

# **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 22 July 2010,

in the following composition:

**Slim Aloulou** (Tunisia), Chairman

**Theo van Seggelen** (Netherlands), member

**Jon Newman** (USA), member

**Ivan Gazidis** (England), member

**Guillermo Saltos Guale** (Ecuador), member

on a matter between the club,

**A,**

*as Claimant*

and the club,

**S,**

*as Respondent*

regarding the solidarity contribution related to  
the transfer of the player Z

## **I. Facts of the case**

1. The Football Association X (FAX) confirmed that the player, Z (hereinafter: *the player*), born on 18 March 1987, was registered with its affiliated club, Club A (hereinafter: *the Claimant*), as an amateur player from 7 January 1998 until 24 June 2004, and then as a professional from 25 June 2004 until 14 August 2007.
2. The sporting season in the country X runs as follows: a) for amateurs (under 20 years of age) from January until December of the relevant year, and b) for amateurs (more than 20 years of age) as well as for professionals from 1 July until 30 June of the following year.
3. According to a written statement from the Football Federation I (FFI), the player was registered with its affiliated club, S (hereinafter: *the Respondent*), on 7 August 2008.
4. On 22 October 2008, the Claimant contacted FIFA claiming its proportion of the solidarity contribution in connection with the transfer of the player from the club, L (hereinafter: *the involved club*), to the Respondent for the alleged amount of USD 3,800,000.
5. In particular, the Claimant requested 3.25% of the total transfer compensation paid by the Respondent to the involved club as solidarity contribution.
6. On 2 September 2009, the Claimant amended its claim. It mentioned in particular that the player had first been loaned to the Respondent at the beginning of the year 2008, and subsequently transferred definitively in the middle of 2008. However, the Claimant stated that it neither knew the loan fee, nor the transfer amount for the definitive transfer.
7. On 7 October 2009, the Respondent informed FIFA that it did not conclude any transfer contract with the involved club and that it did therefore not pay any transfer compensation. According to the Respondent, on 27 April 2009, the player exercised a termination clause stipulated in the employment contract signed with the involved club, and afterwards, on 4 June 2009, he signed a contract with the Respondent.
8. On 11 November 2009, the Claimant argued that the player was first loaned to the Respondent. However, the Claimant underlined that the Respondent remained silent on that issue without contesting the Claimant's arguments. The Claimant alleged that the official website of the Respondent and the media confirmed that the Respondent made use of the option for the definitive transfer of the player. Furthermore, the Claimant was of the opinion that the Respondent did not prove the facts it had alleged, inter alia, that it did not provide FIFA with the pertinent contracts, i.e. the loan agreement as well as the employment contract signed between the player and the involved club. Moreover, the Claimant pointed out that the sum paid for this transfer is of about EUR 20,000,000. Furthermore, the Claimant mentioned that it has to be clarified who paid this sum to the involved club. For these reasons, the Claimant affirmed that the Respondent only wished to avoid paying solidarity contribution and contravene the Regulations on the Status and Transfer of Players.

9. On 19 February 2010, the Claimant provided FIFA with the *“Football Player International Transfer Contract”* signed between the Claimant and the involved club on 23 June 2007. Furthermore, it provided FIFA with the *“Football Player’s Contract”* (hereinafter: *the employment contract*) signed between the player and the involved club on 23 June 2007 for the duration of four years. According to this employment contract, the player should receive a total amount of EUR 12,000,000 as remuneration, in particular monthly salaries of EUR 100,000 as well as several bonuses. *“In case of breach of contract, the player has to pay to [the involved club] the amount of EUR 20,000,000”* (cf. art. 10 point 3 of the employment contract).
10. On 11 March 2010, the Respondent repeated that it neither concluded any transfer contract with the involved club, nor paid any transfer amount. Furthermore, the Respondent provided FIFA with the termination letter from the player dated 27 April 2009, by means of which the player declared that he wishes to terminate his contract with the involved club dated 23 June 2007 immediately and therefore agreed to pay the compensation stipulated in art. 10 point 3 of the pertinent employment contract.
11. On 14 April 2010, the Claimant provided FIFA with the balance sheet of the Respondent, dated 30 June 2009. According to this balance sheet, the Respondent paid the amount of EUR 2,400,000 for the loan of the player and of EUR 20,200,000 for his definitive transfer.
12. In this respect, the Claimant requested 3.56% of the amounts paid, i.e. the requested amount of EUR 85,440, plus an interest rate of 5% per year as from 30 July 2008, based on the loan, as well as the amount of EUR 719,120, plus an interest rate of 5% per year as from 27 May 2009, based on the definitive transfer.
13. On 27 May 2010, the Respondent provided FIFA with its last position. The Respondent repeated its position of 11 March 2010 and added the following: *“It is irrelevant that [the Respondent] then carried out the payment of the termination clause due by the player, because this comes from a direct agreement between [the Respondent] and the player and it is not a “transfer agreement” between [the Respondent] and [involved club]. Actually, the L club is alleging that [the Respondent] induced the player to breach his contract and a dispute has been filed with FIFA on this subject.”*
14. Furthermore, the Respondent stated that the amount of EUR 20,200,000 mentioned in the balance sheet of the Respondent does not represent the transfer compensation, but the costs the Respondent had to pay for registering the player. Furthermore, the Respondent agreed that the player was loaned from the involved club to it, and therefore it paid EUR 2,400,000 to the involved club. Based on this amount, the Claimant should receive EUR 73,442.77 and not EUR 85,440 as requested by the Claimant. As a consequence, the Respondent had already paid EUR 73,442.77 to the Claimant in two instalments: EUR 36,721.39 on 24 March 2009 and EUR 36,721.39 on 22 March 2010.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (DRC) analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 21 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 22 October 2008, as a consequence, the Chamber concluded that the revised Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: "*the Procedural Rules*") 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 Regulations on the Status and Transfer of Players. In accordance with art. 1 par. 1 of these Regulations, which describes its scope, in connection with articles 24 par. 1 and 22 d) of the said Regulations, the Dispute Resolution Chamber shall adjudicate on disputes between two clubs in connection with an international transfer of a professional player related to solidarity mechanism.
3. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation concerning the distribution of the solidarity contribution in connection with the international transfer of the football player, Z (hereinafter: *the player*).
4. Furthermore, and taking into consideration that the player was registered for his new club, S (hereinafter: *the Respondent*), based on a loan on 7 August 2008, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and also considering that the present claim was lodged in front of FIFA on 22 October 2008, the 2008 edition of the said Regulations (hereinafter: *the Regulations*) is applicable as to the substance of the matter.
5. In continuation, and entering into the substance of the matter, the members of the Chamber started by acknowledging that the club, Club A (hereinafter: *the Claimant*), is requesting the payment of EUR 85,440 as solidarity contribution, based on the loan of the professional player from the involved club to the Respondent.
6. Moreover, the Chamber duly noted that according to the Football Federation I (FFI), the player was loaned on 7 August 2008 from the involved club.
7. In continuation, the members of the Chamber emphasised that, as established in art. 10 par. 1 and art. 21 of the Regulations in connection with Annexe 5 of the Regulations, if a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and to be distributed by the new club as solidarity contribution to the club(s) involved in the training and education of the player in proportion to the number of years the player has been registered with the relevant clubs between the sporting seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthday.

8. In this respect, the Chamber took due note that the Football Association X (FAX) confirmed that the player, born on 18 March 1987, was registered with the Claimant as an amateur from 7 January 1998 until 24 June 2004, and then as a professional from 25 June 2004 until 14 August 2007.
9. In this respect, the Chamber took into account that, as alleged by the Claimant and confirmed by the Respondent, the player was transferred for the amount of EUR 2,400,000.
10. Moreover, the Chamber considered that the Claimant requested the payment of the amount of EUR 85,440 as solidarity contribution, corresponding to 3.56% of the total transfer compensation paid by the Respondent to the involved club, i.e. EUR 2,400,000, plus 5% interest per year as from 30 July 2008.
11. In this respect, the members of the Chamber noted that during the procedures of the present matter the Respondent had paid EUR 73,442.77 to the Claimant, in order to settle the matter at stake in connection with the solidarity contribution for the player.
12. In continuation, in particular with reference to points II./7., 8., 9. and 11. (cf. *supra*), the Chamber decided that the Claimant is entitled to receive EUR 11,553 as solidarity contribution from the transfer compensation paid for the loan of the said player, as well as 5% interest per year on said amount as from 7 September 2008 until the effective date of payment. Moreover, it also decided that any further claims lodged by the Claimant regarding the loan of the player are rejected.
13. Furthermore, and with regard to the permanent transfer of the player to the Respondent, the Chamber took into consideration that the information of the Football Federation I regarding the date of the permanent registration of the player was unclear.
14. Therefore, taking into account that the sporting season in country I runs from 1 July until 30 June of the following year, and that the player signed an employment contract with the Respondent on 4 June 2009, which is undisputed by the Claimant, the Chamber concluded that the player was permanently registered at the start of the season 2009/2010, i.e. on 1 July 2009.
15. In this respect, the DRC confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations, and also considering that the present claim was lodged in front of FIFA on 22 October 2008, the 2008 edition of the said Regulations is also applicable as to the substance of the matter regarding the definitive transfer of the player.
16. Additionally, and entering into the substance of the matter, the members of the Chamber started by acknowledging that the Claimant is requesting the payment of EUR 719,120 as solidarity contribution based on the definitive transfer of the professional player from the involved club to the Respondent.

17. In continuation, the members of the Chamber emphasised that, as established in art. 21 of the Regulations in connection with Annexe 5 of the Regulations, if a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and to be distributed by the new club as solidarity contribution to the club(s) involved in the training and education of the player in proportion to the number of years the player has been registered with the relevant clubs between the sporting seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthday.
18. In this respect, the Chamber took due note that the Football Association X confirmed that the player was registered with the Claimant as an amateur player from 7 January 1998 until 24 June 2004, and then as a professional from 25 June 2004 until 14 August 2007.
19. Furthermore, the Chamber noted that the player and the involved club signed the "Football Player's Contract" (hereinafter: *the employment contract*) on 23 June 2007, valid from the date of signature until 23 June 2011. Article 10 point 3 of the employment contract stated the following: "*In case of breach of contract, the player has to pay to [the involved club] the amount of EUR 20,000,000*". This employment contract provided for a total amount of EUR 12,000,000 as remuneration, in particular monthly salaries of EUR 100,000 as well as several bonuses.
20. The DRC also observed that on 27 April 2009, the player sent a letter to the involved club by means of which the player declared that he wished to terminate his contract with the involved club immediately, and therefore agreed to pay the compensation stipulated in article 10 point 3 of the pertinent employment contract.
21. Moreover, the Chamber took into account that according to the balance sheet of the Respondent, it paid EUR 20,200,000 for the transfer of the player.
22. Thus, in view of the above, the DRC concluded that it had been clearly established, and was not contested by the parties to this dispute, that the employment contract between the player and the involved club had been terminated on the above mentioned date, i.e. on 27 April 2009 (cf. point II./20. *supra*), as a result of the payment of the sum of EUR 20,000,000 to the involved club.
23. The Chamber further noted that the parties did not dispute that the player in question signed an employment contract with the Respondent on 4 June 2009.
24. Furthermore, the Chamber observed that the Claimant considered the payment of the amount of EUR 20,200,000 paid by the Respondent (cf. point II./21. *supra*) to constitute a transfer of the player from the involved club to the Respondent, thus activating art. 21 in connection with Annexe 5 of the Regulations.
25. Moreover, the Chamber noted that according to the Respondent, the amount of EUR 20,200,000 mentioned in its balance sheet does not represent the transfer compensation, but the costs the Respondent had to pay for registering the player.

26. Subsequently, the DRC took into account that the Respondent added the following: *"It is irrelevant that [the Respondent] then carried out the payment of the termination clause due by the player, because this comes from a direct agreement between [the Respondent] and the player and it is not a "transfer agreement" between [the Respondent] and [the involved club]."* In view of the above, the Respondent denied that art. 21 and Annexe 5 of the Regulations are applicable to the matter at hand.
27. Consequently, and in view of the opposing positions of the parties, the Chamber deemed that the question at the centre of the dispute was whether the payment in question of the sum of EUR 20,000,000 or even EUR 20,200,000 in the above circumstances was equivalent to the transfer of the player between two clubs, which would thus be subsumed under art. 21 and Annexe 5 of the Regulations.
28. The Chamber firstly analysed article 10 point 3 of the employment contract between the player and the involved club. In this regard, the deciding authority underlined that this release clause should not be interpreted literally, i.e. by adhering only to the letter of the clause in question, but in accordance with the theory of the parties' recognisable intent, i.e. by ascertaining the meaning that the parties could reasonably have wished to give to the contractual clause in question. The DRC highlighted the fact that according to this interpretation, it appears likely according to the principle of good faith and in view of the considerable sum of EUR 20,000,000 set forth in the clause in question, that the involved club and the player were providing for the possibility of a third club indirectly intervening in the payment of the release clause on a subsidiary basis with a view to contracting the services of the player.
29. On the one hand, the DRC then noted that on 4 June 2009, the player had signed an employment contract with the Respondent, this is, after the termination of the contract with the involved club, i.e. on 27 April 2009, and that said fact had not been disputed by either of the parties. On the other hand, the Chamber also observed that according to the Respondent, it carried out the payment of the release clause due by the player.
30. In this regard, the Chamber compared the content of article 10 point 3 of the employment contract signed between the player and the involved club as well as the facts of this case to a transfer agreement signed by two clubs for the transfer of a player. The DRC underlined that a typical transfer agreement signed by two clubs and a player generally stipulates a sum of money freely agreed between the player's former and new clubs in exchange for the early termination of the contractual relationship between the player and his former club, which is thus tantamount to the early termination of the employment contract in question, by means of the payment of a sum commonly described as the *"transfer compensation"*. Furthermore, the Chamber underlined that the professional services that a player renders to a club is a factor that is liable to be assessed by the employer from a financial standpoint. Consequently, when a club shows an interest in the professional services of a player who has a valid employment contract with another club, the interested club must reach an agreement with the old club with regard to the value of this transfer, with a view of compensating the old club for agreeing to dispense with the professional services of the player in question before the expiry of the employment contract.

31. In view of the above paragraph, the Chamber deemed that the two situations, i.e. the concrete one at hand in the present procedure concerning the payment of EUR 20,000,000 by the Respondent in accordance with article 10 point 3 of the employment contract signed between the player and the involved club, and the payment of a sum by one club to another in connection with a typical transfer agreement, are similar and have the same characteristics, in that they both constitute a transfer agreed between two clubs and a player for a specific amount for the early termination of a former labour relationship, except for the fact that in this dispute, at first the value of the transfer was agreed bilaterally, i.e. without the intervention of the interested club, the Respondent. Yet, the latter gave its agreement to the move of the player, thus to his transfer, at a later stage, namely when it agreed to sign the player and to pay the amount in accordance with the pertinent clause of the previous employment contract.
32. With regard to the similarities in the above two situations, the DRC highlighted that in both cases a sum was paid to the player's former club, in order to enable him to terminate the employment contract before the contractually stipulated expiry date with a view of being transferred to a new club. The Chamber also insisted on the fact that the only difference resided in the fact that in the present case, the "*transfer compensation*" was set bilaterally and the Respondent was not consulted at first, although they nevertheless subsequently freely accepted it, and paid the relevant amount of EUR 20,000,000 to the involved club. The Chamber thus concluded that the facts of the present case constitute a transfer agreed to by the involved club, in the terms it had offered at the time of concluding the employment contract with the player.
33. Moreover, the Chamber noted that according to the Claimant, the player had been transferred for the amount of EUR 20,200,000. Equally, the Chamber took into account that, on the other hand, the Respondent admitted that it carried out the outstanding debt of the player, this is EUR 20,000,000, and that the amount of EUR 20,200,000 does not represent the transfer compensation, but the costs the Respondent had to pay for registering the player.
34. Then, the DRC recalled that according to the legal principle of the burden of proof, any party claiming a right on the basis of an alleged fact shall carry the burden of proof (cf. art. 12 par. 3 of the Procedural Rules).
35. In view of the above, the Chamber unanimously concluded that any club claiming its right to receive its alleged proportion of the solidarity contribution from a club that contests the alleged amount of a transfer compensation, shall carry the burden of proof that such a transfer compensation was indeed higher as stated by the Respondent.
36. In this respect, the DRC noted that the Claimant provided FIFA with a copy of the balance sheet published on the Respondent's website, the content of which has never been contested by the Respondent.
37. In continuation, the Chamber took note that in said balance sheet, the amount of EUR 20,200,000 is called "*valor contractual*" and "*adquisición*". Said terms indicate that the amount of EUR 20,200,000 represents a transfer compensation paid by the Respondent to the involved club.



38. Furthermore, the amount of EUR 20,200,000 is mentioned within the context of other transfer compensations, which were paid by the Respondent for the registration of new players.
39. As a consequence, the DRC concluded that according to the wording of said balance sheet, and the context in which the amount of EUR 20,000,000 was mentioned, said amount has to be interpreted as the sum the Respondent paid to the involved club for the transfer of the player.
40. Consequently, and in view of the above paragraphs, the DRC decided that in the present case, the activation of the relevant contractual clause by the player (cf. article 10 point 3 of the employment contract) concluded between the involved club and the player, as well as the wording of the Respondent's balance sheet, bearing in mind that the sum in question, EUR 20,200,000, was voluntarily borne by the Respondent, has to be considered a transfer agreed between the Respondent and the involved club in the sense of art. 21 in connection with Annexe 5 of the Regulations. The DRC underlined that the fact that said compensation for termination was provided for in the relevant employment contract, as mentioned in art. 17 of the Regulations, does not alter the interpretation of the facts in the present case.
41. The Chamber thus took the view that the specific circumstances of this matter are tantamount to a transfer agreed between the involved club, the player and the Respondent, and that, therefore, art. 21 in connection with Annexe 5 of the Regulations were applicable in this case considering its present specificities.
42. Subsidiary, the Chamber held that if the present case was not considered as a transfer in which art. 21 of the Regulations and Annexe 5 of the Regulations were applicable, this would lead to interpret the relevant articles contrary to its sense and thus contrary to the principle of good faith. In such a case, said articles would be interpreted as contrary to the loyalty that must be observed in legal relations. Not applying art. 21 and Annexe 5 of the Regulations in the present matter would be contrary to the meaning that should be objectively given to these articles. The Chamber further held that this opinion was all the more justified in view of the profit of EUR 20,200,000 made by the involved club following the departure of the player to the Respondent.
43. Consequently, and having established that art. 21 and Annexe 5 of the Regulations are applicable in this case, the Chamber referred to the Claimant's specific claims.
44. In continuation, the Chamber considered that the Claimant requested the payment of the amount of EUR 719,120 as solidarity contribution, corresponding to 3.56% of the total amount paid by the Respondent to the involved club, i.e. EUR 20,200,000, plus 5% interest per year as from 27 May 2009.
45. Additionally, in particular with reference to points II./17., 18. and 40. (cf. *supra*), the Chamber decided that the Claimant is entitled to receive EUR 715,383 as solidarity contribution from the transfer compensation paid for the transfer of the player, with 5% interest per year on the said amount as from 1 August 2009 until the effective date of payment. Any further claims lodged by the Claimant regarding the definitive transfer of the player are rejected.

46. In continuation, the Chamber referred to art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Dispute Resolution Chamber relating to disputes regarding solidarity mechanism costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings.
47. In this respect, the Chamber reiterated that the claim of the Claimant is partially accepted. Therefore, the Respondent has to bear the costs of the current proceedings in front of FIFA.
48. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.
49. The amount in dispute to be taken into consideration in the present proceedings amounts to EUR 804,560 related to the claim of the Claimant. Therefore, the Chamber concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annexe A).
50. Considering that the case at hand allowed to be dealt with following a reasonable procedure, that the present case showed particular factual difficulty and that it involved specific legal complexity, the Chamber determined the final amount of costs of the current proceedings to the amount of CHF 20,000.
51. In view of all the above, and bearing in mind that the claim of the Claimant was partially accepted, the Chamber concluded that the amount of CHF 20,000 has to be paid by the Respondent to cover the costs of the present proceedings. Thereof, the amount of CHF 20,000 has to be paid by the Respondent to FIFA.

### III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, A, is partially accepted.
2. The Respondent, S, has to pay to the Claimant, A, the amount of EUR 726,936, **within 30 days** as from the date of notification of this decision.
3. Within the same time limit S has to pay to A default interest of 5% *per annum* on the following partial amounts until the effective date of payment, as follows:
  - on EUR 11,553 as from 7 September 2008
  - on EUR 715,383 as from 1 August 2009.
4. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
5. The costs of the proceeding in the amount of CHF 20,000 are to be paid by the Respondent, S, **within 30 days** of notification of the present decision to FIFA to the following bank account with reference to case no.  
  
UBS Zurich  
Account number 366.677.01U (FIFA Players' Status)  
Clearing number 230  
IBAN: CH27 0023 0230 3666 7701U  
SWIFT: UBSWCHZH80A
6. Any further claims lodged by the Claimant, A are rejected.
7. The Claimant, A, is directed to inform the Respondent, L, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

\*\*\*\*\*

**Note relating to the motivated decision** (legal remedy):

According to art. 63 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber

---

Markus Kattner  
Deputy Secretary General

Encl. CAS directives