Arbitration CAS 2009/A/1909 RCD Mallorca SAD & A. v. Fédération Internationale de Football Association (FIFA) & UMM Salal SC, award of 25 January 2010

Panel: Prof. Luigi Fumagalli (Italy), President; Mr José Juan Pintó Sala (Spain); Mr Hendrik Willem Kesler (the Netherlands)

Football
Unilateral termination of an employment contract without just cause during the Protected Period
Burden of proof
Applicable national law
Material error
Signature of two contracts for the same period
Liquidated damages
Protected Period
Sporting sanctions

1. **In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its "burden of proof", i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. According to the Swiss Federal Tribunal, in the event direct evidence cannot be offered, a judge does not violate Article 8 of the Swiss Civil Code (CC) if he bases his decision on clues or on a high degree of likelihood. In addition, events whose existence must be presumed according to the normal course of things can be indicated as a basis of a judgment, even if these events are not confirmed by evidence, if the opposing party does not indicate or prove circumstances suitable to put their existence in doubt.**

2. **A player can invoke domestic law in order to have an employment contract terminated, if his consent is vitiated by error. It cannot be held that the entire legal regime applicable to employment contracts of professional players has to be found exclusively in the FIFA Regulations. As the CAS practice shows, several points, not covered by the FIFA Regulations, need to be filled by reference to a domestic law, and mainly to Swiss law.**

3. **A contract is not binding because of an error only if the error is material (*"essentielle"*) and the invocation of the error is not contrary to the good faith of the other party. The disciplinary consequences, if any, of an action of an athlete pertinent to his sporting activity are defined by the rules of the relevant sport system, since they are intended to protect the values on which such system is based: consequently, the parties to a contract are in principle not allowed to modify their regime. Therefore, since the disciplinary consequences do not form part of the contractual arrangements, an error regarding them is not an error pertinent to the contract. Such error relates to the legal consequences of an action, and therefore to an element which is not deemed material**

(*"essentielle"*) by Article 24 of the Swiss Code of Obligations (CO).

4. **The signature of two conflicting contracts constitutes an action which cannot be allowed; a player is not entitled to sign a second contract in order to "insure" himself against the possible breach of the first contract by the club: if he does that, he is himself in any case in breach of one of the two contracts.**

5. **The FIFA Regulations acknowledge the freedom of the parties, recognized in the domestic legal systems, to define in advance (in "penalty" or "liquidated damages" clauses) the amount of compensation to be paid in the event of breach. As a result, if a breach occurs, that amount has to be paid and not the amount determined under the other criteria set in the FIFA Regulations.**

6. **It cannot be implied from the definition of the Protected Period that a breach committed after the signature of the contract and before its entry into force is not within the Protected Period. An employment contract is binding on the parties as of its signature even if an initial deadline is set for its applicability. A breach before that deadline (e.g., the day before), depriving the other party of the expected performance promised by the party in breach, is not less serious than a breach after (e.g., the day after) the deadline. The rationale underlying the concept of Protected Period, i.e. to reinforce the contractual stability in the first years of contract, applies to both breaches.**

7. **Rules and regulations have to be interpreted in accordance with their real meaning. This is true also in relation with the statutes and the regulations of an association. There is a well accepted and consistent practice of the DRC not to apply automatically a sanction as per art. 17 para. 3 of the FIFA Regulations. Such an interpretation of the rationale of art. 17 para. 3 of the FIFA Regulations appears to be consolidated practice and represents the real meaning of the provision as it is interpreted, executed and followed within FIFA.**

RCD Mallorca SAD ("Mallorca" or the "First Appellant") is a Spanish football club existing under the laws of Spain and has its headquarters in Mallorca, Spain. Mallorca is affiliated to the Real Federación Española de Fútbol (RFEF), which is a member of the Fédération Internationale de Football Association.

A. (the "Player" or the "Second Appellant"; Mallorca and the Player are hereinafter jointly referred to as the "Appellants") is a professional football player of Guinean nationality, born in 1983.

The Fédération Internationale de Football Association (FIFA or the "First Respondent") is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over

continental confederations, national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich (Switzerland).

UMM Salal SC ("UMM Salal" or the "Second Respondent"; FIFA and UMM Salal are hereinafter jointly referred to as the "Respondents") is a football club with its registered office in Doha, Qatar. UMM Salal is a member of the Qatari Football Association (QFA), itself affiliated to FIFA.

At the beginning of 2008 the Player had a contract in force with Al Itthiad FC ("Al Itthiad"), a club affiliated to the Saudi Arabian Football Federation (SAFF), due to expire on 30 June 2008.

The Player signed an *"Employment contract of a professional footballer"* with Mallorca dated 1 February 2008 (the "First Contract"), valid from 1 July 2008 to 30 June 2013. Under such First Contract, the Player was to receive a monthly salary of EUR 11,000 *"net"* (to be paid in 14 instalments), a *"bonus"* of EUR 360,000 *"net"*, and a *"game bonus in accordance with the bonus structure as agreed for the rest of the squad"*. The First Contract was followed by the signature by Mallorca and the Player, on 7 July 2008, of a *"Contrato de trabajo de jugador professional"* on the contractual form of the *"Liga Nacional de Futbol Professional"* of the RFEF.

The Player signed also a *"Football Player's Contract"* with UMM Salal dated 17 March 2008 (the "Second Contract"), valid from 1 July 2008 to 1 June 2010. Under the Second Contract, the Player was entitled to receive, over the contractual term, inter alia a total salary of USD 2,400,000. The Second Contract contained the following provisions, concerning *"Termination by the Club or the Player"* (Article X):

> *"1. The Club and the Player may terminate this Contract, before its expiring term, by mutual consent.*
>
> *2. The Club and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
>
> *3. When the termination of the Contract is not due to just cause or a mutual agreement between the Parties concerned, the Club or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for an amount of 160,000 $ (one hundred sixty thousand dollars)".*

A document dated 20 March 2008, under letterhead of Fairplay Agency GmbH (the "FPA"), was signed by the Player (the "FPA Document"). The FPA Document describes the *"Conditions of Contract A."* concerning his employment with Mallorca, providing, inter alia, salaries, for each year of contract, of EUR 600,000 *"net"* and a *"signing fee"* of EUR 2,000,000.

On 3 May 2008 the Player informed UMM Salal, by means of a handwritten letter (the "Termination Letter"), that he was not in a position to comply with the Second Contract, since he was obliged with another club. The Player therefore requested the cancellation of the Second Contract as follows:

"Dear Sir,

am writing to you this letter to advice you officer that am not in a position to execute or […]the prilmary agree sing between me and Umm Salal Sport Club on 19/03/2008 since am obliged with my current club. Accordingly the refeered agreement should be considered cancelled. Thanks".

In a letter dated 6 May 2008, the counsel for UMM Salal, writing on behalf of his client, addressed Al Itthiad and the Player in order to have a confirmation that the Player was free to join UMM Salal starting from 1 July 2008. This request made reference to the Termination Letter (which had mentioned an obligation of the Player with his then *"current club"*) and to some rumours that the Player had signed a new contract with Al Itthiad.

On 15 May 2008 the Player agreed with Al Itthiad to terminate by mutual consent the employment contract at the time in force between them.

On 3 June 2008 the QFA contacted the SAFF to request the issuance of the International Transfer Certificate (ITC) for the transfer of the Player to UMM Salal.

On 8 June 2008, the SAFF, after consulting Al Itthiad, sent the ITC to the QFA.

On 8 July 2008 the RFEF, acting upon Mallorca's request, asked the SAFF to issue the ITC for the transfer of the Player to Spain. In light of the prior issuance of the ITC in favour of the QFA, such request was however denied by the SAFF on 14 July 2008. The SAFF referred the RFEF to the QFA.

Following the SAFF's indications, the RFEF requested the ITC from the QFA. On 20 July 2008, the QFA denied the ITC, indicating that the Player had a contract with UMM Salal.

In a letter dated 26 August 2008 to the SAFF and the QFA, FIFA, having been contacted by the RFEF, requested the issuance of the ITC.

After an exchange of correspondence with Mallorca, in letters dated 1 September 2009 and 9 September 2009 UMM Salal specified that, while reserving any right to seek a remedy for the damages sustained, it did not intend *"to be prejudicial* [to] *the sporting career of A. nor to prevent club Deportivo Mallorca from not being able to profit from the services of the aforesaid player and this, only because of a financial dispute of contractual nature with A.".*

On 14 September 2008 the ITC was finally issued by the QFA in favour of the RFEF, after a further intervention of FIFA.

On 15 October 2008 UMM Salal filed with FIFA a claim against the Player for breach of contract without just cause, and requested compensation from the Player in the amount of USD 2,000,000. At the same time, UMM Salal requested that Mallorca be held jointly and severally liable for the payment of such compensation.

The Player denied the allegations submitted by UMM Salal and stated that he had breached the Second Contract with just cause: therefore, no compensation was due. On his part, Mallorca requested that the claim of UMM Salal be dismissed and submitted that it could have never induced the Player to breach the Second Contract, because it was signed after the First Contract. Mallorca also pointed out that UMM Salal had acted in bad faith, while requesting the ITC of the Player in June 2008. As a consequence of that action, Mallorca submits, the Player was prevented from participating in the matches that took place in July, August and first half of September 2008. As a result, Mallorca, acting by way of counterclaim, claimed from UMM Salal the payment of compensation in the amount of USD 110,000.

On 15 May 2009 the Dispute Resolution Chamber of the FIFA Players' Status Committee (the "DRC") issued a decision (the "Decision") holding as follows:

> *"1. The claim of the Claimant, Umm Salal Sports Club, is partially accepted.*
>
> *2. The Respondent 1, A., has to pay the amount of USD 160,000 to the Claimant, Umm Salal Sports Club, within 30 days of notification of the present decision.*
>
> *3. The Claimant, Umm Salal Sports Club, is directed to inform the Respondent 1, A., directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
>
> *4. If this amount is not received within the aforementioned time limit, an interest rate of 5% per annum as of the expiry of the said time limit will apply and the matter will be submitted, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.*
>
> *5. A restriction of four months on his eligibility to play in official matches is imposed on Respondent 1, A. This sanction shall take effect as of the start of the next season of the player's club following the notification of the present decision.*
>
> *6. The Respondent 2 / Counter-Claimant, Real Club Deportivo Mallorca, is not jointly and severally liable for the payment of the aforementioned compensation.*
>
> *7. Any further requests filed by the parties are rejected".*

In its Decision, the DRC applied the 2008 edition of the Regulations on the Status and Transfer of Players (the "Regulations") and noted that:

- *"… the Respondent 1* [the Player] *concluded two employment contracts valid as from 1 July 2008 (i.e. one with the Respondent 2 / Counter-Claimant* [Mallorca]*, dated 1 February 2008, and one with the Claimant* [UMM Salal] *dated 17 March 2008) and that, in this respect, the Claimant alleged disbelieving that the first contract has been actually concluded prior to the second contract".* However, *"… the Claimant has not presented any suitable evidence in order to corroborate its allegation. Therefore, … the respective argumentation of the Claimant could not be upheld and hence, that the first contract signed by the player was the one concluded with the Respondent 2 / Counter-Claimant, dated 1 February 2008, prior to the conclusion of the second contract signed with the Claimant, dated 17 March 2008";*
- *"… the Respondent 1 asserted having signed the first contract with the Respondent 2 / Counter-Claimant on 1 February 2008, and having signed the second contract with the Claimant at a later*

stage. In respect of the compliance of the second contract, the Respondent 1 stated that the breach of this contract was with just cause, since in order to comply with the first contract he had to breach the second one, otherwise he would have breached the first contract". In this regard, *"in lack of any relevant defense which could possibly justify the termination of the employment contract concluded between the Respondent 1 and the Claimant",* the DRC established *"that, by entering into a labour contract with the Claimant valid as from the same date (i.e. 1 July 2008) as the contract concluded with the Respondent 2 / Counter-Claimant, the Respondent 1 had breached his employment contract with the Claimant without just cause".* More exactly, referring *"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'",* the DRC pointed out that the Player *"had been 22 years of age when he signed his employment contract with the Claimant on 17 March 2008",* with the consequence *"that the breach of the relevant contract had occurred within the applicable protected period".*

The DRC, then, *"turned its attention to the question of the consequences of such breach of contract during the protected period committed by the Respondent 1*". In this respect, the DRC:

- *"… first of all established that, in accordance with art. 17 par. 1 of the Regulations, the Respondent 1 is liable to pay compensation to the Claimant";* then
- *"… focussed its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, … 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 disputed, 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"* and *"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";*
- *"… held that it first of all had to clarify as to whether the relevant employment contract between the Respondent 1 and the Claimant contains a provision by which the parties had beforehand agreed upon an amount of compensation for breach of contract".* Upon *"careful examination of the employment contract concluded between the Respondent 1 and the Claimant",* the DRC *"took note that art. X of the second contract provides for a compensation of USD 160,000 in case of termination of the contract without just cause or without mutual agreement of the parties concerned".* As a consequence, the DRC *"determined that the amount of compensation for breach of contract without just cause to be paid by the Respondent 1 to the Claimant is USD 160,000 in accordance with art. X of the contract at the basis of the dispute";*
- *"… took note that the Claimant was claiming, in accordance with art. XIV par. 5 of the contract concluded with the Respondent 1, 50% of the total value of the second contract as transfer compensation, as allegedly stipulated in the said contract in case the Respondent 1 is transferred to a third club",* but *"emphasized that … the first contract signed by the Respondent 1 was the one concluded with the Respondent 2 / Counter-Claimant, dated 1 February 2008, prior to the signature of the contract with*

the Claimant, hence, the Respondent 1 had not been transferred from the Claimant to the Respondent 2 / Claimant, and therefore the above-mentioned article is not applicable".

In continuation, the DRC focused on the further consequences of the breach of contract in question and, in this respect, addressed the question of sporting sanctions against the Player in accordance with Article 17.3 of the Regulations, under which, 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 (as defined in the Regulations, the "Protected Period": see § 16(i) below). In this regard, the DRC *"recalled that … the breach of contract by the Respondent 1 had occurred during the applicable protected period"*. Consequently, the DRC *"decided that, by virtue of art. 17 par. 3 of the Regulations, the Respondent 1 had to be sanctioned with a restriction of four months on his eligibility to participate in any official football match. This sanction shall take effect from the start of the next season of the Respondent 1's club following the notification of the present decision"*.

Finally, the DRC turned its attention to the question whether, in view of Article 17.4 of the Regulations, *"the Respondent 1's current club, i.e. the Respondent 2 / Counter-Claimant, must be considered to have induced the Respondent 1 to breach 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 registration periods"*. In this respect, the DRC *"referred to art. 17 par. 4 of the Regulations, which provided, inter alia, that 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"*. In this regard, the DRC *"underlined that … the contract concluded with the Respondent 2 / Counter-Claimant was signed by the relevant parties prior to the contract concluded between the Claimant and the Respondent 1 and that therefore no inducement could have taken place"*. As a result, the DRC decided *"that no sporting sanctions would be imposed on the Respondent 2 / Counter-Claimant"*.

At the same time, with regard to the joint and several liability of Mallorca and the Player for the payment of compensation for the breach of contract, the DRC referred to Article 17.2 of the Regulations, according to which the professional and his new club shall be jointly and severally liable to pay compensation, and *"recalled that the contract concluded between the Respondent 1 and the Respondent 2 / Counter-Claimant was signed prior to the contract concluded between the Respondent 1 and the Claimant"*. As a result, the DRC *"established that the Respondent 2 / Counter-Claimant shall not be jointly and severally liable for the payment of compensation by the player, since the Respondent 2 / Counter-Claimant is not the new club of the Respondent 1"*.

The DRC also considered the counter-claim lodged by Mallorca, by means of which Mallorca demanded a compensation of USD 110,000 from UMM Salal, *"since the latter, as an alleged act of bad faith, requested the ITC from SAFF in June 2008 while the Respondent 1 had already sent his termination letter in May 2008, and as a consequence the Respondent 1 was not able to participate in matches for the Respondent 2 / Counter-Claimant during July, August and half of September 2008"*. In this regard, the DRC considered that *"the Claimant had concluded an employment contract with the Respondent 1, and consequently insisted in its compliance since it was interested in the services of the Respondent 1, as stated during the ITC procedure. Furthermore, after FIFA's intervention in the ITC procedure, and in order not to interfere with the career of the Respondent 1, the Claimant did not oppose to the issuance of the ITC, but focused on the financial aspects of the*

dispute". In this context, the DRC *"concluded that the bad faith of the Claimant could not be presumed, and therefore … rejected the counter-claim lodged by the Respondent 2 / Counter-Claimant"*.

The Decision was notified to Mallorca, the Player and UMM Salal on 25 June 2009.

On 16 July 2009, Mallorca and the Player filed a joint statement of appeal, dated 14 July 2009, with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the "Code"), against the Club to challenge the Decision. The statement of appeal contained also an application for provisional measures, seeking the stay of the challenged Decision, the request that FIFA be ordered to lodge the file of the proceedings before the DRC, and the appointment of Mr José Juan Pintó Sala as arbitrator.

On 24 July 2009, the Appellants filed, together with 11 exhibits, their appeal brief, dated 22 July 2009. In such submission, the Appellants confirmed their requests for relief against the Decision, and named the Player, Mr Fernando Pons and the legal representative of UMM Salal *"with knowledge of the facts"* as witnesses to be heard at the hearing.

Following an exchange of correspondence, in which the Respondents indicated that they did not contest the request for the stay of execution of the Decision filed by the Appellants, on 18 August 2009 the President of the CAS Appeals Arbitration Division issued an order on provisional measures as follows:

> *"1. The application for provisional measures filed by RCD Mallorca SAD and A. on 16 July 2009 in the matter CAS 2009/A/1909 is allowed.*
>
> *2. The decision passed on 15 May 2009 by the Dispute Resolution Chamber of FIFA by virtue of which A. was imposed a four months restriction to his eligibility to play in official matches is provisionally stayed until the Court of Arbitration for Sport issues a final award on the merits.*
>
> *3. The costs of the present order shall be determined in the final award".*

On 20 August 2009, UMM Salal filed its answer, dated 19 July 2009, to the appeal, seeking its dismissal, together with a counterclaim. UMM Salal's answer had attached 21 exhibits.

On 24 August 2009, FIFA filed its answer to the appeal, asking its rejection. FIFA's answer had attached 5 exhibits.

In a letter 5 October 2009, then, the CAS Court Office informed the parties that the Panel had decided to allow the Appellants to file an answer to the counterclaim lodged by UMM Salal. As a result, the Appellants filed a brief in reply to the counterclaim, dated 19 October 2009.

On 24 November 2009 the Appellants filed with CAS a *"complementary statement"* intended to modify their presentation of the facts and to withdraw an allegation brought in support of their request for relief.

In a letter dated 30 November 2009, the CAS Court Office, writing on behalf of the Panel, informed the parties that the Panel had decided to accept the new statement of the Appellants and to grant the Respondents the opportunity to express their position on such statement.

The position of FIFA was stated in a letter dated 7 December 2009.

A hearing was held in Lausanne on 11 December 2009. At the hearing Mr Fernando Pons, sport manager of Mallorca, was heard as a witness. The Player, then, also made some declarations.

In his deposition Mr Fernando Pons stated that:

- he personally negotiated at the end of January 2008 the First Contract with the Player, even though the financial conditions of the Player's employment were defined by the general manager of Mallorca, who also signed the First Contract;
- the First Contract was followed by the signature in July 2008 of a contract on the form of the *"Liga Nacional de Futbol Professional"* of the RFEF in order to comply with Spanish regulations; such form could not be used at the time the First Contract was signed simply because it was not available;
- Mallorca was never presented the FPA Document: it received a copy thereof only during the FIFA proceedings.

The Player, then, declared the following:

- the Second Contract was signed in Aleppo, where he was playing a football match with his then team, Al Itthiad, in a hotel room, in the early hours of a night. More exactly, the Second Contract was signed during a meeting attended by himself, the President of UMM Salal, an agent named (something like) Abdulla (hereinafter referred to as "Mr Abdulla"), and a fourth person;
- Mr Abdulla was not his agent, nor the agent of UMM Salal, but acted as a sort of intermediary to create a contact between the Player and UMM Salal; however, he trusted Mr Abdulla, since he had met Mr Abdulla in preceding occasions;
- during the meeting he informed UMM Salal of the fact that he had already signed the First Contract with Mallorca. Such First Contract was even shown to Mr Abdulla;
- the Second Contract was signed by him only because he had concerns as to the possibility to actually join Mallorca on the basis of the First Contract, also because of the rumours that Mallorca was having financial problems. In other words, the Second Contract was a way to insure him against the risk of remaining without a club in July 2008 (after the expiration of the contract with Al Itthiad). In fact, during the meeting in Aleppo, it was agreed that all copies of the Second Contract, signed by the Player and UMM Salal, had to be kept by Mr Abdulla, with the instruction to destroy them in the event the Player had decided to play for Mallorca;
- during the meeting he did not discuss at all a provision, to be inserted in the Second Contract, concerning the possibility to terminate it upon payment of a given amount. Actually, he signed the Second Contract without even reading it, on the basis of the

trust he had in Mr Abdulla and of the assumption that the Second Contract was to be destroyed in the event he had decided to play for Mallorca: in such situation, therefore, it would not have been necessary to formally invoke a contractual provision to terminate it;

- after receiving a payment from Mallorca, he decided that he did not need the Second Contract. As a result, he contacted Mr Abdulla in order to have the Second Contract destroyed in accordance with agreement, based on trust, reached at the time of its signature, only to learn that copy of the Second Contract had already been delivered to UMM Salal – in breach of the mentioned agreement;
- he was not shown by Al Itthiad the UMM Salal letter dated 6 May 2008;
- he never signed the FPA Document, which was probably created by an agent using the signature he had made on a blank document in 2006 when playing in Switzerland, in order to empower that agent to act on his behalf.

The counsel for UMM Salal, after the presentation of his client's position, the deposition of Mr Pons and the declarations of the Player, had to leave the hearing, because of other engagements. Before leaving, however, the counsel for UMM Salal confirmed that the hearing could continue also in his absence and that he had no objections in respect of UMM Salal's right to be heard and to be treated equally in the arbitration proceedings.

The Appellants and FIFA, then, made submissions in support of their respective cases. At the request of the Panel, the parties illustrated their position on some points: inter alia, on the definition of Protected Period, as contained in the Regulations, and on the disciplinary sanction provided in the Regulations for a player in the event of breach of contract during the Protected Period. In this latter respect, FIFA was requested to expound on the existence of an obligation, or of a mere faculty, for the DRC to impose a sporting sanction whenever a breach is committed within the Protected Period. More specifically, the parties' attention was brought by the Panel to some CAS precedents (CAS 2007/A/1358 and CAS 2007/A/1359, awards of 26 May 2008) which had noted and upheld the FIFA submission in those cases that it is a stable, consistent practice of FIFA to decide on a case by case basis whether to sanction a player or not. At the conclusion of the hearing, the Appellants and FIFA confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

LAW

Jurisdiction

1. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed by either party, is based *in casu* on Article R47 of the Code and on Articles 62 and 63 of the FIFA Statutes.

2. More specifically, the provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

   i. Article 62 [*"Court of Arbitration for Sport (CAS)"*]:

   "1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.

   2. The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

   ii. Article 63 [*"Jurisdiction of CAS"*]:

   "1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

   2. Recourse may only be made to CAS after all other internal channels have been exhausted.

   3. CAS, however, does not deal with appeals arising from:

   (a) violations of the Laws of the Game;

   (b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

   (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.

   4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. [...]".

Appeal proceedings

3. As these proceedings involve an appeal against a decision in a dispute relating to contracts, issued by a federation (FIFA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

4. The statement of appeal was filed within the deadline set in the FIFA Statutes and the Decision. No further recourse against the Decision is available within the structure of FIFA. Accordingly, the appeal is admissible.

Scope of the Panel's review

5. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

Applicable law

6. The question of what law is applicable in the present arbitration is to be decided by the Panel in accordance with the provisions of Chapter 12 of the Swiss Private International Law Act (the "PIL"), the arbitration bodies appointed on the basis of the Code being international arbitral tribunals having their seat in Switzerland within the meaning of Article 176 of the PIL.

7. Pursuant to Article 187.1 of the PIL,

   "The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the law with which the case is most closely connected".

8. Article 187.1 of the PIL constitutes the entire conflict-of-law system applicable to arbitral tribunals, which have their seat in Switzerland: the other specific conflict-of-laws rules contained in Swiss private international law are not applicable to the determination of the applicable substantive law in Swiss international arbitration proceedings (KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland, Zurich 2004, p. 116; RIGOZZI, L'arbitrage international en matière de sport, Basle 2005, § 1166 *et seq.*).

9. Two points should be underlined with respect to Article 187.1 of the PIL:

   i. it recognizes the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute;

   ii. its wording, to the extent it states that the parties may choose the *"rules of law"* to be applied, does not limit the parties' choice to the designation of a particular national law. It is in fact generally agreed that the parties may choose to subject the dispute to a system of rules which is not the law of a State and that such a choice is consistent with Article 187 of the PIL (DUTOIT, Droit international privé suisse, Basle 2005, p. 657; LALIVE/POUDRET/REYMOND, Le droit de l'arbitrage interne et international en Suisse, Lausanne 1989, p. 392 *et seq.*; KARRER, in HONSELL/VOGT/SCHNYDER, Kommentar zum schweizerischen Privatrecht, Internationales Privatrecht, Basel 1996, Art. 187, § 69 *et seq.*; see also CAS 2005/A/983 & 984, § 64 *et seq.*, award of 12 July 2006). It is in

addition agreed that the parties may designate the relevant statutes, rules or regulations of a sporting governing body as the applicable "rules of law" for the purposes of Article 187.1 of the PIL (RIGOZZI, *op. cit.*, § 1178 *et seq.*).

10. This far-reaching freedom of the choice of law in favour of the parties, based on Article 187.1 of the PIL, is confirmed by Article R58 of the Code. The application of this provision follows from the fact that the parties submitted the case to the CAS. Article R27 of the Code stipulates in fact that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS.

11. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

"according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

12. In the present case, the question is which "rules of law", if any, were chosen by the parties: i.e., whether the parties choose the application of a given State law and the role in such context of the "applicable regulations" for the purposes of Article R58 of the Code.

13. In solving this question the Panel has to consider the following:

i. the First Contract specifies that:

"5.- The Player warrants that he know … the Rules and Regulations that govern football … .

6.- All matters not covered by this contract shall be governed by Royal Decree 1006/85 dated 26th June relating to the special employment relationship of professional sportsmen, the collective agreement that is in force and any other applicable regulations".

ii. the Second Contract provides that:

"Article I Employment Basis

[…]

2. The following elements form an integral part of this Contract:

a) Statutes and Regulations of the Club

b) Statutes and Regulations of the Qatar Football Association (QFA)

c) Statutes and Regulations of AFC and FIFA … .

3. The Player acknowledges the aforementioned statutes and regulations as strictly binding on him … .

[…]

Article XIII Law and Jurisdiction

1. In case of any contractual dispute the applicable law shall be the Law of the State of Qatar as well as the FIFA, AFC and QFA Regulations governing this matter. …".

iii. Article 62.2 [*"Court of Arbitration for Sport (CAS)"*] of the FIFA Statutes indicates that:

"... CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

14. In light of the foregoing, the Panel remarks that:

i. the parties referred to the FIFA regulations in the First Contract and in the Second Contract, even though together with some domestic laws;

ii. the appeal is directed against a decision issued by the DRC, and is based on Article 62.2 of the FIFA Statutes, mandating the application of the *"various regulations of FIFA"* and, additionally, of Swiss law;

iii. the parties discussed in this arbitration, without raising any objection, the application of some provisions of Swiss law, as contained in the CO: no petition was based on, and no reference was made to, Qatari and/or Spanish law.

15. The Panel therefore concludes that this dispute has to be determined on the basis of the FIFA regulations, with Swiss law applying subsidiarily. More exactly, the Panel agrees with the DRC (see above) that the dispute, submitted to FIFA by UMM Salal on 15 October 2008, is subject to the 2008 edition of the FIFA Regulations on the Status and Transfer of Players (the "Regulations"), according to their Article 26.

16. The provisions set in the Regulations which appear to be relevant in this arbitration are the following:

i. "Definitions"

"For the purpose of these regulations, the terms set out below are defined as follows: […]

7. Protected period: a period of 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".

ii. Article 13 "Respect of contract"

"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement".

iii. Article 14 "Terminating a contract with just cause"

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

iv. Article 17 "Consequences of terminating a contract without just cause"

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. 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 up to a maximum of five years, 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.

2. *Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*
3. *In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season at the new club. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*
4. *In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. 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. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods.*
5. *Any person subject to the FIFA Statutes and regulations (club officials, players' agents, players, etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned".*

v. Article 18 "Special provisions relating to contracts between professionals and clubs"

"[…]

5. *If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply".*

The merits of the dispute

17. The Decision is challenged in this arbitration under several perspectives. On one side, the Appellants criticize it to the extent it granted damages in favour of UMM Salal, it imposed a restriction on the Player's eligibility to play in official matches and it denied the Mallorca's request that UMM Salal be held liable for compensation because of some allegedly wrongful actions; on the other side, UMM Salal questions the Decision because it only partially granted its claim for damages. As a result, all those parties request that the Decision be somehow set aside and their respective requests granted. Only FIFA is requesting that the Panel confirms the Decision in its entirety.

18. In light of the parties' submissions and petitions, the questions that the Panel has to examine are the following:

a. Has the Player breached the Second Contract (i.e., the contract he signed on 17 March 2008 with UMM Salal)?

b. If so, what are the consequences of such breach? More specifically, the Panel, in the event it finds that the Player breached the Second Contract, has to answer the following questions:
   i. are damages to be awarded to UMM Salal? If so, in what measure?
   ii. is Mallorca jointly and severally liable for the payment of such damages, if they are awarded?
   iii. is a restriction on his eligibility to play in official matches to be imposed on the Player?

c. Is Mallorca entitled to the compensation it seeks from UMM Salal?

19. The Panel shall consider each of said questions separately.

20. Before doing that, however, two preliminary points need to be addressed by the Panel.

21. The first point concerns the evidentiary rules to be applied in this arbitration. In this respect, the Panel underlines that it finds itself to be bound to apply the general rules on the burden of evidence to determine which party should bear the consequences of the failure to prove its allegations.

22. In fact, pursuant to Article 8 of the Swiss Civil Code

"Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit".

Translation: "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right".

23. Such principle applies also in CAS proceedings (see for instance CAS 96/159 & 96/166, published in *Digest of CAS Awards II 1998-2000*, pp. 434 ff.). As a result, in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its "burden of proof", i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue.

24. At the same time it must be stressed, as made clear in the CAS jurisprudence (CAS 96/159 & 96/166, at § 16, pp. 441-442), that *"selon la jurisprudence fédérale suisse, dans le cas où une preuve directe ne peut pas être rapportée, le juge ne viole pas l'art. 8 CC … en fondant sa conviction sur des indices ou sur un haut degré de vraisemblance (ATF 104 II 68 = JdT 1979 I 738, à la p. 545). En outre, des faits dont on doit présumer qu'ils se sont déroulés dans le cours naturel des choses peuvent être mis à la base d'un jugement, même s'ils ne sont pas établis par une preuve, à moins que la partie adverse n'allègue ou ne preuve des circonstances de nature à mettre leur exactitude en doute (ATF 100 II 352, à la p. 356)"* [Translation: "according to the Swiss federal case law, in the event direct evidence cannot be offered, a judge does not violate Article 8 of the Civil Code … if he bases his decision on clues or on a high degree of likelihood … . In addition, events whose existence must be presumed according to the normal course of things can be indicated as a basis of a judgment, even if these events are not confirmed by evidence, if the opposing party does not indicate or prove circumstances suitable to put their existence in doubt"].

25. In this framework, therefore, the Panel can, for instance, note that on one hand the Appellants brought evidence, by way of documents and witness depositions, to affirm their position, while, on the other hand, UMM Salal did not present any evidence to the contrary. Indeed, notwithstanding the Appellants' specific request, the UMM Salal's legal representative did not attend the hearing.

26. The second point concerns the temporal sequence of signature of the contracts by the Player. It is in fact undisputed in this arbitration that the Player signed two employment contracts, one with Mallorca and the other with UMM Salal (even though the Appellants submit that the signature of the latter was vitiated by error). It is however disputed which contract was signed first. UMM Salal, in fact, casts doubts as to the circumstance that the contract with Mallorca was actually signed on 1 February 2008, date appearing on the First Contract. According to UMM Salal, *"UMM Salal does not … understand how A. could have signed a contract of employment with the Spanish club in January … February … 2008"*, if the FPA Document, signed on 20 March 2008, is considered; in addition, in UMM Salal's view, the evidence filed by Mallorca does not prove that the First Contract was signed on the date therein mentioned: it only shows that the Player was in Spain; *"the so-called contract concluded on February 1, 2008 between A. and … Mallorca … constitute only one draft-agreement even an engagement of principle"*: in fact, on 7 July 2008, Mallorca and the Player concluded a *"contract of employment in due form"*, starting from 7 July 2008. As a result, UMM Salal criticizes the Decision, to the extent the DRC therein held that the Player concluded an employment contract first with Mallorca and only later with UMM Salal.

27. The Panel does not agree with the UMM Salal's criticism and finds the evaluations of the DRC to be correct. Indeed, the Appellants brought convincing evidence to show that at the end of January / beginning of February 2008 the Player visited Spain (copy of an email with the details of flight tickets, copy of a hotel invoice, copy of the Player's passport with an entry visa stamped on it) to meet with Mallorca (reports of medical tests) and signed the First Contract (deposition of Mr Pons). Such finding is not contradicted by the later signature of the *"Contrato de trabajo de jugador professional"* on the contractual form of the *"Liga Nacional de Futbol Professional"* of the RFEF, since this form, providing for the same conditions as the First Contract, was not available at the time the First Contract was signed (deposition of Mr Pons); and by the FPA Document, which is disputed by the Player and contains financial terms which do not match the content of the agreement reached by the Player and Mallorca. As a result, the Panel confirms that the First Contract was signed on 1 February 2008, before the Second Contract was signed (on 17 March 2008).

A. Has the Player breached the Second Contract?

28. The first issue that the Panel has to examine concerns the breach of the Second Contract. The DRC held in this respect that, *"in lack of any relevant defence which could possibly justify the termination of the employment contract"* concluded between the Player and UMM Salal, and *"by entering into a labour contract with the Claimant* [UMM Salal] *valid as from the same date (i.e. 1 July 2008) as the contract concluded with the Respondent 2 / Counter-Claimant* [Mallorca]*"*, the Player *"breached his*

employment contract with the Claimant [UMM Salal] *without just cause"*. The Appellants challenge such holding, and maintain that the Player is not responsible for any breach.

29. Under a first point of view, the Appellants submit that the Second Contract is not binding on the Player (and therefore could not be breached), since his *"consent"* to be bound by it *"was vitiated by an essential error in his terms and effects"*. More specifically, the Appellants invoke Articles 23 and 24 of the CO and allege that the Player signed the Second Contract on the erroneous assumption that it could be terminated by simply paying the amount stipulated in its Article X, without any further disciplinary consequence. In the course of this arbitration, in fact, the Appellants withdrew the other allegation, that the Player's consent was vitiated because it had not been freely given.

30. Contrary to the Appellant's submission based on Swiss law, FIFA maintains that *"there is no room for the subsidiary application of art. 23 seq. of the Swiss Code of Obligations"*, because *"the Regulations conclusively determine the situations due to which a player shall no longer be considered bound by a labour agreement"*.

31. The Panel does not agree with FIFA's indication that a player cannot invoke his error, relevant under the applicable domestic rules, in order to have an employment contract terminated.

32. The Panel, in this respect, notes that the invocation of an error is indeed consistent with the Regulations (which therefore do not exclude it) as it could be treated as a just cause for termination, pursuant to their Article 14. In any case, the Panel confirms that a player can invoke domestic law in order to have an employment contract terminated, if his consent is vitiated by error. In the Panel's opinion, in fact, it cannot be held that the entire legal regime applicable to employment contracts of professional players has to be found exclusively in the Regulations. Indeed, as the CAS practice shows, several points, not covered by the Regulations, need to be filled by reference to a domestic law, and mainly to Swiss law (on the limits to freedom of contract: CAS 2008/A/1544, award of 13 February 2009; on interest payable: CAS 2008/A/1519 & CAS 2008/A/1520, award of 19 May 2009; on the concept of "decision": CAS 2008/A/1633, award of 16 December 2008, with further references; etc.). The Regulations themselves, being rules adopted by an association created under Swiss law, are subject to the mandatory provisions of Swiss law (see the advisory opinion rendered by a CAS panel on 21 April 2006, CAS 2005/C/976 & 986, para. 123). And the Panel doubts that the Regulations could be considered to be consistent with Swiss law, should they be interpreted to exclude any remedy in the event the consent given by a player to an employment contract is vitiated (by error, fraud or violence). In addition, the concurrent application of the Regulations and, subsidiarily, of Swiss law, is confirmed also by Article 62.2 of the FIFA Statutes.

33. The provisions of the Swiss Code of Obligations (CO) on error are the following:

Article 23 CO [*"Effets de l'erreur"*]

"Le contrat n'oblige pas celle des parties qui, au moment de le conclure, était dans une erreur essentielle".

Translation: "Effects of error"

"The contract does not bind the party that, at the time of the conclusion, was in material error".

Article 24 CO [*"Cas d'erreur"*]

"[1] L'erreur est essentielle, notamment:

1. lorsque la partie qui se prévaut de son erreur entendait faire un contrat autre que celui auquel elle a déclaré consentir;

2. lorsqu'elle avait en vue une autre chose que celle qui a fait l'objet du contrat, ou une autre personne et qu'elle s'est engagée principalement en considération de cette personne;

3. lorsque la prestation promise par celui des contractants qui se prévaut de son erreur est notablement plus étendue, ou lorsque la contre-prestation l'est notablement moins qu'il ne le voulait en réalité;

4. lorsque l'erreur porte sur des faits que la loyauté commerciale permettait à celui qui se prévaut de son erreur de considérer comme des éléments nécessaires du contrat.

[2] L'erreur qui concerne uniquement les motifs du contrat n'est pas essentielle.

[3] De simples erreurs de calcul n'infirment pas la validité du contrat; elles doivent être corrigées".

Translation: "Cases of error"

"[1] An error is in particular, deemed to be material:

1. if the party in error intended to enter into a contract other than the one he declared to consent to;
2. if the party in error had another thing in mind than the one which is the object expressed in contract, or another person, provided that the contract was concluded with a particular person in mind;
3. if the performance promised by the contracting party invoking his error is considerably greater in extent, or the performance promised by the other party is considerably smaller in extent, than the performance the party in error intended;
4. if the error related to certain facts that the party in error considered to be a necessary basis of the contract, in accordance with the rules of good faith in the course of business.

[2] The error concerning only the motives of the contract is not material.

[3] Mere errors in calculations do not invalidate the contract; they shall be corrected".

Article 25 CO [*"Action contraire aux règles de la bonne foi"*]

"[1] La partie qui est victime d'une erreur ne peut s'en prévaloir d'une façon contraire aux règles de la bonne foi.

[2] Elle reste notamment obligée par le contrat qu'elle entendait faire, si l'autre partie se déclare prête à l'exécuter".

Translation: "Action contrary to good faith principles"

"[1] The party in error is not permitted to avail himself of such error if this is contrary to good faith principles.

> [2] In particular, a party in error is bound by a contract as it was understood by him, as soon as the other party consents thereto".
>
> Article 26 CO [*"Erreur commise par négligence"*]
>
> *"[1] La partie qui invoque son erreur pour se soustraire à l'effet du contrat est tenue de réparer le dommage résultant de l'invalidité de la convention si l'erreur provient de sa propre faute, à moins que l'autre partie n'ait connu ou dû connaître l'erreur.*
>
> *[2] Le juge peut, si l'équité l'exige, allouer des dommages-intérêts plus considérables à la partie lésée".*
>
> Translation: "Error caused by negligence"
>
> "[1] The party invoking his error in order to avoid the effects of the contract shall compensate for the damages caused by the invalidity of the agreement if the error derives for his own negligence, unless the other party knew or should have known the error.
>
> [2] The judge may, if equity so requires, award compensation for further damages to the damaged party".

34. According to Swiss law (see SCHWENZER, in: Basler Kommentar, OR I, 3. Aufl., Basel 2003, p. 230; GAUCH/AEPLI/STOECKLI, Praejudizienbuch zum Obligationenrecht, 5. Aufl., Zurich 2002, p. 147; GAUCH/SCHLUEP/SCHMID/REX, Obligationenrecht Allgemeiner Teil, 8. Aufl., Zurich 2003, p. 73), therefore, a contract is not binding because of an error only if the error is material (*"essentielle"*) and the invocation of the error is not contrary to the good faith of the other party. Swiss law, then, defines the cases in which an error is material (*"essentielle"*).

35. The foregoing provisions do not allow, in the Panel's opinion, the relief requested by the Appellants, i.e. the conclusion that the Second Contract was vitiated by an error, and therefore does not bind the Player.

36. In fact, the error invoked by the Appellants (the assumption that the Second Contract could be terminated by simply paying the amount stipulated in its Article X, without any further disciplinary consequence) does not appear to be considered material (*"essentielle"*) by Article 24 CO. Indeed, the Player does not claim by such submission that he *"intended to enter into a contract other than the one he declared to consent to"*, or that he *"had another thing in mind than the one which is the object expressed in contract, or another person"*, or that *"the performance* [he] *promised … is considerably greater in extent, or the performance promised by …* [UMM Salal] *… is considerably smaller in extent, than the performance …* [he] *… intended"*. Indeed, the error invoked does not relate *"to certain facts"* that the Player *"considered to be a necessary basis of the contract, in accordance with the rules of good faith in the course of business"*: it relates to the legal consequences of an action (i.e., of the termination of the Second Contract), and therefore to an element which is not deemed material (*"essentielle"*) by Article 24 CO. Indeed, the disciplinary consequences, if any, of an action of an athlete pertinent to his sporting activity are defined by the rules of the relevant sport system, since they are intended to protect the values on which such system is based: consequently, the parties to a contract are in principle not allowed to modify their regime. Therefore, since the disciplinary consequences do not form part of the contractual

arrangements, an error regarding them is not an error pertinent to the contract. Such error seems more to relate to the motives and is thus irrelevant pursuant to Article 24.2 CO.

37. As a result, the Panel holds that the conclusion of the Second Contract was not vitiated by an error relevant pursuant to the CO. The Second Contract was therefore binding on the Player.

38. Under a second point of view, the Appellants deny that the Player breached the Second Contract. In their submission, the withdrawal of the Player from the Contract was allowed by its Article X. Therefore, the Player, by the Termination Letter, exercised a contractual right, whose only consequence was the payment of the amount indicated in Article X of the Second Contract.

39. Contrary to the Appellants' submissions, the Panel finds that Article X of the Second Contract, concerning *"Termination by the Club or the Player"* (see above), does not allow a unilateral withdrawal of the Player: it only provides for the termination of the Second Contract for *"mutual consent"* or *"just cause"*, and sets the amount of the compensation to be paid by the *"party in breach"* when *"the termination of the Contract is not due to just cause or a mutual agreement between the Parties concerned"*. In other words, termination other than for just cause or mutual consent is considered to be a breach of the contract; and the amount to be paid, when just cause or mutual consent are not given, is not the consideration for the withdrawal, but a quantification of the damages due in the event of breach.

40. In light of the foregoing, the Panel holds that the Player breached the Second Contract, as a result of his refusal to comply with it, expressed in the Termination Letter and his failure to join UMM Salal according to its terms, not being justified by mutual consent or by just cause.

41. In any case, the Panel wishes to underline that the signature by the Player of two contracts for the same period constitutes in itself a breach of the Regulations, which entails the application of the rules therein contained concerning the maintenance of contractual stability and the breach of contract (as indicated in Article 18.5 of the Regulations): the signature of two conflicting contracts constitutes in fact an action which cannot be allowed; a player is not entitled to sign a second contract in order to "insure" himself against the possible breach of the first contract by the club: if he does that, he is himself in any case in breach of one of the two contracts.

B. What are the consequences of the Player's breach of the Second Contract?

42. Article 17 of the Regulations provides for a number of consequences in the event an employment contract is breached by a player:

i. compensation shall be paid (Article 17.1),

ii. the player's new club shall be jointly liable with the player for the payment of such compensation (Article 17.2), and

iii. sporting sanctions shall be imposed, if the breach occurs during the Protected Period (Article 17.3).

43. The Panel found that the Player breached the Second Contract. As a result, the Panel has to identify, in light of Article 17 of the Regulations, the consequences of the Player's breach.

a) Are damages to be awarded to UMM Salal? If so, in what measure?

44. The first consequence set by Article 17.1 is the payment of compensation. The obligation to pay compensation is indeed a corollary of the binding force of contracts: the party that does not comply with the obligations binding it has to bear the financial consequences of its action and compensate the other party of the adverse effects it caused.

45. As a result, the Player, having breached the Second Contract, is obliged to pay compensation for the damages caused to UMM Salal. The holding of the Decision in this respect is correct.

46. UMM Salal, however, in its counterclaim, disputes the amount of compensation the DRC awarded, and request the payment of larger damages.

47. The Panel notes that the Regulations set, in Article 17.1, some criteria intended to assist in the calculation of the compensation payable. Such criteria, however, can be applied only *"unless otherwise provided for in the contract"*. In fact, *"the amount"* of compensation *"may be stipulated in the contract or agreed between the parties"* (Article 17.2 of the Regulations). The Regulations, in other words, acknowledge the freedom of the parties, recognized in the domestic legal systems, to define in advance (in "penalty" or "liquidated damages" clauses) the amount of compensation to be paid in the event of breach. As a result, if a breach occurs, that amount has to be paid and not the amount determined under the other criteria set in the Regulations.

48. The Player and UMM Salal defined, at Article X.3 of the Second Contract, in USD 160,000 the measure of the compensation to be paid in the event of breach by the Player (or UMM Salal) of the Second Contract. As a result, the compensation to be awarded to UMM Salal is limited to such amount: the Decision that so held is correct; and UMM Salal's claim for larger damages cannot be sustained.

49. At the same time, the Panel notes that UMM Salal's indication that the damages it suffered exceed the contractual amount is not assisted by any evidence at all. As a result, UMM Salal's claim could not, in any case, be accepted.

50. In light of the foregoing, the Decision (point 2 of the holding of the Decision) is to be confirmed: the Player is bound to pay UMM Salal compensation in the amount of USD 160,000 for the breach of the Second Contract.

51. According to the Decision (point 4 of the holding of the Decision), interest accrues on such amount, at the rate of 5% per annum. Such interest started to accrue on 25 July 2009, i.e. as of the expiry of the thirty day period after the notification (on 25 June 2009) of the Decision.

b) Is Mallorca jointly and severally liable for the payment of the damages awarded?

52. Pursuant to Article 17.2 of the Regulations, *"if a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment"*. The DRC, in light of such provision, established (point 6 of the holding of the Decision) that Mallorca was not to be held jointly and severally liable for the payment by the Player of the damages awarded to UMM Salal, because the First Contract had been concluded before the Second Contract and therefore Mallorca was not the *"new club"* of the Player.

53. It is not clear to the Panel whether UMM Salal, in its counterclaim, challenges also such holding of the Decision. Indeed, the Second Respondent requested this Panel *"to reform partially the decision pronounced by the Dispute Resolution Chamber … in what A. … is condemned to the payment of an allowance to the amount of 2.000.000,00 $ (and this, if need be, in Co-solidarity with club REAL DEPORTIVO MALLORCA SAD)"* (emphasis added). In other words, UMM Salal's claim that Mallorca be held liable for the compensation due by the Player seems to be linked, and therefore limited, to the petition that compensation in a larger amount be granted, and not submitted also with respect to the amount actually granted by the DRC. As a result, the dismissal of the claim for larger damages would imply also the rejection of the claim for a joint liability.

54. In any case, the Panel holds that the Decision was correct in excluding the joint liability of Mallorca. Therefore, a challenge on this point, if submitted by UMM Salal, is to be dismissed.

55. The Panel, in this respect, remarks that Mallorca had a contract with the Player before the Player signed the Second Contract, and therefore before the Player breached the contract with UMM Salal. As a result, Mallorca, being already the club of the Player at the time of the breach, cannot be considered as the *"new club"* of the Player for the purposes of Article 17.2 of the Regulations.

56. In light of the foregoing, the Panel concludes that Mallorca is not jointly and severally liable for the payment of the compensation due by the Player to UMM Salal. The Decision is on this point to be confirmed.

c) Is a restriction on the eligibility to play in official matches to be imposed on the Player?

57. Pursuant to Article 17.3 of the Regulations, *"in addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. Unilateral breach without just cause or sporting just cause*

after the protected period shall not result in sporting sanctions …". In other words, the provision distinguishes between breaches committed within and breaches committed without the Protected Period: only in the first situation *"sporting sanctions shall … be imposed"* in addition to the obligation to pay compensation.

58. The application of such provision in the dispute before this Panel raises two questions: i.e. whether the breach of the Second Contract occurred in the Protected Period, and, if so, whether a sanction is to be imposed on the Player. The Decision in such respect held that the Player breached the Second Contract in the Protected Period and imposed on the Player the sporting sanction provided in Article 17.3 of the Regulations (point 5 of the holding of the Decision).

59. With respect to the first point, the Appellants submit that the Second Contract was not breached in the Protected Period: the Second Contract, in fact, at the time of the Termination Letter, *"had not yet come into force"*, since it had effects starting from 1 July 2008. As a result, no suspension can be imposed on the Player. According to the Appellants, in fact, the Protected Period starts only at the moment the relevant contract comes into force – to last then for the period indicated in the Regulations. Thus, a breach occurring before the entry into force of a contract does not occur within the Protected Period.

60. The Panel does not agree with such interpretation of the concept of Protected Period. The Panel notes that the wording of the definition of Protected Period contained in the Regulations could lend some support to the Appellants' interpretation to the extent is refers to *"a period … following the entry into force of a contract"*. The Panel, however, underlines that the definition can also be read as only setting the date the Protected Period expires (i.e., at the end of a period of two or three years or seasons following the entry into force of a contract) and not to imply that a breach committed after the signature of the contract and before its entry into force is not within the Protected Period.

61. More in general, the Panel understands the interpretation submitted by the Appellants as based on the confusion between the "binding force" of a contract and the "entry into force" of such contract. An employment contract is binding on the parties as of its signature even if an initial deadline is set for its applicability. A breach before that deadline (e.g., the day before), depriving the other party of the expected performance promised by the party in breach, is not less serious than a breach after (e.g., the day after) the deadline. The rationale underlying the concept of Protected Period, i.e. to reinforce the contractual stability in the first years of contract, applies to both breaches. As a result, the breach of the Second Contract by the Player, to the extent it was committed after the signature of the Second Contract but before its entry into force, occurred in the Protected Period.

62. In any case, the Panel notes, as FIFA did, that the breach of the Second Contract, as a result of the Player's refusal to comply with the Second Contract, expressed in the Termination Letter, was confirmed by his failure to join UMM Salal according to its terms at the moment the Second Contract had entered into force. Therefore a breach *"following the entry into force of a contract"*, i.e. certainly within the Protected Period, was committed by the Player.

63. Article 17.3 of the Regulations provides that if a breach is committed within the Protected Period *"sporting sanctions shall … be imposed"*. On the basis of such provision, the Decision imposed a restriction of four months on the Player's eligibility to play in official matches.

64. The sanction is challenged by the Appellants, who requested that the restriction be cancelled. The Appellants submit that the parties to the Second Contract stipulated therein that in the event of breach only the payment of USD 160,000 was due – and no sporting sanctions were contemplated: *"the autonomy of will of the parties"*, recognized by Article 19 of the CO, could also be exercised in order to define all consequences of termination of a contract, excluding the application of the FIFA rules on the matter. In this respect, the Appellants invoke a CAS precedent (CAS 2008/A/1544, award of 13 February 2009).

65. The Panel does not agree with this Appellants' submission. As already noted (§ 36), the disciplinary consequences of an action of an athlete pertinent to his sporting activity are defined by the rules of the relevant sport system, which intend to protect the values on which such system is based. Consequently, the parties to a contract are in principle not allowed to modify their regime: the freedom of the parties, in fact, can be exercised only when private interests of the individuals concerned are involved (as it happened in CAS 2008/A/1544, concerning the parties' stipulations on the payment of the solidarity contribution contemplated in Article 21 of the Regulations). As a result, the fact that the Second Contract did not mention the imposition of a disciplinary sanction in the event of breach without just cause in the Protected Period is not a reason to exclude the application of Article 17.3 of the Regulations.

66. The Panel has therefore to turn its attention to Article 17.3 of the Regulations. It follows from a literal interpretation of said provision that it is a duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: "shall" is obviously different from "may"; consequently, if the intention of the Regulations was to give the competent body the power to impose a sporting sanction, it would have employed the word "may" and not "shall". Accordingly, based on the wording of Article 17.3 of the Regulations, a sporting sanction had to be imposed on the Player, without any further evaluation: the mentioned provision appears to give the competent body the obligation, and not only the power, to impose a sporting sanction on a player found to be in breach of contract during the Protected Period.

67. However, this Panel underlines, as another CAS Panel did (CAS 2007/A/1358 and CAS 2007/A/1359, awards of 26 May 2008), that rules and regulations have to be interpreted in accordance with their real meaning. This is true also in relation with the statutes and the regulations of an association.

68. In the mentioned CAS precedents, FIFA observed that it is stable, consistent practice of FIFA and of the DRC in particular, to decide on a case by case basis whether to sanction a player or not. The CAS Panel was in those cases satisfied that there is a well accepted and consistent practice of the DRC not to apply automatically a sanction as per Article 17.3 of the

Regulations. The Panel then followed such an interpretation of Article 17.3 of the Regulations which appears to be consolidated practice and represents the real meaning of the provision as it is interpreted, executed and followed within FIFA.

69. Such practice was discussed but not disputed by FIFA at the hearing before this Panel. As a result, this Panel finds itself in the same position as the other CAS Panel (in CAS 2007/A/1358 and CAS 2007/A/1359) and bound to give Article 17.3 of the Regulations its real meaning and to follow the stable, consistent practice of FIFA to decide on a case by case basis whether to sanction a player or not. Indeed, the Panel notes that the Regulations have not been amended following the mentioned CAS precedents to exclude such discretion.

70. With respect to the Player, the Panel notes that a number of exceptional circumstances are given to justify the imposition of no disciplinary sanction, additional to the payment of compensation. Such circumstances include:

i. the unique situation in which the Second Contract was signed by the Player, and more specifically the breach by Mr Abdulla and UMM Salal of the agreement then reached that all the copies of the Second Contract, signed by the Player and UMM Salal, had to be kept by Mr Abdulla, with the instruction to destroy them in the event the Player had decided to play for Mallorca: on the point, the Panel relies on the Player's declarations, that have not been contradicted by UMM Salal, whose legal representative did not attend the hearing;

ii. the fact that the termination without just cause was declared by the Player in the Termination Letter, not long after the signature of the Second Contract;

iii. the fact that the Player has *de facto* been prevented from playing in official matches for a certain period, at the time the issuance of the ITC was delayed.

71. In light of the foregoing, the Panel concludes that no restriction on playing in official matches is to be imposed on the Player. The Decision is on this point to be set aside.

C. Is Mallorca entitled to the compensation it seeks from UMM Salal?

72. Mallorca is requesting in this arbitration not only the declaration that UMM Salal is not entitled to any compensation: Mallorca is also seeking an award against UMM Salal ordering UMM Salal to compensate for the damages it allegedly causes to Mallorca. The Decision dismissed the Mallorca's claim and is therefore challenged before this Panel.

73. The Panel does not agree with Mallorca. Indeed, failing a contract between Mallorca and UMM Salal, Mallorca's claim intends to enforce an extra-contractual (or tort) liability of UMM Salal, alleging a sort of interference of UMM Salal with the plain implementation of the First Contract. The Panel, however, remarks that no legal basis for such claim has been specified by Mallorca, and, in any case, that no wrongful action appears to have been committed by UMM Salal: UMM Salal had a contract signed by the Player, even though a termination without just

cause had been declared. UMM Salal, therefore, was entitled to try to enforce the contractual obligations of the Player. By so doing, UMM Salal did not commit any wrongful action.

74. In light of the foregoing, the Panel concludes that Mallorca is not entitled to any compensation from UMM Salal. The Decision is on this point to be confirmed.

Conclusion

75. The Panel holds that the appeal brought by Mallorca and A. is to be partially upheld: the measure of damages, including interest thereupon (starting 30 days after the notification of the Decision), owed by the Player to UMM Salal, as awarded by the DRC, is to be confirmed, but the suspension imposed on the Player is to be set aside. All other prayers for relief submitted by the parties are to be dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by RCD Mallorca SAD and A. against the decision issued on 15 May 2009 by the Dispute Resolution Chamber of the FIFA Players' Status Committee is partially upheld.

2. The restriction on the eligibility to play imposed on A. is set aside. All other points of the decision issued on 15 May 2009 by the Dispute Resolution Chamber of the FIFA Players' Status Committee are confirmed.

(…)

5. All other prayers for relief are dismissed.