for the Claimant in order for him to come to the club's premises and to fulfill his obligations in accordance with the contract.
7. The DRC noted that the Claimant asked to be awarded payment of the total amount of USD 230,000, consisting of USD 180,000 as compensation relating to the non-execution of the contract and USD 50,000 as "*compensation for the future and present damage*". The Chamber took note of the Claimant's allegation that he had signed a contract for two seasons, *i.e.* the 2012/2013 season and the 2013/2014 season.
8. Equally, the Chamber noted that the Respondent, for its part, failed to present its response to the claim of the player in a timely manner, in spite of having been duly invited to do so. The Chamber, in particular, noted that the Respondent submitted its position on the claim to FIFA after the investigation phase in the present matter had been concluded and even after the parties had been informed of the date of the present meeting as well as of the composition of the Chamber. Therefore, the Chamber decided that the Respondent's submission cannot be taken into account.
9. As a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it 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.
10. Having established the above, the Chamber went on to analyse as to whether the employment contract had been breached and, in the affirmative, which party is to be held liable for the breach of the contract and which are the consequences thereof.
11. In doing so, the Chamber concurred that in mid-June 2012, the club had resumed trainings for the 2012/2013 season and that the player had not been able to render his services to the club, since the Respondent had not provided the relevant documents to the player.
12. In this regard, the DRC referred to the constant jurisprudence of the Dispute Resolution Chamber and emphasised that the responsibility to obtain the necessary work permit or visa in order for a player to render his services to the club is incumbent on the club, *i.e.* the Respondent. The Respondent had therefore been required to undertake all appropriate steps to duly acquire a work permit for the Claimant not only before

concluding the relevant contract but, as the case may be, also during the term of said contract. In addition, the Chamber highlighted that the Respondent had the contractual obligation to provide the Claimant with the relevant flight ticket.

13. Taking into account the above, the DRC concluded that it has remained uncontested that the Respondent failed to proceed with and finalise the necessary administrative formalities and to provide the Claimant with the relevant documents and the flight ticket in order to enable the Claimant to join the club at the start of the contractual duration and fulfill his contractual obligations.
14. Consequently, in the absence of the proof of the contrary, the DRC considered that the required work permit, visa and flight ticket for the Claimant had not been acquired by the Respondent. What is more, the members of the Chamber could not establish from the file that the Respondent had a just cause for its failure to provide the aforementioned documents, including the flight ticket, to the Claimant.
15. On account of the above circumstances, the Chamber established that the Respondent had not complied with its obligation to provide the relevant documents to the Claimant, and that, thus, the Respondent has failed to accept the services of the player without just cause. The Chamber considered this behaviour of the club to be a clear breach of contract, for which the Respondent is to be held liable.
16. The Chamber further noted that the Claimant had never gone to country I due to the Respondent's failure to obtain the relevant documents for the Claimant. Consequently, the DRC came to the conclusion that the execution of the contract had, in fact, never started at the Respondent's fault.
17. Having established that the Respondent is to be held liable for the breach of the employment contract without just cause, the Chamber turned its attention to the consequences of such breach. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent compensation for breach of contract.
18. In continuation, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the matter at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, 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 player 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.

19. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause had been included in the employment contract at the basis of the matter at stake.
20. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract. The DRC noted that the parties had signed a contract valid for one guaranteed season, *i.e.* the 2012/2013 season. The DRC further held that the contract equally provides for an option for the 2013/2014 season and that due to the optional character of the extension of the contract for another season, the DRC concluded that the contract was only valid for the 2012/2013 season. Consequently, bearing in mind that the execution of the contract had, in fact, never started, the Chamber determined that the amount of USD 90,000 serves as a basis for the final determination of the amount of compensation for breach of contract.
21. 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 Dispute Resolution Chamber, 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 player's general obligation to mitigate his damages.
22. The Chamber noted that, on 18 September 2012, the Claimant had concluded an employment contract with the Club B, from country G valid for two years as from the date of first registration of the player, providing a "*signing on fee*" in the amount of currency of country G 40,000 and a monthly salary of currency of country G 500, totalling the approximate amount of USD 20,000 until the end of May 2013 (*i.e.* the end of the 2012/2013 season in country I), and therewith enabling the Claimant to reduce his loss of income.
23. In accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the player to mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract. What is more, the Chamber also considered it important to point out that, although the employment contract was fully valid and enforceable, the execution of the contract actually never started, an

element which equally should be taken into consideration in the calculation of the amount of compensation.

24. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the DRC decided that the Respondent must pay to the Claimant the amount of USD 50,000 as compensation for breach of contract.
25. 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 S, is partially accepted.
2. The Respondent, Club H, has to pay to the Claimant compensation for breach of contract in the amount of USD 50,000 within 30 days as from the date of notification of this decision.
3. If the aforementioned amount is not paid within the stated deadline, interest at the rate of 5 % *p.a.* will fall due as of expiry of the above-mentioned time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for its consideration and a formal decision.
4. Any further request filed 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 Dispute Resolution Chamber of every payment received.

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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Encl. CAS directives