Decision of the
Dispute Resolution Chamber

passed in Zurich, Switzerland, on 18 March 2016,

in the following composition:

Geoff Thompson (England), Chairman
Philippe Piat (France), member
John Bramhall (England), member
Theodore Giannikos (Greece), member
Zola Percival Majavu (South Africa), member

on the claim presented by the club,

Club A, country B

as Claimant

against the player,

Player C, country D

as Respondent 1

and against the club,

Club E, country F

as Respondent 2

regarding an employment-related dispute
between the parties
I. Facts of the case

1. On 31 August 2012, the player from country D, Player C (hereinafter: Respondent 1 or player) and the club from country B, Club A (hereinafter: Claimant), concluded an employment contract (hereinafter: contract) valid from the date of the signature until 31 May 2015.

2. Clause 3.1.d) of the contract established that “Si el futbolista juegue en la temporada del fútbol 2014-2015 en 25 o más Premier League partidos de fútbol; el contrato de futbolista se prolonga con una notificación a los partidos hasta la fecha 15.06.2015 con las condiciones siguientes por una temporada del fútbol. La fecha opcional del final de contrato: Se va 31.05.2016.”. In this respect, the Claimant provided a translation of the relevant clause into English as follows: “In the season 2014 – 2015 if the player plays 25 or more first division league games parties has right to extend players contract one football season by notification until the date on 15.06.2015 for the following conditions The term of the optional contract will be end on 31.05.2016”.

3. According to the contract, the player was entitled to the following remuneration:

   **Season 2012-2013:**
   - EUR 60,000 in September 2012;
   - EUR 1,040,000 divided in 10 monthly instalments.

   **Season 2013-2014:**
   - EUR 60,000 in October 2013;
   - EUR 1,040,000 divided in 10 monthly instalments.

   **Season 2014-2015:**
   - EUR 240,000 in October 2014;
   - EUR 960,000 divided in 10 monthly instalments.

4. In case the contract would be extended for the season 2015-2016, the player would be entitled to the following remuneration:

   - EUR 240,000 due in October 2015;
   - EUR 960,000 divided in 10 monthly instalments from August 2015 until May 2016.

5. On 15 May 2015, the Claimant notified the player that the contract was extended until 31 May 2016, in accordance with clause 3.1.d) of the contract.

6. On 18 May 2015, the Claimant also notified the Football Association of country B about the extension of the contractual period.

7. On 25 May 2015, the Football Association of country B issued a declaration confirming that it had registered the extension of the contract until 31 May 2016.
8. On 3 July 2015, the player notified the Claimant that he considered the extension of the contract invalid, since it was a unilateral extension. Moreover, the player pointed out that the remuneration was the same for the season 2014-2015. In conclusion, the player held that the contract was effectively terminated on 15 May 2015.

9. On 6 July 2015, the Claimant replied to the player’s letter dated 3 July 2015, affirming that the extension clause is valid since it is valid for both parties. Therefore, the Claimant stated that the player was contractually bound to it until 31 May 2016 and urged the player to join the team for training.

10. On the same date, 6 July 2015, the player replied insisting on the termination and refusing to return to the Claimant.

11. On 10 July 2015, the player signed an employment contract with the club from country F, Club E (hereinafter: Respondent 2), valid from the date of signature until 30 June 2016, by means of which the player was entitled to receive an annual remuneration of USD 1,200,000. Moreover, the player and the Respondent 2 signed another employment contract, dated 13 July 2015, valid from 1 July 2015 until 30 June 2016, which established a total remuneration of USD 600,000.

12. On 27 August 2015, the Players’ Status Committee authorized the provisional registration of the player with the Respondent 2, after the rejection of the issuance of the International Transfer Certificate (ITC) by the Football Association of country B on two occasions.

13. On 30 September 2015, the Claimant lodged a claim before FIFA against the Respondent 1 and the Respondent 2 for breach of contract, claiming the amount of EUR 10,000,000 as compensation as well as that the Respondent 2 is to be considered jointly and severally liable to pay the compensation claimed.

14. According to the Claimant, the contract was valid until 31 May 2015 with the possibility to be extended by any of the parties, in case the Respondent 1 played 25 or more first division league matches during the season 2014-2015, by notifying the other party until 15 June 2015. In particular, the Claimant pointed out that the contract had already foreseen the financial terms in case of extension of the contractual period.

15. In this respect, the Claimant held that, during the season 2014-2015, the Respondent 1 played in 32 first division league matches and thus, both parties to the contract had the right to extend the contractual period for one football season. Consequently, the Claimant notified the Respondent 1 in writing of the exercise of the extension option and, thus, the parties became contractually bound until 31 May 2016.

16. Finally, the Claimant stated that the Respondent 1 informed it that he had signed an employment contract with the Respondent 2 and, in reaction, it immediately sent a warning letter to the latter.
17. The Respondent 1 submitted his reply, rejecting the Claimant’s claim. First of all, the Respondent 1 raised the issue that the Claimant addressed its claim to the Players’ Status Committee which would not be competent to deal with employment-related disputes and thus, the claim should be rejected.

18. Moreover, the Respondent 1 held that the attempt of the Claimant to extend the validity of the contract was based on an illegal and unenforceable clause of the contract that established a unilateral option for contractual extension. Therefore, the Respondent 1 stated that, even though he played in 32 “first division league (Premier League as described in the contract) matches during the 2014/2015 season” and the Claimant notified him of the extension, the contract expired after the end of the 2014-2015 season. According to the Respondent 1, he simply exercised his right to refuse the unilateral extension and thus, he did not terminate the contract without just cause.

19. In particular, the Respondent 1 made reference to the DRC and CAS jurisprudence that a unilateral contract extension to a club’s benefit is invalid and inadmissible, particularly where the extension is for the same financial terms as those of the previous year.

20. In addition, the Respondent 1 indicated that the option to extend was only for the Claimant as well as that the Claimant had the power to decide whether he would participate in the country B’s first division league matches, which was the condition to be fulfilled for a possible extension.

21. Furthermore, the Respondent 1 highlighted that, in any case, the claim is excessive and unsubstantiated, considering the contractual terms.

22. Finally, the Respondent 1 requested the costs to be imposed on the Claimant as well as legal fees in the amount of EUR 10,000.

23. The Respondent 2 submitted its position to the claim, alleging that the Claimant has no claims against it since:

   - The Respondent 2 hired the Respondent 1 in good faith and did not intervene in the contractual relationship between the Claimant and the Respondent 1. In this respect, the Respondent 2 submitted a statement of the Respondent 1 declaring he was free of contract.

   - The unilateral extension of the contract is null and void in accordance with the applicable legislation and jurisprudence.

24. In continuation, the Respondent 2 made reference to the “Portman Report” and affirmed that a unilateral extension clause could only be accepted if 5 elements were present:

   - the maximal duration of the contract is not excessive;
- the option is exercised within an acceptable deadline before the expiration;
- the salary is defined in the original contract;
- one party is not at the mercy of the other party and a substantial increase of the salary is the most important indication;
- the option is clearly established and emphasised so that the player is conscious of it when signing the contract.

In this respect, the Respondent 2 stated that the clause was clearly null, since the participation of the Respondent 1 in country B’s first division league matches depends solely on the Claimant as well as there is no increase in the salary for the new season.

25. In addition, the Respondent 2 held that the Claimant did not explain or justify the amount of compensation requested and, for this reason, even in case it is considered that the extension of the contract was valid and that the player breached the contract, the claim should be rejected. Moreover, the Respondent 2 highlighted that the Claimant did not submit any evidence of the damages allegedly suffered.

26. Finally, the Respondent 2 held that, if a compensation would be granted to the Claimant, the maximum amount would be EUR 24,000, which allegedly corresponds to one fourth of the monthly salary, in accordance with art. 337d 1 of the Swiss Code of Obligations.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as Chamber or DRC) analysed whether it was competent to deal with the matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 30 September 2015. Consequently, the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (edition 2015; hereinafter: Procedural Rules) are applicable to the matter at hand (cf. art. 21 of the Procedural Rules).

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2015) the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from country D and a club from country B as well as a club from country F.

3. Furthermore, the Chamber analysed which regulations 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 (edition 2015), and considering that the present claim was lodged on 30 September 2015, the 2015 edition of said regulations (hereinafter: Regulations) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

5. The Chamber took note that the Claimant lodged a claim against the Respondent 1 and the Respondent 2 for breach of contract, claiming compensation in the amount of USD 10,000,000 and that the Respondent 2 be held jointly and severally liable for payment of the amount of compensation.

6. In this context, first and foremost, the members of the DRC acknowledged that the Claimant and the Respondent 1 were bound by an employment contract signed on 31 August 2012 and valid from that date until 31 May 2015.

7. Moreover, regarding the duration of the contract, the DRC took note that clause 3.1.d) of the contract established that, in case the player played 25 first division league matches or more in the season 2014-2015, the parties would have the right to extend the contract for one season, i.e. until 31 May 2016, upon notification until 15 June 2015. In addition, the contract determined that, in case of extension of the contractual period, for the season 2015-2016, the player would be entitled to receive a total remuneration of USD 1,200,000 (cf. point 1./3. above).

8. In continuation, the DRC took note that the Claimant maintains that both parties had the right to extend the contract for one season in accordance with clause 3.1.d) of the contract, in case the player played 25 or more first division league matches. In particular, the Claimant pointed out that the contract even foresees the relevant remuneration for the season 2015-2016.

9. In this respect, the Claimant affirms that the Respondent 1 participated in 32 first division league matches and consequently both parties had the right to extend the contractual period. In this regard, the Claimant states having notified the Respondent 1, on 15 May 2016, of the extension of the contractual period, as well as the Football Association of country B and therefore, holds that the contract was validly extended until 31 May 2016.

10. Moreover, according to the Claimant, considering that the contract was validly extended until 31 May 2016, the Respondent 1 breached the contract by concluding an employment contract with the Respondent 2, on 10 July 2015, while being contractually bound to the Claimant. Finally, the Claimant held that the Respondent 2 must be considered jointly and severally liable for the payment of compensation for breach of the contract.
11. Subsequently, the DRC took note that according to the Respondent 1 the contract expired on 31 May 2015, as originally agreed. The Respondent 1 held that he exercised his right to refuse the unilateral extension proposed by the Claimant and that therefore, he did not terminate the contract without just cause. The Respondent 1 emphasised that the Claimant’s attempt to extend the contract was based on a unilateral clause that cannot be considered valid.

12. In this respect, the Respondent 1 added that a unilateral extension clause is invalid in accordance with the DRC and the CAS jurisprudence.

13. The DRC also took into account the arguments raised by the Respondent 2. In particular, it took note that the Respondent 2 alleged that the unilateral extension is null and void, since the participation of the player in the country B’s first division league matches depended solely on the Claimant.

14. Having considered the diverging position of the parties, the members of the DRC concluded that, first and foremost, and before entering into any other consideration, they should examine the validity of the extension clause and determine whether the employment contract signed between the Claimant and the Respondent 1 had been validly extended until 31 May 2016.

15. At this point, the members of the DRC turned their attention to the contents of the relevant extension clause, i.e. clause 3.1.d) of the contract, which establishes inter alia in the uncontested English translation provided by the Claimant that the parties have the right to extend the contract in case the player plays a certain number of matches during the season 2014-2015, by notifying the other party until 15 June 2015.

16. The members of the Chamber underlined that it was undisputed by the parties that the Respondent 1 fulfilled the condition required for an extension of the contract under clause 3.1.d) of the contract.

17. Nevertheless, the Chamber deemed necessary to appreciate whether the fulfilment of said condition, that is, the participation of a player in a certain number of matches during a certain period of time, can be established in a mutual matter or, oppositely, if it is a prerogative in the hands of a club.

18. Within this context, the members of the Chamber recalled that, in accordance with the principle of pacta sunt servanda, a player is expected to duly fulfil his contractual duties and, in particular, to diligently carry out and follow the instructions provided by the club’s technical staff, including the decisions of the latter to line up a player in an official match.

19. In this regard, the members of the Chamber concurred that, under normal conditions, a player cannot decide on his own participation in official matches and that this is a prerogative of the club’s technical staff.
20. Consequently, and in relation to the referred clause, the members of the Chamber unanimously understood that only the Claimant had a capacity in the case at stake to influence the fulfilment of the condition for the extension of the contract, and that ultimately, the Respondent 1 was in a relationship of subordination to the Claimant’s decisions over this issue.

21. In this regard, the Chamber took note that although in theory both parties could unilaterally extend the contract by simply notifying the other party within the deadline established in the contract, the right to unilaterally extend the contract would only come into existence in case the imposed condition was met, i.e. that the player plays in at least 25 first division league matches during the season 2014-2015, which decision as explained above lies in the hands of the Claimant.

22. Considering all the above, the members of the Chamber agreed that clause 3.1.d) of the contract is essentially unilateral in its own nature to the benefit of the Claimant and that, accordingly, it should be deemed as invalid.

23. In addition, the DRC reverted to the financial terms of the contract and realised that the remuneration foreseen for the season 2015-2016 in case of extension of the contract was the exact same remuneration as for the season 2014-2015 and thus, did not establish any raise or improvement in the financial conditions for the Respondent 1.

24. Moreover, the members of the Chamber highlighted the fact that the extension clause established the deadline for notification of the extension until 15 June 2015, therefore after the expiration of the contract agreed by the parties, i.e. 31 May 2015.

25. On account of the above, the DRC decided that the extension clause, i.e. clause 3.1.d) of the contract, cannot be considered as being legally binding on the Respondent 1.

26. Having established the above and bearing in mind that the Respondent 1 has not accepted to extend the contract with another season, the Chamber decided that the contract signed between the Claimant and the Respondent 1 on 31 August 2012 ended with its ordinary expiry on 31 May 2015.

27. Consequently, the Respondent 1 was no longer contractually bound to the Claimant as of 1 June 2015.

28. In this regard, the members of the Chamber observed that the Respondent 1 and the Respondent 2 concluded an employment contract on 10 July 2015. The Chamber established that said contract was thus concluded after the expiration of the contractual relationship between the Claimant and the Respondent 1 only.

29. As a result, the members of the Chamber understood that neither the Respondent 1 nor the Respondent 2 should bear any liability towards the Claimant, and that consequently, the claim of the Claimant has to be rejected in full.
30. In addition, as regards the legal fees requested by the Respondent 1, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the Chamber decided to reject the Respondent 1’s request relating to legal fees.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Club A, is 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:

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Encl: CAS directives