Decision of the
Dispute Resolution Chamber (DRC)

passed in Zurich, Switzerland, on 16 November 2012,

in the following composition:

Geoff Thompson (England), Chairman
Theo van Seggelen (Netherlands), member
Carlos Soto (Chile), member
Ivan Gazidis (England), member
Mohamed Mecherara (Algeria), member

on the claim presented by the player,

Player C, country D,

as *Claimant*

against the club,

Club T, country U,

as *Respondent*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 1 July 2009, player C (hereinafter: *the Claimant*), and club T. (hereinafter: *the Respondent*), signed an employment contract (hereinafter: *the contract*).

2. According to art. 10 of the contract, *"the relation between the player and the club starts on the date which the player is duly registered with the club by FA of country U"* and ends on 31 May 2013.

3. According to art. 10 to 13 of the employment contract, the Respondent undertakes to pay the Claimant, *inter alia*, the following net amounts:
   - EUR 100,000 as an advance payment in July 2009;
   - EUR 200,000 as remuneration for the season 2009/2010, payable in 10 equal monthly instalments of EUR 20,000, at the latest on the 5th day of the following month, as from August 2009 until May 2010;
   - EUR 100,000 as an advance payment in July 2010;
   - EUR 250,000 as remuneration for the season 2010/2011, payable in 10 equal monthly instalments of EUR 25,000, at the latest on the 5th day of the following month, as from August 2010 until May 2011;
   - EUR 150,000 as an advance payment in July 2011;
   - EUR 250,000 as remuneration for the season 2011/2012, payable in 10 equal monthly instalments of EUR 25,000, at the latest on the 5th day of the following month, as from August 2011 until May 2012;
   - EUR 150,000 as an advance payment in July 2012;
   - EUR 300,000 as remuneration for the season 2012/2013, payable in 10 equal monthly instalments of EUR 30,000, at the latest on the 5th day of the following month, as from August 2012 until May 2013;
   - EUR 200,000 as conditional match bonuses per season, divided between 40 league matches and payable after every 8 matches, according to the player's participation;
   - EUR 20,000 as extra bonus, in case the player is in the starting line-up in 20 matches;
   - the rent of a furnished apartment;
   - a car;
   - 8 economy flight tickets country U-country D-country U per season.

4. On 18 March 2010, the Claimant lodged a claim in front of FIFA against the Respondent for the fact that the agreement could not enter into force, due to a failure of the Respondent to request the player's registration. Thus, and after amending his claim, the Claimant requests that the Respondent should proceed with the payment of the total amount of EUR 3,443,875, plus interests as from 20 August 2010, made up of:

- EUR 520,000, corresponding to the entire amount due to the player for season 2009/2010 (EUR 100,000 as advance payment + EUR 200,000 as global salary + EUR 200,000 as conditional match bonuses + EUR 20,000 as extra bonus);
- EUR 570,000, corresponding to the entire amount due to the player for season 2010/2011 (EUR 100,000 + EUR 250,000 + EUR 200,000 + EUR 20,000);
- EUR 620,000, corresponding to the entire amount due to the player for season 2011/2012 (EUR 150,000 + EUR 250,000 + EUR 200,000 + EUR 20,000);
- EUR 670,000, corresponding to the entire amount due to the player for season 2012/2013 (EUR 150,000 + EUR 300,000 + EUR 200,000 + EUR 20,000);
- EUR 100,000 corresponding to the costs of an apartment rental, a car rental and 8 air tickets;
- EUR 500,000 corresponding to match bonuses;
- EUR 500,000 as moral damages;
- EUR 50,000 corresponding to various expenses related to the present affair, i.e. attorney fees, transportation, etc;
- legal fees;
- minus EUR 86,125, corresponding to the amount received by the player from Club M (of country N), between 1 July 2009 until 30 June 2010 (EUR 71,125), and from club K (from country D), between 1 July 2010 and 11 October 2010, date of the amended claim (EUR 15,000).

5. In addition to the employment contract at stake, the Claimant encloses to his claim a copy of the transfer agreement dated 1 July 2008, involving his former club, club M, from country N, the Respondent and himself, bearing the signatures of club M and of the Claimant only.

6. In his arguments, the Claimant explains that, after signing the contract, he was informed by the Respondent that, by engaging him, it exceeded the number of foreign players allowed per club in country U. However, this issue would be solved and the Claimant would be registered with the Respondent by the end of July 2009.

7. According to the Claimant, in spite of the Respondent's several promises in view of obtaining his registration, the registration period expired without the Respondent having taken any measures in this regard.

8. As he believed to have a valid and binding contract with the Respondent, the Claimant allegedly rejected several other proposals from prestigious European clubs. Once the transfer window was closed without the Claimant having been registered with the Respondent, he found himself obliged to return to his former club, club M, of countr N's second division, suffering, thus, professional and financial damages.

9. By means of his letter dated 20 August 2009, the Claimant requested from the Respondent compensation in the total amount of EUR 3,530,000, corresponding to

material and moral damages deriving from the non-execution of the contract. As he received no response, the case was brought to FIFA.

10. In its response, the Respondent argues that the document signed between it and the Claimant was a conditional preliminary agreement, to be effective in case the transfer would actually be concluded, as established in its art. 10 (cf. point I.2 above). Since the Claimant's registration with the Football Federation of country U was not concluded, for there has never been an ITC request in this respect, the Claimant continued to play for his former club, club M, and was being regularly paid by it. Therefore, the contract with the Respondent never became valid and the Claimant would not be entitled to any type of compensation.

11. In addition, the Respondent mentions art. 99/3 of the Swiss Code of Obligations, according to which a party can only claim damages in case the actual existence and the contractual basis of such damage are demonstrated. In the present case, none of those elements are present, since the Respondent did not have a valid and binding contract with the Claimant or the intention to conclude one, and the Claimant continued his employment relationship with club M.

12. Finally, the Respondent encloses a copy of a correspondence from club M, dated 23 April 2010, according to which *"no club has contacted club M with regard to the player C. No club has shown interest in a transfer of the player and no club has asked permission to negotiate with the player on a contract. This information applies for the period from the start of the player's contract in July 2008 until the end of the transfer window in the summer 2009, 31 August 2009"*.

13. In his replica, the Claimant rejects the Respondent's arguments and insists on the fact that the contract signed between the parties was not a pre-contract, but a valid and binding employment contract. The fact that art. 10 of the contract foresees a payment in the amount of EUR 100,000 to be made in July 2009 implies, according to the Claimant, that the contract entered into force on that date.

14. According to the Claimant, the Respondent is responsible for the non-conclusion of the Claimant's registration with the Football Federation of country U. In this respect, he recalls a legal principle valid in country U as well as in the Swiss law, according to which a condition is to be considered as fulfilled in case one of the parties, in bad faith, has hindered its fulfilment. In view of the foregoing, the Claimant deems that the condition established in art. 10 of the contract is to be considered as fulfilled and the contract as valid and binding.

15. The Claimant explains that the salary he received from club M, as from 1 July 2009 until 30 June 2010, and from club K (Country D), as from 1 July 2010 until 10 October

2010, was considerably lower than the one he would be entitled to as per the contract with the Respondent.

16. In its final position, the Respondent maintains its previous argumentation and rejects the Claimant's claim.

17. Finally, the Claimant informs FIFA that, as from 1 July 2009 until 30 June 2010, he received from club M the total amount of EUR 71,125.

18. Subsequently, the Claimant signed a new contract with club K valid as of 1 July 2010 until 30 June 2012 and extendable for one more season, i.e. until 30 June 2013, according to which he was entitled to receive:
    - EUR 5,000 as gross monthly salary;
    - EUR 500 net per month as expenses;
    - EUR 82,000 gross as a yearly loyalty bonus.

19. On 31 August 2011, the Claimant signed a new contract with club A of Country D, valid as from the date of signature until 30 June 2015, according to which he was entitled to receive:
    - EUR 13,000 as gross monthly salary;
    - EUR 1,000 per month as expenses;
    - EUR 100,000 gross payable on 15 September 2011;
    - EUR 70,000 gross payable on 15 February 2012;
    - EUR 50,000 gross payable on 15 September 2012;
    - EUR 50,000 gross payable on 15 February 2013;
    - EUR 50,000 gross payable on 15 September 2013;
    - EUR 50,000 gross payable on 15 February 2014;
    - EUR 50,000 gross payable on 15 September 2014;
    - EUR 50,000 gross payable on 15 February 2015.

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 case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 18 March 2010. Consequently, the 2008 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 par. 2 and par. 3 of the Procedural Rules).

2. Subsequently, the DRC referred to art. 3 par. 1 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. a) and

b) of the Regulations (edition 2009), it is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension, between a player from country D and a club from country U.

3. Furthermore, the DRC 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 of the Regulations (edition 2009) and considering that the present matter was submitted to FIFA on 18 March 2010, the 2009 edition of said Regulations is applicable to the present matter as to the substance.

4. 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.

5. In this respect, the DRC acknowledged that it was undisputed by the parties that, on 1 July 2009, they signed an employment contract, according to which the Claimant is entitled to receive, *inter alia*, EUR 100,000 as an advance payment in July 2009; EUR 200,000 as remuneration for the season 2009/2010; EUR 100,000 as an advance payment in July 2010; EUR 250,000 as remuneration for the season 2010/2011; EUR 150,000 as an advance payment in July 2011; EUR 250,000 as remuneration for the season 2011/2012; EUR 150,000 as an advance payment in July 2012; EUR 300,000 as remuneration for the season 2012/2013; EUR 200,000 as conditional match bonuses per season; EUR 20,000 as extra bonus, in case the player is in the starting line-up in 20 matches; the rent of a furnished apartment; a car; and 8 economy flight tickets country U-country D-country U per season.

6. According to art. 10 of the contract, *"the relation between the player and the club starts on the date which the player is duly registered with the club by FA of country U"* and ends on 31 May 2013.

7. Furthermore, the DRC noted that it was also undisputed by the parties that the aforementioned contract never came into force, due to the non-fulfilment of the requirement established in art. 10 of the contract, namely the registration of the Claimant with the Football Federation of Country U (FFU) in a timely manner.

8. In this respect, the DRC noted that, on the one hand, the Claimant claims that, after signing an employment contract with the Respondent, he was informed by the latter that, by engaging him, it exceeded the number of foreign players allowed per club in country U. According to the Claimant, in spite of the Respondent's several promises in view of obtaining his registration, the registration period expired without the Respondent having taken any measures in that regard. Once the transfer window was closed without the Claimant having been registered with the Respondent, he found himself obliged to return to his former club, club M, for a considerably lower salary, suffering, thus, professional and financial damages.

9. Based on the aforementioned, the Claimant requests from the Respondent the payment of compensation for breach of contract in the total amount of EUR 3,443,875, plus unspecified interests as from 20 August 2010, made up of: EUR 520,000, as his entire remuneration for season 2009/2010; EUR 570,000, as his entire remuneration for season 2010/2011; EUR 620,000, as his entire remuneration for season 2011/2012; EUR 670,000, as his entire remuneration for season 2012/2013; EUR 100,000 corresponding to the costs of an apartment rental, a car rental and 8 air tickets; EUR 500,000 as match bonuses; EUR 500,000 as moral damages; EUR 50,000 corresponding to various expenses related to the present affair, i.e. attorney fees, transportation, etc; legal fees; minus EUR 86,125, corresponding to the amount received by the player from club M, between 1 July 2009 until 30 June 2010 (EUR 71,125), and from club K, between 1 July 2010 and 11 October 2010 (EUR 15,000).

10. Subsequently, the Chamber noted that, on the other hand, the Respondent argues that the document signed between it and the Claimant was a conditional preliminary agreement, to be effective in case the transfer would have actually been concluded, as established in art. 10 of the contract. Since the Claimant's registration with the Football Federation of country U was not concluded, for there has never been an ITC request in this respect, the Claimant continued to play for his former club, club M, and was being regularly paid by it. Therefore, the contract with the Respondent never became valid and the Claimant would not be entitled to any type of compensation.

11. Furthermore, the Chamber noted that the Claimant, in his replica, rejects the Respondent's arguments and insists on the fact that the contract signed between the parties was not a pre-contract, but a valid and binding employment contract. In addition, the Claimant deems that the Respondent is responsible for the non-conclusion of the Claimant's registration with the Football Federation of country U and, in this respect, he recalls a legal principle valid in country U as well as in the Swiss law, according to which a condition is to be considered as fulfilled in case one of the parties, in bad faith, has hindered its fulfilment. In view of the foregoing, the Claimant deems that the condition established in art. 10 of the contract is to be considered as fulfilled and the contract as valid and binding.

12. Finally, the Chamber noted that the Respondent maintained its previous argumentation in its final position, rejecting the Claimant's claim.

13. From the outset, the members of the Chamber highlighted that there does not seem to be any disagreement between the parties as to the fact that the terms of the agreement were not performed, including the payment of the remuneration established therein, since the Respondent did not contest such allegation made by the Claimant. The fundamental disagreement between the Claimant and the Respondent – and the central issue to the present dispute – is whether the contract signed

between the parties can be considered as a valid and binding employment relation between the parties.

14. The Chamber noted that according to the Respondent, as opposed to the Claimant, no legally binding employment contract had come into effect between the Claimant and the Respondent, since art. 10 of the contract established that *"the relation between the player and the club starts on the date which the player is duly registered with the club by FA of country U"* and such registration could not be executed by the Respondent, since the number of foreign players allowed per club in country U had already been reached.

15. Consequently, the Chamber, first and foremost, focused its attention on the content of art. 10 of the contract and, in this respect, it deemed appropriate to analyze the question of whether such clause inserted in an employment contract could be considered as valid.

16. In this regard, the Chamber deemed that the above-mentioned rule was ambiguous and that its application was arbitrary, since it lead to an unacceptable result based on non-objective criteria, which entitled the Respondent to unilaterally decide upon the date of the start of the contract without the Claimant having any means to intervene. The DRC emphasized that the lack of objective criteria by the application of the relevant rule lead to an unjustified disadvantage of the Claimant's financial rights and fundamentally affected the maintenance of contractual stability between the parties.

17. Furthermore, the Chamber considered that the possibility granted to the Respondent to unilaterally decide upon the commencement of the contractual relation between the parties appeared to be of a highly subjective nature, entailing that, *de facto*, it is left to the complete and utter discretion of the Respondent whether or not it was willing to establish a contractual relationship with the Claimant, without granting the latter any means to intervene in this decision.

18. In addition, the DRC considered relevant to recall its jurisprudence in accordance with which the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player, which are of the sole responsibility of a club and on which a player has no influence. In this regard, the DRC pointed out that it is the responsibility of the engaging club to ensure that the player is properly registered with his new club in order to be able to provide it with his services. Since the club is supposedly interested in acquiring the rights of the player and in benefiting from his services, it is also expected from it that it acts accordingly in view of obtaining the player's ITC and his subsequent registration.

19. In view of the foregoing, the Chamber was of the opinion that art. 10 of the contract, invoked by the Respondent in order to establish that the contract signed between the

parties was not valid, was clearly potestative and that, consequently, the respective argumentation of the Respondent could not be upheld by the DRC.

20. Subsequently, the Chamber focused its attention on the second argument of the Respondent, according to which the contract signed between the parties is a pre-contract and, therefore, cannot be considered as valid and binding. As a consequence, the Chamber began to analyse whether a legally binding employment contract had actually been concluded by and between the Claimant and the Respondent.

21. In this regard, the Chamber recalled that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration and the signature of both parties. After a careful study of the contract signed between the parties, the Chamber concluded that all such essential elements are included in the pertinent document, in particular, the fact that the contract establishes that the Claimant is entitled to receive remuneration, including a monthly salary, in exchange for his services to the Respondent as a player.

22. On account of all of the above, the members of the Chamber concluded that by having signed a contract containing all the *essentialia negotii* on 1 July 2009, the parties indeed established between them a valid and binding employment relation and are, therefore, bound by the terms of the contract concluded between them. Consequently, the Respondent had no just cause for not executing the validly agreed contract.

23. Having established that a valid and legally binding employment contract had been in force between the Claimant and the Respondent, the Chamber went on to analyse whether such contract had been breached and, in the affirmative, which party is to be held liable for breach of contract.

24. At this point, the Chamber was eager to emphasize that, given that the Respondent did not contest that it had not performed any of its obligations under the employment contract and that, in fact, it merely disputed the legal validity of such contract, the DRC concluded that the employment contract, which is to be considered as valid and binding, was indeed breached by the Respondent without just cause.

25. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the Chamber focused 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.

26. In continuation, the Chamber focused 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.

27. 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.

28. 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 31 May 2013 and concluded that the Claimant would have received in total EUR 1,500,000 in salaries and advance payments, had the contract been executed until its expiry date.

29. In continuation, the Chamber verified whether the Claimant had signed any employment contract with another club, 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 player's general obligation to mitigate his damages.

30. The Chamber noted that, as the contract with the Respondent did not enter into force, the Claimant returned to his former club, club M. On 1 July 2010, the Claimant entered a new employment contract with club K, and on 31 August 2011, with club A. The amount earned by the Claimant with the aforementioned clubs, until 31 May 2013, amounts to EUR 794,125.

31. The Chamber also considered important to point out that, although the employment contract was fully valid and enforceable, the execution of the contract had never started.

32. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Respondent must pay the lump sum of EUR 235,000 to the Claimant as compensation for breach of contract,

plus interests of 5% as of the date of the decision, which was considered as reasonable and justified.

33. Subsequently, the DRC analysed the request of the Claimant corresponding to compensation for moral damages in the amount of EUR 500,000. In this regard, the Chamber deemed it appropriate to point out that the request for said compensation presented by the Claimant had no legal basis or evidence that demonstrated the damage suffered or its quantity. In this context, the members of the Chamber referred to the general legal principle of the burden of proof, according to which a party deriving a right from an alleged fact has the obligation to prove the relevant fact (cf. art. 12 par. 3 of the Procedural Rules). Moreover, the members of the DRC recalled that it had already granted the Claimant compensation for the breach of the contract and, for that reason he could not claim any further compensation. On account of the aforementioned, the DRC decided that the request for compensation related to moral damages shall be rejected.

34. Moreover, the Chamber analysed the request of the Claimant to be awarded with possible bonuses that he could have achieved amounting to EUR 500,000. In this regard, the DRC considered that the employment relation as agreed in the contract never came into effect, thus the Claimant could not have participated in matches played by the Respondent. Therefore, the members of the Chamber decided to reject the claim for bonuses.

35. 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 jurisdiction.

36. For all the above reasons, the Dispute Resolution Chamber decided to partially accept the claim of the Claimant and to reject any further claims of the Claimant.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player C, is partially accepted.

2. The Respondent, Club T, is ordered to pay to the Claimant, player C, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 235,000, plus interest of 5% *p.a.* as of the date of this decision until the date of effective payment.

3. If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

4. Any further claims lodged by the Claimant, player C, are rejected.

5. The Claimant, player C, is directed to inform the Respondent, Club T, 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:

Court of Arbitration for Sport
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For the Dispute Resolution Chamber

Markus Kattner
Deputy Secretary General

Encl. CAS directives