

# **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 28 May 2010,

in the following composition:

**Slim Aloulou** (Tunisia), Chairman

**Geraldo Movilla** (Spain), member

**David Mayebi** (Cameroon), member

**Essa M. Saleh Al-Housani** (United Arab Emirates), member

**Thilina Panditaratne** (Sri Lanka), member

on the claim presented by the club,

**M,**

*as Claimant*

against the player,

**I,**

and the club,

**F,**

*as Respondents*

regarding an employment-related dispute  
between the parties

## I. Facts of the case

1. On 20 October 2003, the player, I (hereinafter: *the player*), born on 7 July 1983, and the club, T (hereinafter: *T*) signed a five-year employment contract, valid from its date of signature until the end of the season 2007-2008.
2. On 20 December 2006, the player and the club, M, signed an employment contract valid as from 1 January 2007 until *"the end of [the] Sport Season 2008"*.
3. According to this employment contract, the player was to receive the following amounts and benefits:
  - an advance of USD 25,000 *"for the Sport Season 2007"*,
  - a monthly salary of USD 2,500 *"for the Sport Season 2007"*,
  - an advance of USD 30,000 *"for the Sport Season 2008"*,
  - a monthly salary of USD 3,000 *"for the Sport Season 2008"*,
  - some bonuses for winning matches according to the Internal Regulations,
  - one monthly salary in case the team becomes champion in the General Tournament, the X Cup or any external championships,
  - one return flight ticket to country Y for the Sport Season 2007/2008,
  - a vehicle throughout the entire period of contract.
4. On 24 February 2007, M Club and T signed a "player transfer agreement" according to which the player was transferred to M Club *"for the year 2006-2007"*. This agreement also bears the signature of the player.
5. On 7 July 2007, T and the club, F, signed a transfer agreement in connection with the definitive transfer of the player. Under this agreement, F was to pay the amount of 450,000 to T. The said agreement also bears the signature of the player and mentions that *"he acknowledges the terms of this agreement and that he accepts to be transferred to F"*.
6. On 9 July 2007, F and the player signed a five-year employment contract valid until 31 July 2012.
7. On 7 November 2007, M Club contacted FIFA via the Football Association B to inform it that, after having spent his holidays in country Y, the player did not return to country B at the start of the season 2007-2008. M Club requested the player's return to the club.
8. On 21 November 2007, after having been informed of M Club's claim against him, the player stated that he had, initially, signed a five-year employment

contract with T and that, during the course of the season 2005-2006, he had been loaned to the club I Football from the XXX. While in the XXX, he was allegedly approached by the managers of M Club, who notified to him their intention of signing an employment contract with him. Thereupon, he allegedly replied to them that his transfer should be negotiated with T, as he was still bound to that club.

9. The managers of M Club allegedly replied to him that T and M Club had already found an agreement for his definitive transfer, and that this transfer agreement would be signed as soon as he would sign an employment contract with M Club. Therefore, on 20 December 2006, the player signed an employment contract valid until the end of the season 2007-2008.
10. Shortly afterwards, the player discovered that T had never agreed to his definitive transfer. In an attempt to solve this particular issue, the player called a meeting between the representatives of M Club and T, where an agreement was found to sign a loan agreement. Therefore, on 24 February 2007, T, M Club and the player signed a "player transfer agreement" according to which the player was to play for M Club *"for the year 2006-2007"*.
11. The player emphasized that it was on the basis of the loan agreement that he rendered his services to M Club until the end of the season 2006-2007. At the end of the latter season, he returned to Y to prepare the season 2007-2008.
12. Furthermore, according to the player, M Club cannot claim that he is bound by the employment contract signed on 20 December 2006, since the loan agreement was signed approximately two months after. He also underlined that he would not have signed the employment contract if he had known that T was opposed to his definitive transfer to M Club.
13. Finally, the player requested FIFA to allow him to play in country Y.
14. On 22 January 2008, the Single Judge of the Players' Status Committee authorised the Football Federation Y (FFY) to provisionally register the player with F, without prejudice to any decision that the Dispute Resolution Chamber might pass regarding the present contractual dispute.
15. On 3 February 2008, following the aforementioned decision passed by the Single Judge of the Players' Status Committee, M Club amended its claim and requested compensation for breach of contract by the player totalling 20,234 (or its equivalent in USD, i.e. USD 53,529), from the player as well as from his new club, F. In this respect, M Club asserted that it had relied on the participation of the player in the *"Kick Outs of the Third Group of the ZZZ of*

*the First League Winners*” that were held in country K between 28 August and 3 September 2007. According to M Club, failure of the player to perform his duties has seriously disrupted the work of the club and, as a result, M Club was forced to sign a contract with the player E. Hence, the results of the team were affected in the Kick Outs.

16. Therefore, M Club claims the amount of 10,234 (or its equivalent in USD, i.e. USD 27,074), which corresponds to the costs allegedly incurred for entering into an employment contract with the player E. In support of this claim, M Club provided FIFA with three invoices:
  - one invoice issued by M Club, dated 22 August 2007, for an amount of 7,530, mentioning the name of the player E,
  - one invoice issued by M Club, dated 17 October 2007, for an amount of 1,512, mentioning the name of the player E, which mentions: *“I confirm that I received all balances due to me from M Club in full and final settlement”* – E – followed by a signature,
  - one invoice issued by a travel agency, dated 14 August 2007, for an amount of 1,162, making reference to the payment of a flight for the player E.
17. M Club further requests compensation in the amount of 10,000 (or its equivalent in USD, i.e. USD 26,455) for having carried out a number of tests of foreign players, whose level were not equivalent to that of the player.
18. In reply to M Club’s amended claim, the player referred to his previous position. He reiterated and acknowledged that he had signed an employment contract with M Club until the end of the season 2007-2008. He underlined that he recognised his mistake in signing this employment contract, as he should have had the prior approval of his former club, T, before signing such contract. However, he expressed the opinion that his responsibility for such mistake should also be borne in part by M Club itself, as this latter club knew that he was not a free player. According to the player, M Club should also have had the consent of T before making him sign the litigious employment contract. In this respect, the player emphasized that he was a young player at the time, and that M Club had more experience with regard to employment contracts and was better informed about the contents of the FIFA Regulations.
19. Finally, the player stressed that the “loan agreement” with T was signed seven weeks after he signed the employment contract with M Club, and that this “loan agreement” was concluded for a period of five months. Furthermore, the player emphasized that art. 3 of the “loan agreement” expressly mentioned that M Club must return the player’s International Transfer Certificate to T at the end of the alleged loan period. Therefore, the player

concluded that the loan agreement, which was signed after the employment contract, rendered the employment contract null and void.

20. In reply to M Club's claim, F alleged that the player was under contract with T when he was transferred to F, in accordance with the transfer agreement signed between both clubs as well as by the player on 7 July 2007. Furthermore, thereafter, F signed an employment contract with the player on 9 July 2007. In addition, F underlined that the Single Judge of the Players' Status Committee had authorised the FFY to provisionally register the player with it. Thus, according to F, the player was validly transferred to their club. Finally, F referred to the statements of the player, who had allegedly declared that he was the victim of a manipulation from M Club.
21. As a consequence, F concluded that M Club should not be entitled to any compensation in view of its alleged bad faith in the present case.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 7 November 2007. Consequently, the 2005 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 2 and 3 of the Procedural Rules, edition 2008, in combination with art. 18 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 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2009) 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 B club, a player and a 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 2008 and 2009), and considering that the present claim was lodged on 7 November 2007, the 2005 edition of the 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, entering into the substance of the matter, the members of the Chamber started by acknowledging the established facts of the case and the arguments of the parties as well as the documents contained in the file.
5. In this respect, the Chamber duly noted that both M Club and the player agree on the fact that they signed an employment contract on 20 December 2006, valid as from 1 January 2007 until the end of the season 2007-2008. Equally, it is undisputed that the player was under contract with T when he signed the employment contract with M Club. Indeed, the player and T had signed an employment contract on 20 October 2003, which was valid until the end of the season 2007-2008. In continuation, it has also been undisputedly established that on 24 February 2007, ; Club, T as well as the player signed a "player transfer agreement" according to which the player was transferred to M Club "for the year 2006-2007". In other words, the player was loaned by T to M Club for the remainder of the season 2006-2007. Finally, the Chamber duly noted that on 7 July 2007, T and the club F signed a transfer agreement, by means of

which the player was definitively transferred to F, and that on 9 July 2007, the player entered into a five-year employment contract with the latter club.

6. In continuation, the Chamber recalled that M Club had lodged a claim against the player for breach of contract without just cause and had requested, *inter alia*, compensation for such breach in the amount of 20,234, or its equivalent in USD, i.e. USD 53,529, for which payment F should, according to M Club, be declared jointly and severally liable. Furthermore, M Club had requested sporting sanctions to be taken against the player. In this respect, the Chamber noted that according to M Club, the player was bound by the employment contract signed on 20 December 2006, and that the player had acted in breach of the employment contract signed with the said M club by not returning to the club following the summer holidays of 2007.
7. At the same time, the members of the Chamber took note of the fact that both the player and F had rejected M Club's claim. In this respect, the Chamber took due note of the arguments presented by the player, who stated that he had signed the employment contract with M Club prior to finalising the process of his transfer from T to M Club because the latter M club had assured him that the relevant transfer agreement would be concluded shortly after the signature of the employment contract. Furthermore, the player explained that it was only after having signed the employment contract with M Club that he had discovered that T and M Club had never agreed on his definitive transfer.
8. Therefore, the player indicated that on 24 February 2007, T and M Club signed a loan agreement valid for the remainder of the season 2006-2007 and that it was on that basis that he rendered his services to the club. Additionally, the player underlined that although he recognised his mistake in signing an employment contract with M Club without the approval of T, he deems that the responsibility of such mistake should be shared with M Club, who also signed an employment contract with him while knowing that he was still contractually bound to T. Finally, the player expressed the view that the loan agreement, which was signed between T, M Club and himself, rendered the employment contract signed on 20 December 2006 null and void.
9. In continuation, the Chamber analysed the position presented by F with regard to the present matter and noted, in this regard, that F had affirmed that prior to entering into an employment contract with the player, it had concluded a transfer agreement with the player's former club, T. F further underlined that the Single Judge of the Players' Status Committee had authorised the FFY to provisionally register the player with it. Thus, according to F, the player was validly transferred to it, and seems to have been manipulated by the managers of M Club.

10. In view of the allegations and arguments presented by all the parties involved in the present matter, the Chamber underlined that in order to be able to establish whether, as claimed by M Club, a breach of contract had been committed by the player, it should first of all pronounce itself on the issue of the validity of the relevant employment contract which was concluded between the player and M Club on 20 December 2006.
11. Indeed, the player departs from the assumption that the employment contract signed on 20 December 2006 should be considered as null and void in view of the fact that the transfer agreement, which was signed by T, M Club and himself on 24 February 2007, i.e. after the employment contract was signed, provided for a different duration of the period during which the player was to render his services to M Club. In this respect, the Chamber was eager to emphasise that, in general, the employment relationship between a player and a club is governed by an employment contract, and not by a transfer agreement.
12. Furthermore, the members of the Chamber pointed out that although they may concern the same player and a transfer, be it definitive or on a loan basis, in principle constitutes a tripartite situation requiring all parties' consent, a transfer agreement and an employment contract are two independent contracts which do not have the same object. In this respect, the Chamber stated, on the one hand, that a transfer agreement is usually concluded between two clubs and generally pertains mainly to the financial and administrative aspects of the transfer of a player. The Chamber pointed out that an employment contract, on the other hand, is usually concluded between a club and a player and generally provides for the employment-related obligations of each party, i.e. in general, for the player, to perform his duty as a football player, and for the club, to remunerate the player for his services. As regards a transfer on a loan basis, the Chamber acknowledged that, in principle, the duration of an employment contract signed between a club receiving a player on a loan basis and a player generally and usually does not exceed the duration of the relevant loan period. However, should the duration of a loan agreement and a loan-related employment contract not be congruent, this does not automatically render the loan-related employment contract invalid.
13. In any way, the Chamber pointed out that, in the matter at stake, the said loan agreement was signed after the player and M Club had entered into the employment contract. In other words, the employment contract with M Club had obviously not been signed in the context of the loan of the player to the M club.

14. In light of the above, the Chamber deemed appropriate to underline that according to the player's own admission, he had rendered his services to the club for a period of at least five months. In this respect, the Chamber stressed that the player did not provide any evidence that following the signature of the relevant "player transfer agreement", a new employment contract was signed between him and M Club. Therefore, the Chamber, in accordance with the principle of burden of proof mentioned under art. 12 par. 3 of the Procedural Rules, had no alternative but to conclude that during the time when the player rendered his services to M Club, the pertinent relationship was governed by the employment contract concluded on 20 December 2006. In particular, the Chamber noted that the "player transfer agreement" could not be viewed as governing the relationship between the player and M Club, since it does not provide for the obligations of the aforesaid parties in the context of an employment relationship, but rather and only for the financial and administrative terms of the transfer of the player on a loan basis.
15. In addition, and in response to the player's argumentation that he was led by M Club to believe that a definitive transfer had already been agreed upon with T when he signed the employment contract on 20 December 2006, the Chamber wished to emphasize that it is the responsibility of a player who is under contract with a club and who is approached by another club during the validity of such contract, to ensure that his current club will give its consent to such transfer prior to him signing an employment contract with another club. Consequently, the Chamber decided to reject such argument.
16. On account of the above, the Chamber came to the firm conclusion that the employment contract concluded between the player and M Club was valid and binding upon the player and M Club.
17. With regard to the employment relationship between T and the player, the Dispute Resolution Chamber held that the legal effects of the employment contract between T and the player were considered suspended during the loan period agreed between T, the player and M Club, i.e. until the end of the 2006-2007 season, and that the legal effects of such employment contract between T and the player were re-instated upon the expiry of the said loan period.
18. In continuation, the members of the Chamber concluded that after the expiry of the loan period, the player was confronted with two employment contracts which were valid at the same time, i.e., the contract concluded with T and the one concluded with M Club, as established above. Thus, by having two valid employment contracts covering the same time period, the player effectively

placed himself in a situation where, by honouring one of the two employment contracts, he would inevitably breach the other one. In this regard, the Chamber noted that, after the expiry of the loan period with M Club, the player chose to rely on the employment contract concluded with T and to return to country Y. Later on, a transfer agreement was signed between T and F, and the player signed an employment contract with F, obviously with the consent of T, thereby confirming his intention of not fulfilling his obligations under the employment contract concluded with M Club.

19. In view of the all of the above, the Chamber concluded that, by not returning to M Club at the start of the season 2007-2008 the player unilaterally terminated the employment contract with M Club without just cause.
20. In the context of the specific case at hand, the Chamber recalled that, according to art. 18 par. 5 of the Regulations, if a player enters into an employment contract with different clubs for the same period of time, the provisions of Chapter IV of the Regulations regarding the maintenance of contractual stability between professionals and clubs shall apply (cf. art. 18 par. 5 of the Regulations).
21. In continuation, the members of the Chamber referred to item 7. of the "Definitions" section of the Regulations, which stipulates *inter alia* that the protected period comprises "three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28<sup>th</sup> birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28<sup>th</sup> birthday of the professional". In this regard, the Dispute Resolution Chamber pointed out that the employment contract with M Club was valid as of 1 January 2007 until the end of the season 2007-2008, whereas the unjustified breach of contract by the player occurred in summer 2007, when the player ceased rendering his services to M Club. Consequently, the Chamber concluded that the breach of contract by the player had obviously occurred within the applicable protected period.
22. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the player during the protected period.
23. In doing so, the Dispute Resolution Chamber first of all referred to the provisions of art. 17 par. 1 of the Regulations, in accordance with which a consequence of terminating a contract without just cause is the payment of compensation by the party in breach to the counterparty. In this respect, the members of the Chamber recalled that M Club is claiming compensation for

breach of contract in the total amount of 20,234, or its equivalent in USD, i.e. USD 53,529, against the player as well as F. Furthermore, the Chamber took due note that M Club claimed that the player's non-fulfilment of his obligations towards it had seriously disrupted the work of the club, allegedly forcing it to carry out some trials on several players and, ultimately, recruit another foreign player.

24. Having recalled the aforementioned, the Chamber strongly affirmed, however, that the particular circumstances surrounding the breach of contract by the player in the present case had to be taken into consideration in order to determine whether compensation was payable by the player and, in joint liability, his new club (cf. art. 17 par. 2 of the Regulations).
25. In light of the above, the Chamber acknowledged that when signing an employment contract with the player on 20 December 2006, M Club was well aware of the fact that the player was already under contract with another club, i.e., T. In this regard, the Chamber referred to the player's statement during the course of the proceedings, according to which, prior to signing the employment contract with M Club, the latter club told him that his transfer had already been agreed upon between T and the M club. Furthermore, the Chamber pointed out that M Club had not contested such allegation made by the player.
26. In addition to the aforementioned, the Chamber underlined that M Club and T only reached an agreement concerning the transfer of the player on 24 February 2007, i.e. more than 2 months after having signed an employment contract with the player. Therefore, the Chamber determined that on 20 December 2006, M Club effectively signed an employment contract with a player who, as M Club was aware of, was still under contract with another club.
27. In this respect, the members of the Chamber were eager to emphasise that prior to entering into an employment contract with the player, M Club should have made sure that it had obtained T's consent with regard to the transfer of the player from T to M Club.
28. In light of the considerations mentioned above, the Chamber came to the conclusion that M Club had clearly committed a fault by entering into an employment contract with the player at a point in time when it did not have the definitive consent of T to sign an employment contract with the player.
29. Having stated the above, the members of the Chamber held that, in accordance with the legal principle of *nemo auditur propriam turpitudinem*

*allegans*, it could not enforce M Club's claim for compensation for breach of contract by the player, since, as established above, M Club was itself at fault by signing the relevant employment contract with the player. In other words, the Chamber concluded that due to M Club's fault, as established above, M Club could not be eligible to receive compensation in the case at hand.

30. Therefore, the Dispute Resolution Chamber decided that M's claim for compensation for breach of contract against the player and, in joint liability, his new club, F, must be rejected.
31. In continuation, the Chamber focused its attention on the further consequences of the breach of contract by the player within the protected period, and in this respect, addressed the question of sporting sanctions against the player in accordance with art. 17 par. 3 of the Regulations. The cited provision stipulates *inter alia* that sporting sanctions shall be imposed on any player found to be in breach of contract during the protected period. Furthermore, the Chamber recalled, once again, that art. 18 par. 5 of the Regulations, which deals with the consequences of entering into more than one contract covering the same time period, clearly states that a player shall be subject to the provisions of Chapter IV of the Regulations regarding the maintenance of contractual stability between professionals and clubs.
32. Returning to the facts of the case at hand, the Chamber recalled that the breach of contract by the player had occurred during the protected period (cf. point II. 21 above). Consequently, the Chamber decided that by virtue of art. 17 par. 3 of the Regulations, the player shall be sanctioned with a restriction of four months on his eligibility to participate in official matches. In this context, the Chamber recalled that this is the minimum sanction provided for by the Regulations and the Chamber does not have any scope of discretion to diminish the duration of the suspension. This sanction shall take effect as from the notification of the present decision.
33. The Chamber concluded its deliberations in the present matter by establishing that any further claims of M Club are rejected.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the club, M Club, is partially accepted.
2. The player, I, is found to have terminated the employment contract with M Club without just cause within the protected period.

3. A restriction of four months on his eligibility to play in official matches is imposed on the player I. This sanction shall take effect as from the notification of the present decision.
4. Any further claim lodged by the club, M Club, is rejected.

\*\*\*\*\*

**Note relating to the motivated decision** (legal remedy):

According to art. 63 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  
Avenue de Beaumont 2  
1012 Lausanne, Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org) / [www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber:

---

Jérôme Valcke  
Secretary General

Encl. CAS directives