Decision of the
Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 September 2006,

in the following composition:

Slim Aloulou (Tunisia), Chairman
John Didulica (Australia), Member
Theo van Seggelen (Netherlands),Member
Essa M. Saleh Al Housani (United Arab Emirates), Member
Philippe Diallo (France), Member

on the claim presented by the

Player X, XX,

as *Claimant*

against the club,

Y, YY,

as *Respondent*

regarding a contractual dispute arisen between the parties involved.

I. Facts of the case

1. On 31 July 2005, the YY club, Y (hereinafter: *the Respondent*), and the U club, UU, entered into a loan agreement under which the player X (hereinafter: *the Claimant*) was loaned to the Respondent until 30 November 2006. This loan agreement was co-signed by the Claimant.

2. Subsequently, the Claimant entered into an employment contract with the Respondent with a term as from 10 August 2005 to 30 November 2006.

3. Pursuant to said employment contract, which was submitted by the Claimant, a monthly salary of USD 15'000 was agreed for the year 2005. A handwritten note was added to the employment contract, stating that the Claimant's monthly salary for 2006 would amount to USD 20'000. The Claimant was also entitled to various bonuses payable by the Respondent according to the result (win, draw or defeat) and per game (league or cup).

4. On 12 April 2006, the Claimant filed his claim before FIFA against the Respondent.

Claim of the Claimant

5. On the one hand, the Claimant claims that the Respondent has yet to hand him an employment contract in his native language (UU), as he speaks neither YY nor English. On the other hand, he accuses the Respondent of having unilaterally terminated the employment contract without just cause.

6. In this respect, the Claimant submitted that the Respondent sent him a draft of a termination agreement for signature on 11 February 2006, with retrospective effect as from 1 January 2006. The Claimant did, however, not sign this termination agreement, in particular because the loan agreement between U and the Respondent did not provide for a possibility to prematurely terminate this agreement and, in any case, such a dissolution of the loan agreement would only have been possible with the consent of all three parties involved. A short time later, he learnt from the management of the Respondent that the latter, according to an official statement, had terminated the employment contract with him on the grounds that he had not met the Respondent's sporting requirements and was therefore being released back to U. In this respect, the Claimant attached a letter from the Respondent to the UU club dated 6 December 2005, in which the former informed the UU

club that it is terminating the employment contract with the Claimant and releasing him back to UU. The grounds given in the said letter were that the Claimant did not satisfy the Respondent's technical requirements and that therefore the contract for the season 2006 was not being extended. The UU club was requested by the Respondent to recommend another player with good technical ability.

7. The Claimant also maintained that during his spell with the YY club (from August to October 2005), no one from the Respondent ever found fault with his performances. In the aforementioned period, he played for the first team in every official game, scoring six goals in the process. The Claimant emphasised that these facts clearly demonstrate his ability as a player.

8. In addition, and irrespective of whether he had met the Respondent's requirements or not, the Claimant is of the opinion that the Respondent, in spite of a provision contained in the employment contract to this effect, had no right to unilaterally terminate the employment contract. The Respondent should have at least offered him an opportunity to play for the Respondent's reserve team first, as provided for by the employment contract.

9. The Claimant therefore demanded that the Respondent pay him USD 220'000 for the unilateral breach of contract, which corresponds to his salary of USD 20'000 for the remaining eleven months, i.e. until the end of November 2006, of the employment contract, and that appropriate sanctions be imposed on the Respondent for the unilateral contract termination.

Defence of the Respondent

10. In reply to the Claimant's claim, the Respondent submitted an employment contract that, except the financial provisions, clearly differs from the one remitted by the Claimant. This employment contract has been signed by both parties and by an agent whose name, however, could not be made out.

11. In this employment contract submitted by the Respondent, the Claimant's monthly salary is also fixed at USD 15'000. A monthly salary of USD 20'000 is foreseen for the season 2006, should the Respondent be promoted to the CFA Premier League.

12. Article 8 par. 2 of this employment contract states the following:

"*Party B (*the Claimant*) play in 2005 season must be no less than 85% of all the game time, and gave 7 goals, in 2006 season gave no less than 15 goals*"

13. In addition, article 5 par. 7 of the employment contract states:

> *"During the contract period, if Party B (the Claimant) cannot implement obligation of contract or cannot finish the work because of health, Party A (the Respondent) has right to stop the contract. From the date when the contract is stopped, Party A will not pay salaries to Party B. Party B shouldn't put on forward the appeal of any kind or demand the compensation, in this time Party B must pay Party A 50'000 USD as penalty".*

14. The Respondent is of the opinion that the Claimant did not fulfil the aforementioned obligations arising out of the employment contract, as during the season 2005, he played only 75% of all matches and scored just six goals. For this reason, the Respondent deemed that the Claimant has to pay a contractual penalty amounting to USD 50'000.

15. As a consequence, the Respondent decided to return the Claimant to the UU club, U, and requested the latter to send it a new player.

16. Further, the Respondent submitted that the Claimant, like all the other players in the team, had gone on holiday at the end of October 2005, but had failed to return. This was the reason why it had wanted to terminate the employment contract with the Claimant and had informed him accordingly via fax (termination agreement) without, however, ever receiving any feedback from the Claimant. According to the employment contract, all players have to return on time after the holidays. If this obligation is violated, the players have to pay USD 10'000 per day. In addition, under the terms of the employment contract, i.e. art. 10 par. 5 and art. 17, the Respondent has the right in such a case to terminate the employment contract and demand compensation from the Claimant in the amount of USD 100'000.

17. In addition, the Respondent had discovered that the Claimant had been training on a trial basis with other clubs, in particular U, without its prior permission, which constituted another violation of the contract.

18. Due to the fact that the Claimant had not returned after the holidays and had already trained on a trial basis with other clubs, the Respondent took the view that the Claimant breached the employment contract.

19. In this respect, the Respondent stressed that it had still paid the Claimant's salaries for the months of November and December 2005.

20. With regard to the contract language, the Respondent explained that the contract had been drafted in both English and YY. When the contract was signed, an interpreter had allegedly been attending and had translated every single article of the employment contract for the Claimant.

Second statement of the Claimant

21. In his second submission, the Claimant emphasised that he had not signed the employment contract remitted to the file by the Respondent on every page and therefore it could easily have been forged. The Claimant stressed that he did not sign the employment contract submitted by the Respondent.

22. In this respect, the Claimant referred to the absurdly high compensation payments foreseen in the aforementioned contract that he would have to make in the event of a breach of contract and also the fixed number of goals and matches that he would have to achieve. Were such contractual conditions translated exactly to him, he would never accept them and sign.

23. In addition, the Claimant submitted a letter dated 13 January 2006, in which he had requested the Respondent to inform him whether it still had any interest in him and by when he had to return from Russia.

Second statement of the Respondent

24. In its final submission, the Respondent again emphasised that it had translated every single article of the employment contract to the Claimant.

25. The Respondent also referred to the employment contract that the Claimant signed and according to which the Respondent had the right to terminate the employment contract if the Claimant fails to meet the obligations arising out of the contract. The Respondent noted that the Claimant's lack of ability was the principal reason for it to terminate the employment contract.

26. Finally, the Respondent pointed out once again that the Claimant had not returned to the club since 23 October 2005 and had trained at his previous club, U, on a trial basis during this period. The latter had then attempted to

obtain the International Transfer Certificate from the YY Football Association of YY via the UU Football Association.

II. Considerations of the Dispute Resolution Chamber

a) As to the competence of the Dispute Resolution Chamber

1. First of all, the Chamber analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 12 April 2006, as a consequence the Chamber concluded that the revised Rules Governing Procedures (edition 2005) on matters pending before the decision making bodies of FIFA are applicable to the matter at hand.

2. With regard to the competence of the Chamber, art. 3 par. 1 of the above-mentioned Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the current version of the Regulations for the Status and Transfer of Players (edition 2005). In accordance with art. 24 par. 1 in combination with art. 22 (b) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

3. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation involving a player from XX and a YY club in connection with an employment contract.

4. Subsequently, the members of the Chamber analyzed which edition of the Regulations for 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 for the Status and Transfer of Players (edition 2005) and, on the other hand, to the fact that, independent of the version of employment contracts to be taken into account which have been remitted to the file from the player and the club respectively, the relevant contracts have been definitively signed after 31 July 2005. Moreover, taking into account the aforementioned and considering that the claim was lodged at FIFA on 12 April 2006, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players (edition 2005, hereafter: the Regulations) are applicable to the case at hand as to the substance.

b) As to the substance of the present dispute

5. Entering into the substance of the matter the members of the Chamber acknowledged the documentation contained in the file, and in view of the circumstances of the matter at stake, focused on the question whether an unjustified breach of the employment contract between the Claimant and the Respondent occurred and which party is responsible for such breach of contract and to verify and decide if sanctions for breach of contract have to be imposed.

b1) Responsibility for the breach of contract

6. Firstly, the members of the Chamber acknowledged that two different employment contracts have been remitted to the file for the same period of time. The members noted that while the employment contract submitted by the Claimant did neither contain the signatures of the parties to the contract nor a date, the relevant employment contract delivered by the Respondent, the same as the one remitted by the YY Football Association of YY, did bear the date of 8 August 2006 and the signatures of the Claimant and the Respondent as well as the signature of an agent apparently involved in concluding this contract.

7. In this respect, the Chamber took note that the Claimant objects having signed the employment contract remitted to the file by the Respondent, maintaining in particular that the said contract was not signed by him on every single page and therefore could have easily been falsified. Moreover, the Claimant referred to specific articles in the contract stipulating absurdly high compensation payments in case of breach of contract and also the fixed number of goals and matches that he would have to achieve. The Claimant stated that he would have never signed an employment contract containing such provisions.

8. Then, the Chamber pointed out that with regard to the alleged falsification of the employment contract, the present body is not competent to decide on the authenticity of a document. Moreover, the Chamber emphasized that each party is responsible to corroborate its allegations and that in respect with the alleged falsification, the Claimant abstained from providing the pertinent evidence.

9. For the sake of good order, the Chamber emphasized that in accordance with the legal principle of the burden of proof, which is a basic principle in every legal system, a party asserting a fact has the obligation to prove the same.

10. In accordance with the above-mentioned principle, the Claimant has the burden of proof regarding the falsification of the employment contract at the basis of the present dispute. However, the Claimant never provided FIFA with written evidence regarding the alleged falsification of the said contract.

11. In view of the above, the Chamber established that it could not uphold the Claimant's position with regard to the alleged falsification of the employment contract due to lack of evidence in this respect.

12. In view of the above, the deciding body evaluated that it has no alternative than to consider the signed and dated employment contract submitted by the Respondent as relevant. Such appreciation appeared to be justified given that the Claimant, despite failing to corroborate with documentary evidence his statement that the contract submitted by the Respondent is falsified, did not contest having signed an employment contract with the Respondent. Moreover, the version of the employment contract submitted by the Respondent is the same as the one which was deposited at the Football Association YY and which was also submitted to the file by the latter.

13. Notwithstanding the above, the members concurred that the financial terms of both contracts, the one remitted by the Claimant and the one remitted by the Respondent as well as the Football Association of YY, do not differ. In fact, both contracts stipulate that the Claimant is entitled to receive a salary of USD 15'000 for the year 2005 and for the year 2006 a salary of USD 20'000.

14. On the other hand, the Chamber acknowledged that the employment contract submitted by the Respondent, which was deposited at the Football Association of YY, bears superimposed obligations on the Claimant, the validity of which were questioned by the Claimant.

15. In continuation, the members of the Chamber continued by acknowledging that the Claimant maintained that the Respondent terminated the employment contract without just cause. In support of his allegations, the Claimant attached a letter dated 6 December 2005 from the Respondent addressed to U, the club which loaned him to the Respondent, by means of which the Respondent informed the aforementioned U club that it terminates

the contract with the Claimant on the grounds that the latter did not met the Respondent's sporting requirements.

16. In this context, the Chamber took note of the Respondent's argument that it had just cause to terminate the employment contract since the Claimant did not fulfil the obligations arising out from the contract, in particular that the Claimant played only 75% of all matches and scored only six goals. Moreover, the Respondent deems that since the Claimant failed to achieve the targets provided for in the employment contract, he has to pay it a penalty of USD 50'000.

17. In this respect, the Chamber unanimously concluded that the application of the provision contained in art. 8 par. 2 of the employment contract, concerning the number of matches the Claimant has to play, is arbitrary since it is at the Respondent's sole discretion to decide how many matches the Claimant would have played. Moreover, the Chamber deemed it appropriate to underline in this respect that football is played in a team whereby success is only achievable when the members of a team work together. The obligation imposed on a player in an employment contract that he has to obtain a certain number of goals within one season otherwise his employer may terminate the contract, clearly goes against the spirit of the game and contradicts the fundamental goal of team play.

18. Taking into account the above, the members concluded that the foregoing clauses in the employment contract, i.e. art. 8 par. 2 and art. 5 par. 7, are unacceptable and can certainly not be considered as valid reasons to terminate the employment contract.

19. In continuation, the Chamber took note that the Respondent's second argument to sustain its alleged valid reasons to terminate the employment contract was the Claimant's alleged late return from the holidays. The Respondent emphasized that for the Claimant's failure to return in time, according to the employment contract, he has to pay a fine of USD 10'000 per day. Moreover, the Respondent stressed that in application of art. 10 par. 5 and art. 17 of the employment contract, in case the Claimant violates the obligation to resume duty in time, it has the right to terminate the contract and ask compensation from the Claimant in the amount of USD 100'000.

20. In this context, the members of the Chamber at first stressed that with regard to the monthly income of the Claimant, i.e. USD 15'000 for the season 2005 and

USD 20'000 for the season 2006 respectively, the penalty imposed on him is completely disproportionate and thus cannot be accepted.

21. Furthermore, the Chamber emphasized that it clearly emanates from the contents of the Respondent's letter dated 6 December 2005, addressed to the U club that the main reason for the Respondent to terminate the employment contract with the Claimant, was the latter's alleged failure to reach the skill and technical requirement of the Respondent. Furthermore, the aforementioned letter from the Respondent did neither include any request that the Claimant should resume duty with the Respondent nor that the Claimant breached the contract by failing to return in time after the holidays.

22. Thus, the Chamber reached the conclusion that the argument of the Respondent that it terminated the employment contract on the basis of the Claimant's alleged late return was not very credible. From the Chamber's point of view, such stance does not speak in favour of the Respondent's good faith either.

23. In view of all the above, the Chamber concluded that the reasons raised by the Respondent giving it allegedly just cause to terminate the employment contract with the Claimant have to be considered unjustified and non-considerable. Therefore, the Dispute Resolution Chamber concluded that the Respondent, by means of its correspondence dated 6 December 2006, terminated the employment contract it entered into with the Claimant without just cause.

24. In continuation, the Chamber observed, however, that from the respective positions presented by the Claimant and the Respondent concerned, it is uncontested that the Claimant was already absent from the Respondent at least as from the end of October 2005 and since then did not train or play with the latter, thus prior to the end of the validity of the employment contract.

25. In view of the above, the Chamber underlined that, as a general rule, a long-lasting absence of a player from his club without authorization and without other just cause is to be considered as an unjustified breach of the employment contract by the player.

26. In this respect, the members of the Chamber had to deliberate whether the Claimant was authorized or had just cause to be absent from the Respondent.

27. In this respect, it was noted by the Chamber that the Claimant, in support of his position, submitted a letter dated 13 January 2006, whereby he had requested the Respondent to inform him whether it is still interested in his services.

28. However, despite the fact that the Claimant could not prove with documentary evidence that the Respondent had received his letter dated 13 January 2006, the members took note that the Claimant stated, by means of his initial claim lodged at FIFA on 12 April 2006, that the Respondent sent him on 11 February 2006 a draft of a termination agreement, the proposal of which he rejected and did not sign. Moreover, according to the Claimant, he became aware later on, thus at least after 11 February 2006 when he received the draft of the termination agreement from the Respondent, that the latter apparently terminated the employment contract on the basis of his alleged failure to meet the Respondent's skill and technical requirements.

29. The deciding body deducted from the Claimant's statements that, until the time he offered his services to the Respondent in written by means of his letter dated 13 January 2006, he did not provide valid reasons justifying his absence from the Respondent.

30. Moreover, the members noted that the Respondent stressed having paid to the Claimant his salaries for the months of November and December 2005 although the Claimant did no longer render his services.

31. Yet, concerning in particular the financial aspect, the members of the Chamber concluded that the Respondent has complied with its financial obligations towards the Claimant, in particular, that, as not contested by the Claimant, it has paid to him all his salaries until December 2005, i.e. beyond the date of the Claimant's departure from YY. As a consequence, when the player left, not only were all his salaries paid but the Respondent also continued paying him his salaries even though he did not render his services to the Respondent.

32. After long deliberations and taking into account the above as well as all submissions made by both parties in this respect, the Chamber came to the conclusion that the conduct of both parties lead to the early termination of the

relevant employment relation and that neither party can be held exclusively responsibly for the breach of the relevant employment contract.

33. As a result, the Chamber unanimously decided that the employment contract at the basis of the dispute has come to an end in December 2005 due to the reciprocally fault behaviour of both parties and that therefore, neither party can be held liable to pay compensation nor to be sanctioned.

34. In continuation, the Chamber turned its attention to the Claimant's claim with regard to the alleged outstanding remuneration in relation to his salaries for the year 2006 in the amount of USD 220'000. In this respect and first of all, the Chamber emphasized that based on the fact that the employment contract has to be considered as terminated as from December 2005 due to the reciprocally responsibility of both parties, the Claimant is not entitled to receive the salary for the said year.

35. To concluded with, and in view of all the above, the Dispute Resolution Chamber decided to reject the claim of the Claimant, as well as the counter-claim of the Respondent.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, player X, is rejected.

2. The counter-claim of the Respondent, Y, is rejected.

3. According to art. 61 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the filing of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (cf. point 4 of the directives).

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Encl: CAS directives