Decision of the
Dispute Resolution Chamber (DRC)

passed in Zurich, Switzerland, on 25 October 2012,

in the following composition:

Geoff Thompson (England), Chairman
Joaquim Evangelista (Portugal), member
David Mayebi (Cameroon), member
Damir Vrbanovic (Croatia), member
Guillermo Saltos Guale (Ecuador), member

on the claim presented by the player,

player X, from country C,

as *Claimant*

against the club,

Club S, from country W,

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 17 July 2008, the player X from country C (hereinafter: *the Claimant*), and the club S from country W (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the first contract*), valid as from 1 June 2008 until 31 May 2010.

2. According to art. 4 to 9 of the first contract, the Claimant is entitled to receive, *inter alia*, the following amounts:
   - EUR 60,000 for season 2008/2009, payable in 10 equal payments of EUR 6,000 each, as from 30 August 2008 and subsequently on the last day of each month;
   - EUR 5,000 as bonus, in case the club is classified between the fifth and the eighth places, at the end of the season 2008/2009;
   - EUR 70,000 for season 2009/2010;
   - EUR 10,000 as bonus, in case the club is classified between the first and the fourth places, at the end of the season 2009/2010;
   - EUR 550 per month as accommodation fee;
   - bonus, according to the club's internal regulations;
   - four air tickets from country W, for the player and his family.

3. On 20 July 2008, the Claimant and the Respondent signed a second employment contract (hereinafter: *the second contract*) and a supplementary agreement (hereinafter: *the agreement*), both valid as from 1 June 2008 until 31 May 2010, i.e. for 2 years.

4. Articles 3 to 8 of the second contract stipulate that the Claimant is entitled to receive, *inter alia*, the following amounts:
   - EUR 15,000 net for season 2008/2009, payable in 10 equal payments of EUR 1,500 each, as from 30 August 2008 and subsequently on the last day of each month;
   - EUR 15,000 net for season 2009/2010, payable in 10 equal payments of EUR 1,500 each, as from 30 August 2009 and subsequently on the last day of each month;
   - EUR 550 per month as accommodation fee;
   - four air tickets from country W, for the player and his family.

5. According to art. 10 of the second contract, *"The club shall pay the player's emoluments in the manner specified herein with a period of grace of 40 (forty) days. In the event that the club does not make available due payment then the player can hold the club responsible and the player has the right to cancel the present agreement to transfer to any team without any obligation towards the club"*.

6. Article 15 of the second contract (hereinafter: *the arbitration clause*) establishes that *"The player agrees to adhere to the Rules, Regulations and By-Laws of the Football Association of country W, and/or of the Dispute Resolution Committee of Football Association of country W, in case of any grievance and/or any dispute with the club"*.

7. Furthermore, art. 18 of the second contract stipulates that *"[…] Any previous agreement between the club and the player is null and void"*.

8. In addition, art. 1 of the agreement establishes that the Claimant shall be entitled to receive the following amounts *"additionally to his agreed salary"*:
   - EUR 45,000 net for season 2008/2009, payable in 10 equal payments of EUR 4,500 each, as from 30 August 2008 until 30 May 2009;
   - EUR 5,000 as bonus, in case the club is classified between the fifth and the eighth places, at the end of the season 2008/2009;
   - EUR 55,000 net for season 2009/2010, payable in 10 equal payments of EUR 5,500 each, as from 30 August 2009 until 30 May 2010;
   - EUR 10,000 as bonus, in case the club is classified between the first and the fourth places, at the end of the season 2009/2010.

9. On 16 January 2009, the Claimant reminded the Respondent, in writing, of its arrears in the total amount of EUR 19,308.35, made up of EUR 18,500 in unspecified salaries and EUR 808.35 as the reimbursement of the air tickets purchased by him, and advised the Respondent that, in case such amount were not paid at the latest on 19 January 2009 10:00 a.m., he would take the *"appropriate legal measures in order to safeguard his rights"*.

10. On 19 January 2009, the Respondent having failed to comply with the content of said letter, the Claimant terminated the first and the second contract with immediate effect, in writing.

11. On 17 February 2009, the Claimant lodged a claim in front of FIFA against the Respondent for breach of contract and, after amending his claim, he requests the payment of the total amount of EUR 132,808.35, made up of:
   - EUR 19,500 corresponding to outstanding salaries for September 2008 (EUR 1,500) and for October until December 2008 (3 x EUR 6,000), based on the first contract;
   - EUR 808,35 corresponding to the reimbursement of air tickets purchased by the player;
   - EUR 112,500 as compensation for breach of contract, corresponding to the remaining value of the contracts;
   - legal expenses.

12. In its reply, the Respondent disputed the jurisdiction of the FIFA Dispute Resolution Chamber (hereinafter: *DRC*), citing the arbitration clause in art. 15 of the second contract.

13. The Football Association of country W (hereinafter: *the CFA*) provided FIFA with a copy of the "Regulations for the registration and transfer of football players" (edition 2005; hereinafter: *the Regulations of the CFA*), which establish the following:
    a. with regard to the jurisdiction of the Dispute Resolution Committee (hereinafter: *the Committee*):
    According to art. 22.11 of the Regulations of the CFA, the Committee is competent to *"adjudicate and/or resolve any financial or other disputes which may arise: a) between clubs and non-amateur players* […]*"*.
    b. with regard to the composition:
    Art. 22.1 par. 1 of the Regulations of the CFA establishes that the Committee consists of five members (Chairman, Vice-Chairman, three members). The Chairman, Vice-Chairman and one member are elected by the Executive Committee of the CFA, whereas two members are elected by the Football Players' Association of country W.
    c. with regard to the possibility of an appeal:
    Concerning the possibility of an appeal against a decision taken by the Committee, art. 22.10 stipulates that *"any decision of the* [Committee] *may be appealed to the Disciplinary Authority of the* [CFA]*. The Disciplinary Authority shall finally decide on the appeals referred thereto"*.

14. With regard to the substance of the dispute, the Respondent rejects all the Claimant's allegations and states that he abandoned the trainings on 16 January 2009 and, in spite of the Respondent's warnings, never resumed his activities with the Respondent. The Respondent claims having terminated the contract and the agreement with the Claimant on 19 January 2009, due to his serious breach of contract.

15. The Respondent further states that it does not have any outstanding amounts towards the Claimant and that the documentation provided by him is incomplete as to what concerns their legal relationship.

16. Finally, the Respondent states that the Claimant has been transferred to another club after the termination and that his claim should be rejected.

17. In his replica, the Claimant rejects the Respondent's allegations and insists on the jurisdiction of FIFA over the present dispute, since the existence of an arbitration clause in the contract does not exclude the possibility for the Claimant of lodging a claim at FIFA regarding a dispute of international dimension.

18. Furthermore, the Claimant points out that the contract was terminated by him and not by the Respondent, as the latter states in its response.

19. In spite of having been invited to do so, the Respondent never submitted its final position as to the Claimant's claim.

20. On 12 October 2009, the Claimant signed a new employment contract with the club R from country Z, valid for one year and according to which he is entitled to receive a salary of EUR 2,000 until the end of season 2009/2010 or until the end of an European championship in which the club might participate. In case the contract should be renewed for season 2010/2011, the Claimant should be entitled to a sign-on fee of EUR 10,000 and a global salary of EUR 25,000.

21. The aforementioned contract was, however, allegedly terminated by mutual agreement on 1 January 2010. According to the Claimant, for the period during which he was registered with club R, he received the total amount of EUR 6,000, corresponding to three monthly salaries.

22. Between January and June 2010, the Claimant was not employed by any club.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *the DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at stake. In this respect, the Chamber referred to art. 21 par. 1 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*). The present matter was submitted to FIFA on 17 February 2009, thus, after the aforementioned Rules entered into force on 1 July 2008. Therefore, the Chamber concluded that the edition 2008 of the Procedural Rules is applicable to the matter at hand.

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 b) of the Regulations on the Status and Transfer of Players (edition 2008; hereinafter: *the Regulations*), the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club from country W and a player from country C that have an international dimension.

3. However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of art. 15 of the second contract, stating that any dispute arisen between the parties should be submitted to the Dispute Resolution Committee of the CFA.

4. In this regard, the Chamber noted that the Claimant rejected such position and insisted on the fact that FIFA has jurisdiction to deal with the present matter, since the existence of an arbitration clause in the contract does not exclude the possibility for

the Claimant of lodging a claim at FIFA regarding a dispute of international dimension.

5. Taking into account the above, the Chamber emphasised that, in accordance with art. 22 lit. b) of the Regulations on the Status and Transfer of Players, the DRC is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to the FIFA Circular no. 1010 dated 20 December 2005. In this regard, the members of the Chamber further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

6. While analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute contains a jurisdiction clause.

7. Having said this, the members of the Chamber turned their attention to art. 15 of the second contract, on the basis of which the Respondent contested FIFA's jurisdiction. According to said art. 15, "*The player agrees to adhere to the Rules, Regulations and Bye-Laws of the Football Association from country W and/or of the Dispute Resolution Committee of Football Association of country W, in case of any grievance and/or any dispute with the club"*.

8. In view of the aforementioned clause, the members of the DRC were of the opinion that art. 15 of the second contract does not make clear reference to a national dispute resolution chamber or any similar arbitration body in the sense of art. 22 lit. b) of the aforementioned Regulations. Therefore, the members of the Chamber deemed that said clause does not constitute an arbitration clause, but rather establishes a choice of law.

9. However, the members of the Chamber wished to stress that, even if the contract at the basis of the present dispute would have included an arbitration clause in favour of national dispute resolution, the Respondent was unable to prove that, in fact, the Dispute Resolution Committee of the CFA meets the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, in the FIFA Circular no. 1010 as well as in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations.

10. In this respect, the DRC referred to the general principle of equal representation of players as well as of clubs, and underlined that this principle was one of the very

fundamental elements to be fulfilled, in order for a national dispute resolution chamber to be recognised as such.

11. Indeed, this prerequisite is not only mentioned in the Regulations on the Status and Transfer of Players, but also in the FIFA Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations, which illustrates the aforementioned principle as follows: *"The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate: a) a chairman and a deputy chairman chosen by consensus by the player and club representatives* […]*; b) between three and ten player representatives who are elected or appointed either on proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro; c) between three and ten club representatives* […]*."* In this respect, the FIFA Circular no. 1010 states the following: "*The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal* […]*. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list."*

12. Subsequently, the Chamber acknowledged receipt of the Regulations of the CFA, provided by the latter, and began to analyse its content. In this context, the Chamber noted that, according to art. 22.1.1 of the aforementioned Regulations of country W, the Dispute Resolution Committee of the CFA, is composed of five members, being : a chairman, a vice-chairman, one member appointed by the Executive Committee of the CFA and two members appointed by the Football Players' Association of country W.

13. In view of the aforementioned and taking into account the pre-requisites for the recognition of the jurisdiction of a Dispute Resolution Chamber at a national level stipulated in art. 22 lit. b) of the FIFA Regulations, the FIFA Circular no. 1010 and the FIFA NDRC Regulations, the DRC considered that, in light of the documentation provided by the CFA and the Respondent, the relevant national deciding body does not appear to be composed of an equal number of players' and clubs' representatives, since the representation of the clubs, if any, is not evident.

14. Therefore, the Chamber concurred that the Respondent was unable to prove that the NDRC of country W had met the minimum procedural standards for independent arbitration tribunals, as laid down in art. 22 lit. b) of the above-mentioned Regulations, in FIFA Circular no. 1010 as well as in the FIFA NDRC Regulations.

15. In view of the above, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the DRC is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

16. Subsequently, the members of the Chamber analysed which edition of the Regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations (edition 2008) and considering that the claim in front of FIFA was lodged on 17 February 2009, the 2008 edition of said Regulations is applicable to the present matter as to the substance.

17. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, it started to acknowledge the facts of the case as well as the documents contained in the file.

18. In this respect, the members of the DRC acknowledged that it was undisputed by the parties that, on 17 July 2008, the Claimant and the Respondent had signed a first contract, valid as from 1 June 2008 until 31 May 2010, according to which the Claimant is entitled to receive, *inter alia*, EUR 60,000 for season 2008/2009, payable in 10 equal payments of EUR 6,000 each, as from 30 August 2008 and subsequently on the last day of each month; EUR 70,000 for season 2009/2010; several bonuses; EUR 550 per month as accommodation fee; and four air tickets from country W, for the player and his family.

19. Subsequently, the DRC also noted that it was equally undisputed by the parties that, on 20 July 2008, the Claimant and the Respondent signed a second contract and an agreement, both valid as from 1 June 2008 until 31 May 2010.

20. According to the second contract, the Claimant is entitled to receive, *inter alia*, EUR 15,000 net for season 2008/2009, payable in 10 equal payments of EUR 1,500 each, as from 30 August 2008 and subsequently on the last day of each month; EUR 15,000 net for season 2009/2010, payable in 10 equal payments of EUR 1,500 each, as from 30 August 2009 and subsequently on the last day of each month; EUR 550 per month as accommodation fee; four air tickets from country W, for the player and his family.

21. In addition, the agreement stipulates that the Claimant, *"additionally to his agreed salary"*, shall be entitled to EUR 45,000 net for season 2008/2009, payable in 10 equal payments of EUR 4,500 each, as from 30 August 2008 until 30 May 2009; several bonuses; and EUR 55,000 net for season 2009/2010, payable in 10 equal payments of EUR 5,500 each, as from 30 August 2009 until 30 May 2010.

22. In this context, the members of the DRC also observed that according to art. 18 of the second contract *"[…] Any previous agreement between the club and the player is null and void"*.

23. In continuation, the Chamber noted that, on the one hand, the Claimant claims that the Respondent has breached the contractual relationship without just cause, by failing to pay him his salaries for September to December 2008, *"according to the contract of employment dated 17/7/2008"* as well as to reimburse him the amount corresponding to the purchase of air tickets. Moreover, the Claimant terminated the employment contract on 19 January 2009 and, based on the aforementioned facts, he requests from the Respondent the payment of the total amount of EUR 132,808.35, made up of: EUR 19,500 corresponding to outstanding salaries for September 2008 (EUR 1,500) and for October until December 2008 (3 x EUR 6,000) based on the first contract; EUR 808,35 corresponding to the reimbursement of air tickets purchased by the player; EUR 112,500 as compensation for breach of contract, corresponding to the remaining value of the contracts; as well as legal expenses.

24. Furthermore, the DRC noted that, on the other hand, the Respondent rejects all the Claimant's allegations and states that he abandoned the trainings on 16 January 2009 and, in spite of the Respondent's warnings, never resumed his activities with the Respondent. Thus, the Respondent claims having terminated the contract and the agreement with the Claimant on 19 January 2009, due to his serious breach of contract. In addition, the DRC took into account that the Respondent denies having any outstanding amounts towards the Claimant and states that the documentation provided by him is incomplete as to what concerns their legal relationship. According to the Respondent, since the Claimant has been transferred to another club after the termination, his claim should be rejected.

25. Having established the aforementioned, the DRC deemed that the underlying issue in this dispute, considering the claim of the Claimant, was to determine whether the employment contract had been unilaterally terminated with or without just cause and which party was responsible for the early termination of the contractual relationship in question. The Chamber also underlined that, subsequently, if it were found that the employment contract had been breached by one of the parties without just cause, it would be necessary to determine the financial and/or sporting consequences for the party that caused the unjust breach of the relevant employment contract.

26. In view of the above, the Chamber began to analyse the content of the Claimant's claim. In this respect, the Chamber firstly observed that the Claimant claims, *inter alia*, the payment of his outstanding salaries for September to December 2008, *"according to the contract of employment dated 17/7/2008"*.

27. In this context, the Chamber deemed it appropriate to remind the parties of the wording of art. 18 of the second contract, according to which *"[…] Any previous agreement between the club and the player is null and void"*.

28. Bearing in mind the aforementioned article, the Chamber pointed out that it is very clear that, by signing the second contract and the agreement on 20 July 2008, the parties agreed in art. 18 of the second contract that any pre-existing agreements between the parties – as the first contract – would be considered as null and void as from that moment. Consequently, the first contract, concluded between the parties on 17 July 2008, became null and void as from 20 July 2008 according to art. 18 of the second contract and as such the Claimant was no longer entitled to claim the execution of any of the financial rights stipulated therein.

29. Therefore, the Chamber was of the opinion that the Claimant's claim for outstanding salaries for September to December 2008 in the total amount of EUR 19,500, explicitly based on the first contract of 17 July 2008, had no legal basis in accordance with art. 18 of the second contract and, thus, could not be granted.

30. Furthermore, the members of the DRC took note of the fact that the Claimant also claims that the Respondent failed to reimburse him the amount of EUR 808,35, corresponding to air tickets purchased by the Claimant.

31. In this regard, the Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right from an alleged fact shall carry the respective burden of proof.

32. In view of the foregoing, and bearing in mind the principle of burden of proof, the members of the Chamber observed that the Claimant was not able to present any evidence of the purchase of the aforementioned air tickets and, therefore, this request should also be rejected.

33. Having established the aforementioned, the Chamber concluded that, in view of the lack of legal basis of the Claimant's claim pertaining to unpaid salaries as well as of the lack of evidence concerning the claim for reimbursement of air tickets allegedly purchased by the Claimant, the unilateral breach of contract without just cause by the Respondent, as invoked by the Claimant, could not be upheld. Hence, the Claimant's claim has to be rejected.

34. Finally, and for the sake of good order, the DRC held that the Claimant's claim pertaining to legal costs is rejected, in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's longstanding jurisprudence.

35. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that the claim of the Claimant is entirely rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player X, is admissible.

2. The claim of the Claimant, player X, is rejected.

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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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Markus Kattner
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Encl. CAS directives