Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 September 2007,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Philippe Diallo (France), member

Zola Majavu (South Africa), member

Carlos Soto (Chile), member

Philippe Piat (France), member

on the claim presented by the club

A, X,

as *Claimant*,

against the player

B, X,
represented by Mr S,

and the club

C, Y,
represented by Mr T,

as *Respondents*,

regarding a dispute about the breach of an employment contract
and the inducement to breach an employment contract.

I. Facts of the case

1. On 15 June 2004, the player B (d.o.b. 27 August 1986) and the X club, A, concluded a trainee contract (*"Contrat de joueur stagiaire"*) valid for a period of two years, until 30 June 2006.

2. On 11 August 2006, the player and the Y club, C., concluded an employment contract valid for a period of two years, until 30 June 2008.

Proceeding in front of the Single Judge of the Players' Status Committee concerning the issuance of the International Transfer Certificate

3. On 11 and 15 August 2006, the Y Football Association (the Y-FA, Y) requested the X-Football Association (XXX) to issue the international transfer certificate (ITC) for the player B. The latter was to be registered with the club C as a professional player.

4. On 16 August 2006, the XXX addressed the Y-FA and thereby forwarded a letter of the X League (Professional Footballligue, xxx). Therein, the xxx stated that the player had been bound to the X club A until 30 June 2006 by means of the trainee contract. In accordance with the x collective agreement for professional football (*"Professional Footballcharter of X"*), a professional contract had been offered to the player. Furthermore, the xxx emphasised that its Legal Commission established on 1 August 2006 the absence of the player and decided that based on the aforementioned collective agreement for professional football, the player is obliged to sign a professional contract with the club A. Based on these reasons, the XXX refused to issue the relevant ITC.

5. On 18 August 2006, the Y-FA contacted FIFA and requested the intervention of the latter in order to obtain international clearance for the player B. In this respect, the Y-FA stated that the contractual relationship between the player in question and the x club A had expired on 30 June 2006 and had not been renewed. Therefore, the Y-FA considered the player B to be free to seek employment with another club.

6. Upon the request of FIFA to the XXX to either issue the ITC for the relevant player or to indicate reasons for a possible refusal, the XXX forwarded a letter of its affiliated club A. The x club stated that on 15 June 2004, it had concluded a trainee contract with the player B valid until 30 June 2006. Furthermore, the player signed a training agreement which obliged the player in its art. 12 to sign a

professional contract with A after expiration of the trainee contract. In application of this clause, A offered the player in due time on 5 April 2006 a professional one-year contract. On 31 May 2006, the players' agent of the player, Mr D (licensed players' agent by the XXX) accepted the offer of a professional contract. Subsequently, the player resumed his training with A on 26 June 2006 but suddenly left the club without further notice. The x club explained that it had been forced to institute legal proceedings against the player in front of the Legal Commission of the xxx. The latter established the absence of the player and decided that the player has to sign a professional contract with the club A. A emphasised that C never contacted it in order to negotiate a possible transfer of the player. For all these reasons, the x club is opposing to the issuance of the relevant ITC. Furthermore, the x club informed FIFA that it intends to lodge a complaint for breach of contract committed by the player in front of the labour courts in A. Besides, A asked the Dispute Resolution Chamber of FIFA to deal with the contractual dispute at stake. In order to reach an amicable agreement in the matter, the x club proposed C that it pays compensation in the amount of EUR 500,000 for the transfer of the player.

7. On 29 August 2006, the Single Judge of the Players' Status Committee considered that the contractual relationship between the player B and A had not been renewed upon its expiry by the signature of a new employment contract. That assumption was supported by the fact that no such contract was presented as well as by the decision of the Legal Commission of the xxx stating, inter alia, that the player has to sign a contract. Equally, the Single Judge emphasised that the provisions of the x collective agreement for professional football have a national impact and thus cannot have any effect in another country.

8. On account of the above, the Single Judge came to the conclusion that he had no alternative but to doubt on the current existence of a contractual relationship between the player and A.

9. To that regard, the Single Judge acknowledged that a contractual dispute existed between the player, B, and the club, A, in particular on the validity and legal effects of the training agreement concluded between the parties.

10. Under the given circumstances, the Single Judge decided to authorise the Y-FA to provisionally register the player B for its affiliated club C, pending the outcome of the contractual labour dispute between the player and the x club as to the

substance of the matter, which would have to be dealt with by the Dispute Resolution Chamber.

Claim of A

11. On 15 September 2006, the x club referred once again to the contents of the trainee contract and the training agreement concluded between itself and the player. Furthermore, A emphasised that it proposed on 5 April 2006 an employment contract to the player, which was accepted by the player's agent on 31 May 2006. Subsequently, the player resumed his training on 26 June 2006 but suddenly left the club without further notice. Finally, the x club reiterated that according to the decision of the Legal Commission of the xxx the absence of the player had been established and it had been decided that the player has to sign an employment contract with the x club.

12. The x club referred to the x collective agreement for professional football, particularly its art. 261 and 262 and to the respective jurisprudence of the x courts. According to this jurisprudence, if the employer proposes an employment contract to the employee and the latter accepts the proposal but then refuses to sign the employment contract, the employee becomes responsible for breach of contract. Furthermore, A referred to the case Olympique de Marseille c/ Mathieu Flamini and Arsenal PFC (decision of the Court of Arbitration for Sport [CAS] 2004/A/761 dated 31 October 2005). In that case, the player never accepted the proposals presented by the club Olympique de Marseille and the club did not propose the *essentialia negotii* of an employment contract to the player. *E contrario* to this decision, if the proposal of Olympique de Marseille had contained the *essentialia negotii* of an employment contract and if the player had accepted the offer of Olympique de Marseille, CAS would have accepted the claims of Olympique de Marseille. Furthermore, the French club referred to the case Le Havre AC c/ Charles N'Zogbia and Newcastle (CAS 2004/A/791 dated 27 October 2005) according to which CAS considered that by refusing to sign a trainee contract, the player breached his contractual obligations based on the training agreement concluded with the club. Therefore, the CAS partially accepted the claim put forward by the French club and obliged the player and the new club to compensate the x club for the occurred breach of contract.

13. Based on these considerations, the x club underlined that the player was obliged to sign the proposed and by himself accepted employment contract by no later

than 31 August 2006. Furthermore, the x club emphasised that C never contacted it in order to find a solution concerning a possible transfer of the player.

14. Therefore, the x club claimed that the player B and C shall be jointly and severally liable for the payment of compensation for breach of contract in the amount of EUR 500,000.

Response of the player B and C.

15. On 21 November 2006, the player B and C confirmed that the x club offered the player on 5 April 2006 to enter into an employment contract for the duration of one season. However, the player denied that the players' agent D had any authority to accept this offer of the club on his behalf. On 26 June 2006, the player visited the x club's training ground for a final occasion whilst still contracted to the A solely on the basis of the trainee contract and the training agreement. Both agreements expired on 30 June 2006.

16. The Respondents underlined that as from 30 June 2006, no written contract exists between the player and the x club. Furthermore, the Respondents emphasised that there was no subsisting contractual relationship between the player and the x club and considered the approach of the Claimant to be alarming as it seeks to impose contractual duties and obligations on parties who are no longer contractually bound to one another. This principle would be contrary to art. 13 of the Regulations for the Status and Transfer of Players which provides that an employment contract may be validly terminated by expiry of that contract. The Respondents therefore consider the training agreement to be of disputable validity and deem that it is not in accordance with the principles of international labour law and the specificity of sport.

17. Furthermore, with reference to art. 25 par. 6 of the Regulations for the Status and Transfer of Players, the Respondents submitted that the Dispute Resolution Chamber has only to *"take into account"* the provisions of the x Charter when considering this matter and is not bound to apply and/or enforce national law if it is not acceptable with reference to the specificity of sport. Furthermore, the Respondents emphasised that there was no negotiation as to the key features of the employment relationship, i.e. the financial conditions and the duration of the labour relationship. In fact, at the age of 17, by signing the training agreement and the trainee contract, the player committed himself to at least 2 years with the Claimant and to possible further 3 years thereafter under a non-negotiable

professional contract, potentially therefore, to a 5 year relationship, whereby he would have no influence over the financial conditions of the final 3 years. The Respondents submitted that such a contractual structure would be an onerous burden to place on a 17-year old, who was still a minor at the time, and would be in conflict with art. 18 par. 2 of the Regulations for the Status and Transfer of Players.

18. With respect to the N'Zogbia case, the Respondents emphasised that in that case, the x club had been entitled to claim compensation for breach of the "training agreement" and not for breach of the X collective agreement for professional football. The Claimant had, however, failed to bring this important point to the attention of the Dispute Resolution Chamber.

19. Furthermore, the Respondents referred to the case Club Atlético Peñarol v/ Carlos Heber Bueno Suarez, Christian Gabriel Rodriguez Barotti & Paris Saint-Germain (CAS 2005/A/983 & 984). On the basis of that case, the Respondents were of the opinion that although the X collective agreement for professional football does not allow for an automatic extension to playing contracts as a player may refuse an offer, it does heavily favour clubs as it denies the players the freedom to negotiate, reject or accept the offer without then facing a sanction. The Respondents highlighted that such an inequitable regime would be contrary to the FIFA Regulations.

20. In summary, the Respondents emphasised that it should be noted that there is no existing jurisprudence of the CAS wherein art. 261 of the X collective agreement for professional football has been considered in isolation and where the conclusion has been reached that the obligations that the X collective agreement for professional football seeks to impose are binding and enforceable. Whilst acknowledging the existence of the X collective agreement for professional football and its attempt to place extra-contractual obligations on the player after the expiry of the contractual agreements in place, the Respondents submitted that such obligations must only be "taken into account" by the Dispute Resolution Chamber due to the unfair nature of such an agreement. The Respondents therefore requested that the Chamber takes the opportunity to conclude that the X collective agreement for professional football cannot be used to impose an obligation on the player to sign a contract, particularly in a case like the one at stake where there is no underlying contract in place between the parties.

21. In the event that the Chamber concludes that the type of contractual structure imposed by the X collective agreement for professional football is legally and morally acceptable, then the Respondents in any event contended that the Claimant failed to fully comply with the requirements of the X collective agreement for professional football so as to place any obligation on the player. In this respect, the Respondents stated that the pre-contractual correspondence between the club and the agent of the player is not a written contract as per art. 2 par. 2 of the Regulations for the Status and Transfer of Players, that the offer did not contain all *essentialia negotii* and that the player never accepted the offer of the Claimant. The Respondents underlined that the X collective agreement for professional football requires the acceptance by the player and not by an agent. However, the player emphasised that he had told the agent that he could not accept the offer since it provided him less security and the financial terms offered were less favourable than those under the trainee contract. Therefore, the Respondents submitted that the agent has acted independently of the player and purported to respond to the Claimant's offer without any authority or instruction, as no representation agreement existed between the agent and the player.

22. Furthermore, the Respondents emphasised that by his presence at the Claimant's training ground on 26 June 2007 the player was never demonstrating an acceptance of any further contractual relationship with the Claimant beyond 30 June 2006. The Respondents underlined that on 26 June 2007, the player was still contractually bound to the Claimant under the trainee contract and the training agreement, and he was in effect complying with his contractual obligations.

23. Moreover, the Respondents underlined the fact that the player was actually offered terms which were substantially less favourable than what he was currently receiving.

24. Equally, the Respondents stressed that the X collective agreement for professional football cannot have any impact on C due to its territorial limits.

25. Finally, the Respondents concluded that there are no remedies available under the FIFA Regulations against the player and/or C (including but without limitation art. 17 par. 3 and 4 of the Regulations for the Status and Transfer of Players respectively) other than for a claim for training compensation under art. 20 and Annex 4 of the aforementioned Regulations.

26. In view of all the above, the Respondents concluded that:

- it is clear that no contractual relationship exists between the player and the Claimant as the trainee contract and the training agreement expired on 30 June 2006;
- it is only on the basis of the X collective agreement for professional football that the Claimant seeks to claim the imposition of an obligation on the player to sign a contract with the Claimant. The Respondents contest the validity of the imposition of such an onerous obligation where there is no equality in the bargaining position between the parties;
- even in the event that the Chamber was to ratify the existence of an obligation under the X collective agreement for professional football, the Respondents dispute whether the Claimant has actually complied with its obligations under the said collective agreement to make an offer to the player which contains sufficient information for the player to be able to consider it. Even if the Claimant did satisfy this obligation, the player did not personally accept the alleged offer. It was only an agent acting without his authority who had done so;
- in the event that the Chamber considers that the Claimant's offer was sufficient and that the player had accepted it, the Respondents submit that the only sanction under the X collective agreement for professional football is the three-year interdiction to play for another club in X, which, as accepted by all parties, cannot be deployed outside X. So the consequences under the said collective agreement have no effect upon the player's professional career outside X and not against C.

27. Based on these considerations, the Respondents concluded that there can be no compensation for breach of contract as no breach of contract had actually occurred, since no written employment contract had ever existed. Furthermore, even if the Claimant was deemed to be entitled to compensation for breach of the allegedly offered one-year contract, the maximum compensation payable would be the amount of EUR 31,680 (one year at EUR 2,640 salary per month).

28. The Respondents, however, submitted that no compensation for breach of contract is payable in this case and that the only claim which the former club can bring upon expiry of a contract is one for training compensation. In this respect, the Respondents emphasised that the Claimant failed to lodge such a complaint and that the trainee contract had been the first professional contract of the player. Under such circumstances, training compensation would only be theoretically payable to the Claimant as the former club in accordance with Art. 3 par. 1 of Annex 4 of the Regulations for the Status and Transfer of Players. Based

upon the training period from 1 July 2004 to the date of expiry of the trainee contract on 30 June 2006, the maximum amount of training compensation potentially payable to the Claimant would be EUR 180,000.

29. However, the Respondents pointed out that the Claimant is not entitled to the payment of any training compensation in this case. In this respect, the Respondents referred to the contents of art. 6 par. 3 of Annex 4 of the Regulations for the Status and Transfer of Players according to which the contractual offer shall be at least of an equivalent value to the current contract. To that regard, the Respondents underlined that in the case between ADO Den Haag and Newcastle United FC in respect of the player Tim Krul, the Dispute Resolution Chamber concluded that where a professional contract has not been offered as stipulated by art. 6 of Annex 4 of the aforementioned Regulations, no training compensation was payable. The Respondents deem that the Chamber should follow its existing jurisprudence as confirmed in the Tim Krul case, which is to state that *"…the Claimant did not show enough interest in the player's services as a professional. With such behaviour, the Claimant forfeited its entitlement to receive training compensation…"*.

30. Based upon the above submissions, the Respondents request the Chamber to make the following orders:

- that the Claimant's claim for breach of contract be dismissed in its entirety as the contractual relationship between the player and the Claimant ended by expiration on 30 June 2006;
- that the provisions of the X collective agreement for professional football invoked by the Claimant are of disputable validity and cannot be enforced by the Chamber as they impose an onerous obligation where there is no equality in the bargaining position between the parties;
- that in any event, the Claimant has failed to comply with its obligations under the X collective agreement for professional football to make an offer to the player which contains sufficient information for the player to be able to accept it;
- that in any event, the player did not personally accept the alleged offer and it was an agent acting without the player's authority to do so;
- that in any event, the only remedy available under the X collective agreement for professional football is the three-year prohibition for the player to play for another club in X; a sanction which cannot be deployed

outside X and which cannot have any effect on the player's registration with C;

- that there can be no damages for breach of contract as no such contract exists and even if the Claimant could prove otherwise, it has failed to appropriately quantify its losses;
- that the Claimant has failed to properly plead a claim for training compensation and even if it had done so, it would not be entitled to training compensation in accordance with art. 6 par. 3 of Annex 4 of the Regulations for the Status and Transfer of Players; and finally
- that no other club and/or association which trained the player from the beginning of the season of his twelfth birthday to the date of his registration with C is entitled to claim any training compensation following the player's registration with C as such registration was a "subsequent transfer" in accordance with art. 3 par. 1 of Annex 4 of the Regulations for the Status and Transfer of Players.

Replication of A

31. On 28 November 2006, FIFA invited the Claimant to provide it with its replication. On 16 January 2007, FIFA reminded the Claimant to do so. After expiration of the second deadline, on 1 February 2007, A referred to its claim dated 15 September 2006 and reiterated its position. Furthermore, the X club informed FIFA that it had mandated its representatives to lodge a complaint against the player and C in front of the labour court in X.

Rejoinder of the player B and C.

32. On 26 February 2007, the Respondents submitted that the Claimant failed to comply with the deadlines set by FIFA. Therefore, FIFA would have no option but to close its file. Secondly, the Respondents put forward that according to the Commentary to art. 22 of the Regulations for the Status and Transfer of Players, which states that according to the principle of litispendency, a case pending in front of civil courts cannot be dealt with by sports arbitration, FIFA has no longer jurisdiction to hear this case.

33. Finally, the Respondents reiterated their conclusions of their response dated 21 November 2006.

34. Upon request of FIFA, A responded on 29 March 2007 that it did not start any proceedings in front of the labour court in X and that therefore, the case would only be pending in front of FIFA.

II. Considerations of the Dispute Resolution Chamber

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 first submitted to FIFA and its Dispute Resolution Chamber by means of the statement of A dated 23 August 2006 during the proceeding in front of the Single Judge of the Players' Status Committee concerning the issuance of the International Transfer Certificate (ITC). 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 on 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 connection with art. 22 (a) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate disputes between clubs and players in relation to the maintenance of contractual stability if there has been an ITC request and if there is a claim from an interested party in relation to such ITC request, in particular regarding compensation for breach of contract.

3. As a consequence, the Dispute Resolution Chamber stressed that it is the competent body to decide on the present litigation involving a X club, a X player and an Y club regarding a claim for compensation for breach of contract in relation to the maintenance of contractual stability following an ITC request.

4. Subsequently, the members of the Chamber analysed 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 the relevant contract at the basis of the present dispute was signed on 15 June 2004 and that the claim was lodged at FIFA on 23 August 2006. In view of the aforementioned, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players (edition 2005, hereinafter: the Regulations) are applicable on the case at hand as to the substance.

As to the substance

5. Entering into the substance of the matter, the members of the Chamber started by acknowledging the documentation contained in the file, and in view of the circumstances of the case, focused on the question whether an unjustified breach of an employment contract possibly concluded between the player and A occurred, which party is responsible for such potential breach of contract and whether inducement to breach of contract occurred. Depending on the answers to these questions, the Chamber would also have to verify and decide if compensation is payable and whether sanctions for breach of contract and inducement to breach of contract have to be applied.

6. Thereafter, the members of the Chamber considered that the crucial problem in the present procedure is the question, if the player was still contractually bound to the X club at the time when he signed the employment contract with the Y club. In this respect, first of all, the Chamber took note that it is not contested that the trainee contract signed between the player B and the club A on 15 June 2004 expired on 30 June 2006. Furthermore, the Chamber acknowledged that it is not contested either that the training agreement concluded between the player and the X club expired as well on 30 June 2006. Therefore, the Chamber stressed that no written contract exists between the X club and the player as from 30 June 2006. Equally, the deciding authority was eager to emphasise that, as a consequence, no obligation for the player could be based on any of the aforementioned conctracts after the relevant date.

7. Furthermore, the Chamber took note that on 5 April 2006, A offered to the player a professional one-year contract in application of art. 12 of the training agreement. The Respondents did not contest that on 31 May 2006, the player’s agent, Mr D, accepted the offer of a professional contract. In this respect, the Chamber took into consideration that the player never personally accepted the offer of the X club and that the Respondents contested the legitimacy of the acceptance by the players’ agent. Particularly, the Respondents were of the

opinion that the pre-contractual correspondence between the club and the agent of the player cannot be considered a written contract as per art. 2 par. 2 of the Regulations, that the offer did not contain all *essentialia negotii* of an employment contract and that the player never accepted the offer of the Claimant.

8. To that regard, the Chamber was of the unanimous opinion that when acting as the representative of the player, the attitude of the agent was not in line with the due diligence. In particular, the Chamber underlined that the pre-contractual correspondence between an agent and a club cannot legally bind the player in the sense of a conclusion of a contract. In this respect, the Chamber was furthermore eager to emphasise that the signature of an employment contract has in any case to be considered as a strictly personal right of the employee and that therefore, the signature of a players' agent cannot replace the signature of the player. The Chamber stressed that this consideration is as well in line with art. 18 par. 1 of the Regulations, according to which the agent shall be *named* in the contract, if he is involved in the negotiation of a contract. However, the Chamber emphasised that neither the Regulations nor the Players' Agents Regulations stipulate the possibility for an agent to sign an employment contract on behalf of the player he represents.

9. Therefore, the Chamber concluded that the players' agent D when accepting the contract offer made by Ahas effectively acted independently of the player. To that regard, for the sake of good order, the Chamber stated that in view of the considerations made under point II., 8. above, the question whether the agent acted on the basis of express instructions by the player can remain unanswered. In any case, no evidence in this respect can be found in the file either. On the contrary, the player expressly contested having authorised the agent to such action.

10. Consequently, the members of the Chamber unanimously concluded that the X club and the player were no more contractually bound by any valid (employment) contract at the time the player signed the contract with C.

11. In continuation, the Chamber referred to its constant jurisprudence in identical cases concerning the X collective agreement for professional football and particularly its art. 261 and 262 and emphasised once again that a player cannot be coerced to sign an employment contract based on this collective agreement. Equally, the said jurisprudence considers that the provisions of the French

collective agreement for professional football have a national impact and thus cannot have any effect in another country.

12. In view of the above, the Chamber came to the conclusion that no unjustified breach of an (employment) contract concluded between the player and A occurred. As a consequence, no compensation is payable.

13. In continuation, the Chamber deemed it important to point out that contrary to the case concerning the player Charles N'Zogbia to which the X club is referring, in the case at stake also the training agreement between the player and A had come to a conclusion prior to the player signing for C. Therefore, the conclusions of the CAS in its award CAS 2004/A/791 regarding the player N'Zogbia to award compensation for breach of the training agreement are not of any relevance for the case at hand.

14. Based on the conclusion reached, i.e. no breach of contract without just cause occurred, the Chamber concluded that C can also not be held responsible for inducement to breach of contract.

15. Therefore, the Chamber decided to reject the claims filed by A in their entirety.

16. Finally, the Chamber clarified that since the X club had not lodged any claim with regard to a possible entitlement to training compensation, it had not to deal with that aspect and the present decision is without prejudice to any decision possibly taken in that respect at a later stage.

III. Decision of the Dispute Resolution Chamber

1. The claim of the club A against the player B and C is rejected.

2. According to art. 61 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