Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 4 October 2013,

in the following composition:

Geoff Thompson (England), Chairman
Takuya Yamazaki (Japan), member
Theodore Giannikos (Greece), member

on the claim presented by the club,

Club N, from country U

as *Claimant*

against the player,

Player B, from country A

and the club,

Club G, from country Q

as *Respondents*

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 10 August 2011, Club N, from country U (hereinafter: *Club N or the Claimant*), and the Player B, from country A, (hereinafter: *the player or also referred to as the Respondent player*), born in February 1980, signed an employment contract valid as from 10 August 2011 until 9 August 2013 (hereinafter: *the contract*).

2. In accordance with art. 3 of the contract, the player was entitled to receive, *inter alia*, the following:
    a. From 10 August 2011 until 9 August 2012, the total amount of EUR 1,100,000:
        - EUR 200,000 on 1 September 2011;
        - EUR 900,000 in 12 monthly instalments (12 x EUR 75,000).
    b. From 10 August 2012 until 9 August 2013, the total amount of EUR 1,200,000, to be paid in 12 monthly instalments (12 x EUR 100,000), which includes the housing allowance, furniture and transportation;
    c. Eight round trip business class air tickets for the player and his family annually (country U – country A – country U);
    d. Medical health insurance for the player during the contract period.

3. Art. 8 par. 1 of the contract stipulates that "… *if the Second Party [the player] cancels by himself the said contract made between him and the First Party [Club U] for any reason whatsoever, he shall pay to the First Party all amounts paid by the First Party to the Second Party as a result of implementation of the Contract. Unless the damage caused to the First Party exceeds these amounts, and in this case the First Party may claim the Second Party for compensating it for the actual damages resulting from such breach.*"

4. On 21 February 2013, Club U lodged a claim against the player and Club G (hereinafter: *Club G or also referred to as the Respondent club*) in front of FIFA and maintained that the player had unilaterally terminated the contract on 30 July 2012 without just cause. In addition, the club held that the player had acted in bad faith, pretending to be staying until the last moment, whilst actually negotiating a departure with the Club G, which resulted in additional damages for the club. For this reason they requested from the FIFA Dispute Resolution Chamber (DRC) to:
    a. Issue a finding that the player has terminated his contract without just cause;
    b. Order the player and Club G to compensate them in the amount of at least EUR 2,500,000 plus interest of 5% from 10 August 2011, to be paid within two weeks of the issuance of the FIFA DRC decision:
    c. Impose suitable sporting sanctions upon the player, which at least consist of a six month suspension;
    d. Impose suitable sporting sanctions upon Club G, which shall at least consist of a ban from registering any new players, either nationally or internationally, for two registration periods;

e. To the extend that any costs of these proceedings are to be paid by the parties, rule that such costs shall be paid by the player and Club G;
f. To order the player and Club G to pay them legal costs and expenses.

5. Club N clarified that when the player was transferred to them no transfer fee was paid to the former club of the player. Only a fee of EUR 100,000 had to be paid by Club N to the agent Mr B in two instalments of EUR 50,000, the first of which was paid on 14 February 2012.

6. Club N sustained that on 13 May 2012 it was confirmed that the player would return from his summer vacation to country U on 3 July 2012.

7. Club N alleged that on 25 June 2012 they received a letter from a Brazilian lawyer, who announced that the player was terminating the employment contract from "*the present moment on*" irrevocably and unilaterally. In this regard, Club N stated that they were surprised about the letter, since they had always fulfilled their contractual obligations towards the player and also had the impression that the player was very satisfied at the club. Subsequently, they allegedly contacted the player by telephone and he indicated that he was not aware of the letter sent from the Brazilian lawyer.

8. Club N further referred to the club's CEO's email sent on 27 June 2012 to the Brazilian lawyer, in which he pointed out that the player wishes to continue at the club and that they have the intention to extend the player's employment contract. In addition, the club referred to the club's Chairman's letter sent on 28 June 2012 to the Brazilian lawyer, in which he indicated that the player had confirmed to negotiate with them a one year extension of the contract and that in case of any eventual future termination, the relevant letter should be signed by the player.

9. On 30 June 2012 Club N agreed to extend the player's vacation until 12 July 2012 and requested the player to join the team on that day at the latest. In this respect, Club N maintained that on 2 July 2012 the player requested an additional one week extension of his vacation since he got injured in the last game and still needed more time "*to get himself right*" as the next season required the best of him.

10. As regards the termination letter, according to Club N, they had a meeting with the player on 6 July 2013 during which the player had rejected the content of the alleged termination letter dated 25 June 2012 and had confirmed that he was unaware that it had been sent. In this regard, Club N sent an email to the player on 9 July 2012 with an attached letter, which summarises the said meeting, and in which Club N, *inter alia*, confirmed that they will give the player an offer of a two-year extension of the contract on his first day of training.

11. Consequently, on 11 July 2012 Club N sent their proposed contract extension of two years, for the period from 10 August 2013 until 9 August 2015, to the player. In

addition, on 18 July 2012, the club emailed the player another contract extension with revised terms, such as an increase of the salary.

12. The player was allegedly at Club N for training on 12, 13, 14 and 15 July 2012, then left the club without informing them and travelled to country Q. Club N further stated that on 27 July 2012, their Chairman met the player, who had apparently just before, on 22 July 2012, agreed to a contract extension with them. However, on that day the player requested to let him go and mentioned that Club G had offered him a salary of EUR 1,7 million per annum for three years. In this regard, Club N maintained that at that moment they mentioned to the player that the compensation due would be no less than two million euros, and if the compensation was paid, they would not seek sporting sanctions against him. The player allegedly responded that Club G would pay the compensation.

13. On 30 July 2012, the Brazilian lawyer sent a letter to the club confirming the unilateral termination of the contract by the player and requesting the club's bank account in order to fulfil the terms as stated in clause 8 of the employment contract.

14. Club N sent a letter on 31 July 2012 to the Brazilian lawyer acknowledging receipt of his letter regarding the unilateral termination as well as indicating their will to settle the matter by reference to art. 8 of the contract. However, according to Club N, their own lawyer and the Brazilian lawyer discussed a possible settlement on 1 August 2012 without reaching an agreement, and on 6 August 2012 they found out that the player had already signed an employment contract with Club G.

15. As to determine the total compensation owed to Club N, the club stated that according to art. 8 of the contract, the amounts paid to the player and the actual damage incurred by the club have to be calculated. As to the payments made to the player, Club N enclosed a schedule with the total amount of EUR 1,169,986, calculated as follows:
    - EUR 728,226 paid salary from August 2011 until May 2012;
    - EUR 200,000 as advance payment for the season 2011/2012;
    - EUR 57,683 Match Bonus;
    - EUR 41,278 Air Ticket;
    - EUR 41,379 Life and Personal Accident Insurance, Medical Insurance;
    - EUR 50,000 Agent Fees;
    - EUR 21,420 Car Rental;
    - EUR 30,000 which includes, *inter alia*, the costs incurred by the club to train the player, to treat him medically, to take care of this food and the lodging during the camps, trainings' sessions, away matches etc.

16. As regards the actual damage, Club N stated that there is no doubt that the actual damage caused to them is in excess of EUR 1,169,986. Thus, in order to determine the total compensation owed to them one must calculate the actual damage in addition to the amounts paid to the player. In this regard, Club N took into consideration art. 17

par. 1 of the Regulations and estimated the actual damage to be the total amount of EUR 1,354,046, which includes the following amounts:

- USD 628,577 (EUR 484,000) paid for Player K, from country I (as replacement of the player) for the season 2012/2013, corresponding to the following:
    - USD 250,000 paid salary
    - USD 300,000 Advance Payment
    - USD 54,358 Housing Allowance
    - USD 13,587 Car
    - USD 10,632 Air Ticket
- EUR 733,374 paid for Player M, from country J (as replacement of the player) for the season 2012/2013:
    - EUR 300,000 Contract Value
    - EUR 400,000 Cost of Loan
    - EUR 20,898 Housing Allowance
    - EUR 12,476 Air Ticket
- EUR 106,772, the costs of benefits due to the two aforementioned players (Player K and Player M) such as bonuses, transport expenses and health and medical insurance comparable to the amount paid to the player;
- EUR 30,000 incurred to train them, to treat them medically and to take care of their food and lodging during the camps, trainings.

17. Club N sustained that a very significant portion of the additional damage caused to them is a direct consequence of the player's bad faith. Due to the player's intentional two months delay before informing the club that he was terminating the contract, the player became much more difficult to replace and the costs for his replacement were therefore higher. In this regard, Club N alleged that they had to replace the player firstly with the country I player, who had to be replaced with the country J player, since the country I player was not an adequate replacement. In addition, Club N maintained that the club's sporting performance had been very negatively affected by the departure of the player, as it has gone from second place in the League last season to a mid-table position this year, outside of the qualifying places for the Asian Champions League.

18. Club N claims that in light of the amounts paid to the player the irreparable sporting prejudice caused to them by the player's belated departure, and the amount which would be required to replace the player effectively, pursuant to art. 8 of the contract the Respondents must pay at least the amount of EUR 2,500,000 to them as compensation for actual damages resulting from the player's termination of the contract.

19. Furthermore, with regard to sporting sanctions, Club N maintained that since the player unilaterally terminated the contract during the protected period a six-month suspension must be imposed upon the player. Additionally, Club N shall be banned from registering any new players for two registration periods in accordance with Art. 17 par. 4 of the

Regulations. In this regard, Club N held that in the present case it is clear that Club G was aware that the player was under contract, and yet it offered an attractive financial package to him directly and ignored its duty to contact them.

20. The Respondents in its reply to the claim of Club N requested the DRC:
    - To dismiss the claim of Club N and to confirm that the employment contract was expressly and irrevocably breached by the player on 25 June 2012, pursuant to the terms and conditions of art. 8 of the contract;
    - The total amount of compensation for the breach of the employment contract to be paid by the player to Club N shall be of EUR 728,226, due as salaries, plus EUR 200,000, due as signing-on fee;
    - No interest rate shall be applied over any compensation, since Club N failed to provide its bank account, despite the player having formally requested it;
    - To confirm that Club G has not induced the player to breach the employment contract and consequently may not be considered jointly and severally liable for the payment of the compensation;
    - To uphold that there is not any legal basis for the imposition of sporting sanctions on the player and Club G since the employment contract was "*breached*" in accordance with the terms and conditions as stated in its *"buyout clause";*
    - To confirm that neither the player nor Club G shall be responsible to pay any expense of legal costs regarding the dispute at hand.

21. The player and Club G agree that the player has to pay compensation to Club N. However, they are of the opinion that the breakdown of the compensation presented by Club N violates the provisions as stated in art. 8 of the employment contract and misapplies the terms and conditions as stated in art. 17 of the FIFA Regulations. The Respondents are of the opinion that the amount of compensation to be paid by the player to Club N is EUR 728,226 due as salaries, plus EUR 200,000 due as signing-on fee.

22. The Respondents clarified that the employment contract was unilaterally terminated by the player on 25 June 2012. Therefore, the employment contract "*was breached by the player within couple of weeks after the end of the season*" and thus the negotiations with third clubs and with Club N started only after said termination letter. In this regard, the Respondents indicated that the Claimant did never show any clear evidence proving that the player did not recognise the contents of the termination letter from 25 June 2012 nor that the Brazilian lawyer was not his lawyer. In addition, the Respondents indicated that Club N expressly confirmed that the last payment to the player was made in May 2012, thus they did not perform another payment after the termination letter from 25 June 2012.

23. As regards the reason of the termination of the contract, the Respondents maintained that Club N had ignored the contacts made by the player with the intention to postpone the negotiations of a new employment contract, and therefore the player had

had no other alternative than to terminate the contract on 25 June 2012. In this regard, the Respondents stated that it was unquestionable that according to art. 8 of the contract, the player "*had the deliberation to unilaterally terminate the Employment Contract based upon any reason whatsoever"*.

24. The Respondents maintained that the player was hired as a "free agent player", and thus no transfer compensation was paid to his former club. As the player was already 31 years old, art. 8 had been included in the contract and Club N was aware that the present situation could occur at the end of said season.

25. According to the Respondents, on 30 June 2012, Club N's chairman contacted the player, who confirmed that he was negotiating with other clubs and that he had the intention to sign a new contract with a salary of at least EUR 1,600,000 per season for 3 years. In this regard, the Respondents alleged that Club N had confirmed to be able to fulfil the aforementioned wish of the player.

26. The player admitted to have started training with Club N as of 12 July 2012 whilst waiting to sign a new employment contract with them. However, subsequently he had stopped training with Club N since they failed to provide a new employment contract on the first day after his return from vacation. Then, on 18 July 2012 Club N drafted an employment contract, which contents were totally different from those verbally and previously agreed. On 22 July 2012 the player met Club N to try to reach a conclusive agreement. However, the *"deal breaker"* was that the club insisted on a 2 year contract instead of 3 years. Then on the 27 July 2012 the player met Club N's chairmen and informed him that the negotiations were definitely terminated. In this context, the Respondents clarified that on 31 July 2012 Club N understood that the employment contract had been terminated on 25 June 2012 in accordance with art. 8 of the contract, and that on the same day the player had started negotiating with the representatives of Club G. Nevertheless, Club N allegedly changed its mind on 6 August 2012 insisting that the contract was still valid until 13 August 2013.

27. With regard to the replacement of the player, the Respondents sustained that the amount spent by Club N for the transfer of Player M, from country J shall not be considered. The Respondents further held that the amount spent on Player K, from country I may neither be considered as part of the compensation since said sum shall be amortised in consideration of the savings from the player's unpaid salary for the 2012/2013 season.

28. As to the statement of Club N that the contract was breached too late and consequently the time to replace the player was too short, the Respondents maintained that the first registration period determined by the country U Football Association for the 2012/2013 season commenced on 10 July 2012 and terminated on 1 October 2012. Therefore, according to the Respondents, Club N had 125 days to find a new player, when

considering the termination letter dated 25 June 2012, or at least 60 days, when the second letter dated 30 July 2012 is mistakenly assumed as the letter of termination.

29. As to the breakdown of the compensation, the Respondents stressed that pursuant to the terms and conditions as stated in art. 8 of the contract, the compensation due by the player to Club N shall take into consideration only the amounts paid as remuneration (i.e. salaries and signing-on fee). They shall not include other benefits such as air tickets, car, house, point premiums and/or any kind of bonus or privilege which are not guaranteed in the contract nor paid to third parties. In this regard, the agent fee of EUR 50,000 paid to Mr B may not be considered as part of any compensation breakdown.

30. In relation to the amount claimed for air tickets, which do not correspond to the destination as set out in the contract (country A/country U/country A) nor have they been paid directly to the player or his family, the Respondents argued that it shall be disregarded. The air tickets paid to the players' agent Mr B and to the player (country L/country U/country L) during the negotiations of the contract and amounting to currency of country U 24,600 shall also not be taken into consideration. Furthermore, the Respondents held that the amount claimed for Car Rental (EUR 21,240) shall neither be taken into account, since the contract expressly states that the remuneration paid to the player also includes *"housing allowance, furniture and transportation (Car)".*

31. With regard to the type of insurance (medical insurance) which would be provided to the player, the Respondents maintained that Club N added Life and Personal Accident Insurance which overvalued the amount spent with insurance. As to the allegation made by Club N that Club G had acted in bad faith by contacting the player, the Respondents maintained that Club G had only accepted to officially negotiate after having noticed that the employment contract was formally breached on 25 June 2012. Furthermore, the Respondents alleged that the application of an interest rate of 5% p.a. as of 10 August 2012 was incompatible with the facts as described and also because Club N always failed to provide its bank account when the player formally and expressly requested it.

32. As to the sporting sanctions, the Respondents referred to the FIFA Commentary to the Regulations on the Status and Transfer of Players, in particular to art. 17, which states that with the "buy-out clause" the player can also cancel the contract during the protected period and that no sporting sanctions may be imposed on the player or on Club G.

33. According to information contained in the Transfer Matching System (TMS), the player signed an employment contract with Club G on 6 August 2012 for a period of three years, i.e. valid from the date of signature until 31 July 2015. According to the employment contract's schedule, the player is entitled to receive from the moment of

the early termination of the contract with his former club until the original expiry of the said contract (9 August 2013) the total amount of USD 2,094,400, to be paid as follows:

- USD 418,880 on 6 August 2012;
- USD 1,675.520 in 12 monthly instalments, i.e. 11x USD 143,000 as of 6 August 2012 until 30 June 2013 as well as USD 102,520 as the last salary of July 2013.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter: *the DRC* or *the Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 21 February 2013. Consequently, the 2012 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 2 and par. 3 of the Procedural Rules).

2. Subsequently, the DRC referred to art. 3 par. 1 of the Procedural Rules and confirmed that, in accordance with art. 24 par. 1 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012), it is competent to decide on the present litigation, which concerns an employment-related dispute with an international dimension between an Club N, an country A player and a country Q club.

3. Furthermore, the DRC analysed which edition of the regulations should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2012) and considering that the present matter was submitted to FIFA on 21 February 2013, the 2012 edition of said Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*) is applicable to the present matter as to the substance.

4. The competence of the DRC and the applicable regulations having been established, the Chamber entered into the substance of the matter. In doing so, it started by acknowledging the facts of the case as well as the documents contained in the file.

5. In this respect, the DRC acknowledged that the Claimant and the Respondent player entered into an employment contract, valid as from 10 August 2011 until 9 August 2013.

6. The members of the Chamber further acknowledged that the parties have already divergent positions with regard to when the employment contract had been unilaterally terminated by the player. In fact, while the Respondent player considers that he unilaterally terminated the employment contract on 25 June 2012, the Claimant, on the other hand, sustains that the player terminated the said contract on 30 July 2012.

7. In this regard, the Chamber came to the unanimous conclusion that the letter of 25 June 2012 cannot be considered as the date of termination of the employment contract since the player requested an extension of his holidays on 2 July 2012, and subsequently he was training with Club N. Furthermore, the Chamber also wished to emphasise that it is not contested that in July 2012 the Claimant and the Respondent player were negotiating the extension of the relevant employment contract.

8. In light of the above, the members of the Chamber considered that, by a letter of the player's representative, the player effectively and prematurely terminated the contract on 30 July 2012.

9. In continuation, the Chamber paid due consideration to the fact that the Claimant submitted that the Respondent player, after his authorised summer holidays, unilaterally terminated the employment contract on 30 July 2012 without just cause and subsequently, signed in August 2012 an employment contract with the Respondent club. On such basis, the Claimant deemed that the player shall be sentenced to pay compensation for breach of contract in the amount of EUR 2,500,000 plus interest of 5% per annum, which, according to the Claimant, corresponds to the actual damages resulting from the player's termination of the contract. The members of the Chamber further acknowledged that the Claimant argued that the player's new club, *i.e.* the Respondent club, shall be jointly liable for the payment of the compensation for breach of contract to be paid by the player to the Claimant.

10. Moreover, the Chamber took into account that the Claimant equally requests that sporting sanctions be imposed on the Respondent player and on the Respondent club.

11. The Respondents, for their part, are of the opinion that according to the "buy-out clause" of the employment contract, the player had the deliberation to unilaterally terminate the said contract based upon any reason whatsoever. The Chamber further noted that the Respondents agree that the player has to pay compensation to the Claimant, but contested the breakdown of the compensation presented by the latter. The members of the Chamber also observed that the Respondents sustain that the amount of compensation to be paid to the Claimant is EUR 728,226 due as salaries, plus EUR 200,000 due as signing-on fee.

12. In this respect, the members of the Chamber took into account that the Respondents have, as established above, not invoked a just cause for the early termination of the contract but deem that art. 8 par. 1 of the contract is a "buy-out clause". However, after a careful analysis of the contents of the relevant clause in the contract, the DRC deemed that this was not the case. In particular, the Chamber emphasised that the relevant provision does not establish a right for the player to terminate the contract for a specific, clearly predetermined amount but only seeks at somehow fixing the

minimum amount of compensation due in case of breach by the player. Furthermore, the amount in question remains open as to its maximum.

13. Based on the aforementioned the Chamber had no other option than to consider that the player had no contractually stipulated right to prematurely terminate the contract. Therefore, he had terminated the contract without just cause by means of the letter dated 30 July 2013 sent by his lawyer.

14. The DRC established that, in accordance with art. 17 par. 1 of the Regulations, the player is liable to pay compensation to the Claimant for breach of contract. Furthermore, in accordance with the unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the player's new club, *i.e.* the Respondent club, shall be jointly and severally liable for the payment of compensation. 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 as to whether the new club has committed an inducement to contractual breach or any other kind of involvement by the new club. This conclusion is in line with the well-established jurisprudence of the Chamber that was repeatedly confirmed by the Court of Arbitration for Sport (CAS). Notwithstanding the aforementioned, the Chamber recalled that according to art. 17 par. 4 sent. 2 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.

15. Having stated the above, the Chamber focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including 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 up to a maximum of five years as well as 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. The DRC recalled that the list of objective criteria is not exhaustive and that the broad scope of criteria indicated tends to ensure that a just and fair amount of compensation is awarded to the prejudiced party.

16. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.

17. In this respect, the Chamber acknowledged that the Respondents sustain that pursuant to the terms and conditions as stated in art. 8 par. 1 of the employment contract, the compensation due shall take in consideration only the amounts paid as remuneration. The Claimant for his part alleges that according to the aforementioned article of the employment contract, the amounts paid to the Respondent player and the actual damage incurred have to be calculated.

18. The Chamber considered noteworthy to mention, from the outset, that, due to their important objective of setting forth, in advance, the indemnity to be payable by a party in case of breach of contract, compensation clauses should be clear and give no room for ambiguity. In other words, the DRC emphasised that, as a deciding body, when assessing the existence or not of a compensation clause, it must be in a position to clearly establish the precise intention of the parties as to the matter.

19. Taking into account the clause at stake, the members of the Chamber underlined again that no fixed amount was set out but that the amount remains open as to its maximum and only seeks at somehow fixing the minimum amount of compensation due in case of breach by the player.

20. In light of the above, the Chamber considered that the aforementioned clause cannot be considered by the DRC when establishing the amount of compensation for breach of contract. What is more and for the sake of good order, the Chamber wished to emphasise that, in any case, the clause at stake was not reciprocal, meaning that it did not foresee the consequences of the unilateral termination without just cause by the club, and that as such it could not be seen as enforceable.

21. In continuation, the members of the Chamber determined that the amount of compensation payable in the case at stake had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber stated beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.

22. In order to estimate the amount of compensation due to the Claimant in the present case, the members of the Chamber first turned their attention to the financial terms of the former contract and the new contract, the value of which constitutes an essential criterion in the calculation of the amount of compensation in accordance with art. 17 par. 1 of the Regulations. The members of the Chamber deemed it important to emphasise that the relevant compensation should be calculated based on the average fixed remuneration, i.e. excluding any conditional or performance related payment, agreed by the player with his former club and his new club, as well as considering the

period of time remaining on the contract signed between the player and the former club.

23. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the fixed remuneration payable to the player under the terms of both the employment contract signed with the Claimant, *i.e.* Club N, and the one signed with the Respondent club, *i.e.* Club G, for the period of 12 months that was remaining since the unilateral termination of the contract by the player until its expiry, i.e. from 1 August 2012 until 9 August 2013.

24. In this regard, the Chamber noted that, as per the employment contract signed with the Claimant, the Respondent player was entitled to a monthly salary in the amount of EUR 100,000 for the remaining contractual period, i.e. a total fixed remuneration of EUR 1,200,000.

25. In continuation, the DRC equally took note of the Respondent player's monthly remuneration under the terms of his employment contract with his new club, *i.e.* the Respondent club, which corresponds to USD 174,530 or approximately EUR 128,900, i.e. the total amount of EUR 1,550,000 for the months from August 2012 until July 2013.

26. Taking into account the above, the Chamber concluded that, for the relevant period, the player's average remuneration amounts to EUR 1,375,000.

27. Having stated that, the DRC recalled that the remuneration paid by the player's new club is particularly relevant in so far as it reflects the value attributed to his services by his new club at the moment the breach of contract occurs and possibly also provides an indication towards the player's market value at that time.

28. In this regard, the Chamber was eager to emphasise that the player appeared to have raised his income considerably by concluding an employment contract with the Respondent club and that no transfer compensation had been paid by the Claimant to Club S, from country L, for the player's transfer.

29. Furthermore, with regard to the criterion relating to the fees and expenses allegedly paid by the Claimant for the acquisition of the player's services, the members of the Chamber took due note that Club N had claimed to have paid the amount of EUR 1,169,986 (cf. Facts of the case no. I./15.) and that the actual damage was estimated to be the total amount of EUR 1,354,046 (cf. Facts of the case no. I./16.). In this respect, the Chamber wished to point out that the Claimant had not sufficiently corroborated the expenses invoked and that in any case, the amounts paid to the player while he was rendering his services to the club could not be considered.

30. Taking into account all the aforementioned objective elements in the matter at hand, the Dispute Resolution Chamber decided that the total amount of EUR 1,375,000 was to

be considered reasonable and justified as compensation for breach of contract in the case at hand.

31. As a consequence, the Chamber decided that the Respondent player has to pay the amount of EUR 1,375,000 as compensation for breach of contract to the Claimant, plus interest of 5% *p.a.* as of the date of this decision until the date of effective payment, taking into account the Claimant's petition and the Chamber's constant jurisprudence in this regard.

32. Furthermore, the Chamber decided that, in accordance with art. 17 par. 2 of the Regulations, the Respondent club shall be jointly and severally liable for the payment of the aforementioned amount of compensation.

33. In continuation, the Chamber focused its attention on the further consequences of the breach of contract in question and, in this respect, it addressed the question of sporting sanctions against the player in accordance with art. 17 par. 3 of the Regulations. The cited provision stipulates that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any player found to be in breach of contract during the protected period.

34. In this respect, the members of the Chamber referred to item 7 of the *"Definitions"* section of the Regulations, which stipulates, *inter alia*, that the protected period shall last *"for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*. In this regard, the DRC pointed out that the player, whose date of birth is 11 February 1980, was 31 years of age when he signed his employment contract with the Claimant on 10 August 2011, entailing that the unilateral termination of the contract occurred within the applicable protected period.

35. With regard to art. 17 par. 3 of the Regulations, the Chamber emphasised that a suspension of four months on a player's eligibility to participate in official matches is the minimum sporting sanction that can be imposed for breach of contract during the protected period. This sanction, according to the explicit wording of the relevant provision, can be extended in case of aggravating circumstances. In other words, the Regulations intend to guarantee a restriction on the player's eligibility of four months as the minimum sanction. Therefore, the relevant provision does not provide for a possibility to the deciding body to reduce the sanction under the fixed minimum duration in case of mitigating circumstances.

36. Consequently, taking into account the circumstances surrounding the present matter, the Chamber decided that, by virtue of art. 17 par. 3 of the Regulations, the Respondent player had to be sanctioned with a restriction of four months on his eligibility to participate in official matches.

37. Finally, the members of the Chamber turned their attention to the question of whether, in view of art. 17 par. 4 of the Regulations, the player's new club, i.e. Club G, must be considered to have induced the player to unilaterally terminate his contract with the Claimant without just cause during the protected period, and therefore shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

38. In this respect, the Chamber recalled that, in accordance with art. 17 par. 4 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional player who has terminated his previous contract without just cause has induced that professional to commit a breach. Consequently, the Chamber pointed out that the party that is presumed to have induced the player to commit a breach carries the burden of proof to demonstrate the contrary.

39. Having stated the above, the members of the Chamber took note that the Respondents referred in particular to art. 17 of the FIFA Commentary to the Regulations on the Status and Transfer of Players which states that with the "buy-out clause" the player can also cancel the contract during the protected period and that no sporting sanctions may be imposed on the Respondent club. In this regard, the members of the Chamber referred to point II./12. of the present decision, according to which the members of the Chamber did not consider the provision of art. 8 par. 1 of the contract to be a "buy-out clause".

40. In light of the aforementioned and given that the Respondent club did not provide any other specific or plausible explanation as to its possible non-involvement in the player's decision to unilaterally terminate his employment contract with the Claimant, the DRC had no option other than to conclude that the Respondent club had not been able to reverse the presumption contained in art. 17 par. 4 of the Regulations and that, accordingly, the latter had induced the player to unilaterally terminate his employment contract with the Claimant.

41. In view of the above, the Chamber decided that in accordance with art. 17 par. 4 of the Regulations, the Respondent club shall be banned from registering any new players, either nationally or internationally, for the two entire and consecutive registration periods following the notification of the present decision. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in art. 6 par. 1 of the Regulations in order to register players at an earlier stage.

42. Finally, the DRC decided that the Claimant's claim pertaining to legal costs and expenses is rejected, in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's longstanding respective jurisprudence.

43. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by the Claimant are rejected.

III. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Club N, is partially accepted.

2. The Respondent player, Player B, is ordered to pay to the Claimant, Club N, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 1,375,000, plus interest of 5% *p.a.* as of the date of this decision until the date of effective payment.

3. The Respondent club, Club G, is jointly and severally liable for the payment of the aforementioned compensation.

4. If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

5. The Claimant, Club N, is directed to inform the Respondent player, Player B, and the Respondent club, Club G, 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.

6. A restriction of four months on his eligibility to play in official matches is imposed on the Respondent player, Player B. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

7. The Respondent club, Club G, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

8. Any further claims lodged by the Claimant, Club N, are rejected.

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Note relating to the motivated decision (legal remedy):

According to art. 67 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
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For the Dispute Resolution Chamber:

Markus Kattner
Deputy Secretary General

Encl. CAS directives