Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 4 April 2007,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Mario Gallavotti (Italy), Member

Ivan Gazidis (USA), Member

Theo van Seggelen (Netherlands), Member

Carlos Soto (Chile), Member

on the claim presented by

the club, B,

as Claimant

against

the player, A,

and

the club, C,

as Respondents

regarding compensation for contractual breach and inducement to contractual breach

I. Facts of the case

1. The player A, born on 23 April 1982, signed an employment contract with the club B on 31 March 2001 and due to expire on 30 June 2005 which, on 1 July 2003, was renewed until 30 June 2007.

2. The above-mentioned employment contract also provides, *inter alia*, that in the event of an intentional failure of the club to fulfil the terms of the contract, the player is entitled to give 14 days written notice to the club to terminate the agreement.

3. A transfer compensation of 75,000 had been paid by B to the club Arbroath for A's transfer.

4. On 9 August 2006 the player A signed a three-year employment contract with the club, C, whereby a basic weekly wage of 10,000 is foreseen in favour of the player for the season 2006/2007. A bonus of 3,000 or 1,500 would be paid to the player in case he was named in the starting eleven or as a substitute, respectively.

5. The weekly salary would rise up to 11,000 in case the player was named in the starting eleven in 12 league games. Should this be the case, a bonus of 4,000 or 2,000 would be paid to the player in case he was named in the starting eleven or as a substitute, respectively.

6. If the player was named in the starting eleven in 20 league games, a bonus of 5,000 or 2,000 would be paid to him in case he was named in the starting eleven or as a substitute, respectively.

7. The weekly salary would rise up to 12,000 as of 1 July 2007 in case the player was named in the starting eleven in 25 league games.

8. On 9 August 2006 the C Football Association requested the international transfer certificate (ITC) from the B Football Association for the player in question.

9. The Football Association replied in writing to this request stating that they cannot issue the requested ITC since the player A is still under contract with their affiliated club, B.

10. On 18 August 2006 the C Football Association turned to FIFA asking for the authorisation to provisionally register the player concerned for its member club, C.

11. On 28 August 2006, at the request of FIFA, the B Football Association stated that it was not in a position to comply with the ITC request, since the player A was still under contract with their affiliated club, B.

12. On 31 August 2006 the Single Judge of the Players' Status Committee authorised the C Football Association to provisionally register A with its affiliated club C with immediate effect.

13. Whereas the matter of the player's provisional registration has been decided upon, the dispute at stake lies on the substance of the contractual dispute between the player and the club and, in particular, on the conditions of the contractual termination.

14. In January 2007 A was transferred to the club Y on a loan basis until the end of the season.

B's position:

15. In November 2006 B contacted FIFA claiming compensation for breach of contract in the amount of 5,037,311 against Mr A as well as against C, for having induced the aforementioned breach.

16. The claimant also asks for the player to be ineligible to take part in any official matches for a period of two months, in compliance with Article 17.3 of the FIFA Regulations for the Status and Transfer of Players (hereafter, *the Regulations*), and for C to be banned from registering any new player for one registration period, in compliance with Article 17.4 of the FIFA Regulations.

17. According to the club, the relationship with A, until then one of the team's bedrocks, deteriorated when the player refused to extend the contract eighteen months before its expiry. It is clear, in the club's view, that Mr A was already then seeking a more lucrative contract and, to this effect, planning to walk out of his contract.

18. Subsequently, Mr A first notified B that he would terminate his contract for just cause with a 14-day notice from 4 May 2006 under clause 18 of the employment contract. Such termination notice would then be withdrawn by the player on 7 July 2006.

19. Then, the player notified the club in writing on 26 May 2006 of his intention to terminate the employment contract in accordance with the provision contained in Article 17.3 of the Regulations, i.e. allegedly outside of the Protected Period and within 15 days following the last match of the Season.

20. After having rejected B's proposals for an extension of the contract, Mr A addressed, through his agent, Mr , a fax to approximately fifty clubs, stating that the player had terminated his contract with the club, that no sanctions would apply as a result of this termination and that compensation would be fixed by FIFA at 200,000.

21. It is clear that Mr A breached the contract without just cause utterly disregarding the principles set out in the Regulations for the maintenance of the contractual stability, but whereas the first notice of termination will not be taken into account, the second notice of termination raises the most relevant issues.

22. To this effect, the club asserts that, according to point 9) of the Definitions of the Regulations, the Season ends with the last Official Match of the relevant national league championship. As the last match of the national league championship, i.e. the Premier League, for the Season 2005/2006 was on 7 May 2006, the notice of termination dated 26 May 2006 was not issued within 15 days following the last match of the Season under the purpose of Article 17.3 of the Regulations.

23. In all cases, as the player breached the employment contract without just cause, he shall pay compensation. The latter should be calculated in accordance with the criteria established by Article 17 of the Regulations, yet bearing in mind that the relevant list is not exhaustive, as already pointed out by the Dispute Resolution Chamber itself in its previous decisions.

24. In particular, national law, *in casu* National Law, should also assist in the calculation of the amount due as compensation by the player and/or the new club. This is confirmed by the parties' intention, expressed in clause 26 of the employment contract, to have the rules of the Football Association and of the Premier League govern any issue pertaining to the suspension and termination of the contract. The rules of the Football Association and of the Premier League are governed by the law of , where the contract was performed and where both parties were domiciled.

25. According to National Law, remedies for the breach of contract are based on the *restitutio in integrum*, which attempts to return the injured party to the same position it would have been in had the breach not occurred. Hence, B request to be awarded an amount, which would return the club in the position it would have been in had A not committed breach of contract without just cause.

26. According to National Law, it should also be taken into account the *lucrum cessans* suffered by the club, insomuch as Mr A and C should be condemned to pay 1% default interest until such time as B receive the full payment of the amount due as compensation.

27. As regards the loss of opportunity to receive a transfer compensation (*lucrum cessans)* for the transfer of the player, the claimant requests that the Chamber apply the same principle that it applied in one of their precedents (Auxerre Football Club, France v Player Philippe Mexes, France and AS Roma, Italy), the damage suffered by the club being analogous to the one for which the French club was appropriately restored.

28. Mr A was in fact one of the best players for the club, and a leading player for the national team. B would have received at least 3 million for the player's transfer, had he not unilaterally terminated the contract. The second division club X made an offer of 1.5 million on 21 June 2006, which was rejected since it was deemed

considerably below the player's real value. A number of top division clubs would have been ready to pay significantly more for the player's transfer and some of them, Blackburn Rovers among the others, expressed their genuine interest in the player.

29. This would be corroborated by the fact that in the top division the amount paid for the transfer of a player of a similar pedigree to A would have been between 3 million and 5 million. The claimant further resorts to an expertise according to which, in comparison with a number of players sharing the same age and ability with A, the latter's market value at the last transfer window would be of 5 million.

30. The club invested a lot of money and resources in the player's training and education. Between salary, appearance bonuses, other bonuses and sign-on fee, B as from 1 July 2003 invested on A the amount total of 709,137, also taking into account the amount that the player would have earned for the last season of contract.

31. By means of a further submission received by FIFA after the investigation was officially closed, B amended the above-mentioned figure, through the witness statement of the club's secretary, whereby the total amount paid to the player in the five years spent with the club as from 31 March 2001 is of 1,004,346.

32. On account of the fact that the compensation should also take into consideration the remuneration and other benefits due to the player under the new contract, the claimant reckons that the difference between the last season of contract with them and the first season of contract with C amounts to 717,335.

33. The costs of a replacement player to be paid by the claimant should also be taken into account by the Chamber, in accordance with its previous jurisprudence. Yet again, the price for a player of A's calibre would be between 3 million and 5 million.

34. Mr A's unilateral termination of contract deprived the claimant of a very valuable player and, as a consequence, the club suffered a competitive and commercial loss, the player being very popular among the supporters. The shirt sales and other commercial revenues, which could have been generated are quantified by the claimant in 70,000.

35. B further maintain that they should be entitled to receive a reimbursement of 50,000 incurred in as legal expenses.

36. The claimant, B, request the Dispute Resolution Chamber to condemn Mr A and C to pay the total amount of 5,037,311 corresponding to 4 million as loss of opportunity to receive a transfer compensation (*lucrum cessans*) for the transfer of the player, 199,976 as the remaining value of the player's employment contract with the claimant, 717,335 as the difference between the last season of contract with the claimant and the first season of contract with C, 50,000 as legal expenses, 70,000 as commercial loss following the player's unilateral termination.

37. Finally, B request that Mr A be declared ineligible to take part in any official matches for a period of two months, in compliance with Article 17.3 of the Regulations, for having breached the contract without just cause and failed to give notice in due time. The fact that the player attempted to breach the contract twice should be taken into account by the Chamber as an aggravating circumstance.

38. B also request that C be banned from registering any new player for one registration period, in compliance with Article 17.4 of the Regulations, for having induced the contractual breach and failed to contact the claimant with regard to the player's contractual position before signing him.

Mr A's position:

39. Mr A firstly states that he was an ever present in the B's first team in seasons 2003/04, 2004/05 and until 7 February 2006 of the 2005/06 season. He was widely acknowledged as one of B's best and most consistent players. Despite having approximately one and a half years left to run on the contract, he was being pressured by B into entering into a new playing contract to extend his term at the club, on terms that were not acceptable to him. Following his refusal to enter into a new playing contract on such terms, on 7 February 2006, he was dropped from the side for which he had featured in every minute of every match from the start of the 2005/06 season. This began a course of non-selection by B of Mr A.

40. Mr A considers that he was dropped from the B's team due to his refusal to sign a new contract and that the decision taken to consistently drop him was based on non-sporting reasons, and taken by the majority shareholder, Vladimir Romanov, rather than by the manager of B.

41. Mr A sought legal advice from the Professional Footballers Association ("SPFA"), which advised him that the course of unfair treatment, culminating in the very public and unwarranted criticism of him and his family constituted a complete breakdown of mutual trust and confidence and thus gave him a legal right to terminate the contract for just cause.

42. It was also considered that Mr A could terminate the contract under the Regulations on the grounds of sporting just cause due to his sudden non-selection from the team after having been an ever present for purely non-sporting reasons. This non-selection also resulted in him losing his place in the national team. The SPFA considered that such a situation should fall within the definition of sporting just cause under Article 15 of the Regulations, particularly as Mr A had been told that he would not play again for the remainder of the contract (i.e. that this non-selection would continue throughout the 2006/07 season).

43. Mr A therefore served notice on B to terminate his contract for just cause with a 14-day notice from 4 May 2006 under clause 18 of the employment contract. The SPFA advised Mr A that this process may take some time as the procedure and possible

appeals process that may follow, could be lengthy. This could damage his prospects of securing a contract with another club before the end of the next registration period in August. The SPFA therefore also advised Mr A of his rights to terminate the contract under Article 17.3 of the Regulations which would present a more expedient route.

44. Mr A resolved to proceed with a termination under Article 17.3 of the Regulations and served a notice on B to this effect on 26 May 2006. This decision was based on procedural reasons to ensure a swift resolution to his contractual relationship with the club and was not an acceptance that he did not have grounds to terminate for just cause.
45. Mr A therefore reiterates his right to terminate the contract for just cause and sporting just cause as well as under Article 17.3 of the Regulations and requests that the Dispute Resolution Chamber make a pronouncement on these grounds before considering the termination under Article 17.3 and the issues of compensation and sanctions.

46. Mr A contends that he should not be liable for any sanctions or compensation in this case as he had just cause and sporting just cause to terminate the contract. If this is not accepted, then Mr A makes the following points with regard to any sanctions and compensation that the Dispute Resolution Chamber decides to award.

47. Mr A, unlike B, has acted properly throughout this process and in principle, it is the club that should be liable to pay damages to Mr A. Mr A was badly treated due to the simple fact that he would not extend his contract with B. He was dropped from the team for non playing reasons and then suffered the ultimate punishment when he was left out of the team for the Cup Final.

48. However, to reduce the damages that B would have otherwise been liable to pay, Mr A did his utmost to find a new club in due time. As he was successful in obtaining a new job at C, there is no direct financial damage for the player and there was no need for him to claim damages from B.

49. The misconduct of B leading to this conflict could instead justify a referral to the FIFA Disciplinary Committee.

50. The contract was terminated in accordance with Article 17.3 of the Regulations outside of the Protected Period by the unilateral action of the player. Mr A signed the contract at the age of 21 and served 3 full seasons under it and was thus entitled to utilise "the Article 17.3 procedure". The fact that Mr A has been allowed to play for his new club underlines this, and no sporting sanctions can be applied to Mr A in this case.

51. Mr A wants to emphasise that it was his own decision to terminate the contract. There was no club involved that induced this termination, nor did his agent. Mr A refers the Dispute Resolution Chamber to the witness statement of the agent which confirms that Mr A's new club, C, only became involved in this case on 10 July 2006 following receipt of a fax from Mr A's agent. C therefore had no involvement in the

contract termination. As such, there is no justifiable reason to hold his new club, C, responsible for the consequences of his termination.

52. Mr A also wishes to state that he terminated the contract within 15 days of the last game of the season that his club played, i.e. the Cup Final on 13 May 2006 which is the premier cup competition in and is organised and controlled by the Football Association. The winner of this trophy gains automatic entry into the UEFA Cup for the following season.

53. Mr A notes that the Cup Final is an "Official Match" under the Regulations and he therefore understood that the 15 day notice period would run from this game. In this respect, it is noted that under Article 15 of the Regulations when terminating for sporting just cause, the notice is to be sent within 15 days of the last "Official Match".

54. It is therefore contended that Mr A's actions of sending the letter under Article 17.3 of the Regulations, which was aimed at avoiding disruption to B before the Cup Final, are justifiable and in line with the principle behind the notice period of Article 17.3 of the Regulations.

55. Even if the Dispute Resolution Chamber does not accept that the end of the season was the Cup Final on 13 May 2006, then Mr A would state that his notice to terminate on 26 May 2006 was only 4 days outside the 15-day period after the last league fixture (7 May 2006) and therefore caused no prejudice to B.

56. In the circumstances, and for the reasons set out, Mr A respectfully requests that he should not face any disciplinary measures under Article 17.3 of the Regulations. It is also clear that there can be no 'sporting sanctions' in this case as the termination came outside the Protected Period.

57. In this regard, Mr A would request the Dispute Resolution Chamber to note that he has already been out of football for some time due to his non-selection at B and subsequent lack of match fitness whereby he did not play during the period from April to October 2006 at either club or international level.

58. In the event that Mr A is held liable for damages to B he would like to point out that these damages must be limited to the residual value of the contract.

59. As the termination of contract occurred outside of the Protected Period there is no factor available to increase the amount of this residual value although B uses a lot of paperwork to state otherwise. In the view of the player it is not possible that the breach of a contract between two parties with a certain value (the salary of the player) would lead to a compensation that exceeds this amount many times. In previous Dispute Resolution Chamber cases the residual value of the contract has been the guideline for the settlement of the compensation. In this case there is no justified reason to deviate from that guideline.

60. The residual value of the contract is in fact the only applicable factor for calculating the compensation as it is obvious that the said value represents the value of the contract between the two parties. The fact that the termination of the contract took place outside of the stability period is a mitigating factor.

61. In the Regulations and Dispute Resolution Chamber's jurisprudence there is no foundation for the position of B that the compensation shall be calculated on the basis of an alleged "market value" of a player. In any case B failed to substantiate this.

62. Of course it is possible that parties come to a mutual agreement that exceeds the residual value of the contract, but this is not the position here.

63. Moreover, from the submission of B can be learnt that an offer of 1.5 million (10 times the residual value of the contract) was turned down. It should be noted that this bid came after A had terminated the contract. So even if B were minded to accept the bid it was not in a position to do so as A had already terminated the contract.

64. Furthermore, B seem to forget that at the end of the contract on 1 July 2007 – if it were not terminated – A could have left the club without any compensation at all.

65. To this effect, Mr A has also noted the detailed response of C to B's claim for compensation and confirms that he fully concurs with these submissions and requests that the Dispute Resolution Chamber also take them into account when assessing any compensation that may be payable by him in this case.

66. Finally, and as far as B's latest submission is concerned, whereby they propose a calculation of the amount paid to the player during the course of his contracts, Mr A maintains that the club has had two previous opportunities to submit any evidence regarding this case. Therefore, according to the procedures set out by FIFA to govern the manner in which these proceedings are conducted, any evidence produced by the club within its latest submission is out of time and cannot be relied upon. In any case the evidence produced does not offer any new insight into the case and is not relevant to the facts of the case.

67. However, if the Dispute Resolution Chamber does choose to allow this new evidence, Mr A would like to state that the club has chosen to outline salary figures it maintains were paid to him for a period of five seasons from 2001 until 2006. These figures cannot contribute to the calculation of any compensation that may be payable to B, as it can only be the residual value of the contract that can be taken into consideration by the Chamber.

68. Furthermore, within the club's own schedule of payments the amounts for the seasons 2001/02 and 2002/03 relate to a previous contract concluded between the parties and are therefore completely irrelevant, whereas for the seasons 2003/04, 2004/05 and 2005/06 the club has of course had a return for these payments by way

of having Mr A play for them during this period. Again these figures are irrelevant to the case.

69. It is interesting however to note that B, in submitting this as evidence, are clearly acknowledging that the player's contract is indeed the only relevant factor with regard to the calculation of any compensation. This is a change from the club's previous submissions where its position was based around purely subjective views of the player's transfer market value.

70. A would like to stress once more that it can only be the residual value of the final year of his contract that can be taken as relevant, and the club appears indeed to agree with this view by means of its latest submission. The new evidence does not in any case contribute to the facts of the matter.

71. For the reasons set out above, Mr A hereby requests the dismissal of the claims of B against him. Mr A submits he had just cause and sporting just cause to terminate the contract. Furthermore, the player acted entirely properly in terminating the contract under Article 17.3 of the Regulations and no sporting sanctions or disciplinary measures can be imposed against him. Finally, any compensation deemed payable to B, must be limited to the residual value of the contract.

C's position:

72. C's recollection of the facts reflect that of the player.

73. C maintain in their position that the employment contract between the player, Mr A, and B was unilaterally terminated by the earlier outside the Protected Period. The employment contract at stake was in fact concluded on 1 July 2003 and is due to expire on 30 June 2007. Therefore, the Protected Period has come to an end with the end of the third season, i.e. on 7 May 2006.

74. To this effect, C are eager to point out that the player gave the club even two notices of termination, one on 4 May 2006 on the grounds of just cause, and the second on 26 May 2006, in compliance with the provision contained in Article 17 of the Regulations, i.e. outside of the Protected Period and within 15 days following the last match of the Season. This second notice was not, however, a withdrawal of the underlying allegations that support the player's right to terminate the contract for just cause.

75. According to the club, the first contact between Mr A and C occurred on 10 July 2006, i.e. six weeks after the termination of contract performed by the player. As a matter of law, there is no causative link between C and the termination of the contract, as a consequence of which, the club cannot be deemed liable for any damage arising from such a breach.

76. As regards B's request to be awarded an amount, which would return the club in the position it would have been in had A not committed breach of contract without

just cause, it is not so obvious that the club is the damaged party in this case, especially taking into account that their behaviour led the player to terminate the contract.

77. Furthermore, the club appears to request a "*transfer fee*", which not only is not provided for in the Regulations, but what is more is not included in the criteria listed in Article 17 of the Regulations to assess the amount of compensation due for breach of contract.

78. The club also points out that the offer made by X occurred after the player had terminated the contract and, therefore, cannot be taken into consideration as loss of opportunity, apart from the fact that the evaluation X give of the player is subjective and cannot be regarded as a proof of the player's actual value. In fact, all the club's allegation with respect to the player's value are entirely arbitrary and hypothetical.

79. As regards B's calculation of the compensation due, when it comes to the remaining value of the contract, only the salary and sign-on fee and no other bonuses should be taken into account. Therefore, the residual value of Mr A's contract with B should not exceed 149,976.

80. Also the projection for the player's future salary made by the claimant is totally ungrounded, since no sign-on fee is provided for under the new contract and, taking into account that the player earns 10,000 per week, a likely figure as yearly salary is 450,000 plus approximately 33,000 as appearance bonus.

81. For the record, the player only featured in a small number of matches for C and is now on loan to the club Y.

82. As far as B's request for A to be imposed disciplinary sanctions is concerned, C's position reflects that of the player.

83. Finally, and as far as B's latest submission concerning the player's salaries is concerned, C's position again reflects that of the player, especially under the procedural point of view, i.e. the latest evidence was produced out of time and should not be taken into consideration.

84. However, if the Dispute Resolution Chamber does choose to allow this new evidence, it has to be noted that the amounts for the seasons 2001/02 and 2002/03 are completely irrelevant, since they relate to a previous different contract, which was superseded by the one signed on 1 July 2003.

85. In any case, Article 17.1 of the Regulations refers to "benefits due to the player under the existing contract", i.e. the sums that have not yet been paid to him. Therefore, what has been paid by the club is totally irrelevant. Plus, that club has largely benefited from the services of the player, who played 239 games with them.

86. It is also worth emphasising that the figures of the latest submission are greater than those presented by means of the claimant's submission.

87. To conclude with, C request the Dispute Resolution Chamber that all requests filed by B be rejected.

88. The Dispute Resolution Chamber is asked to rule upon the breach of contract, as well as on the possible consequences.

Players' Agent:

89. The Dispute Resolution Chamber is also asked to pronounce itself on the relevance of the role played by Mr A's agent in the affair at stake.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution 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 in November 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 apply 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 (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 on employment-related disputes between a club and a player 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 its issuance, regarding sporting sanctions or regarding compensation for breach of contract.

3. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation regarding a dispute in relation to the maintenance of contractual stability arisen following the issuance of an ITC regarding compensation for breach of contract.

4. Subsequently, the members of the Chamber analysed which edition of the Regulations 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 (edition 2005) and, on the other hand, to the fact that the relevant contract at the

basis of this dispute was signed on 1 July 2003 and that this claim was lodged at FIFA by B in November 2006. In view of the aforementioned circumstances, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players apply to the case at hand as to the substance.

5. Before entering the substance of the matter, the Chairman of the Dispute Resolution Chamber addressed the issue raised by B, that challenged one of the members, Mr Theo van Seggelen, and asked the Chamber to reconsider the constitution of the panel.

6. In this context, B drew FIFA's attention to the article that appeared on the website of FIFPro, the General Secretary of which is Mr Theo van Seggelen himself, under the title: "*A case, step forwards in the freedom of players*". This report contained some statements suggestive of the decision that the Dispute Resolution Chamber would have reached in the case at hand.

7. The club therefore questioned the presence of a FIFPro member (what is more, its General Secretary) in the case at stake and, in particular, challenged Mr Theo van Seggelen and sought its replacement on the grounds of lack of impartiality.

8. In this respect, Mr Theo van Seggelen pointed out that the above-said article represents an independent opinion expressed by an individual operating outside FIFPro and that, either in this one or in any other case in which he has been involved in his quality of member of the Dispute Resolution Chamber, he has never made any comment either before or after a decision, always abiding by the duty of confidentiality.

9. The Chairman was then eager to emphasise that the Chamber is an impartial deciding authority composed by an equal number of members chosen amongst representatives of clubs and representatives of players, of which FIFPro is the leading organisation at international level. It was also underlined that the aforementioned composition has always allowed a fair resolution of the football-related disputes.

10. None of the members, the Chairman assured, has ever represented the interests of either the players or the clubs, but always taken care of the exclusive interest of the Dispute Resolution Chamber itself.

11. Consequently, and in view of the concerned person's above explanations, the Chairman along with all the remaining members concluded that the request for the dismissal of Mr Theo van Seggelen shall be rejected.

12. In continuation, and entering into the substance of the matter, the Chamber acknowledged the documentation contained in the file and focussed its attention on the fact that the player A and the club B signed an employment contract on 31 March 2001 due to expire on 30 June 2005 which, on 1 July 2003, was renewed until 30 June 2007.

13. The Chamber also noted that, on 9 August 2006, A signed a three-year employment contract with the club, C and that, whereas the subsequent matter of the player's provisional registration had been decided upon by the FIFA competent authority, the dispute at stake lay on the substance of the contractual dispute between the player and the club and, in particular, on the conditions of the contractual termination.

14. To this effect, the Chamber took note of the fact that, on 26 May 2006, Mr A served notice of termination on B and, in this regard, the members had to ascertain whether or not the said notice of termination, and the subsequent unilateral termination of the contract, occurred in compliance with the provisions established under Article 17.3 of the Regulations, i.e. outside of the Protected Period and within 15 days following the last match of the Season.

15. It was observed that, on account of the fact that the employment contract between the player and the club was concluded on 1 July 2003 and due to expire on 30 June 2007, the unilateral termination undeniably occurred after three seasons, i.e. outside of the Protected Period, as indicated under point 7) of the Definitions section of the Regulations.

16. This being established, the Chamber stated that it had to assess the unavoidable consequences of this unilateral termination, in accordance with the provisions provided for by Articles 13 ff. of the Regulations.

17. The deciding authority incidentally noticed that Mr A had firstly served notice on B to terminate his contract for just cause with a 14-day notice from 4 May 2006 under clause 18 of the employment contract whereby, in the event of an intentional failure of the club to fulfil the terms of the contract, the player would be entitled to give a 14-day written notice to the club to terminate the agreement.

18. However, it was also noted that Mr A had been advised that this process may have taken some time as the procedure and possible appeals process that may have followed, could have been lengthy and that this could have damaged his prospects of securing a contract with another club before the end of the next registration period in August. Mr A then resolved to proceed with a termination under Article 17.3 of the Regulations and served a further notice on B to this effect on 26 May 2006. This decision was based on procedural reasons to ensure a swift resolution to his contractual relationship with the club and, according to the player, was not an acceptance that he did not have grounds to terminate for just cause.

19. In this context, and whilst not discounting the difficulties that the player and the club may have been faced with in the final part of their contractual relationship, the Chamber was left with no other choice than to regard the termination that the player actually performed on 26 May 2006, on the basis of Article 17.3 of the Regulations as the only valid one, for the purpose of this procedure.

20. In continuation, and for the sake of good order, the Chamber deemed it essential to state that also the termination of the contract for sporting just cause, which the

player appears to invoke, at least on a subsidiary basis, could not be further considered. In fact, a player intending to make use of this possibility, would have to proceed by serving notice on the club that he is registered with and call upon the relevant sporting just cause in the fifteen days following the last Official Match of the Season (cf. Article 15 of the Regulations). Undisputedly, the player had never served such a notice. Yet, on 7 July 2006 the player withdrew his first termination notice.

21. However, as far as the timeliness of the notice of termination of 26 May 2006 is concerned, it has to be noted that, according to point 9) of the Definitions section of the Regulations, the Season ends with the last Official Match of the relevant national league championship. As the last match of the national league championship, i.e. the Premier League, for the Season 2005/2006 occurred on 7 May 2006, the notice of termination dated 26 May 2006 does not appear to have been issued within 15 days following the last match of the Season for the purpose of Article 17.3 of the Regulations.

22. In this respect, the members of the Chamber understood that Mr A terminated the contract within 15 days of the last game of the season that his club actually played, i.e. the Cup Final on 13 May 2006, and that such a match is to be regarded as an "Official Match" under the FIFA Statutes and Regulations (cf., in particular, point 5) of the Definitions section of the Regulations) and he therefore understood that the 15-day notice period would run from this game.

23. However, point 9) of the Definitions section of the Regulations is unambiguous in stating that the Season ends with the last Official Match of the relevant **national league championship** and, therefore, any notice of termination served after fifteen days of the last Official Match of the Season may result in the application of disciplinary measures, in accordance with Article 17.3 of the Regulations.

24. The deciding authority emphasised the relevance of the strict implementation of this rule, and of the consequent adoption of disciplinary measures, so as to enhance the legal certainty in the contractual relationships between players and clubs.

25. Nonetheless, the Chamber took also into consideration that, in any case, the notice was notified nineteen days after the last Official Match of the Season, i.e. four days only beyond the fifteen days required by Article 17.3 of the Regulations.

26. In light of the above, the Dispute Resolution Chamber decided that Mr A failed to give B due notice of termination on time as provided for under Article 17.3 of the Regulations, and, as a consequence, the player will not be eligible to participate in any official football match for a period of two weeks as from the beginning of the next national league championship of the club for which he will be registered.

27. After the consequences of the failure to give B due notice of termination on time were thus established, the Chamber went on to consider the consequences of terminating the employment contract without just cause.

28. In this respect, the deciding body first and foremost laid emphasis on the primacy of the principle of the maintenance of contractual stability, which represents the backbone of the agreement between FIFA/UEFA and the European Commission signed in March 2001. This agreement and its pillars represent the core of the former (edition 2001) as well as of the current version of the Regulations.

29. In particular, the Chamber was eager to point out that the measures provided for by the above Regulations concerning compensation for breach of contract without just cause serve as a deterrent and that a lack of a firm response by the competent deciding authorities would represent an inappropriate example towards all the football actors, especially in view of the particular attention that this case arouses in the world of football.

30. Above all, it was underscored that the criteria contained in Article 17 of the Regulations are applied on 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.

31. 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 means and has always found a widespread acceptance since it guarantees that the fundamental principle of the respect of the contracts is duly taken care of.

32. As it was observed, Article 17 of the Regulations, far from stipulating the right of a contractual party to terminate the employment contract, affirms that in all cases the party in breach of contract shall pay compensation.

33. This notwithstanding, the members of the Chamber were also unanimously keen to emphasise that the breach of contract without just cause committed by Mr A outside of the Protected Period cannot result in the imposition of sporting sanctions, in compliance with the applicable Regulations (cf. Article 17 of the Regulations).

34. Consistently with the above, and in conformity with the relevant Regulations, the player's new club, the C, shall not suffer sporting sanctions for inducing the contractual breach and its responsibility shall be limited to being jointly and severally liable for the payment of any amount of compensation for breach of contract that Mr A will be ordered to pay (cf. Article 17.3 and 17.2 of the Regulations). In this respect, the Chamber was eager to point out that the joint liability of the player's new club is independent from the question of a possible inducement to contractual breach.

35. Moreover, and with respect to a possible responsibility of the club for having entered into negotiations with A during the course of his contract and for having failed to inform B in writing in accordance with Article 18.3 of the Regulations, the Dispute Resolution Chamber underlined that there is no evidence in support of the

fact that the club contacted the player any time before the unilateral termination of the contract with the club.

36. On the contrary, the time elapsed between the notice of termination, dated 26 May 2006, and the conclusion of the contract between C and A on 9 August 2006 led the Chamber to conclude that there is no causative link between C and the termination of the contract by the player and, therefore, to rule out any wrongdoing by the club.

37. In continuation, according to the members of the Chamber a careful reading of the applicable provision, i.e. Article 17.1 of the Regulations, provides the key to assess the amount of compensation due by the player to the club.

38. The Chamber stated that the criteria listed therein are, however, not exhaustive and that each request for compensation for breach of contract has to be assessed on a case-by-case basis, leaving to the deciding body the faculty to decide *ex aequo et bono*, where appropriate.

39. The members thus stated that it falls under their responsibility to estimate the prejudice suffered by B in the case at hand, not only in accordance with the above-stated criteria, but also with their specific knowledge of the world of football, as well as with the experience the Chamber itself has gained throughout the years.

40. In the calculation of the amount of compensation due by A, at first the Chamber turned its attention on the remuneration and other benefits due to the player under the existing contract and under the new contract.

41. According to the documentation provided by B to FIFA, it appears that the remaining value of the player's employment contract with the club can be calculated in the amount of 199,976.

42. As regards the financial conditions of the employment contract concluded between A and C, the Chamber acknowledged the fact that the player would receive a basic weekly wage of 10,000 for the season 2006/2007, plus a number of appearance bonuses.

43. In addition to that, transfer compensation of 75,000 had also been paid by B to the club Arbroath for A's transfer. According to Article 17.1 of the Regulations, this amount shall be amortised over the term of the relevant employment contract.

44. The deciding body concluded its analysis of the objective criteria listed in Article 17.1 of the Regulations, by recalling that the contractual breach occurred outside the Protected Period and pointing out that, at the time when the contract was breached, A was still bound to B by one further year of contract only.

45. As a matter of fact, the five seasons A spent with B shall also play a chief role in determining the amount of compensation due for contractual breach.

46. Likewise, the deciding authority observed that another crucial factor to be taken into account is the way B have greatly contributed to the steady improvement of a player, A, who joined the club at the age of nineteen and, throughout the course of his spell with the side, has become a high-profile footballer, deserving a constant presence in the national team and arousing the interest of top-flight clubs both in the and in the Premiership, as the events revealed. According to the Chamber, such a stance demonstrates the real interest the club had always had in the services of the player.

47. Once again, emphasis was placed on the fact that Article 17.1, while listing certain factors to be included in the Chamber's consideration in the calculation of the amount of compensation payable, does not purport to limit the factors that may be considered by the Chamber in any individual case. These factors may include, in addition to local law and the specificity of sport, "any other objective criteria", including those specifically listed in Article 17.1.

48. The aforementioned considerations led the deciding authority to the conclusion that limiting the compensation for breach of contract to the residual value of the contract not only is not in line with the jurisprudence of the Dispute Resolution Chamber, but would also undermine the principle of maintenance of contractual stability, reducing to a mere formula the legitimate right of the damaged party to receive compensation.

49. In this respect, it was declared that, as a general rule, a player cannot, at any time and under any circumstances, "buy out" an employment contract by simply paying to his club the remaining value of his contract.

50. In light of all the above-exposed circumstances, and after a careful analysis of the documentation at its disposal, the specificities of the case at hand, as well as of all the parties' respective positions, the Chamber decided that A must pay the amount of 625,000 to B as compensation for breach of contract.

51. To conclude with, the members of the Dispute Resolution Chamber were of the unanimous opinion that, under the light of the facts of this dispute, the role played by the players' agent in the breach of contract requires further investigation by the competent authorities.

52. Therefore, in compliance with Article 21.1 in connection with Article 14 c) of the Players' Agents Regulations and 17.5 of the Regulations, the matter will be forwarded to the Players' Status Committee for investigation and decision.

III. Decision of the Dispute Resolution Chamber

1. The claim of the club, B, is partially accepted.

2. The player, A, has unilaterally breached the employment contract with B without just cause outside the Protected Period.

3. Mr A has to pay the amount of 625,000 to B within 30 days of notification of this decision.

4. If this amount is not paid within the aforementioned deadline, a 5% interest rate *per annum* as from the expiry of the aforementioned deadline will apply, and the present matter will be submitted to the FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.

5. The club C is jointly and severally liable for the aforementioned payment.

6. Any other request filed by B is rejected.

7. B is directed to inform Mr A and C immediately of the account number to which the remittance is to be made, and to notify the Dispute Resolution Chamber of any payment received.

8. Mr A failed to give B due notice of termination.

9. Mr A is not eligible to participate in any official football match for a period of two weeks as from the beginning of the next national league championship for which he will be registered.

10. The matter concerning the role played by the players' agent in the breach of contract, will be forwarded to the Players' Status Committee for investigation and decision.

11. 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).

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For the Dispute Resolution Chamber:

Urs Linsi
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Encl. CAS directives