Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 15 May 2009,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Joaquim Evangelista (Portugal), member
Carlos Soto (Chile), member
Mario Gallavotti (Italy), member
Caio Cesar Vieira Rocha (Brazil), member

on the claim presented by the player

A,

as *Claimant / Counter-Respondent*

against the club

FC D,

as *Respondent / Counter-Claimant*

regarding a contractual dispute between the parties

I. Facts of the case

1. The player, A (hereinafter: *the Claimant / Counter-Respondent*, or *the Claimant*), born on 21 December 1984, and the club, FC D (hereinafter: *the Respondent / Counter-Claimant*, or *the Respondent*), signed an employment contract (hereinafter: *the contract*) on 24 June 2008, valid from 23 June 2008 until 30 June 2011, i.e. for the 2008/2009, 2009/2010 and 2010/2011 seasons.

2. According to art. 3 of the contract, the Claimant was entitled to receive a monthly salary of EUR 8,333.33 during the 2008/2009 season (i.e. EUR 100,000 for the entire season). The contract stated that the Claimant's annual salary would be increased to EUR 110,000 for the 2009/2010 season and to EUR 120,000 for the 2010/2011 season. Furthermore, if the Claimant signed for an additional two years, his annual salary would be EUR 130,000 for the 2011/2012 season and EUR 150,000 for the 2012-2013 season. Art. 3 of the contract allowed for bonuses depending on the player's performance, whereas art. 4 of the contract stipulated that the club should pay the player's monthly salary by no later than on the fifteenth day of the following month.

3. In addition, art. 3 of the contract also stated that the Claimant would receive two yearly return flight tickets from B to S and that "*the club will provide USD 500 for accommodation and the rest amount will be covered by the sportsman*".

4. On 28 January 2009, the Claimant lodged a complaint with FIFA against the Respondent, claiming that the latter had failed to comply with its contractual obligations. The Claimant explained that since EUR 1 equated to 4,25, he should have received the amount of 35,416.65 every month, whereas he claimed only to have received a total amount of 80,613 for the period from 24 June 2008 until 14 January 2009. As proof of the aforementioned, the Claimant submitted a bank statement showing that the following amounts had been paid to him:
   - 16,587 on 21 August 2008
   - 10,228 on 16 September 2008
   - 15,700 on 29 September 2008
   - 27,896 on 16 October 2008
   - 10,202 on 12 November 2008

5. The Claimant argued that, by January 2009, the Respondent had failed to pay him his salary for September, October, November and December 2008 (i.e. four months out of the first six months of the contract) and that, consequently, he had no option but to terminate his contract with just cause. In turn, the Claimant informed the Respondent in writing on 14 January 2009 that he had decided to unilaterally terminate his contract and asked the Respondent to pay his outstanding salary within three days.

6. In summary, the Claimant claimed his monthly salaries of September, October, November and December 2008 (i.e. 4 x EUR 8,333.33, equating to a total amount of EUR 33,333) from the Respondent as well as an additional USD 33,000, representing, according to the Claimant, the overall match bonuses that he should have received under the terms of the contract (i.e. 11 victories x USD 3,000). In addition, the Claimant also claimed compensation for the alleged breach of contract amounting to the remaining value of the contract (EUR 50,000 for the remaining period of the 2008/2009 season and EUR 510,000 for the 2009/2010 to 2012/2013 seasons) as well as a further USD 100,000 for the moral and sporting damage he claimed to have suffered.

7. Furthermore, the Claimant requested FIFA to establish that he had unilaterally terminated his contract with the Respondent with just cause and that he should be free to sign a new employment contract with the club of his choice in order for him to proceed with his football career.

8. On 13 February 2009, the Respondent responded by explaining that, at the end of 2008, the Claimant had gone back to B apparently to receive medical treatment during the winter holiday. The Respondent alleged that it had then contacted the Claimant in B on 12 January 2009 in order to ask him to rejoin the team but, apparently, without success.

9. Furthermore, the Respondent argued that FIFA should not be competent to hear the dispute since the Football Federation (hereinafter: *the FF*) had established an independent commission in front of which disputes such as the present affair could be dealt with, and since art. 9 of the contract stipulated that (quote) "*If the parties fail to reach an amiable agreement, then the disputes will be submitted in view of settlement to the organisms with jurisdictional duties of the Football Federation and of the Professional Football League*".

10. As for the allegations made by the Claimant, the Respondent deemed that they should be rejected as it claimed that it had completely fulfilled its side of the contract and alleged that, out of the EUR 50,000 that it should have paid to the Claimant for the period from July until December 2008 (i.e. the first six months of the contract), EUR 49,998 had been duly paid to the Claimant. It explained that the aforementioned amount had been paid either directly to the Claimant or taken out of the Claimant's salary to cover some of his expenses, which had not been expressly stipulated in the contract.

11. In this context, the Respondent submitted detailed documents apparently demonstrating that **EUR 42,458** had been paid directly to the Claimant and that EUR 7,540 had been deducted from the Claimant's salary, leading to a total amount of EUR 49,998 paid to the Claimant or credited against his salary as follows:

12.

- **EUR 1,000 paid on 30/06/08 as advance payment of the contract (cash payment n. 1274)**
- **EUR 1,000 paid on 30/06/08 as advance payment of the contract (cash payment n. 1275)**
- EUR 325 credited on 02/07/08 for the flight ticket paid out of the contract at the Claimants' request
- EUR 52 credited on 11/07/08 for phone calls (Claimant has a subscription of 35 EUR/month only)
- EUR 1,050 credited on 05/08/08 as the amount paid on top of the USD 500/month granted under the contract for the rent of August, September and October 2008 (apartment rent is EUR 850)
- EUR 223 credited on 05/08/08 for meals at the hotel
- EUR 226 credited on 15/08/08 for phone calls
- **EUR 4,683 paid on 20/08/08 as payment of the contract (via bank transfer)**
- **EUR 5,110 paid on 25/08/08 as advance payment of the contract (cash)**
- EUR 248 credited on 27/08/08 for the flight ticket of the Claimant's girlfriend
- EUR 330 credited on 27/08/08 for the flight ticket of the Claimant's girlfriend
- EUR 125 credited on 16/09/08 for phone calls
- **EUR 2,201 paid on 16/09/08 as advance payment of the contract (via bank transfer)**
- **EUR 602 paid on 16/09/08 as advance payment of the contract (via bank transfer)**
- EUR 233 credited on 24/09/08 for meals at the hotel
- EUR 243 credited on 14/10/08 for phone calls
- **EUR 7,404 paid on 16/10/08 as payment of the contract (via bank transfer)**
- EUR 468 credited on 28/10/08 in additional apartment rent costs for November 2008
- **EUR 318 paid on 06/11/08 as advance payment of the contract (cash)**
- EUR 78 credited on 12/11/08 for phone calls
- EUR 397 credited on 24/11/08 representing the fine according to report 1813 (according to art. 3.3)
- EUR 1,784 credited on 22/11/08 representing the fine according to report 1814 (according to art. 3.3)
- EUR 460 credited on 10/12/08 in additional apartment rent costs for December 2008
- EUR 1 credited on 10/12/08 for the Claimant's work permit
- **EUR 2,616 paid on 11/12/08 as payment of the contract (via bank transfer)**
- EUR 246 credited on 15/12/08 for phone calls
- EUR 398 credited on 15/12/08 for additional apartment costs (electricity, water etc.)
- EUR 653 credited on 12/01/09 for phone calls
- **EUR 858 paid on 16/01/09 as payment of the contract (via bank transfer)**
- **EUR 8,333 paid on 16/01/09 as payment of the contract (via bank transfer)**
- **EUR 3,856 paid on 23/01/09 as payment of the contract (via bank transfer)**
- **EUR 4,477 paid on 23/01/09 as payment of the contract (via bank transfer)**

13. As for the bonuses claimed, the Respondent referred to art. 3 of the contract, according to which it had no obligation to grant bonuses and held that the Claimant's performances from July to December 2008 did not justify the granting of any bonus since he had only played in six official matches and for only 265 minutes in total. In conclusion, the Respondent considered that it was the Claimant who had breached the contract and that it could in no way accept its termination. Furthermore, it argued that since the contract had been concluded on 24 June 2008, the breach occurred within the protected period. In view of the foregoing, the Respondent apparently requested the FF, on 6 February 2009, to suspend the Claimant.

14. Moreover, the Respondent deemed that it would only allow the termination of the contract if it obtained compensation amounting to EUR 500,000 of the total expenses incurred by the Respondent for the transfer of the Claimant from his former club to the Respondent, i.e. EUR 550,000, which could be broken down as follows: EUR 450,000 for the transfer of the Claimant to the Respondent, EUR 50,000 for the player's agent's commission pertaining to the aforementioned transfer, and EUR 50,000 representing the financial rights paid to the Claimant for half of the season and other expenses.

15. In his second submission dated 3 March 2009, the Claimant responded by stating again that the Respondent had not complied with its contractual obligations in full as it had, *inter alia*, never paid the requested monthly salary on time and in full, and that this gave him just cause to terminate the contract. In this respect, the Claimant reiterated his claim that, for the period from 24 June 2008 until 14 January 2009, he had only received salary payments amounting to 80,613, which, according to him, represented only two monthly salaries in Euros.

16. Furthermore, the Claimant claimed that he was contractually entitled to two flight tickets to B and that therefore, the deductions that the Respondent had made from his salary were unjustified. He also refuted the allegation that the Respondent had contacted him in B in order to ask him to rejoin the team. In addition, the Claimant denied having received the cash payments mentioned in the Respondent's submission since such payments were not supported by any documentary evidence and he only acknowledged the amounts paid via bank transfer unto his bank account.

17. Moreover, the Claimant rejected the Respondent's assertion that it had rightly deducted from his salaries various expenses not covered by the contract. In this respect, he claimed that neither of the first two cash payment receipts for EUR 1,000 proved that the Claimant had received these amounts, as they had been prepared solely by the Respondent. The Claimant also refuted the other evidence submitted by the Respondent pertaining to his alleged phone costs, the rent for the apartment, the hotel expenses, the financial penalties imposed on the Claimant and the additional apartment costs. Finally, the Claimant denied having received the cash payments of EUR 5,110 on 25 August 2008 and EUR 318 on 6 November 2008.

18. The Claimant also argued that the payments made by the Respondent on 16 and 23 January 2009, just after the notice of termination had been sent by the former to the latter, clearly demonstrated that the Respondent had wanted to minimise its alleged contractual breach. In this respect, the Claimant sought to argue that the fact that the aforementioned amounts had been paid should not mitigate the Respondent's responsibility since the contract had already been unilaterally terminated on 14 January 2009. Finally, while entirely rejecting the Respondent's

position, the Claimant reiterated his claim and added that sporting sanctions should be imposed on the Respondent in the form of a registration ban for new players for two registration periods.

19. In its duplica, the Respondent submitted documents apparently demonstrating that the Claimant had, by his signature, acknowledged receipt of the amounts he had denied receiving. Furthermore, and while recognising that there had been some delays in the payments of the Claimant's wages, the Respondent also stated that it had made certain payments in advance and that consequently, the overall payments schedule was nothing more than a usual situation in a football club's activity. Moreover, it argued that the Claimant had incorrectly calculated the equivalent in euro of the received amounts, using a single exchange rate (4.25 /EUR), whereas the contract stipulated in art. 4 that "*the sums owed to the Sportsman in accordance with this contract will be paid for in, at the reference rate of exchange of the National Bank on the payment date*". Furthermore, the Respondent rejected the assertion that it had tried to minimise its responsibility for the breach by paying certain amounts on 16 and 23 January 2009 as it argued that the contract had not come to an end for the Respondent and that the payments were made precisely in order to have the Claimant rejoin the team as soon as possible.

20. As for the costs deducted from the Claimant's wages, the Respondent considered that although the contract had not provided for the deduction of costs caused by the Claimant, neither had it stated that these costs would have to be borne by the Respondent. In continuation, it argued that by paying certain costs on behalf of the Claimant, it had become the Claimant's creditor and therefore had a legitimate right to recuperate such amounts by deducing them directly from the Claimant's salary.

21. Finally, the Respondent reiterated its previous claim that the only way it could accept the termination of the contract would be to accept the transfer of the Claimant for an amount covering at least the costs generated by the Claimant's transfer to its team. If this could not be agreed upon, the Respondent said that it would have no other alternative but to claim damages from the Claimant for the termination of the contract.

22. Asked by FIFA to specify the amount it would claim as compensation, the Respondent deemed that it would take into consideration the total amount of EUR 500,000 and that, should the Claimant sign a new contract with another club, the latter would be jointly and severally liable. Furthermore, the Respondent asked for sporting sanctions to be imposed on the Claimant for his alleged breach of contract.

23. In his final submission, received on 13 April 2009, the Claimant completely rejected the allegations of the Respondent and repeated that it had never complied with

its financial obligations in full. While maintaining his previous financial claim against the Respondent, the Claimant also deemed that the counter-claim for compensation made against him by the Respondent should be rejected as it was the Respondent itself which had been the party at fault and which had caused the termination of the contract. Furthermore, the Claimant explained that since leaving the Respondent in January 2009, he had not entered into any employment relationship with any other club.

24. According to a document submitted by the Respondent on 16 April 2009, the disciplinary board of the Football Federation (FF) decided, on 11 March 2009, to suspend the Claimant for a three-month period. In the same correspondence, the Respondent also provided FIFA with some brief information on the disciplinary board of the FF.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber analysed whether it was competent to deal with the matter at hand. In this respect, it took note that the present matter was submitted to FIFA by the Claimant on 28 January 2009. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *the Procedural Rules*) are applicable to the matter at hand (cf. art. 21 par. 1 and par. 2 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 connection with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2008), the Dispute Resolution Chamber (DRC) shall adjudicate on employment-related disputes between a club and a player of an international dimension. As a consequence, and since the Claimant holds the B nationality and the Respondent is a R club, it was confirmed that the Dispute Resolution Chamber is, in principle, the competent body to decide on the present litigation.

3. However, the Chamber acknowledged that the Respondent had, during the course of the proceedings, sought to argue that FIFA should not deal with the present matter since the FF had established and independent commission in front of which disputes such as the present one could be dealt with and, in particular, since art. 9 of the contract stipulated that in case the parties could not reach an amicable agreement, the dispute should be submitted to the relevant decision-making body at national level. This being said, the members of the Chamber also noted that the Respondent had nevertheless provided its position and comments in response to the Claimant's specific claim as to the substance.

4. In this respect, the Chamber recalled that in accordance with art. 22 b) of the Regulations on the Status and Transfer of Players, the Dispute Resolution Chamber 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 FIFA Circular no. 1010 dated 20 December 2005.

5. In this respect, the Chamber noted that on the basis of the documentary evidence provided by the Respondent, it could not be established beyond doubt that any such arbitration tribunal respected the strict wording of art. 22 b) of the Regulations on the Status and Transfer of Player. Consequently, and taking into consideration the documentary evidence provided, the Chamber established that the Respondent's objection to the competence of FIFA to deal with the present matter had to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.

6. 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 took note, on the one hand, that the relevant contract at the basis of the present dispute was signed on 24 June 2008 and, on the other hand, that the claim was lodged with FIFA on 28 January 2009. In view of the foregoing, the Chamber concluded that the current version of the regulations, the FIFA Regulations on the Status and Transfer of Players (edition 2008; hereinafter: *the Regulations*), is applicable to the case at hand as to the substance (cf. art 26 par. 1 and 2 of the Regulations).

7. Once its competence and the applicable Regulations had thus been established, the Dispute Resolution Chamber went on to deal with the substance of the matter and started by acknowledging the above-mentioned facts as well as the documentation of the submissions the Claimant and the Respondent had filed. In particular, the Chamber noted that the Claimant and the Respondent had signed an employment contract on 24 June 2008 valid from 23 June 2008 until 30 June 2011, i.e. for three sporting seasons.

8. The Chamber also observed that while the Claimant had tried to argue throughout the proceedings that he had a just cause to terminate the employment contract he had signed with the Respondent, and that he should therefore be granted compensation from the Respondent, the latter had sought to argue in turn that the Claimant had unlawfully terminated the said contract and that he should therefore be required to pay compensation. In this context, the

Chamber concluded that it would have to decide, on the basis of the submissions of the parties and, in particular, the documentary evidence filed, which of the parties terminated the contract without just cause and which amount of compensation ought to be eventually paid by the party at fault to the injured one. More fundamentally, the members of the Chamber would also have to determine at which point in time a party would be deemed to have had, or not to have had, a just cause to terminate the relevant employment contract.

9. With those considerations in mind, the Dispute Resolution Chamber started by analysing the elements and arguments that the Claimant had raised in his submissions as well as the Respondent's arguments *in contra*. First of all, the Chamber noted that the Claimant had insisted on the fact that since EUR 1 equated to 4,25, he should have received from the Respondent the amount of 35,416,65 every month on the basis of their contractual relationship, whereas he had claimed only having received a total amount of 80,613 for the period from 24 June until 14 January 2009, i.e. as from the conclusion of his employment contract until the day he unilaterally terminated his labour relationship with the Respondent. This, according to the Claimant, meant that by January 2009, the Respondent still owed him his salary for September, October, November and December 2008, i.e. four months out of six. The Chamber noted that these assumptions had eventually led the Claimant to unilaterally terminate his contract with the Respondent by means of a letter sent to the latter on 14 January 2009.

10. As to the actual amount the Claimant should have received from the Respondent as remuneration under the contract, the Chamber could not agree with his submission that a fixed and single exchange rate of EUR 1/ 4,25 should be applied but found in favour of the Respondent which had argued that the Claimant had incorrectly calculated the equivalent in EUR of the received amounts. In this regard, the Chamber underlined that, on the basis of art. 4.2 of the contract, the parties had agreed that the Claimant's salary would be paid in taking into account the official exchange rate of the R National Bank on the date each payment was done and thus not a fixed exchange rate.

11. In continuation, and taking into account that art. 4.1 of the contract stipulated that each monthly salary should be paid to the player by no later than the 15th day of the following month after the one for which the player has worked, the Chamber remarked that the Respondent would have had to pay to the Claimant the amount of EUR 8,333, converted in, by no later than 15 August 2009, a sum which represented the salary of his first entire month of work under the employment contract. In the same way, the Claimant would have received the same amount by the 15th day of each following month. On that basis, the members of the Chamber concluded that the total added sum paid to the Claimant, taking into account a monthly salary of EUR 8,333 for the first year under the contract, would have equalled to EUR 16,666 by 15 September 2008, to EUR 24,999 on 15

October 2008, EUR 33,332 on 15 November 2009 and EUR 41,665 on 15 December 2008.

12. Furthermore, the members of the Chamber agreed that since the Claimant had used the exchange rate of 4.25/EUR 1 valid on 28 January 2009, i.e. after he had unilaterally terminated his contract with the Respondent, he had come to the erroneous conclusion that the amount of 80,613 paid onto his bank account only represented about EUR 18,967, whereas such paid amounts represented, according to the official exchange rate at the time of each of the relevant payments, in fact EUR 21,911.

13. The Dispute Resolution Chamber then turned its attention to the argument of the Respondent according to which it had duly paid the relevant amounts to the Claimant, albeit with some delays. First of all, and based on the documentation provided, the Chamber noted that the Respondent had claimed having paid to the Claimant the total amount of EUR 24,934 between the period from 30 June 2008 until 11 December 2008. The Chamber further noted that out of eight payments allegedly made by the Respondent during the aforementioned period, the Claimant had, in his second submission, sought to argue that he had never received the four cash payments apparently paid on 30 June 2008 (two payments of EUR 1,000 each), 25 August 2008 (one payment of EUR 5,110) and 6 November 2008 (one payment of EUR 318). In this respect, the Chamber acknowledged that although the Claimant had denied receiving the two first cash payments of EUR 1,000 each on 30 June 2008, the payment receipts provided by the Respondent, and contained in Annexe 1 and 2 of its submission, appeared to bear the signature of the Claimant on them. In the same way, the Annexe 9 and 19, respectively, pertaining to the cash payment of EUR 5,110 apparently made on 25 August 2008 and the cash payment of EUR 318 apparently made on 6 October 2008, had also been duly signed by the Claimant.

14. In view of the above, and since the Claimant had at no point put into question the authenticity of his own signature on the relevant payments receipts, the members of the Chamber concluded that the Claimant had indeed received all four cash payments previously mentioned. Consequently, and taking into account that the Claimant had not denied receiving the other amounts of EUR 4,683 (documented in Annexe 8), EUR 2,803 (documented in Annexes 13 and 14), EUR 7,404 (documented in Annexe 17) and EUR 2,616 (documented in Annexe 25), which corresponded to the amounts mentioned on the bank statement the Claimant submitted in his original claim, it could thus be established that the Claimant had in fact received, in the form of four cash payments and four wire bank payments from the Respondent the total amount of EUR 24,934 until 11 December 2008.

15. Subsequently, the Chamber observed that the Respondent had provided detailed documentary evidence apparently demonstrating that an additional amount of EUR 7,540 had been deducted and retained by the Respondent from the Claimant's salary between 2 July 2008 and 12 January 2009 to cover a number of expenses that had allegedly been caused by the latter. In this respect, and after a careful analysis of the documentation pertaining to these deductions, the Chamber firstly noted that, based on the Annexes 4, 7, 12, 16, 20, 26 as well as 28 and, in particular, the phone costs lists mentioning the name of each player, it had enough evidence to conclude that the costs related to phone calls had indeed been caused by the Claimant. Secondly, and based on art. 3.1 of the employment contract which stipulates, *inter alia*, that "*The club will provide 500 USD for accommodation and the rest of the amount will be covered by the sportsman*", the Chamber was also satisfied that the documentary evidence comprising of Annexes 5, 18 and 23 demonstrated that the additional apartment rent costs could be attributed to the Claimant. Thirdly, the members of the Chamber noted that the costs related to two flight tickets (documented in Annexes 10 and 11) could be attributed to the Claimant's girlfriend since her name was mentioned on the relevant invoices. Fourthly, the Chamber noted that the costs of a flight ticket paid to the Claimant and documented in Annexe 3 did not concern the B - S route and therefore had to be considered as an additional cost generated by the Claimant, falling outside of the Respondent's obligations towards the Claimant under the employment contract. Finally, the Dispute Resolution Chamber found no reason to believe that the amounts related to the other documented costs pertaining to meals taken at the '*Hotel*', the additional apartment costs (for electricity, water etc..), the two fines according to report 1813 and 1814 as well as the costs related to the Claimant's work permit could not be attributed to him either.

16. The above-mentioned being established, the Chamber then posed itself the question whether such deductions were admissible under the employment contract and whether the Respondent had thus had any justification for deducting such amounts from the Claimant's salary. In this respect, it noted that, apart from the provisions on flight tickets and the extra costs related to the accommodation contained in art. 3.1, the employment contract did not contain any provision pertaining to such deductions. This said, the Chamber was of the view that such costs could well be attributed to players as long as it could be ascertained who had caused them and if they were well documented.

17. Furthermore, the members of the Chamber endorsed the argument of the Respondent according to which it had become the creditor of the Claimant and agreed that coming to another conclusion under the present circumstances would not be appropriate since this would mean that any expenses caused by a player, and not provided for by the relevant contract, would automatically have to be paid by the club. On account of the above, and since the relevant costs had been incurred by the Respondent on behalf of the Claimant, they could be rightly deducted by the Respondent from the Claimant's salary.

18. Moreover, the members of the Chamber were keen to underline that the Claimant had not provided any documentary evidence at all neither demonstrating that the deductions had been unjustified nor putting a doubt on the Respondent's allegations. The Claimant had merely maintained and sought to assert that he had only received the amount of 80,613 and therefore had deemed that he had a just cause to unilaterally terminate his contractual relation with the Respondent

19. In continuation, and having come to the conclusion that the above-mentioned costs had been rightly deducted from the Claimant's salary, the Chamber added the amount of EUR 7,540, representing the deductions made, to the amount of EUR 24,934 (cf. point II./14. above) and acknowledged that the Claimant was actually awarded by the Respondent the total amount of EUR 32,474 between the period elapsing from 30 June 2009 until 12 January 2009.

20. In this context, the Chamber observed that on 14 January 2009, the very day the Claimant had unilaterally terminated his employment relationship, the amount of EUR 41,665 was due to the Claimant according to the relevant employment contract, whereas an amount of EUR 32,474 had either partly been paid directly to the Claimant or partly deducted from his salary as expenses incurred. This meant that, at the time the contract was unilaterally terminated by the Claimant, the Respondent still owed him the amount of EUR 9,191, i.e. representing just over a monthly salary under the terms of the contract, a figure much lower than what the Claimant had put forward and sought to argue in his submissions.

21. After having come to the aforementioned conclusions, The Dispute Resolution Chamber went on to consider the content and effect of the termination letter sent by the Claimant on 14 January 2009, by means of which he unilaterally terminated his contract, since he deemed that the Respondent had (quote) "*constantly and permanently failed to comply with its contractual obligations towards the player A, in particular, to pay to him all sorts of remuneration for long periods, such as salaries and match bonuses without even providing him with a justification for such delays"*. The Chamber further noted that the Claimant had also asked the Respondent to immediately release him from his contract so that he could join another club of his choice and had given the Respondent three days to pay him his alleged outstanding salaries for September 2008, October 2008, November 2008 and December 2008.

22. In this connection, the Chamber was unconvinced that the Claimant had been able to prove that the Respondent had "*constantly and permanently failed to comply with its contractual obligations towards the player*", not only for the above-mentioned reasons but also because the Claimant had not, except for the termination letter itself, submitted any documentary evidence demonstrating that he had, before terminating his contract, contacted the Respondent in order to bring to its attention the alleged delays of payments. In the Chamber's view, the

Claimant should have requested the Respondent to respect the agreed timing of payments before he unilaterally terminated the contract on 14 January 2009. Moreover, the members of the Chamber underlined that according to art. 3 of the contract, the granting (or not granting) of bonuses was at the entire discretion of the Respondent and consequently, it had to take the view that the Claimant's request for bonuses was unjustified since, again, he had not been able to provide any evidence proving his contrary allegations.

23. In addition to the above, and most importantly, the Dispute Resolution Chamber acknowledged that three days after having received the termination letter, i.e. on 16 January 2009, the Respondent had, via bank transfer, paid another additional amount of EUR 9,191 and, again, on 23 January 2009, had paid another amount of EUR 8,333 to the bank account of the Claimant. Such payments, the Chamber remarked, were never contested by the Claimant. Consequently, and taking into account that the Claimant's salary of December 2008 was due by no later than 15 January 2009, the Respondent had, by 23 January 2009, fully complied with its contractual obligations towards the Claimant, having paid to him the total amount of EUR 49,998 (i.e. the Claimant's first six salaries under the contract), an amount representing EUR 42,458 in the form of monetary payments and EUR 7,540 in the forms of deductions for expenses incurred by the Respondent on behalf of the Claimant.

24. As for the allegation raised by the Claimant, according to which the payments made by the Respondent on 16 and 23 January 2009 were made in order to minimise its alleged breach, the Chamber could not agree with such reasoning since it was of the firm opinion that such payments had precisely been made by the Respondent in order to comply with its side of the agreement, entirely fulfilling by 23 January 2009 its obligations under the relevant employment contract and demonstrating its willingness to keep the Claimant in its club.

25. In view of all of the above, the Chamber was convinced that the Claimant had had no reason to terminate his contract with the Respondent. In fact, by requesting his alleged outstanding salaries and declaring that he considered himself to be no longer bound by the contract he had concluded with the Respondent, he had himself terminated his contract without just cause.

26. In this respect, the Chamber was keen to emphasise that the sport of football is subject to cyclical situations in which clubs are often led to make payments slightly outside of the schedules contractually agreed. This is common knowledge to all the actors of the football scene and has to be taken into consideration by anyone intending to lodge a claim.

27. Having established that the Claimant was in breach of contract without just cause, the Chamber turned its attention to the financial consequences of such a breach and further took into account the financial request submitted by the Respondent

against the Claimant in its counter-claim. In this respect, it noted that the Respondent had deemed that the amount of EUR 500,000, representing the total expenses incurred by it for the transfer of the Claimant from his former club to the Respondent, should be taken into consideration when calculating the correct amount of compensation. In this connection, the Chamber noted that the Respondent had provided documentary evidence, in particular, a copy of the relevant transfer agreement amounting to EUR 450,000 as well as a copy of the commission agreement for EUR 50,000 paid to a players' agent for the services provided in the said transfer.

28. In continuation, the members of the Chamber referred to art. 17 of the Regulations and recalled that the said provision contains a non-exhaustive enumeration of criteria which may be taken into account at the entire discretion of the relevant decision-making body when calculating the amount of compensation due. Furthermore, the Chamber recalled that each request for compensation has to be assessed on a case-by-case basis, taking into account the circumstances of each particular case as well as the specificity of sport.

29. With those considerations in mind, and as a preliminary remark, the Chamber noted that the Claimant had rendered his services to the Respondent from 24 June 2008 until the end of 2008, meaning that the Respondent had amortised 1/6 of his total investment of EUR 500,000. Consequently, the non-amortised share represented EUR 416,667 (i.e. EUR 500,000 minus EUR 83,333). In this regard, the Chamber was keen to underline that a party's non-amortised investment also falls within the ambit of art. 17 of the Regulations and its non-exhaustive enumeration of criteria, such an element representing an indication of the lost suffered by the injured party. In the present matter, and since the damage suffered by the injured party was easily calculable, the Chamber decided not to take any other elements into consideration in order to put a figure on the amount of compensation due.

30. Finally, and notwithstanding the above, the Dispute Resolution Chamber considered whether the responsibility of the Claimant could be mitigated by any attenuating circumstances. In this respect, the Chamber took into account that although the Respondent had complied with its overall contractual relationship, in monetary and non-monetary terms, around the time of the unilateral termination by the Claimant, it had nevertheless delayed, at times, some of the payments due under the contract for a short period of time. Thus, the Chamber concluded that the overall compensation to be paid by the Claimant should accordingly be reduced and could not be awarded in full. Consequently, the members of the Chamber agreed that the amount of compensation to be paid by the party in breach of contract should be reduced by EUR 116,667.

31. Consequently, on account of all of the above-mentioned considerations, the Chamber unanimously decided that the claim of the Claimant / Counter-Respondent is rejected and that the counter-claim of the Respondent / Counter-

Claimant is partially accepted and that, thus, the Claimant has to pay the amount of EUR 300,000 to the Respondent as compensation for breach of contract without just cause on the part of the Claimant / Counter-Respondent, A.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, A, is rejected.

2. The counterclaim of the Respondent / Counter-Claimant, FC D, is partially accepted.

3. The Claimant / Counter-Respondent, A, has to pay the amount of EUR 300,000 to the Respondent / Counter-Claimant, FC D, **within 30 days** as from the date of notification of this decision.

4. Any further claims lodged by the Respondent / Counter-Claimant, FC D, are rejected.

5. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.

6. The Respondent / Counter-Claimant, FC D, is directed to inform the Claimant / Counter-Respondent, A, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

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Note relating to the motivated decision (legal remedy):

According to article 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
www.tas-cas.org

For the Dispute Resolution Chamber

Jérôme Valcke
Secretary General