Decision of the
Dispute Resolution Chamber

passed in Zurich, Switzerland, on 21 September 2012,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Piat (France), member
Takuya Yamazaki (Japan), member
Mario Gallavotti (Italy), member
Thilina Panditaratne (Sri Lanka), member

on the claim presented by the player,

Player X, Country A,

as *Claimant*

against the club,

Club Z, Country K

as *Respondent*

regarding an employment-related dispute arisen between the parties.

I. Facts of the case

1. On 1 August 2008, the player X from country A, (hereinafter: *player* or *Claimant*), born on 3 March 1981, and the club Z from country K (hereinafter: *club* or *Respondent*), signed an employment contract (hereinafter: *contract*) valid as from the date of signature until 30 June 2011.

2. In accordance with the appendix to the contract signed by and between the player and the club, the player was entitled to receive *inter alia* a monthly salary in the amount of USD 30,000.

3. On 1 July 2009, the player and the club Z from country K (hereinafter: *club Q*), signed – within the context of a loan agreement between the Respondent and club Q – an employment contract valid as from the date of signature until 30 June 2010.

4. On 16 August 2010, the Respondent – by means of a letter containing its logo and letterhead – confirmed that in case the player would sign a contract with any other football club before the end of the transfer window on 31 August 2010, "*part of the salary mentioned* [the] *player agreed with their club, will pay club Z*".

5. By means of an undated letter, the club declared that it does not object to the transfer of the player to any other club and that it does not have any financial claims with respect to such transfer.

6. On 18 August 2010, the player and the club M from country S (hereinafter: *club M*), signed an employment contract (hereinafter: *the new contract*) valid as from 20 August 2010 until 30 June 2012.

7. According to this new contract, the player was entitled to receive the gross amount of EUR 80,000 as remuneration for each of the seasons 2010/11 and 2011/12, to be paid in twelve monthly instalments. In addition, club M undertook to pay to the player the amount of EUR 25,000 within eight days of signature of the contract and a further payment of EUR 25,000 no later than six months following the signing of the contact.

8. The new contract also mentions a bonus of EUR 25,000 gross for winning the Cup from country S as well as one of EUR 35,000 gross for the [country S] championship.

9. On 6 September 2010, the player lodged a claim in front of FIFA against the Respondent for alleged breach of contract by the Respondent, requesting compensation amounting to the net sum of USD 360,000 (USD 30,000 x 12). On the other hand, the player pointed

out that he would receive from club M, until 30 June 2011, the approximate amount of USD 80,000 net.

10. According to the player, on 1 July 2010, after the summer break, he turned up at the beginning of the training in club Z. However, his participation in the training was allegedly denied by the club. From the side of the club it was allegedly communicated to him that he should "*disappear as soon as possible*" and that he should try to find a new club.

11. The player asserts having stayed a week in club Z and tried several times to participate in the training, which was repeatedly denied to him. During this time, he had to bear all his expenses (hotel, travel expenses, etc.). After a week, he travelled from club Z back to his home country A.

12. Despite having been invited by FIFA to do so, the Respondent did not present any reply to the player's claim.

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 6 September 2010. 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 stake (cf. art. 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 2010), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an player from country A and a club from coutry K.

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 (editions 2010 and 2009), and considering that the present claim was lodged on 6 September 2010, the 2009 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 acknowledged that the Claimant and the Respondent signed an employment contract setting out a period of validity as from 1 August 2008 until 30 June 2011, in accordance with which the Claimant was to receive, *inter alia*, a monthly payment of USD 30,000. The Claimant maintains that the Respondent is to be held liable for the early termination of the employment contract towards the beginning of July 2010 by having denied his participation in the training as from 1 July 2010 and by having advised him to leave the club and try to find a new club.

5. The club, for its part, failed to present its response to the claim of the player, in spite of having been invited to do so. Hence, so the Chamber, the Respondent renounced its right to defence and, thus, accepted the allegations of the Claimant.

6. As a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision upon the basis of the documents already on file; in other words, upon the statements and documents presented by the Claimant.

7. Having established the above, the Chamber went on to analyse as to whether the employment contract had been breached and, in the affirmative, which party is to be held liable for breach of contract and which are the consequences thereof.

8. In doing so, the Chamber concurred that, in the beginning of July 2010, the Claimant had obviously offered his services to the club by uncontestedly having resumed duty at his club of origin, *i.e.* the Respondent, after the end of his loan to club Q. The Chamber further held that the Respondent had then denied the Claimant the participation in the training sessions and finally even informed him to leave the club and try to find a new club.

9. In this respect, the members of the Chamber recalled that the Respondent had not contested such particular allegations by having failed to respond to the claim.

10. On account of the above circumstances as well as the documentation presented by the Claimant in support of his position, the Chamber established that the Respondent had obviously no longer been interested in the Claimant's services since it had advised him to leave the club. The Chamber considered this behaviour of the club to be a clear breach of contract. Accordingly, the Chamber concurred that the Respondent had unilaterally terminated the contract without just cause by mid-July 2010.

11. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the Chamber turned its attention to 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 compensation for breach of contract.

12. In continuation, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the matter 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 player 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.

13. 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 had been included in the employment contract at the basis of the matter at stake.

14. 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 30 June 2011. Consequently, the Chamber concluded that the amount of USD 360,000 (*i.e.* the salary as from July 2010 until June 2011) serves as a basis for the final determination of the amount of compensation for breach of contract.

15. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Dispute Resolution Chamber, 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.

16. The Chamber noted that the Claimant had concluded an employment contract with the club M from country S, for the period from 20 August 2010 until 30 June 2012, providing a yearly salary of EUR 80,000 as well as two additional payments of EUR 25,000 each and therewith enabling the Claimant to reduce his loss of income.

17. On account of the aforementioned circumstances and the particularities of the case at hand, the Chamber concluded that the amount of USD 180,000 was to be considered reasonable and justified as compensation for breach of contract without just cause committed by the Respondent in the present matter.

18. On account of the above, the Dispute Resolution Chamber decided that the Respondent must pay to the Claimant compensation for breach of contract in the amount of USD 180,000 and that, consequently, the player's claim is partially accepted.

19. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

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III. Decision of the Dispute Resolution Chamber

1. The claim of the player X, from country A , is partially accepted.

2. The Respondent, club Z, has to pay to the Claimant compensation for breach of contract in the amount of USD 180,000 **within 30 days** as from the date of notification of this decision.

3. Any further request filed by the Claimant is rejected.

4. If the aforementioned sum is not paid within the above-mentioned 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 the FIFA Disciplinary Committee for its consideration and decision.

5. The Claimant is directed to inform the Respondent immediately and directly about the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber (DRC) of every payment received.

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Note relating to the motivated decision (legal remedy):
According to article 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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Encl. CAS directives