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 (The Netherlands), member

Carlos Soto (Chile), member

on the claim presented by the club

A, AA,
represented by Mr X,

as *Claimant*,

against the player

B, BB,
represented by Mr Y,

and the club

C, CC,
represented by Mr Z,

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

Intervention request filed by A and legal proceedings concerning the departure of the player and the registration of the player with C

1. On 24 August 2005 the AA club A (hereinafter A) informed FIFA that the player B, born on 18 May 1986, had left the club without permission and was refusing to return to AA.

2. At FIFA's request A submitted the contract of employment, according to which the contractual relationship started on 1 March 2003 and should end on 1 March 2006. The parties agreed on a monthly salary in the amount of USD 300 increased in steps to USD 1,200 with effect from 1 October 2004.

3. On 29 August 2005 A insisted that the contract be honoured.

4. On 5 September 2005, the club informed FIFA that the player sent his luggage five days prior his departure to CC. The luggage had been sent to the address of the girl friend of the former AA National Team assistant coach, D. The mentioned contact telephone number in cargo documents belonged to D himself and the luggage was registered under the name of E, another player of A, whose agent F is CC.

5. On 16 September 2005, FIFA contacted the G-FA, the H-FA and the Football Federation of I and recalled these Associations that on the basis of the documentation received from the Football Federation of AA (AAA) it appeared that the only club for which the player would be eligible is A. Therefore, the registration of the player for any other club would not be allowed. This letter was sent in copy as well to the BB-FA, the J-FA and the players' agent F.

6. On 17 October 2005, the BB-FA informed FIFA that it acknowledged the "désertion" of the player and that it would announce to FIFA if the player requests to be registered with any BB club.

7. On 22 November 2005 the player contacted FIFA and stated that he had been naturalised as AA citizen. The move to A had taken place when he was still minor. This was therefore a violation of art. 12 of the Regulations for the Status and Transfer of Players (hereinafter FIFA Regulations [2001 version; "Protection of Minors"]) and FIFA Circulars 769 and 801. He had also been naturalised against his will. In addition, he had subsequently made appearances for the AA under-17 team. He had now been suspended by the Football Federation of AA (AAA) for

two years, which was certainly not lawful. For all the above reasons the player demanded to be released from his contracts.

8. On 29 November 2005 the AAA informed FIFA that it had suspended the player for two years. A also informed FIFA that the player was training at C, who was managed by former AA coach D.

9. On 13 January 2006 A refuted the comments made by the player. The player had been naturalised as AA citizen at the age of 17 in 2002. There could be no talk of any coercion. The contract of employment had not been signed until 2003, however. The player had been suspended because he had left the club. Accusations that the player had been subjected to racism were totally defamatory. On the contrary, the player had been very popular in AA.

10. On 18 and 25 January 2006 the player submitted that the claim made by the club with regard to his naturalisation and the disciplinary action had not been proved and that the AA passport showed that he was BB citizen. He therefore applied for his registration to be annulled and for him to be allowed to join the club of his choice without having to pay any form of compensation. It was also a contradiction in terms that, on the one hand, the club wished to exercise the right to retain the player and yet on the hand, had sent him abroad for trials.

11. On 1 March 2006 the CC Football Federation (CCC) informed FIFA that C had negotiated with the BB club K with regard to a transfer of the player. On 12 September 2005 the CC and BB clubs signed a transfer agreement. Under the terms of the agreement submitted, C undertook to provide K with sports equipment and balls in lieu of a transfer compensation for the player. The CCC added that at the request of C the BB Football Federation (BB-FA) had issued the international transfer certificates (ITC) for the player on 26 January 2006 (copy submitted). This therefore raised the question of how the player could have been registered on behalf of A. In particular A should be requested to submit the ITC that BB-FA had allegedly issued in their favour to FIFA. The CCC also stated that the player's right to play in the UEFA Cup had been suspended by UEFA.

12. On 7 March 2006 FIFA asked BB-FA, the player and the AAA how and when the player had left BB and on what basis he had been transferred to AA.

13. On 15 March 2006 the player replied that he had left BB on 7 July 2002. After a trail period of just two days he had appeared in official matches for A's second team thereafter he had played for the first team into March 2003, without ever

being under contract, however. He had then been forced to sign a contract in March 2003. The player affirmed that the AA club and the AAA had wanted to force him to take AA citizenship, but he had refused. This could be seen from the copies of the passports that had been submitted by the AA club. Though issued by the AA government, the passport clearly referred only to his BB nationality in the citizenship section. Under the influence of the former A and AA coach D, who in the meantime had become sport director at C, the player had left the club because of his precarious situation in AA. In September 2005 he had travelled to CC, where he had been offered a contract. C, however, had advised him to stay in BB until the contract with A expired, i.e. until 1 March 2006.

14. The player continued that as far as the transfer from BB to AA was concerned, it was to be noted that the contract with the players had been signed on 1 March 2003. The player had not reached the age of 18 at the time. In this respect the player, in his submission dated 15 March 2006, referred to art. 12 of the FIFA Regulations, Art. 4, par. 2 of the Regulations Governing the Application of the FIFA Regulations, FIFA Circular Letters 769 and 801, and art. 19 of the new FIFA Regulations (2005 version). His registration with the AA club was to be considered null and void for all these reasons. The player's move from BB to AA was a transfer involving a minor and thus void. As far as the move from BB to CC was concerned, this did not correspond to reality, as the player had demonstrably not been last registered in BB. His registration in CC was therefore void as well.

15. On 20 March 2006 BB-FA confirmed that the ITC for the player had been issued based upon an enquiry from the CCC and the transfer agreement between K and C. K was an amateur club and the player had been registered there since 1999.

16. On 22 March 2006 the AAA informed that the player was registered for the first time in 2002 and that the player had been AA national when he signed the contract with A in March 2003. In this respect the AAA referred to the previously submitted copy of the passport issued by the AA government (which state BB in the nationality section). As it was the first time the player had been registered, no ITC had been requested for the player. The AAA was thus the first association with the power to issue an ITC for the player. The documents submitted by C had to be forgeries. The player had appeared for A in the Champions League, he had played for AA national teams. It was astounding that K had transferred the player, yet failed to contact the responsible authorities, even though the BB club had known of the player's whereabouts. That the transfer contract allegedly concluded between the BB club and the CC club was a forgery could be seen from the letter from BB-FA to FIFA dated 17 October 2005 in which it stated that it would inform

FIFA should the player wish to be registered with a BB club. This statement clearly showed that BB-FA had no idea who the player was. It was therefore astounding that a few months later BB-FA suddenly issued an ITC for the player and sent it to the CCC. In addition, the CCC club had to have known that the player was registered with A, as he had represented AA at under-21 and senior level in matches against CC. Reference was again to be made to the fact that former AA assistant coach D was now the coach of C.

17. On 7 April 2006 C informed FIFA that the player had approached the club himself. Negotiations had then begun with K, where the player had been under contract until 1 January 2006. The transfer agreement with the BB club had been concluded on 12 September 2005, and the player had subsequently signed a contract of employment on 14 December 2005. BB-FA had then been requested to release the player. D had exerted no influence on the player, he had merely been asked for his opinion when the player was taken on because he knew him from his time in CC. D had not worked in AA since 2003, however.

18. On 7 April 2006 A refuted the accusation that the player had been in a precarious situation. From the player's submission it was clear that he had been incited to leave A by D. A therefore demanded that C and D be ordered to pay compensation for breach of contract by the player B and another player in the amount of EUR 1,278,000.

19. On 10 July 2006 the CC club contacted FIFA, stating that no specific demand had been submitted by the AA club. In the first instance, the Players' Status Committee should state whether, in application of art. 23 of the FIFA Regulations, the player's registration with A was at all proper. If it took the view that the registration was improper, then the Dispute Resolution Chamber could not pass a decision in the matter. The complaint filed by A against C was as such unfounded. The player had contacted C himself with the aim to concluding an employment contract. C had then consulted D with regard to the player's footballing ability. D had not had any contact with them before the player appeared in CC. As K had confirmed that the player was under contract until 1 January 2006, the two clubs had signed the transfer agreement that had resulted in the ITC being issued for the player. This transfer was in line with the rules. The player had left AA on his own initiative. His registration in AA had infringed the rules because it involved a contract of employment with a minor that had been signed neither by the parents nor by the player's legal representative, it was an international transfer of a minor, no ITC had been issued and the player had been unlawfully naturalised as AA citizen.

Claim against the player B and the club C filed by A

20. On 21 August 2006 the AA club submitted a detailed complaint to FIFA. To A it was evident that C had incited the player to violate his contract. The player B was meant to have gone to GGGG for trials at XXXX and XXXX. He had gone straight to C, however. The statement to that the player had been in HHHH for contract negotiations before going to CC was therefore untrue. Further, C could not claim that the player had been under contract with the BB club K, as the player had demonstrably played in AA (copies of team sheets submitted). As for D, he had been employed by both A and the AAA from 24 March 2003 to 7 June 2004 and therefore knew the player very well. On 6 June 2005 the player had been in XXXXX, CC, with the AA under-21 team and had met D again. And finally another player, E, had sent 110 kilos of personal effects belonging to the player to L, D's girlfriend, on 16 August 2005. The telephone number indicated on the consignment note was D's mobile phone number in CC. For all these reasons it was evident that C had in fact incited the player to break the contract with A. A then reiterated that the contract with K was a forgery. In addition, this club was an amateur club, as had been confirmed by BB-FA, so how could any contract of employment have been signed? The contract signed by the player and A was valid, however, as in AA 16-year-olds were allowed to sign a contract of employment without the consent of their parents. A then referred back to the BB-FA letter dated 17 October 2005 and asked why BB-FA had stated that it would inform FIFA of the player's whereabouts if the player was still registered with BB-FA based upon the contract of employment with K. The player had demonstrably been playing for A for three-and-a-half years, however. In addition, BB-FA had never paid any attention to the player. That the player had regularly played for AA national teams could be seen from correspondence sent to UEFA and FIFA in which the AAA had explained that the player had chosen to represent AA of their own free will. Neither UEFA nor FIFA had opposed this. A also emphasised that the player had come to AA in 2002 of his own free will. The player had never been registered in BB and the AAA had therefore been able to register the then minor for the first time. As the player had acquired AA citizenship in September 2002 and signed a contract of employment with A in March 2003, the issue was in any case time-barred. The only case pending before FIFA, therefore, was the one concerning the breach of contract by the player and the incitement so to do by C.

21. For all these reasons A requested that it be ruled that the contract of the player with A were valid, that AA citizenship and the player's registration had been

properly obtained, that the player had broken the contract and that he had been incited to do so by C. As A had been offered EUR 250,000 for the player B, this was the sum it was claiming from C. A also requested that the player be handed a six-month suspension due to aggravating circumstances and C be prohibited from making transfers for two registration periods.

Answer of C

22. On 2 October 2006 C reiterated that the player had approached the club himself. Any suggestion that E had forwarded personal effects of the BB player to D's girlfriend was purely speculation. The fact that D had spoken to his former player at the UEFA European Under-21 Championship qualifier on 6 June 2005 was completely normal, as he already knew him from before. C added that just because the player had taken AA citizenship and as a minor was allowed to sign contracts of employment under AA law, this did nothing to alter the fact that the transfer from one association to another of players below the age of 18 was prohibited. He had therefore been improperly registered with the AA club. Art. 12, par. 2 of the FIFA Regulations also prohibited a first registration of minors. Further, it was extremely unlikely that after six months of training in AA the player would have been of a standard good enough to sign a professional contract solely on the basis of this training period. This meant the player had clearly been coached as footballer in BB. BB-FA had also confirmed that the player had been registered in BB since 1999. Finally no ITC had been issued for the player and his naturalisation as AA citizen, if it actually occurred, was in contradiction of FIFA Circular 901. Based upon all these facts, both A and the AAA were to be sanctioned. The two-year regulatory limitation period was not applicable to such transgressions and the ten-year limitation period under Swiss law was to be applied instead. Owing to the fact that the player had last been properly registered in BB, the transfer between BB and CC had been conducted legitimately.

Answer and counter-claim of the player B

23. On 3 October 2006 the player reiterated that he had been forced to stay in AA and would never have taken AA citizenship. Otherwise he went along with the CC club's submission. By way of counterclaim the player M demanded a lump-sum compensation payment of EUR 50,000 in damages from A.

Second exchange of correspondence

24. On 9 November 2006 A replied that the claims of the player that he had been forced to stay in AA for three years, sign the contracts and play for AA national teams were part of a conspiracy theory. As far as his "flight" from AA was concerned A referred back to its earlier submissions.

25. On 7 December 2006 C referred back to its earlier submissions.

26. The player B waived his right to submit a further response.

Application concerning the competence of the Dispute Resolution Chamber

27. On 9 January 2007 C made an application for the case to be put before the Players' Status Committee before being submitted to the Dispute Resolution Chamber and for the former to answer the question concerning the validity of the player's registration in AA.

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 submitted to FIFA on 24 August 2005, 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 (b) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on employment-

related disputes between a club and a player that have an international dimension.

3. The Dispute Resolution Chamber acknowledged that a party to the dispute insisted that the matter has to be first submitted to the Players' Status Committee or its Single Judge for decision about the registration of the player with A before any submission to and consideration of the Dispute Resolution Chamber. In this respect, the Chamber referred to its constant practice and well-established understanding and jurisprudence according to which the Players' Status Committee, the Dispute Resolution Chamber, the Single Judge or the DRC Judge shall not address any matter if more than two years have elapsed since the facts arose. Application of this time limit shall be examined ex officio in each individual case. Consequently, the Chamber emphasised that the facts arisen prior to 24 August 2003, i.e. two years before the present affair has been brought before the decision-making bodies of FIFA, will not be discussed and treated. Therefore, the deciding authority will neither address the question whether or not the matter should be remitted prior to the Players' Status Committee as requested by the CC club nor take into account the facts arisen prior to August 2003.

4. As a consequence, the Dispute Resolution Chamber stressed that it is the competent body to decide on the present litigation involving an AA club, a BB player and a CC club regarding a contractual dispute in connection with an employment contract.

5. 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 contracts at the basis of the present dispute were signed on 1 March 2003 and the claim was lodged at FIFA on 24 August 2005. 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

6. 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 the employment contract concluded between the player and A occurred and which party is responsible for such breach of contract, whether inducement to breach of contract occurred, and to verify and decide if sanctions for breach of contract and inducement to breach of contract have to be applied. The Chamber then took note that uncontestedly, the player B and the club A signed on 1 March 2003 an employment contract valid until 1 March 2006 and that the player left the club at the end of August 2005, i.e. six months prior to the expiration of the employment contract.

7. Thereafter, the members of the Chamber considered that although the player was a minor player by the time the employment contract had been concluded between the Claimant and the player, the employment contract had been concluded for a duration of three years, thus, in line with the Regulations (cf. art. 18 par. 2 of the Regulations). Equally, the deciding body acknowledged that according to the applicable national AA law, 16-year-olds are allowed to sign binding contracts by themselves and particularly, the Chamber was eager to emphasise that the relevant employment contract had been executed during 2½ years and that the player had not contested that he had received all salaries.

8. Consequently and for the sake of good order, the members of the Chamber unanimously concluded that the Claimant and the player were contractually bound due to a valid employment contract.

Responsibility for the breach of contract

9. As far as the question of the responsibility for the breach of contract is concerned, the Chamber first of all reiterated that the player's salaries until August 2005 were duly paid.

10. The Chamber then had to deliberate whether the player was authorised or had any other just cause to leave the club prematurely. In this respect, the Chamber unanimously concluded that the player did not present any valid reason for the premature departure. The player always based his argumentation on the fact that he had been registered with the AA club as a minor and therefore applied for his registration to be annulled. However, the player did not contest the facts leading

to his departure from AA. Indeed, the player even confirmed that he had left the club and had travelled in September 2005 to CC, where he had been offered a contract.

11. In view of the above, the Chamber came to the conclusion that the player had not presented any evidence to corroborate that either his departure had been authorised by the club or that he had just cause to leave his club.

12. On account of the above, the Chamber concluded that the departure of the player without the authorisation of the club or just cause is to be considered as an unjustified breach of the employment contract by the player.

Consequences of the unjustified breach of contract against the player

13. On account of the above-mentioned conclusion, the Chamber had to address the issue of the consequences for unjustified breach of contract, in accordance with art. 17 of the Regulations for the Status and Transfer of Players.

14. In this context, the Chamber first focussed its analysis on the amount of compensation for the unjustified breach of contract due by the player to A and examined the objective criteria listed in art. 17 par. 1 of the Regulations for the Status and Transfer of Players. According to this provision, these criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract and/or the new contract, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

15. The first criteria the Chamber took into consideration was the remuneration under the employment contract between the player and A, and the length of time remaining on the said contract, i.e. the rest value of the employment contract. In this regard, the Chamber took note of the fact that the player would have been entitled to receive from September 2005 to 1 March 2006 on account of salaries the amount of USD 7,200 (USD 1,200 per month).

16. Furthermore, the Chamber emphasised that the alleged offer of EUR 250,000 for the services of the player by another club cannot be taken into consideration as the AA club failed to provide FIFA with any evidence about transfer offers from other clubs. In this respect, the deciding body referred to the legal principle of the

burden of proof, which is a basic legal principle in every legal system, according to which a party deriving a right from an asserted fact has the obligation to prove the relevant fact (cf. art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

17. The Chamber furthermore analysed the stances of the player and A, in order to consider if there were any exceptional circumstances mitigating or aggravating the amount of compensation. Therefore, the Chamber stated that the attitude of the player could be judged as particularly reproachable. In fact the player left the club without any permission and without any just cause six months prior to the expiration of the contract. The damage caused by the player is not only of a financial nature, but also a sporting one, since A could not rely on the services of the player during the period of absence. This could have an aggravating effect on the amount of the financial compensation to be paid by the player to A.

18. Furthermore, the members of the Chamber considered that the player was not registered with the new club, i.e. C prior to the expiration of the breached employment contract with A, i.e. not before the 1 March 2006.

19. In view of all of the above, the members of the Chamber came unanimously to the conclusion that the player should be liable to pay compensation for breach of contract to A in the amount of USD 15,000.

20. Furthermore, the Chamber decided that in accordance with art. 17 par. 2 of the Regulations for the Status and Transfer of Players, the new club of the player, i.e. C, shall be deemed jointly responsible for the payment of the amount of compensation the player has to pay, if the aforementioned amount is not paid to A within one month of notification of the present decision.

Consequences against the club for inducement to unjustified breach of contract

21. In continuation, the Chamber had to consider and pass a decision on the request made by A against C for sports sanctions for inducement to contractual breach, in accordance with the art. 17 par. 4 of the Regulations for the Status and Transfer of Players.

22. Considering the substance of the matter in order to establish the alleged responsibility of C for inducement to contractual breach, the Chamber preliminarily deemed it appropriate to recall some of the key events in the

contractual breach between the player and A. In particular, it was recalled that the player left AA without any valid reason and without permission of the club. Subsequently, the player trained in CC with C and signed a new employment on 14 December 2005.

23. The Chamber then focussed its analysis on the accountability of C for inducement to the contractual breach between the player and A.

24. In particular, the Chamber first referred to art. 17 par. 4 of the Regulations for the Status and Transfer of Players, according to which, a club seeking to register a player who has unilaterally breached a contract during the protected period will be presumed to have induced a breach of contract.

25. As a consequence, it falls under C's responsibility to demonstrate that it should not be held responsible for having induced the player to breach the contract.

26. Consequently, the Chamber considered the fact that the former A and AA coach D managed the CC club, C, as sport director. The Chamber took note that the player admitted in its statement dated 15 March 2006 that under D's influence, he had left the club and had travelled to CC, where he had been offered a contract. However, the player emphasised in the same statement that the CC club advised him to stay in BB until the contract with A expired, i.e. until 1 March 2006.

27. The CC club emphasised that the player had approached the club himself and that it concluded a transfer agreement with the BB club of K, where the player had been under contract until 1 January 2006. Subsequently, the player and the C signed an employment contract on 14 December 2005. In particular, D had exerted no influence on the player but had been consulted with regard to the player's footballing ability.

28. Based on the above, the Chamber concluded that C cannot be held responsible for inducement to breach of contract and decided to reject the claim filed by A to impose a ban on registering any new player, either nationally or internationally, for two consecutive transfer periods.

Further requests

29. The request of A for interest on the financial compensation at a rate of 5% per year was adjudicated in case of non-payment of the fixed compensation within 30 days of notification of the present decision, as of expiry of this deadline.

30. The request of A that the costs of the proceedings shall be allocated to the Respondent is rejected as the proceedings in front of the Dispute Resolution Chamber are free of charge (cf. art. 25 par. 2 of the Regulations for the Status and Transfer of Players and art. 15 par. 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

31. Finally, the Chamber rejected all counter-claims from the player against A.

III. Decision of the Dispute Resolution Chamber

1. The claim of the club A is partially accepted.

2. The player B is ordered to pay USD 15,000 to the club A **within the next 30 days** as from the date of notification of this decision.

3. The club C is jointly responsible for the payment of the above-mentioned amount if the same is not paid within one month of notification of the present decision.

4. If the aforementioned amount is not paid within the stated deadline, an interest rate of 5% per year shall apply, as from expiry of the stated deadline.

5. Any further claim lodged by A is rejected.

6. The counter-claim of the player B is rejected.

7. In the event that the above-mentioned amount is not paid within the stated deadline, the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.

8. The club A is instructed to inform the player B 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.

9. 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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Encl. CAS directives