Decision of the
Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 March 2014,

in the following composition:

Thomas Grimm (Switzerland), Deputy Chairman
Jon Newman (USA), member
Eirik Monsen (Norway), member
Theodore Giannikos (Greece), member
Mario Gallavotti (Italy), member

on the claim presented by the player,

Player H, from country I

as *Claimant*

against the club,

Club T, from country R

as *Respondent*

regarding an employment-related dispute between the parties

I. Facts of the case

1. On 31 July 2009, Player H, from country I (hereinafter: *the Claimant*) and the Club T, from country R (hereinafter: *the Respondent*), concluded an employment contract (hereinafter: *the contract*), and an appendix, valid until 31 July 2012.

2. The contract established that the player is entitled to a monthly salary in the amount of currency of country R 18,000 *"without compensation, pay-for-performance, incentive and social payment".*

3. The appendix to the contract, established the remuneration for each year of contract. In particular, established a total remuneration of USD 233,331 for the year 2012, to be paid monthly from January until 31 July 2012, divided in instalments of USD 33,333.

4. The contract establishes *inter alia* the following:
   - clause 2.1: *"The Player is employed by the Club as a football professional in Club T football team and personally fulfil his duties: training for football matches and participation in them"*;
   - clause 2.7: *"The Parties agree that the analysis of the Player's performance, playing for Club T football team, evaluation of the Player's professional contribution to the sport activity of Club T football team, the Player's job performance evaluation is made by C football team's Main coach with the advice and consent of the Club General Director"*;
   - clause 3.2: *"the sphere of the Player's action is professional sport – professional football"*;
   - clause 5.1. *"The player is obliged: 5.1.1 to fulfil his duties fairly and properly; 5.1.2 to observe a sport discipline established by the Club; 5.1.3 to fulfil plans of training for football matches and championships; 5.1.15 by the instructions of the Main coach and (or) coaches to participate personally in football championships and matches played by the Club, to participate in trainings, meetings, study tours, conferences, game playbacks and in all events and actions organized by the Club not excepting weekends, red-letter days and holidays, except …; 5.1.16 to undergo proficiency tests; to obey orders and directions of the Club General Director, Main coach and coaches, football team chief and team doctor, to abide the decisions of the Club's administration; 5.1.18 to observe strictly all instructions and directions concerning football match tactical plan as well as general tour schedule, meetings, other events and activities;*
   - clause 5.3: *"the player agrees that by the decision of the Club (which are based on professional arguments) he could be transferred to the reserve (second team) to participate in football matches of lower sport level.";*

- clause 6.1: *"the Club is obliged: 6.1.3 to provide for trainings under the coach's (coaches') guidance".*

5. On 5 February 2012, the Claimant lodged a claim before FIFA against the club for breach of contract and requested the following:
   - USD 233,333 corresponding to the salaries until the end of the contract, from January 2012 until July 2012 (USD 33,333 each), plus interest "accrued thereon";
   - USD 250,000 as additional compensation;
   - Sporting sanctions;
   - Legal fees.

6. According to the Claimant, he participated in the Respondent's official games during the first two seasons of the contract. On 28 November 2011, *i.e.* at the start of the mid-season break of the season 2011/2012, the Respondent informed all players to return from holidays on 6 January 2012 and go straight to the training camp in country T. However, at the end of December 2011, the Claimant allegedly received a notification letter from the Respondent, ordering him to join the training of the youth/amateur team which was due to start on 23 December 2011 in country R. Later on, the Respondent changed the date of the Claimant's return by sending him a flight ticket dated 26 December 2011. The Claimant held having reacted in writing, on 4 January 2012, and confirming his attendance to the training camp of the professional team, to which the Respondent answered, on the same day, informing him that he would not be allowed to train and, that in any case he should bear his own travelling expenses.

7. In this respect, the Claimant affirmed that he was hired as a professional player and in accordance with the contract (cf. clause 5.1.3) he would only agree to play with the reserve team based on a professional decision and for the purpose of participating in football matches if so required.

8. The Claimant held that the youth/amateur team is composed of amateur players only between 15 and 18 years old and that their training started on 8 January 2012. The Claimant further referred to clause 6.1.3 of the contract and stated that the Respondent, by acting as aforementioned, has materially breached the contract.

9. The Claimant highlighted that he is a professional player that entered into a professional contract with a professional club and thus he was not obliged to train with the amateur team. Additionally, the Claimant stated that the Respondent's conduct caused him damages, affecting his career and reputation, preventing him from maintaining his skills and exposing him to injuries.

10. The Respondent submitted its position, rejecting the claim. According to the Respondent, the Claimant was dismissed on 6 February 2012 for gross breach of sporting and labour discipline, *i.e.* due to his unauthorized absence.

11. In this regard, the Respondent held that it only participates in professional competitions and that the Respondent *"has only one football team the squad of which is divided into first team squad and reserve team squad accordingly. The players of both squads are listed in the consolidated entry form for participation in Championship of country R, Youth (Reserve) Championship and country R Cup. The players of the first team are allowed to participate in the matches of Reserve (Youth team) competition, whereas players of the reserve team squad are allowed to participate in the matches of the first team (Championship of country R and country R Cup)".* Moreover, the Respondent held that the interpretation of clause 5.1.3 of the contract made by the Claimant is incorrect, since training is necessary for a player to participate in a match. Also, the Respondent affirmed that the Claimant had previously participated in trainings and matches with the reserve team and had never complained. The Respondent provided an extract drawn from its website regarding the statistics of the Claimant's participation in the *"youth championship"*.

12. In continuation, the Respondent explained that the Claimant was notified in writing regarding the training with the reserve team *"by professional cause (condition) in conformity with Club's management decision (memorandum report from the head coach of the football team and order of the general director) pursuant to Clause 2.7 of the labor contract"*. In addition, the Respondent explained that two other players were sent to the reserve team without complaining.

13. Finally, the Respondent held that the Claimant had unilaterally terminated the contract by not attending the trainings with the reserve team and not returning to the Respondent. The Respondent stated having bought a flight ticket to the Claimant and reminded him to return on several occasions, but the Claimant never returned. The Respondent enclosed copies of the letters sent to the Claimant on 4 and 16 January 2012 and a telegram dated 25 January 2012.

14. On 31 January 2012, the Respondent summoned the player via telegram to attend the disciplinary commission on 6 February 2012, but the Claimant did not show up and therefore the Respondent dismissed the Claimant. The Respondent submitted a copy of the Dismissal Order for termination of the contract dated 6 February 2012.

15. The Claimant submitted his replica, insisting that the youth team is an amateur team and that the Respondent was trying to force him to accept the termination of the contract. The Claimant held having instantly reacted to the letter by means of which he was informed about the training with the youth/amateur team and insisted in his claim.

16. The Respondent submitted its final comments, insisting that the claim should be rejected. In this respect, the Respondent clarified that the Respondent is a professional club participating in the country R Premier League which holds two competitions in the sphere of professional football – country R Football Championship and Youth Championship - and that it does not take part in amateur competitions. The Respondent enclosed statements of the country R Football Union and of the country R Football Premier-League stating that the Youth Championship bears a professional status.

17. Furthermore, the Respondent emphasised that the Claimant was hired *"without being assigned to any squad"* in accordance with clause 2.1 of the contract as well as that the players are assigned to a squad *"depending on the evaluation of the level of their game (performance) in the football team and individual contribution of the footballer to the sporting activities"*, in accordance with clause 2.7 of the contract. Moreover, the Respondent explained that the players of both squads can participate in both squads, which was agreed by the players in accordance with clause 5.1.3 of the contract.

18. According to the Respondent, the Claimant had the obligation to take part in preparation for football matches and to participate in the matches. The Respondent highlighted that the Claimant participated in several training and matches of the reserve team during the season 2011/2012, providing a statistics' list of the country R Football Premier-League website as well as statements of two players confirming the Claimant's attendance to several matches of the reserve squad.

19. In conclusion, the Respondent insisted that the Claimant was assigned to the reserve squad of the football team to take part in the training camp in country R for a professional reason, after a decision of the club's management.

20. The Respondent referred to clauses 5.1.1, 5.1.2, 5.1.3, 5.1.15, 5.1.16 and 5.1.18 of the contract and held that the Claimant breached the contract by not returning at the end of the leave granted in December 2011. The Claimant, therefore, decided not to appear before the Respondent and not to play for the Respondent.

21. Finally, the Respondent asked for disciplinary measures to be imposed on the Claimant.

22. The Claimant informed FIFA that he had not found a new club after the termination of the contract and only signed a new employment contract with Club A on 7 August 2012. The Claimant held that it was the Respondent's fault that he did not manage to find a new club during the contractual period.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) 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 5 February 2012. Consequently, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*) are applicable to the matter at hand (cf. article 21 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 2012) 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 country R club and a country I player.

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 par. 2 of the Regulations on the Status and Transfer of Players (editions 2012 and 2010), and considering that the present claim was lodged on 5 February 2012, the 2010 edition of said 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, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging the above-mentioned facts as well as the arguments and documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

5. The members of the Chamber acknowledged that the parties were bound by an employment contract, which was signed on 3 July 2009 as well as an appendix both valid until 31 July 2012. The Claimant, on the one hand, maintains that the employment contract was breached by the club that violated the contractual obligations, excluding him from the professional team and sending him to train and play with the young team, which was allegedly amateur. The Respondent, on the other hand, rejects such claim maintaining that the Claimant had in fact acted in violation of its contractual obligations. The Respondent alleged having terminated the contract with just cause on 6 February 2012 as a result of the unauthorized absence of the Claimant that never returned to the club.

6. The Chamber highlighted that the underlying issue in this dispute, considering the claim of the Claimant and the conflicting positions of the parties, was to determine whether the employment contract had been prematurely and unilaterally terminated with or without just cause by either of the parties.

7. In continuation, the Chamber, first and foremost, acknowledged that it has remained undisputed that the Respondent had fulfilled with its contractual obligations until the end of 2011.

8. According to the Claimant, after he left for his holidays, he received a notification letter from the Respondent, ordering him to join the training of the youth/amateur team. The Claimant held having reacted in writing, confirming his attendance to the training camp of the professional team, to which the Respondent answered, on the same day, informing him that he would not be allowed to train and, that in any case he should bear his own travelling expenses.

9. In this respect, the Claimant affirmed that he was hired as a professional player and in accordance with the contract he would only agree to play with the reserve team based on a professional decision. Moreover, the Claimant held that the youth/amateur team is composed of amateur players only between 15 and 18 years old.

10. The Claimant highlighted that he is a professional player that entered into a professional contract with a professional club and thus he was not obliged to train with the amateur team. The Claimant thus, considered that the Respondent had materially breached the contract. In particular, the Claimant stated that the Respondent's conduct caused him damages, affecting his career and reputation, preventing him from maintaining his skills and exposing him to injuries.

11. The Respondent, for his part, held that the interpretation of clause 5.1.3 of the contract made by the Claimant is incorrect, since training is necessary for a player to participate in a match. Also, the Respondent affirmed that the Claimant had previously participated in trainings and matches with the reserve team.

12. In continuation, the Respondent explained that the Claimant was assigned to train with the reserve team, in accordance with a decision of the coach, together with two other players.

13. Finally, the Respondent held that the Claimant had unilaterally terminated the contract by not attending the trainings with the reserve team and not returning to the Respondent.

14. On account of all of the above, the members of the Chamber concluded that the Claimant had unilaterally terminated the contract by not joining the club after the end of his holidays.

15. In this context, the DRC analysed whether the Claimant had just cause or not to terminate the contract with the Respondent. In this respect, the DRC considered that the fact that the Respondent sent the Claimant to train with the reserve team or young team is not enough reason to justify the unilateral termination of the contract. In particular, the DRC considered that, even if the contract establishes that the Claimant is a professional player, the Respondent can still decide if the player needs to train with the reserve team, if necessary for his preparation. Moreover, the Respondent has demonstrated that the Claimant participated in trainings with the reserve team during the contract prior to the termination.

16. Additionally, the members of the Chamber highlighted that at the moment the Claimant terminated the contract, there were no outstanding remuneration thus, the Respondent had fulfilled all its financial obligations.

17. In this context, the members of the DRC were eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an *ultima ratio.*

18. In view of the above, the Chamber was of the opinion that the Claimant did not have just cause to prematurely terminate the employment contract with the Respondent, since there would have been more lenient measures to be taken before terminating the contract.

19. Overall, the Chamber decided that there was no just cause to unilaterally terminate the employment relationship between the Claimant and the Respondent and that, therefore, the Claimant had breached the employment contract without just cause.

20. On account of the above considerations, the members of the Chamber established that the Claimant did not return after the holidays at the end of 2011 to resume his duties thereafter and that, consequently, he has acted in breach of the employment contract without just cause.

21. The Chamber concluded its deliberations in the present matter by rejecting the claim lodged by the Claimant.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Player H, is rejected.

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Note relating to the motivated decision (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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For the Dispute Resolution Chamber:

Jérôme Valcke
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Encl. CAS directives