Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 13 October 2010,

in the following composition:

Slim Aloulou (Tunisia), Chairman
Theo van Seggelen (Netherlands), member
Johan van Gaalen (South Africa), member
Essa M. Saleh Al-Housani (United Arab Emirates), member
Theodoros Giannikos (Greece), member

on the claim presented by the player

L,

as *Claimant*

against the club

V,

as *Respondent*

regarding a contractual dispute
between the parties

I. Facts of the case

1. On 18 June 2008, the player, L (hereinafter: the Claimant), and the club, V (hereinafter: the Respondent), concluded an employment contract (hereinafter: the Contract) valid from 1 July 2008 until 1 July 2011.

2. No. XV of the Contract stipulates *inter alia* that the Contract is governed by R law. No. XVI. 17.2 of the Contract stipulates *inter alia* that *"The parties will do their best to solve in an amiable manner any dispute controversies or misunderstandings that derive from or are related to the present contract. If this is not possible, the litigation will be sent for being solved only to the sporting courts of jurisdiction of R or F".*

3. The parties signed a *"financial addendum"* dated 15 June 2008, which specified the following remuneration:

   Period 1.07.2008 – 01.07.2009
   - EUR 200,000 net to be paid in 13 instalments as follows: the first instalment of EUR 100,000 to be paid on 15 July 2008 and the remaining amount of EUR 100,000 to be paid in 12 monthly instalments of EUR 8,335 each due on the 15th of each month.

   Period 01.07.2009 – 01.07.2010
   - EUR 250,000 net to be paid in 13 instalments as follows: the first instalment EUR 125,000 to be paid on 15 July [2009] and the remaining amount of EUR 125,000 to be paid in 12 monthly instalments of EUR 10,415 each due on the 15th of each month.

   Period 01.07.2010 – 01.07.2011
   - EUR 350,000 net to be paid in 13 instalments as follows: the first instalment of EUR 175,000 to be paid on 15 July 2010 and the remaining amount of EUR 175,000 to be paid in 12 monthly instalments of EUR 14,585 each due on the 15th of each month.

   In addition to the amounts above, art. 1 part. V and VI of the addendum provided for the following bonuses:
   - *"the contract value"*, in case the Respondent is ranked in the 1st- 2nd place (Champion's League),
   - 50% of the value of the contract, respectively EUR 100,000, EUR 125,000 and EUR 175,000 if the Respondent is participating in the UEFA Cup or winning the R Cup,
   - EUR 3,000 for each victory at home or away,
   - EUR 6,000 for victories against the teams *"D, A, C, T"*,
   - EUR 12,000 for victories against *"U"*.

   Art. 1 part. VII of the addendum adds that the bonuses and the premiums are paid *"for taking part in the field at a least 70% of the matches"*. Art. 1 part. VIII of the addendum stipulates that *"placing lower than the 12th place causes a decrease of the contract of 30% for each competition year".*

4. On 3 February 2010, the Claimant lodged a complaint against the Respondent before FIFA claiming that the Respondent had terminated the Contract without just cause, and, consequently, claimed the following:

- EUR 100,000 as bonus payment for the qualification for the UEFA Cup at the end of the season 2008/2009,
- EUR 7,251 as remaining unpaid amount regarding the first instalment of EUR 125,000 due on 15 July 2009,
- EUR 704 and EUR 1,105 as remaining unpaid amounts regarding the monthly salaries due for the months of July and August 2009,
- EUR 52,075 corresponding to 5 monthly salaries of EUR 10,415 each allegedly unpaid by the Respondent and due for the months of September 2009 until January 2010,
- EUR 402,075 as residual value of the Contract, i.e. according to the Claimant, composed as follows: EUR 52,075 for the months of February until June 2010 (EUR 10,415 x 5) and EUR 350,000 for the season 2010/2011,
- 5% of interest p.a. as from 29 January 2010,
- the imposition of sporting sanctions.

5. In this respect, the Claimant held that the Respondent had paid him all the due salaries for the season 2008/2009, except for a qualifying bonus for the UEFA Cup amounting to EUR 100,000 that was allegedly due on 11 June 2009.

6. Regarding the season 2009/2010, the Claimant alleged that the first instalment of EUR 125,000 due on 15 July 2009 had not been paid entirely. Indeed, the Claimant held that he had received, on 10 September 2009, an amount of EUR 117,749 only. Thus, an amount of EUR 7,251 remained unpaid.

7. In continuation, the Claimant maintained that the Respondent paid him, on 14 October 2010, the amount of EUR 9,711 for the month of July 2009 as well as the amount of EUR 9,310 for the month of August 2009. However, the Claimant stated that he was supposed to receive the amount of EUR 10,415 each month, consequently, EUR 704 (July) and EUR 1,105 (August) remained unpaid for these two months.

8. The Claimant alleged that the Respondent had not paid the monthly salary (EUR 10,415) due for the months of September to December 2009 as well as January 2010, i.e. an amount of EUR 52,075 (EUR 10,415 x 5).

9. The Claimant further maintained that he played the last official match on 3 October 2009. On 13 January 2010, the Respondent supposedly informed him that he would not join the first team preparation camp in country G from 14 January until 23 January 2010. Since 14 January 2010, he was allegedly neither allowed to train with the first team, to enter in the locker-room nor to wear the equipment of the first squad. He added that he had trainings with two other players and one coach 12 km away from the stadium.

10. The Claimant further alleged that, after several unsuccessful attempts to solve the matter amicably, putting the club in default, and to receive his salaries on 15, 22 and 26 January 2010, the Claimant decided, on 29 January 2010, to terminate the

Contract in writing and to leave the country, since the Respondent allegedly breached the contract.

11. On 24 February 2010, the Claimant contacted FIFA, once again, and provided several letters received from the Respondent. In that context, the Claimant was willing to underline that all the three letters were sent by the Respondent after his letter of termination and the several reminders he had sent at the end of January 2010: on 3 February 2010, the Claimant apparently received a letter from the Respondent, by means of which he was invited to attend a meeting on 9 February 2010 in country R in order to clarify the situation, *inter alia,* the fact that he did not attend trainings and that he left the country. On 8 February 2010, the Respondent contacted the Claimant to inform him that his work permit had expired on 24 January 2010 – according to the Claimant, the visa had never been arranged since June 2008 - and, consequently, requested his return as soon as possible. The Claimant also remitted to FIFA a letter dated 11 February 2010 from the Respondent, by means of which the latter informed the Claimant that he had been sanctioned for his misconduct, *i.e. "failure program established by the club and leaving the town",* with *"financial penalty of 25% from the contract value of the season 2009/2010"* and with *"the interdiction to participate at the official games, friendly games and trainings of the team for a period of 3 (three) months".*

12. Furthermore, the Claimant highlighted that the club, N, was willing to conclude an employment contract with him. However, when the Claimant joined N for a trial, the latter was apparently informed by an agent, on behalf of the Respondent, that the Claimant had been suspended. Therefore, N apparently refused to sign any employment contract with the Claimant. As a consequence of that act, the Claimant amended his claim and requested the payment of an additional amount of EUR 52,075 (i.e. 5 monthly salaries), since the Respondent hindered his career.

13. On 15 March 2010, the Claimant informed FIFA that the Respondent had made a bank deposit of EUR 64,600 on his account on 26 February 2010. As a consequence, the Claimant amended his claim and requested the payment of:
    - EUR 96,535 (EUR 100,000 + EUR 7,251 + EUR 704 + EUR 1,105 + EUR 52,075 – EUR 64,600),
    - EUR 402,075 (EUR 52,075 + EUR 350,000),
    - EUR 52,075 as additional compensation,
    - 5% of interest.

14. The Claimant also remitted to FIFA a correspondence dated 1 March 2010 he addressed to the F, by means of which he contested the competence of the F to pass a decision on the matter at hand and refused to attend a hearing to be held apparently on 3 March 2010, based on the fact that he had already lodged a complaint against the Respondent before FIFA's Dispute Resolution Chamber (hereinafter: DRC), which should be the competent deciding body to hear the matter at stake. On 9 March 2010, the Claimant addressed himself to the F stating that he did not accept a decision apparently passed by the latter deciding body,

since a claim had been already lodged and was pending at FIFA between the same parties.

15. In its response to the claim dated 14 April 2010, the Respondent held that the FIFA DRC was not competent to hear the present dispute. In this respect, the Respondent was of the opinion that at national level two deciding bodies exist, i.e. the National Dispute Resolution Chamber of the Football Federation of R (hereinafter: the NDRC of the Football Federation of R) and the Dispute Resolution Committee (DRC) of the F, which are, according to the Respondent, two independent arbitration tribunals respecting the principles set out in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, FIFA Circular no. 1010 of 20 December 2005 and the National Dispute Resolution Chamber (NDRC) Standard Regulations, such as the principle of equal representation of players and clubs and of *fair proceedings.* Furthermore, the Respondent stated that the parties had agreed, according to No. XVI. 17.2 of the Contract, to submit any dispute relating to the employment contract to *"the sporting courts of jurisdiction of R or F".* Thus, the Respondent stated that the dispute had to be brought before the deciding bodies of the Football Federation of R and F and not the FIFA DRC. The Respondent was also eager to refer to the decision passed by the DRC on 16 July 2009 in the case *Claimant X from P / Respondent C, from R*, without submitting a copy of the said decision, according to which, allegedly, the R National Dispute Resolution Chamber fulfilled the prerequisites stipulated in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

16. Furthermore, the Respondent referred to No. XVI 17.2 of the Contract (cf. point no. 2 above) and highlighted the fact that the parties to the contract validly, under R and W civil law, agreed to submit any dispute to the deciding bodies of the Football Federation of R and the F.

17. Furthermore, the Respondent maintained that, in case the FIFA DRC considered itself competent, the Claimant had allegedly not fulfilled his contractual obligations prior to the termination of contract, that he had no right to claim the amount of EUR 96,535 and that it did not owe any amounts to the Claimant. Thus, the Respondent stated that the Claimant had terminated the contract without just cause and in an *"abusive way"* and held that it should in fact be compensated for the player's breach, without specifying any amount.

18. On 2 August 2010, the Respondent reiterated its previous position and provided FIFA with a decision passed by the DRC of the F on 15 June 2010 on the claim lodged by V against the player. Therefore, the Respondent considered that the claim lodged at FIFA by the player was inadmissible. The said deciding body was composed by one president, one vice-president, three members and one secretary. The said deciding body exposed that *"The facts exposed by the appellant* [V] *is confirmed by the documents lodged on file, the defendant player* [L] *did not understood to defend himself in any way which is interpreted by the committee as adherence to the request. Given the foregoing,* ***the Dispute Resolution Committee*** *will accept the request and for these reasons DECIDES finds the contractual relationships ended and compels the player to pay the amount of*

502,458.5 *euros with the title of damages, also deciding to suspend the player for a period of 16 stages. The decision is final. With appeal within five days from the communication date."*

19. On 28 September 2010, without having been invited to do so, the Claimant contacted FIFA and reiterated that he had lodged a claim against the Respondent before FIFA on 3 February 2010, i.e prior to the claim lodged by the Respondent against him before the R deciding bodies and that the R decision-making bodies could not be competent.

20. On 7 October 2010, the Claimant provided FIFA with a copy of the employment contract the club, B, offered to conclude with the Claimant. Indeed, the Claimant, in this respect, informed FIFA that the said employment contract had not been signed, since the Claimant was suspended for 16 matches and therefore, could not play for any new club.

21. The said employment contract is valid for one season, i.e until 31 July 2011. According to the annexe to the employment contract, also provided by the Claimant, the latter was entitled to receive a total remuneration of EUR 12,000, payable in 4 instalments of EUR 3,000. Furthermore, the Claimant added that he was entitled to receive 10 monthly payments of EUR 500, which are not mentioned in the annexe. Finally, the Claimant held that he had received an amount of EUR 250 only, since he is not entitled to play.

22. Upon request of FIFA, the Football Federation of R informed FIFA that the right to be heard of the Claimant had been granted during the procedure pending before the F's deciding body. In that respect, the Football Federation of R remitted to FIFA a correspondence dated 28 September 2010 from F, which stated that the Claimant had been granted the right to be heard and was informed of the procedure via Mr Z– the Claimant's legal representative in the present procedure - and that the latter received all the documents, *inter alia,* the Respondent's claim together with the enclosures. The F held that the decision, notified to the Claimant via Mr Z, had not been appealed against by the Claimant, and, consequently became definitive and binding.

23. Regarding the establishment of a national arbitration chamber within the Football Federation of R, upon request of FIFA, the RFF provided FIFA with the 2009 edition of the Football Federation of R Regulations on the Status and Transfer of Football Players (hereinafter: the Football Federation of R Regulations).

24. Art. 26 of the Football Federation of R Regulations concerns the *"Jurisdiction for settlement of disputes"*, i.e. *inter alia* the NDRC of the Football Federation of R and the DRC of F:
    - the first instance deciding bodies are the NDRC of the Football Federation of R, the DRC of F and Football Federation of Y Players' Status Committee (art. 26.1 lit. a) of the Football Federation of R Regulations);

- art. 26.1 lit. b) of the Football Federation of R Regulations provides for three different appeal bodies depending on the first instance deciding body;
- art. 26.1 lit c) of the Football Federation of R Regulations provides that the decisions of the three appeal bodies may be appealed to the Court of Arbitration for Sport in accordance with the Football Federation of R Statutes.

25. According to art. 26.2 of the Football Federation of R Regulations, the NDRC of the Football Federation of R is competent *inter alia* to decide on disputes concerning *"the construing, enforcement and performance of the contractual clauses in the contracts executed between clubs and players, as well as regarding the maintenance of contractual stability"* (art. 26.2 lit. a) the Football Federation of R Regulations).

26. According to art. 26.8 of the Football Federation of R Regulations, the DRC of F is *"exclusively"* competent to solve disputes *"involving only Clubs that participate in the First League National Championship, and their officials, players and coaches (…) according to the annual agreement between the* Football Federation of R *and F".*

27. Art. 26.5 of the Football Federation of R Regulations provides that the NDRC of the Football Federation of R is composed of a chairman and a deputy chairman, chosen by consensus between the representatives of players and clubs, three players' representatives *"on the Proposal of the Association of Amateur and non-amateur Football Players"* and three clubs' representatives on the proposal of the Football Federation of R Executive Committee.

28. Art. 26.8 *in fine* of the Football Federation of R Regulations stipulates that the DRC of F – and its appeal body – is composed of *"five members, two of them acting as chairman and deputy chairman, respectively. The nominal composition of the NDRC of the F and the F Review Commission* [the appeal body] *is approved by the F Executive Committee, for one-year mandate."*

29. Art. 32.6 of the Football Federation of R Regulations provides that if one party does not cooperate, the NDRC shall pass the decision based on the documents currently in its possession.

30. Art 33.9 of the Football Federation of R Regulations stipulates that the decisions imposing sporting sanctions shall be notified together with the grounds.

31. The Football Federation of R Regulations were *"approved"* by the Football Federation of R Executive Committee on 22 June 2009 (art. 41.1 of the Football Federation of R Regulations). According to art. 39.1 of the Football Federation of R Regulations, any case that has been brought to the Football Federation of R, F and the R Players' Status Committee, before these regulations come into force, shall be assessed according to the previous regulations. As a general rule, all other cases shall be assessed by the Football Federation of R Regulations - edition 2009 -

with the exception of disputes regarding solidarity contribution, training compensation and labour dispute relating to contracts signed before 1 September 2001 (art. 39.2 of the Football Federation of R Regulations).

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (DRC) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber referred to art. 21 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: *Procedural Rules*). The present matter was submitted to FIFA on 3 February 2010, thus after 1 July 2008. Consequently, the Chamber concluded that the 2008 edition of the Procedural Rules is applicable to the matter at hand.

2. With regard to the competence of the Dispute Resolution Chamber, art. 3 par. 1 of the Procedural Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2010). In accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the aforementioned Regulations, the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player and a club.

3. However, the Chamber acknowledged that the Respondent, with reference to the second part of art. 22 lit. b) of the mentioned Regulations, contested the competence of FIFA's deciding bodies due to the alleged fact that only the deciding bodies of the Football Federation of R and/or F were competent to deal with the present case. In particular, the Chamber took note that the Respondent argued that these two independent arbitration tribunals respected the principles set out in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, FIFA Circular no. 1010 of 20 December 2005 and the National Dispute Resolution Chamber (NDRC) Standard Regulations, such as the principle of equal representation of players and clubs and of *fair proceedings.* Furthermore, the Respondent stated that the parties had agreed, according to No. XVI. 17.2 of the Contract, to submit any dispute relating to the employment contract to *"the sporting courts of jurisdiction of* Football Federation of R *or F".*

4. In continuation, the Chamber acknowledged that the Respondent considered the claim at the basis of the present dispute before the Dispute Resolution Chamber as inadmissible due to the fact that the case had already been dealt with as to the substance by the DRC of F on 15 June 2010, and by means of which the said deciding body decided that: *"The facts exposed by the appellant* [V] *is confirmed by the documents lodged on file, the defendant player* [L] *]did not understood to defend himself in any way which is interpreted by the committee as adherence to the request. Given the foregoing,* ***the Dispute Resolution Committee*** *will accept the request and for these reasons DECIDES finds the the contractual relationships ended and compels the player to pay the amount of* 502,458.5 euros

with the title of damages, also deciding to suspend the player for a period of 16 stages."

5. This being said, the Chamber observed that the Claimant contested the competence of the deciding bodies of the Football Federation of R and F and, consequently, refused to participate in the procedure pending in country R. The Claimant pointed out that, in any case, the matter at hand had been pending before the deciding bodies of FIFA since 3 February 2010, *i.e.* before a claim had been lodged by the Respondent before the F.

6. In this regard, the Chamber emphasized that in accordance with art. 22 b) of the Regulations on the Status and Transfer of Players, the DRC 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 (hereinafter: *the Circular no. 1010*) and the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations (hereinafter: the FIFA NDRC Regulations) which came into force on 1 January 2008.

7. In this respect, the DRC turned its attention to the principle of equal representation of players and clubs and underlined that this principle was one of the very fundamental elements to be fulfilled, in order for a national dispute resolution chamber to be recognised as such. Indeed, this prerequisite is mentioned in the Regulations on the Status and Transfer of Players, in the Circular no. 1010 as well as in art. 3 par. 1 of the NDRC Regulations, which illustrates the aforementioned principle as follows: *"The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate: a) a chairman and a deputy chairman chosen by consensus by the player and club representatives (…); b) between three and ten player representatives who are elected or appointed either on proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro; c) between three and ten club representatives (…)."* In this respect, the FIFA Circular no. 1010 states the following: "*The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal (…). Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list."*

8. In view of the above, the Chamber went on to examine the documentation presented by the Respondent and the Football Federation of R and acknowledged that the Football Federation of R Regulations – edition 2009 – provided by the

latter federation appear to be applicable to the matter at hand in accordance with art. 39.1, 39.2 and 41.4 of the Football Federation of R Regulations.

9. Firstly, bearing in mind that the DRC of F passed the decision presently at stake, the members of the Chamber enlightened the fact that, at least, two deciding bodies of the first instance appeared to exist in country R at national level, *i.e.* the NDRC of the Football Federation of R and the DRC of F, and deemed it appropriate to analyse both deciding bodies in relation to the minimum requirements as stated in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

10. In continuation, the Chamber analysed the respective jurisdiction of the two aforesaid deciding bodies and noted that, whereas the NDRC of the Football Federation of R is competent *inter alia* to decide on disputes concerning *"the construing, enforcement and performance of the contractual clauses in the contracts executed between clubs and players, as well as regarding the maintenance of contractual stability"* (art. art. 26.2 of the Football Federation of R Regulations), the DRC of F is *"exclusively"* competent to solve disputes *"involving only clubs that participate in the First League National Championship, and their officials, players and coaches (…) according to the annual agreement between the* Football Federation of R *and F* (26.8 of the Football Federation of R Regulations).

11. On account of the above, the DRC was eager to point out that, in view of the Regulations of the Football Federation of R, the respective jurisdiction of these two R deciding bodies did not appear to depend on the nature of the dispute but rather on the participation of the club involved in a possible dispute in the *"First League National Championship"* or not. On a side note, the DRC was eager to point out that the frame of jurisdiction of the DRC of F – contrary to the frame of jurisdiction of the NDRC of the Football Federation of R - was not clearly defined by the Football Federation of R Regulations, art. 26.8.

12. With regard to the composition of the deciding bodies implemented at national level in R, the Chamber observed that, according to art. 26.5 of the Football Federation of R Regulations, the NDRC of the Football Federation of R is composed of a chairman and a deputy chairman, chosen by consensus between the representatives of players and clubs, three players' representatives *"on the Proposal of the Association of Amateur and non-amateur Football Players"* and three clubs' representatives on the proposal of the Football Federation of R Executive Committee.

13. In continuation, the DRC observed that art. 26.8 *in fine* of the Football Federation of R Regulations stipulates that the DRC of F – and its appeal body – is composed of *"five members, two of them acting as chairman and deputy chairman, respectively. The nominal composition of the NDRC of F and F Review Commission* [the appeal body] *is approved by F Executive Committee, for one-year mandate."*

14. The DRC recalled that the DRC of F passed the decision currently at stake and, consequently, drew its attention to the composition of the said chamber,

remarking, on a side note, that the composition of the NDRC of the Football Federation of R in principle appeared to be *prima facie* in accordance with the prerequisites stipulated in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

15. Thus, in light of the documentation provided by the Football Federation of R, the members of the Chamber were of the unanimous opinion that the DRC of F did not fulfill one of the *conditionae sine qua non* stipulated in art. 22 lit. b) of the Regulations - and illustrated in art. 3 par. 1 of the FIFA NDRC Regulations -, being that the national independent arbitration tribunal needs to respect the principle of equal representation between players and clubs. Indeed, the DRC highlighted that, since the DRC of F was composed of five members as follows: one chairman, one deputy chairman and three members, whose nominations shall be approved by the Executive Committee of F exclusively, the said arbitration tribunal was not composed of an equal number of players' and clubs' representatives or, in light of the documentation provided, did not appear to be. Furthermore, the said members of the DRC of F were elected for a one year mandate only. In addition, it shall also be underlined that no players' trade union appears to be involved or to have any influence on the nomination of any members who could possibly act as players' representatives. In that respect, the DRC pointed out that a players' association apparently exists in R, since, according to art. 26.5 of the Football Federation of R Regulations, the "*Association of Amateur and non-amateur Football Players"* proposes the appointment of members, who will sit as players' representatives within the NDRC of the Football Federation of R.

16. Additionally, the DRC turned its attention to the Respondent's allegations, according to which the DRC had previously decided that the R National Dispute Resolution Chamber fulfilled the minimum prerequisites stipulated in art. 22 lit. b) of the Regulations on the Status and Transfer of Players. In this respect, the Chamber recalled that the Respondent did not provide the pertinent decision although available on the website FIFA.com. In virtue of the principle *jura novit curia*, the Chamber nevertheless decided to analyse the contents of the said decision and came to the unanimous conclusion that the National Dispute Resolution Chamber at stake in the previous decision had not been the DRC of F, as in the present matter. Indeed, the two R deciding bodies did not have at all the same composition and the one at stake in the previous decision of the DRC, presently invoked by the Respondent, had been based on art. 3 of the *"Rules Governing the Organizing and the Functioning of the National Dispute Resolution Chamber"* of the Football Federation of R – which were not submitted in the present procedure -, which stipulated that the tribunal would be composed of three player representatives proposed by the association of amateur and non-amateur players (AFAN), an association affiliated to FIFPro, as well as three club representatives proposed by the Football Federation of R Executive Committee. By contrast, the composition of the DRC of F, as established above (cf. point no. II.13), is mentioned in art. 26.8 of the Football Federation of R Regulations and does not comply with the minimum requirements of art. 22 lit. b) of the Regulations on the Status and Transfer of Players. Furthermore, the Chamber deemed it useful to recall that the following paragraph can be read in the DRC decision advocated by

the Respondent: *"the Chamber deemed that the Respondent was able to prove that, **for the period comprehended between October 2008 and January 2009**, the NDRC met the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 b) of the Regulations, FIFA Circular no. 1010 and also in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations which came into force on 1 January 2008."*

17. In view of the foregoing, the DRC rejected the Respondent's line of argument pertaining to the DRC's previous decision, and came to the conclusion that the DRC of F, which passed the pertinent decision relating to the present affair did not meet the cumulative prerequisites laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players.

18. Notwithstanding the above, examining the contents of the decision of the DRC of F, the DRC recalled that the decision at stake condemned the player to pay a sum of money as damages – EUR 502,485.50 – and imposed a sanction on the player of 16 matches which, based on general experience, in principle corresponds to a suspension of approximately 4 months.

19. Bearing in mind that the suspension of the player is of disciplinary nature and is usually the consequence of a severe breach of contract, the DRC emphasized the obligation of a deciding body to analyse and outline the grounds of such a decision. This obligation is expressly stipulated in the Football Federation of R Regulations, in their art. 33.9. However, after having thoroughly analyzed the decision of the DRC of F, the Chamber was of the opinion that the factual and legal grounds justifying the payment of a compensation, and above all, the suspension of 16 matches were absolutely absent in the decision. Indeed, the members of the Chamber noted that the R deciding body limited itself to refer to the allegations of V, without even recalling and/or summarizing them. Furthermore, there was no reference to any legal basis, clarifying *inter alia* the length of a possible suspension as well as the prerequisites under which a disciplinary measure could be imposed on a player.

20. On account of all the foregoing, the DRC summarized that the DRC of F, which passed the decision at hand, was not constituted in accordance with the fundamental and explicit principle of equal representation of players and clubs, and as a consequence, did not fulfill the minimum procedural standards laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, the FIFA Circular no. 1010 and the NDRC Regulations and, finally, that the Claimant contested its competence. Thus, the DRC unanimously decided that it could not recognize the said decision as well as its effects, since it was passed by a deciding body in lack of jurisdiction. Thus, based on the fact that the matter is not affected by the general legal principle of *res judicata*, the DRC rejected the Respondent's objection and declared itself competent to decide on the matter at hand between a player and a club in accordance with art. 22 lit. b) *ab initio* of the Regulations on the Status and Transfer of Players. For the sake of completeness, the DRC underlined that, in view of the foregoing conclusion, No. XVI. 17.2 of the Contract cannot be considered and construed as a valid clause of competence.

21. Subsequently, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2009) and, on the other hand, to the fact that the present claim was lodged on 3 February 2010 and that the relevant employment contract was signed on 18 June 2008. The Dispute Resolution Chamber concluded that the 2009 version of the Regulations for the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

22. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, the members of the Chamber were eager to emphasize that the matter had been submitted urgently for consideration and decision due to the fact that the player had been suspended from playing at the time of the decision.

23. In doing so, the Chamber recalled that, on 18 June 2008, the Claimant and the Respondent had signed an employment contract valid from 1 July 2008 until 1 July 2011. The Chamber acknowledged that the parties to the dispute signed a *"financial addendum"* dated 15 June 2008, according to which the Claimant was entitled to receive a remuneration of EUR 200,000 for the season 2008/2009, EUR 250,000 for the season 2009/2010 and EUR 350,000 for the season 2010/2011. According to the *"financial addendum"*, the Chamber acknowledged that the Claimant was also entitled to several bonuses, among which a bonus equal to 50% of the contract value for the respective season in case the Respondent qualified for the H League (cf. art. 1 part. IV).

24. In continuation, the Chamber paid due consideration to the fact that the Claimant claimed having received the salaries due for the season 2008/2009 except for a bonus of EUR 100,000 allegedly due on 11 June 2009 since the Respondent was qualified for the H League at the end of the season 2008/2009. In this respect, the DRC noted that the Respondent had not contested that this bonus became due on the mentioned date. Moreover, regarding the second season of the Contract, the Claimant alleged not having received the salaries due for the months of September 2009 until January 2010 at all. Furthermore, the Claimant pointed out that he had received an amount of EUR 117,749 instead of EUR 125,000 regarding the first instalment due for the 2009/2010 season and that an amount of EUR 704 and EUR 1,105 were still due regarding the salaries for the months of July and August 2009 respectively. The DRC also noticed that, after several unsuccessful attempts to solve the matter amicably, the Claimant terminated the Contract on 29 January 2010 considering that he had just cause in that respect and left the country.

25. Equally, the Chamber went on examining the answer of the Respondent as to the substance of the claim. In this regard, the Chamber observed that the Respondent held that the Claimant had allegedly not fulfilled his contractual obligations prior to the termination of Contract, that he had no right to claim the allegedly

outstanding amount of EUR 96,535 and that it did not owe any amounts to the Claimant. Thus, the Respondent stated that the Claimant had terminated the contract without just cause and in an *"abusive way"*.

26. In that respect, the members of the Chamber deemed it appropriate to recall the general principle of burden of proof stipulated in the art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, and pointed out that the Respondent did not submit any documentary evidence in support of these allegations, *i.e.* in support of the fact that the Claimant would have not fulfilled his contractual obligations and consequently would have breached the contract. The Chamber was eager to underline that, by contrast, the Respondent did not submit any document nor any explanation attesting that it had paid the outstanding salaries and bonuses claimed by the Claimant (which would, in the Chamber's view, have been fairly easy to prove) or that it did not owe these amount for any other justifiable reason. On the contrary, the DRC enlightened the fact that several letters had been addressed by the Claimant to the Respondent in order to solve the matter. Therefore, the members of the Chamber had no alternative but to conclude that the Respondent had failed to create any plausible doubt in the members' minds with regard to the Claimant's assertions. Thus, in the absence of the proof of the contrary, the DRC considered that several amounts were outstanding at the time that Claimant terminated the Contract and that the Respondent had the obligation to strictly comply with the terms of the Contract and the *"financial addendum"* until the end of January 2010.

27. As a consequence, and before examining the question of the termination of the Contract by the Claimant, the Dispute Resolution Chamber held that, in accordance with the basic legal principle of *pacta sunt servanda*, the Respondent must fulfill its obligations as per the Contract and the *"financial addendum"* entered into with the Claimant and, consequently, pay the outstanding remuneration which is due to the latter.

28. In this respect, the Chamber reiterated that the Respondent had not successfully contested the allegations of the Claimant, according to which he had not received the amount of EUR 161,135 composed as follows: a bonus of EUR 100,000 due on 11 June 2008, EUR 7,251 as remaining unpaid amount of the first instalment of EUR 125,000 due on 15 July 2009, EUR 704 and EUR 1,105 as remaining unpaid amounts regarding the monthly salaries due for the months of July and August 2009, EUR 52,075 corresponding to 5 monthly salaries of EUR 10,415 each allegedly unpaid by the Respondent and due for the months of September until January 2010.

29. However, the Chamber remarked that the Claimant declared that, on 26 February 2010, the Respondent made a bank deposit in his favour of EUR 64,600.

30. Based on the foregoing, the members of the Dispute Resolution Chamber determined that the Claimant was to receive the amount of EUR 96,535 as outstanding salaries and bonuses due until January 2010, *i.e.* the outstanding

amounts claimed by the Claimant equaling EUR 161,135 reduced by an amount of EUR 64,600, which the Claimant admitted having received.

31. In continuation, the Dispute Resolution Chamber took note that the Claimant requested the payment of all the salaries due to him until the contractual end of the Contract, *i.e.* an amount of EUR 402,075 due as from February 2010 until 1 July 2011.

32. In this respect, the Chamber recalled that the Claimant claimed *inter alia* having not received one bonus of EUR 100,000, five consecutive salaries and took also due note that the Claimant maintained that, since the month of January 2010, he was not allowed to train with the first team, to enter in the locker-room nor to wear the equipment of the first team, which had in effect not been disputed by the Respondent. The Chamber was also eager to reiterate that, before unilaterally terminating the contract, the Claimant put the Respondent in default on three occasions, in vain.

33. On the other hand, the Chamber reiterated that the Respondent, without submitting any evidence and/or justification whatsoever, limited itself to affirm that the Claimant terminated the contract without just cause and that it did not owe any amount to the latter. In addition, the Chamber was keen on enlightening the fact that the Respondent had not provided, or even tried to, any proof that the outstanding amounts claimed by the Claimant, in particular the salaries due from September 2009 until January 2010, in other words five consecutive monthly salaries, had been paid to him or were not due for any other reasons.

34. Based on the foregoing, the Chamber concluded that, in line with its well-established jurisprudence, by failing to pay the player *inter alia* five consecutive monthly salaries, the Respondent breached the contract and the *"financial addendum"* without just cause and the Claimant had a just cause to unilaterally terminate the contractual relationship on 29 January 2010.

35. In this respect, the members of the Chamber referred to item 7. of the *"Definitions"* section of the Regulations, which stipulates, *inter alia,* that the protected period shall last *"for 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 28th 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 28th birthday of the professional"*. In this respect, the Chamber took note that the Claimant terminated the contract with just cause, due to the breach of contract committed by the Respondent, on 29 January 2010. Therefore, the Chamber concluded that the breach had occurred one year and approximately seven months following the entry into force of the contract, hence, in any case, within the protected period.

36. Having stated the above, the Chamber turned its attention to the question of the consequences of such breach of contract during the protected period committed by the Respondent.

37. In doing so, the Dispute Resolution Chamber first of all established that, in accordance with art. 17 par. 1 of the Regulations, the Respondent is liable to pay compensation to the Claimant.

38. For the assessment of the applicable amount of compensation, the Chamber referred to the aforementioned provision of the Regulations (art. 17 par. 1 of the Regulations), in particular to the non-exhaustive enumeration of the objective criteria which need to be taken into account.

39. In continuation, the Dispute Resolution Chamber pointed out that art. 17 par. 1 of the Regulations also grants a certain degree of discretion to the deciding body when calculating the relevant compensation. The Chamber recalled that it regularly makes use of this margin of action.

40. Prior to proceeding to the calculation of the amount of compensation, the Chamber put emphasis on the primacy of the principle of the maintenance of contractual stability, which represents the backbone of the agreement between FIFA/E and the H Commission signed in March 2001. This agreement and its pillars represent the core of the editions 2001 and 2005 as well as of the respective 2008, 2009 and 2010 versions of the Regulations, which all stakeholders – including player and club representatives – agreed upon in 2001.

41. Above all, the Chamber was eager to point out that the measures provided for by the Regulations concerning in particular compensation for breach of contract without just cause serve as a deterrent discouraging the early termination of employment contracts by either contractual party and that a lack of a firm response by the competent deciding authorities would represent an inappropriate example towards all the football stakeholders.

42. In this respect, awarding compensation in favour of the damaged party (either the player or the club, as the case may be) has proven to be an efficient mean and has always found a widespread acceptance since it guarantees that the fundamental principle of the respect of the contracts is duly observed.

43. Above all, it was emphasised that the criteria contained in art. 17 of the Regulations are applied with the principle of reciprocity for clubs and players, signifying that both clubs and professionals who are seen to have committed a breach of contract without just cause will in all cases be subject to pay compensation and, under specific circumstances, also subject to the imposition of sporting sanctions.

44. Having stated the above, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the

specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period. The Dispute Resolution Chamber recalled that the list of objective criteria is not exhaustive and that the broad scope of criteria indicated tends to ensure that a just and fair amount of compensation is awarded to the prejudiced party.

45. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the relevant employment contract between the Respondent and the Claimant contains a provision by which the parties had beforehand agreed upon an amount of compensation for breach of contract. Upon careful examination of the contract, the members of the Chamber assured themselves that this was not the case in the matter at stake.

46. As a consequence, the members of the Chamber determined that the prejudice suffered by the Claimant in the present matter had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.

47. In this respect, the Dispute Resolution Chamber took due note of the fact that the Claimant claimed the payment of the salaries due from February 2010 until 1 July 2011, in other words, the remaining value of the contract as compensation for the breach of contract. In this regard, the members of the Chamber acknowledged that the Claimant had been rendering, or at least offering to render, his services to the Respondent for approximately one complete season and six months – from July 2008 until January 2010 –, and that the relevant employment contract still had approximately seventeen months to run at the moment of its termination. Furthermore, the members of the Chamber noted that, at the time of the decision, the club, B, offered to the Claimant to sign an employment contract valid for one season until 31 July 2011. This employment contract stipulated that the Claimant would receive a total remuneration of EUR 12,000 payable in four instalments. The Claimant also alleged that he would be entitled to receive 10 monthly payments of EUR 500. In that regard, the DRC paid due consideration to the fact that the Claimant held that the said employment contract had not been signed and that he had received an amount of EUR 250 only from B, since he had been suspended to play 16 matches. In this respect, the DRC, whilst analysing the facts of the case, noted that, according to employment contract offered by B, the Claimant was entitled to receive a remuneration approximately 20 times inferior to the contract breached by the Respondent, as far as the season 2010/2011 is concerned.

48. Subsequently, the Chamber referred to the decision passed by the Court of Arbitration for Sport (CAS) in the affair CAS 2008/X/XXX J / Mr M & Q & FIFA and

CAS 2008/X/XXXX Mr M & Q / J & FIFA and recalled that *"*[…] *a player has to make reasonable efforts to seek other employment possibilities and, in the event he finds an new club, the damage has to be reduced for the amount the player was able to earn elsewhere."*

49. On account of the above, in particular in view of the original duration of the Contract, the Claimant's contractual entitlements, his financial claim, the general obligation of the Claimant to mitigate his damages, as well as the behaviour of the Respondent, which, except from the fact that it had paid an amount of EUR 64,600 in February 2010, basically limited itself to contest the competence of the DRC and did not deem it appropriate to submit to the Chamber any kind of evidence attesting its allegations as to the substance, decided that not the entire remaining value of the contract, but the amount of EUR 385,000 was to be considered reasonable and justified as compensation for breach of contract.

50. As a consequence, the Dispute Resolution Chamber concluded by deciding that the Respondent has to pay the total amount of EUR 481,535 to the Claimant, consisting of EUR 96,535, plus 5% of interest as from 29 January 2010, concerning outstanding salaries and bonuses, and of EUR 385,000 as compensation for breach of contract.

51. In continuation, the Chamber focused on the further consequences of the breach of contract in question and, in this respect, addressed the question of sporting sanctions to be imposed on the Respondent in accordance with art. 17 par. 4 of the Regulations. The cited provision stipulates *inter alia* that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period.

52. In this regard, the Dispute Resolution Chamber recalled that, as established under point II.35. above, the breach of contract by the Respondent had occurred during the protected period. Consequently, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the Respondent had to be sanctioned with a ban from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

53. 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 Claimant, L, is partially accepted.

2. The Respondent, V, has to pay to the Claimant, L, outstanding remuneration in the amount of EUR 96,535, plus 5% of interest *p.a.* as from 29 January 2010, **within 30 days** as from the date of notification of this decision.

3. The Respondent, V, has to pay to the Claimant, L, the amount of EUR 385,000 as compensation for breach of contract **within 30 days** as from the date of notification of this decision. In the event that this amount of compensation is not paid within the stated time limit, interest at the rate of 5% *p.a.* will fall due as of expiry of the above-mentioned time limit until the date of effective payment.

4. In the event that the above-mentioned amounts due to the Claimant, L, are not paid by the Respondent, V, within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and decision.

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

6. The Respondent, V, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

7. The Claimant, L, is directed to inform the Respondent, V, 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 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
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For the Dispute Resolution Chamber

Markus Kattner
Deputy Secretary General

Encl. CAS directives