Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 30 August 2013,

in the following composition:

Geoff Thompson (England), Chairman
Jon Newman (USA), member
Damir Vrbanovic (Croatia), member

on the claim presented by the player,

Player L, from country S

as *Claimant*

against the club,

Club Y, from country C

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 22 February 2012, Player L, from country S (hereinafter: *the Claimant*), and Club Y, from country C (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*) valid as from the date of its signature "*until the end of the 2013 country C Super league*".

2. According to the country C Football Association, the 2013 country C Super League ended on 3 November 2013.

3. In accordance with the contract, the Claimant was entitled to receive a signing fee of EUR 50,000 as well as the following net amounts, due on the 12th of the following month:
   - EUR 20,000 monthly for the season of 2012;
   - EUR 25,000 monthly for the season of 2013, only if the Respondent agreed to extend the contract with the Claimant.

4. Art. 5.12 of the contract states that "*Party A* [the Respondent] *may at its sole discretion reassign party B* [the Claimant] *to a different position between the Senior Team and the Reserves Team of the Club to meet the needs of the Club […]. During the period of Party B to be sent to the Reserves Team, Party B has no rights to take the salary as stipulated in the contract, party B only takes 1,500 currency of country C salary by as the currency format of country C of Reserves Team. Party B should not have the rights to claim on the appeal of any kinds or demand the compensation".*

5. Art. 8.4 stipulates that "*Party A* [the Respondent] *shall provide party B* [the Claimant] *with training lawn field and other training facilities up to the standards set forth by country C* Football Association.

6. Art. 16.1 provides that if the Claimant leaves the team without written permission and thus does not participate in "*work, training or competitions within more than 24 hours*", he will be fined with USD 5,000; if the absence is for up to 48 hours, the fine will be of USD 10,000 and for every additional 24 hours, the fine will be increased in USD 10,000.

7. On 12 September 2012, the Claimant lodged a claim against the Respondent in front of FIFA, indicating that on 13 July 2012, the coach of the Respondent informed the Claimant that the Respondent had not registered him for the second part of the 2012 season, since another foreign player was coming to the team, and so he was not allowed to train with the first team of the Respondent anymore. According to the Claimant, he was also told that he should look for another team. The Claimant did not receive further reasons or instructions, and was not allowed to join the trainings of either teams of the

Respondent. The Claimant asserted that, eventually and in order to keep himself on a competitive level, he began to train on his own initiative under inadequate training conditions, without any coach and needed requirements. In the meantime, he expressed in several letters to the Respondent his discomfort about his situation, requesting the Respondent to accept him again in the training sessions and to motivate in writing the decision the Respondent had taken.

8. In this respect, the Claimant submitted several letters addressed to the Respondent dated 23, 25, 27, 31 July and 3 August 2012. In the letter dated 3 August 2012, the Claimant requested the Respondent to provide him with adequate training requirements prior to 6 August 2012, otherwise he would immediately take legal measures without another warning.

9. On 7 August 2012, the Claimant informed the Respondent about the termination of the contract "*with immediate effect and with just cause, due to the unilaterally breach of the contract by your club for unfulfilled training/medical requirements, according to the FIFA Regulations on the Status and Transfer of Players, Art. 14 and 17.1*".

10. In view of the above, the Claimant asserted that not registering the player and, in particular, not arranging "*the work allowance as a daily training for a football player means a grave violation of the contractual obligations*". Therefore, according to the Claimant, the Respondent breached the contract and the Claimant requested FIFA:
    a) to be awarded with the amount of EUR 400,517 plus 5% interest rate *p.a.*, calculated as follows:
        - EUR 25,517 as outstanding salary related to the Claimant's salary of July 2012 and of the days 22 to 29 of February of 2012;
        - EUR 375,000 as compensation related to the time remaining under the contract.
    b) to "*impose disciplinary sanctions on the Respondent"* as the breach of contract was made during the protected period.

11. The Respondent, in its response, recognized that, on 12 July 2012, it had decided not to register the Claimant for the second part of the 2012 season. However, the Respondent asserted it had offered the Claimant to play for the second team during the remaining period of the season and, in the season of 2013, the Respondent would register him again in the country C Football Association, without altering the conditions of the contract. According to the Respondent, the Claimant "*totally agreed with the decision of the club*", however he changed his mind a few days later and refused to train with the team. The Respondent emphasized that it never told the Claimant that he

could not train with the team; it even tried to persuade the Claimant to come and train with the team again.

12. Regarding the termination of the contract, the Respondent firstly declared that it only became aware of such termination when the Claimant returned the keys of his apartment and, in addition, indicated that the Claimant had left the Respondent without any written "*application*" or permission, considering that the Claimant had thus breached the contract. According to the Respondent, it sent a letter to the Claimant on 7 August 2012 in which it stated that the Claimant did not attend the training sessions for 7 days and that, if he did not return before 15 August 2012, the Respondent would have the right to unilaterally terminate the contract.

13. Moreover, according to the Respondent, it sent a further letter to the Claimant on 10 September 2012 stating it did not allow the Claimant to leave and that by not training with the team, he had breached the contract and the Respondent's regulations. Accordingly, the Respondent decided to terminate the contract as from the date of that notice. Furthermore, in this letter, the Respondent offered the Claimant to pay him the salaries of July and August 2012, but the Claimant never replied.

14. Additionally, the Respondent made reference to its right to reserve actions against the Claimant for an alleged breach of contract.

15. In his replica, the Claimant explained that he never asked the Respondent for a mutually agreed termination of the contract as the Respondent alleged. The Claimant stressed that, on the contrary, the Respondent contacted him informing him that it would issue the relevant International Transfer Certificate (ITC) only if the Claimant did not claim any financial titles.

16. Furthermore, the Claimant declared that he never received the above-mentioned correspondence dated 10 September 2012, allegedly sent by the Respondent by means of which it offered the payment of the salaries of July and August.

17. In addition, the Claimant stated that he was never asked by the Respondent to play for the second team during the remaining period of the season without altering the conditions of the contract. The Claimant further pointed out that under the country C regulations, a foreign player who is not registered with the country C Football Association is not allowed to play for the second team either.

18. In response, the Respondent repeated its previous arguments and reiterated its right to reserve actions against the Claimant "*if the player* [the Claimant] *still makes this tangle*" and provided various figures it could ask from him.

19. Upon FIFA's request, the Claimant confirmed he signed a contract with Club R, from country S, valid as from 28 August 2012 until 30 June 2013. The remuneration the Claimant was entitled to receive from this new club is EUR 300 per month plus EUR 16,500 paid in three installments as follows: (i) EUR 3,000 payable on 15 September 2012; (ii) EUR 3,000 payable on 1 March 2013 and (iii) EUR 10,500 payable in ten equal monthly installments of EUR 1,050 each, starting in September 2012.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter referred to as *the DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at stake. In this respect, it took note that the present matter was submitted to FIFA on 12 September 2012. Consequently, the previous edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: the *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 3 of the 2012 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 2012), the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. In continuation, 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 referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2012), and, on the other hand, to the fact that the present claim was lodged in front of FIFA on 12 September 2012. Therefore, the DRC concluded that the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the 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 members of the Chamber entered into the substance of the

matter. In doing so, it started by acknowledging the abovementioned facts of the matter as well as the documentation contained in the file.

5. In this respect, the members of the Chamber acknowledged that the parties had signed a valid employment contract on 22 February 2012 in accordance with which the Respondent would pay the Claimant, *inter alia*, a monthly remuneration in the amount of EUR 20,000 for the season 2012 and a monthly salary of EUR 25,000 for the season 2013.

6. In continuation, the Chamber noted that the Claimant lodged a claim against the Respondent maintaining that the Respondent had breached the employment contract by "de-registering" the Claimant for the second part of the 2012 season and by preventing him from training with the team.

7. Furthermore, the Chamber noted that the Claimant maintains that, on the one hand, the "de-registration" of a player is not admitted under the Regulations and it involves a serious violation of the contractual obligations and that, on the other hand, as a result of his "de-registration", he was no longer able to play in official competitions for the Respondent. Equally, the Claimant held that he was not even allowed to train with the teams of the Respondent in order to keep a competitive level and, as such, was prevented from carrying out his profession. Therefore, eventually, on 7 August 2012, the Claimant unilaterally terminated the employment contract.

8. The Chamber then focused its attention on the Respondent's allegations and noted that the Respondent sustained that the "de-registration" was only temporary given that the player would allegedly be registered again for the following season of the year 2013. The Chamber further noted that the Respondent maintained that the "de-registration" would not have altered the conditions of the contract and that the Claimant had initially accepted the decision of the Respondent, but that he later on changed his mind.

9. Equally, the members of the Chamber took note of the Respondent's position, which held that it did not prevent the Claimant from training with its teams but, on the contrary, it had encouraged him to train with them and it was the Claimant's decision not to do so.

10. In this regard, the Chamber, first and foremost, highlighted that the underlying issue in the present dispute is to determine whether the unilateral termination of the employment contract by the Claimant on 7 August 2012, following his de-registration from the country C Football Association, had been with or without just cause.

11. In this respect, the members of the Chamber emphasized that the fact that the Claimant had been "de-registered" by the Respondent on 12 July 2012 had not been disputed by the parties and had, in fact, been acknowledged by the Respondent.

12. In light of the above, the members of the Chamber considered important to point out, as has been previously sustained by the DRC, that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete in the team's official matches.

13. Furthermore, the members of the DRC wished to highlight that by "de-registering" a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player.

14. Therefore, the Chamber established that the "de-registration" of a player would in principle constitute a breach of contract since it *de facto* prevents a player from being eligible to play for his club.

15. Subsequently, the Chamber recalled that, according to the Claimant, the Respondent informed him that he could not train or play anymore with the first or the second team and, so, in order to keep himself at a competitive level, he proceeded to train individually and without a coach. The Respondent, on the other hand, held that the Claimant accepted its decision of "de-registering" him, but that, later on, he refused to train with the team. Moreover, the members of the Chamber took note of the correspondences dated 23, 25, 27, 31 July and 3 August 2012 sent by the Claimant to the Respondent, requesting his reintegration in the Respondent's training sessions as well as requesting a clarification of his status with the Respondent, to which the Respondent had not replied. Furthermore, the members of the Chamber pointed out that the first communication of the Respondent addressed to the Claimant was dated 7 August 2012, at the time the Claimant had already put an end to the contract.

16. In this respect and bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the Chamber was eager to point out that the Respondent had failed to present documentation in support of its position. In particular, the members of the Chamber observed that the Respondent was not able to corroborate that the Claimant indeed accepted his "de-registration", as the Respondent alleged he initially did. As a consequence, the Chamber concluded that the Respondent had not presented any evidence

proving the existence of any agreement between the Respondent and the Claimant on the de-registration of the latter.

17. Furthermore, the Chamber stressed that the Respondent i) had not provided any documentation which would prove its interest in the Claimant's services or participation with the team, ii) had not proven that it would indeed register the player again for the 2013 season, and iii) had not proven that the contractual terms would indeed not be altered, contrary to that stipulated in art. 5.12 of the contract. Quite to the contrary, the Chamber noted that the Respondent had systematically ignored all communications from the Claimant in relation to his status, until the latter had put an end to the contractual relationship.

18. On account of the all the above circumstances, in particular, by "de-registering" the Claimant on 12 July 2012, the Chamber established that the Respondent had *de facto* excluded the Claimant from the team. Such conduct constitutes, in line with the jurisprudence of the Chamber, a clear breach of contract. Accordingly, the Chamber concurred that the Claimant had just cause to unilaterally terminate the employment contract on 7 August 2012. Consequently, the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant.

19. Having established that the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant, the Chamber focussed its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract.

20. First of all, the Chamber reverted to the Claimant's financial claim, which includes outstanding remuneration relating to the monthly remuneration for July 2012 in accordance with the employment contract. The members of the Chamber recalled that the Respondent failed to demonstrate that it had in fact paid the remuneration for July 2012.

21. Consequently, taking into account the documentation remitted by the Claimant to substantiate his claim and the fact that the employment contract was considered terminated as of 7 August 2012, the DRC decided that the Respondent is liable to pay to the Claimant the amount of EUR 20,000 relating to the payment due to him for the month of July 2012, plus 5% interest.

22. In continuation, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case 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 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.

23. 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 was included in the employment contract at the basis of the matter at stake.

24. 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 until 3 November 2013, taking into account that the player's remuneration until July 2012 is included in the calculation of the outstanding remuneration (cf. no. II/21 above). Consequently, the Chamber concluded that the amount of EUR 350,000 (i.e. salary as from August 2012 until October 2013) serves as the basis for the final determination of the amount of compensation for breach of contract.

25. 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.

26. Indeed, on 28 August 2012, the Claimant found employment with the Club R, from country S. In accordance with the pertinent employment contract, which has been made available by the Claimant, valid until 30 June 2013, the Claimant was entitled to receive a monthly salary of EUR 300 plus the amount of EUR 16,500 paid in three different instalments. Consequently, the Chamber established that the value of the new employment contract concluded between the Claimant and the new club for the period as from September 2012 until and including June 2013 amounted to EUR 19,500.

27. 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.

28. 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 the amount of EUR 330,500 to the Claimant as compensation for breach of contract.

29. In addition and with regard to the Claimant's request for interest, the Chamber decided that the Claimant is entitled to 5% interest *p.a.* on said amount as of 30 August 2013 until the date of effective payment.

30. The members of the Chamber concluded their deliberations by rejecting any further claim of the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Player L, is partially accepted.

2. The Respondent, Club Y, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 20,000 plus 5% interest *p.a.* on said amount as of 12 September 2012 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 EUR 330,500 plus 5% interest *p.a.* on said amount as of 30 August 2013 until the date of effective payment.

4. If the aforementioned sums plus interests are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged 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 Dispute Resolution Chamber of every payment received.

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Note relating to the motivated decision (legal remedy):

According to art. 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