Arbitration CAS 2011/A/2380 Arie Haan v. Cameroon Football Federation (FECAFOOT), award of 21 November 2011

Panel: Mr José Juan Pintó (Spain), President; Mr Goetz Eilers (Germany); Mr Bola Ajibola (Nigeria)

Football
Contract of employment between a national football association and a coach
FIFA's jurisdiction
Constituting elements of a claim
Time limit for appeal
Termination of the agreement and consequences

1. **The analysis of the facts and of the evidence brought to the proceedings can lead to believe that, irrespective of the literal wording of a contract of employment, in practice, for a coach, a federation is the counterparty of the agreement. Given this background and the principle that a party cannot *venire contra factum proprium*, the claim brought before the CAS in such circumstances should be considered as one between a coach and an association of international nature, which in accordance with article 22 of the FIFA Regulations on the Status and Transfer of Players (RSTP) falls within the scope of competence of FIFA.**

2. **To be considered a claim, a letter should contain the basic elements of a claim i.e. description of the facts and grounds, production of evidence and request for relief.**

3. **As long as a claim was filed (and the proceedings were started) within the period stipulated in article 25 of the FIFA RSTP, that is within the two year time limit elapsed from the event giving rise to the dispute, the inactivity of FIFA shall not carry as a consequence that the claim is deemed to be time bared.**

4. **Under Swiss Law, the infringing party has the duty to repair the damages caused. Where in light of a contract, either party can terminate the contract in advance for whatever reason and at any time with a prior 30-day advance notice, the lack of evidence of the notice of termination cannot justify any compensation. The wording of the contract also impedes to consider or project the production of damages until the theoretical end of the contract. Moreover, the immediate termination by a party without granting the 30 days prior notice implies that said party did not render his services in the following month. In this context, the other party is entitled to receive the reimbursement of the part of salary paid in advance corresponding to the period in which the party did not render services.**

Mr. Arie Haan ("the Appellant" or the "Coach") is a professional football coach of Dutch Nationality.

Cameroon Football Federation (the "Respondent" or the "FECAFOOT") is a national football association affiliated to FIFA, with its seat in Yaoundé, Cameroon.

A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the parties' submissions and the evidence taken. Additional factual background may be also mentioned in the legal considerations of the Award. The Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

On 25 August 2006, the Coach, the Ministry of Sports and Physical Education of the Republic of Cameroon (the "Ministry") and the FECAFOOT signed an agreement (the "Agreement"), by means of which the Appellant became the coach of national football team of Cameroon.

The object of the Agreement is defined in Article 1 as follows:

> *Le Ministre des Sports et de l'Éducation Physique engage Monsieur ARIE HAAN sur recommandation de la Fédération Camerounaise de Football comme entraîneur national sélectionneur de l'équipe nationale de football de Cameroun.*
>
> In English (free translation):
>
> *The Minister of Sports and Physical Education hires Mr ARIE HAAN upon the recommendation of the Cameroonian Football Federation as coach of the National Football Team of Cameroon.*

The functions of the Coach were listed in Article 2 of the Agreement in the following terms:

> *1) Monsieur Arie Haan est appelé à remplir les fonctions d'entraîneur de l'équipe national fanion de football "LES LIONS INDOMPTABLES". A ce titre, il est seul chargé pendant la durée du présent contrat:*
>
> - *De l'encadrement technique de l'équipe;*
> - *De la prospection, du choix, du suivi et de la sélection des joueurs;*
> - *De l'organisation technique et du choix des stages et des entraînements à l'occasion des matches officielles et amicaux;*
> - *De la détection de jeunes joueurs juniors et seniors évoluant en championnats camerounais pour les équipes nationales;*
> - *De la formation des formateurs des jeunes et des entraîneurs sous l'autorité du Directeur Technique National;*
> - *De l'organisation du football des jeunes en relation avec la Fédération;*
> - *De la détection et du suivi des joueurs camerounais non internationaux évoluant en Europe*
>
> *Pour l'exercice de ses fonctions, l'entraîneur est assisté de collaborateurs nommés par le Ministre.*
>
> *2) Il est entendu entre les parties que l'entraîneur sera le seul et exclusif décideur dans le choix des joueurs sélectionnés et convoqués pour un stage, un entrainement, un match (officiel ou non) de l'équipe nationale.*

3) La liste des joueurs convoqués devra être scrupuleusement respectée et ne pourra en aucun cas être modifiée sans le consentement de l'entraîneur. Cela vaut également pour le choix des joueurs et des remplaçants pour les matchs.

In English (free translation):

1) Mr. Arie Haan is expected to perform the duties of National Coach of the National Football Team "THE INDOMITABLE LIONS". As such, he is solely responsible during the term of this contract for:

- *The Team's technical training;*
- *The prospection, choice, monitoring and selection of players;*
- *The technical organisation and the choice of stages and training on the occasion of official and friendly matches;*
- *the identification of young junior and senior players evolving in the Cameroonian championships for the national team;*
- *the training of youth trainers and coaches under the authority of the National Technical Director;*
- *the organization of youth football in relation with FECAFOOT;*
- *the identification and monitoring of non-international Cameroonian players evolving in Europe.*

For the performance of his duties, the Coach will be assisted by assistants appointed by the Minister.

2) The parties understand that the Coach will solely and exclusively decide on the selection and calling of players for a stage, a training, a match (official or not) of the National Team.

3) The list of called players shall be strictly respected and shall not be modified in any case without the consent of the Coach. This also applies for the selection of players and the substitutes during a match.

The obligations of the Coach and the Ministry were detailed in Article 3 of the Agreement, which in the pertinent part - given the scope and background of the dispute dealt with herein - reads as follows:

A/ - OBLIGATIONS DE L'ENTRAÎNEUR

[…]

3) L'entraîneur s'engage à s'établir au Cameroun et à consacrer tout son temps pour l'accomplissement des missions visées aux articles 2 et 3 (i) ci-dessus. A cet effet, il est tenu de n'entreprendre aucune autre activité.

4) L'entraîneur présentera un programme d'action annuel à la Fédération pour avis technique et au Ministère pour approbation, concernant ses missions et déplacements professionnelles.

[…]

B/ - OBLIGATIONS DU MINISTRE

Le Ministre s'engage à:

- *Exécuter les obligations liées au traitement de l'entraîneur telles que définies au article 6 ci-dessous (rémunération et avantages en nature).*

[…]

- *Demander à la Fédération de fournir tout l'aide nécessaire à l'entraîneur pour mener à bien sa mission*

In English (free translation):

A/ - OBLIGATIONS OF THE COACH

[…]

3) The Coach undertakes to live in Cameroon and to devote all his time to the tasks referred to in Articles 2 and 3 (1) above. To such purpose, he shall not assume any other business activity.

4) The Coach shall file an annual action plan to FECAFOOT for technical advice and to the Minister for approval, concerning his tasks and business trips.

B/ OBLIGATIONS OF THE MINISTER

The Minister commits itself to:

- *Execute the obligations related to the payment of the Coach as defined in articles 6 and 7 hereto.*

[…]

- *Request FECAFOOT to provide all necessary assistance to the Coach so that he can carry out his tasks properly.*

The duration of the Agreement and the entitlement to terminate it was set out in Article 4 of such Agreement as follows:

1. *Le présent contrat qui prend effet à compter de sa date de signature est conclu pour un période de deux ans renouvelable.*

2. *Toutefois, le présent contrat peut prendre fin à tout moment par la volonté de l'une ou l'autre des parties notamment en cas d'inexécution des obligations contractuelles à charge de chacune entre elles.*

   Dans ce cas la partie qui désire dénoncer le contrat avisera l'autre trente (30) jours avant par lettre recommandée avec accusé de réception.

In English (free translation):

1. *This contract, which enters into force as of its date of signature, is entered into for a period of two (2) years, renewable.*

2. *However, this contract may be terminated at any time by the will of either party including for breach of contractual obligations payable by each of them.*

   In this case the party seeking rescission shall notify the other party thirty days in advance by registered letter with acknowledgment of receipt.

The Coach's remuneration (in cash and kind) was set out in Articles 6 and 7 of the Agreement, which in the pertinent part reads as follows:

ARTICLE 6 REMUNERATION: SALAIRE/PRIMES

a) salaire:

L'Entraîneur percevra un salaire mensuel fixe en Euros de 40.000 équivalent en francs CFA 26.240.000- hors taxes, payable semestriellement et d'avance.

Ce salaire est viré dans un compte ouvert par l'entraîneur auprès d'une banque au Cameroun.

L'entraîneur bénéficie de la collaboration d'un adjoint, Monsieur Theodorus Jacob de Jong et d'un assistant qui sont à sa charge exclusive.

[…].

ARTICLE 7 AVANTAGE EN NATURE

En plus des traitements ci-dessus repris, le Ministre assurera à l'entraîneur:

- *Un logement de fonction meublé qu'il partagera avec son adjoint. Toutefois, les charges locatives (eau, électricité, gaz) sont a la charge de l'entraîneur.*

[…].

In English (free translation):

ARTICLE 6 REMUNERATION: SALARY/BONUS

a) salary:

The Coach will receive a monthly fixed salary of 40,000 Euros – equivalent to 26,240,000 CFA francs, excluding taxes, payable by semesters in advance.

This salary shall be deposited into an account opened by the Coach at a bank in Cameroon.

The Coach will have the collaboration of a deputy, Mr. Theodorus Jacob De Jong and of an assistant, who are at his exclusive expense.

[…].

ARTICLE 7 REMUNERATION IN KIND

Additionally to the remuneration above described, the Minister will ensure the Coach:

- *A furnished residence to be shared with his deputy. However, the utilities (water, electricity, gas) are at the Coach's expense;*

[…].

The parties decided to submit the disputes arising out of the Agreement to the *fori* mentioned in its Article 9:

En cas de litige résultant de l'exécution des clauses et conditions du présent contrat, les parties ont l'obligation d'un règlement à l'amiable, et à défaut, elles saisiront les tribunaux de Yaoundé et/ou de la FIFA.

In English (free translation):

In case of dispute arising from the performance of the terms and conditions of this Agreement, the parties have an obligation to find an amicable settlement, failing which, the parties will submit their dispute to court in Yaounde and / or FIFA.

From the very beginning of their relationship, the parties seemed to have had different views regarding the execution of the Agreement.

On 26 October 2006, the FECAFOOT sent an email to the Coach in which (i) it informed the Coach about its displeasure since he was abroad instead of being in Cameroon, (ii) requested the Coach to come back to Cameroon on 31 October at the latest to travel to Garoua for a football tournament, and (iii) reminded the Coach that the FECAFOOT was still waiting for his proposal of friendly matches for the Cameroonian national team.

On 9 November 2006, the Coach replied to FECAFOOT's email by stating that (i) FECAFOOT was well aware about all his activities as coach of the national team, (ii) he would travel to Garoua for the purpose of scouting for players even if it was very unlikely to find good eligible players for the national team at such a tournament, and (iii) he was a coach, not a match maker. Finally, the Coach mentioned that he would travel to Cameroon as soon as he received the flight tickets.

On the same day, the FECAFOOT sent an email to the Coach requesting him to buy the flight tickets to Cameroon at his own expense, this cost to be reimbursed afterwards by the FECAFOOT. The Coach immediately replied to the FECAFOOT's email stating that he was waiting for a pre-paid flight ticket in order to travel to Cameroon and that in the event that he had to pay for his flight ticket, he would rather travel to Vietnam for another tournament. Finally, the Coach mentioned that after the Vietnam tournament, he would fly to Cameroon in order to solve the existing misunderstandings.

On 14 November 2006, the FECAFOOT sent a letter to the Coach in which it accused him of abandoning his position as national team coach and consequently of breach of the Agreement. The alleged breach of the Agreement was mainly based on the following reasons: (i) the Coach did not live in Cameroon, (ii) he did not submit an annual plan for obtaining the approval of his activities and professional travels by the FECAFOOT and the Minister, and (iii) he had travelled without the prior authorization of the FECAFOOT. Finally, the FECAFOOT invited the Coach to travel to Cameroon to hold a meeting to clarify the terms of their relationship.

On 16 January 2007 a meeting was held in Cameroon in order to discuss the terms and the execution of the Agreement.

On 19 January 2007, the Coach requested permission to travel to Europe and the reimbursement of the expenses which he had incurred as coach of the Cameroonian national team during 2006. The referred permission was refused and the Coach was requested to stay in Cameroon until the 7 February 2007, the date on which Cameroon was expected to play a friendly match against Togo or Ivory Coast. Furthermore, the Coach was reminded of his obligation to live in Cameroon and of submitting the annual plan as per the Agreement.

On 29 January 2007, the FECAFOOT sent an email to the Coach asking him to travel to Lomé to prepare a friendly match against Togo.

On 31 January 2007, the Coach sent an email to the FECAFOOT by virtue of which he terminated the Agreement in accordance with Article 4.2 of such Agreement. The relevant part of this email reads as follows:

> *In the same time I give my resignation of the contract signed 25 aug. 2006 in Yaoundé.*
>
> *Like I said already, I cannot work properly and sucessfully with your interpretation. So I take Art. 4/2 […]*

The letter, recommandée, will be delivered at Fecafoot Yaounde.

On 9 March 2007, the FECAFOOT sent a letter to FIFA in which:

(i) It informed FIFA about the existing dispute with the Coach and about the content of a letter that the FECAFOOT had sent to such Coach in this respect, which final part reads as follows:

Cette triste situation qui cause un énorme préjudice à notre équipe, mérite d'être réparée de la manière suivante:

- *Manque à gagner: 40.000 Euros x 4 mois = 160.000 Euros*
- *Dommages-intérêt: A réclamer en temps opportun, devant les instances compétentes.*

In English (free translation):

This unfortunate situation, which has caused a huge damage to our team, is worth to be repaired in the following way:

- *Lucrum cessans: 40.000 Euro x 4 months = 160.000 Euro*
- *Damages: to be claimed in due time before the competent authorities.*

(ii) It requested FIFA to intervene in the matter so that the damages caused to the FECAFOOT were repaired.

On 19 March 2007, FIFA sent a letter to the FECAFOOT which in the pertinent part reads as follows:

Please be informed that petitions regarding a claim to be submitted to one of our deciding bodies must comply with the formalities stipulated in article 9 of the Rules Governing the Procedure of the Player's Status Committee and the Dispute Resolution Chamber. In particular, they need to comprise a clear motion or claim, a representation of the case, the grounds for the motion or claim and details of evidence as well as documents of relevance to the dispute such as contracts and previous correspondence with respect to the case (…).

In this respect, please take note that our services need in particular to be provided with the following elements:

- *Employment contract signed between the Cameroon Football Federation and the coach concerned.*
- *Breakdown of the financial claim (exact amount claimed).*

On account of the above, and in order to enable our services to start with the investigation of the present affair, we kindly ask you to complete your claim accordingly. […].

On 9 April 2007, the FECAFOOT, in reply to the referred letter of FIFA, filed a new letter before FIFA in which (i) reference was made to the facts giving rise to the dispute with the Coach, (ii) the Agreement and some correspondence exchanged between the parties prior to the Agreement's termination were attached, and (iii) the FECAFOOT claimed *"le reimbursement de quatre mois de salaire et des dommages et interets que nous vous laisson le soin de fixer"* (in English -free translation-: *"the reimbursement of 4 months of salary and the damages and interest to be determined by you"*).

Nothing further occurred in this matter until 2 February 2010, when the FECAFOOT sent another letter to FIFA in which (i) it mentioned that on 9 March 2007 it had denounced in FIFA the unilateral termination of the Agreement, (ii) explained the facts of the case again, and (iii) claimed the payment of 800.000 Euro as compensation for breach in accordance with the following breakdown:

- *Le paiement de la somme de 40.000 € au titre de remboursement des salaires du mois de février indûment perçu. En effet, la FECAFOOT, pour manifester sa bonne volonté, avait versé à Monsieur Arie Haan une avance sur salaire de six mois. Il a rompu le contrat après 5 mois de travail.*
- *Le paiement de la somme de 760.000 € au titre d'indemnité de rupture abusive du contrat (19 mois) et de son salaire mensuel (€ 40.000).*

In English (free translation):

- *The payment of the amount of € 40.000 as reimbursement for the salary of the month of February unduly received. Indeed the FECAFOOT, as proof of good faith, had paid 6 months of salary to Mr. Arie Haan in advance. He breached the agreement after 5 months of work.*
- *The payment of an amount of € 760.000 as compensation for the abusive breach of the agreement (19 months) and his monthly salary (€ 40.000).*

FIFA then requested the Coach to express his position about the claim filed by the FECAFOOT, which the Coach did by means of written submissions filed by the Royal Netherlands Football Association, his representative at the FIFA proceedings as per the power of attorney granted by the Coach in favour of the referred Association.

On 16 November 2010, the Single Judge of the FIFA Players' Status Committee decided to partially accept the claim of the FECAFOOT, and ordered the Coach to pay the amount of € 500.000.-. The operative part of the referenced decision reads as follows:

1. *The claim of the Claimant, the Cameroon Football Federation, is partially accepted.*
2. *The Respondent Arie Haan, is ordered to pay to the Claimant, the Cameroon Football Federation, the amount of EUR 500.000 within 30 days as from the notification of the decision.*
3. *Any further claims lodged by the Claimant, the Cameroon Football Federation, are rejected.*
4. *In the event that the amount of EUR 500,000 is not paid within the above-mentioned time-limit, an interest rate of 5% p.a. will apply as of expiry of the fixed time limit and the present matter shall be submitted upon request to the FIFA Disciplinary Committee and decision.*

…

5. *The Claimant, the Cameroon Football Federation, is directed to inform the Respondent, Arie Haan, immediately and directly of the account number to which the remittance is to be made and notify the Players' Status Committee of every payment received.*
6. *The final cost of the proceedings in the amount of CHF 20.000 are to be paid by the Respondent, Arie Haan, within 30 days as from the notification of the present decision to the following bank account with reference to the case nr. 07-00666/rta: […].*

The Coach decided to appeal the referred decision of FIFA (the "Appealed Decision") before the CAS, and thus filed the relevant Statement of Appeal with the following requests for relief:

1. *The before-mentioned decision is waived, the Respondent's claims are fully rejected.*
2. *The Respondent shall bear all costs before FIFA and the CAS as well as the fees of the Appellant's counsel in the CAS procedure.*

On 8 April 2011, the Appellant filed his Appeal Brief.

On 30 May 2011, the Respondent filed its Answer to the Appeal Brief, in which it requested the CAS to render an award in the following terms:

1. *To confirm all the provisions of the decision of the single judge taken on 16 November 2010.*
2. *To condemn to appellant to pay the cost of this action in front of the CAS.*

The Panel dealing with this case is composed of Mr. José Juan Pintó Sala (President), Mr. Goetz Eilers (arbitrator appointed by the Appellant) and H.E. Bola Ajibola (arbitrator appointed by the Respondent). None of the parties raised any objection as to the constitution of the Panel.

The language of the present proceedings is English.

The hearing in the present case took place in Lausanne on 5 September 2011. At the beginning of the hearing, the parties raised the following procedural/formal issues:

- The Respondent stated that Exhibit 15 of the Appeal Brief (written statement of Ms. Atizy Mevo Suzanne Marlyse) should not be taken into account by the Panel, as the signatory of such statement would not be appearing at the hearing to be cross-examined.
- The Appellant contended that several documents attached to the Respondent's written submissions in French language were not accompanied by the relevant translation into English (the language of the present proceedings).

With respect to the issue raised by the Respondent, the Panel is of the opinion that the absence of the statement's signatory at the hearing (and her unavailability to declare via teleconference or videoconference) implied that the Respondent (and the Panel) were deprived from cross-examining her. This, in the Panel's view, has an impact in the assessment of this piece of evidence by the Panel in the resolution of the case. Therefore Exhibit 15 shall be deemed as part of the CAS file, but with the limited probationary value arising out of the impossibility to hear the witness statement's signatory.

Regarding the issue raised by the Appellant, the Panel notes that certainly the language of these proceedings is English and that some of the documents filed by the Respondent are in French with no translation into English. However, it is also noted that this objection, instead of having been brought immediately after it became known to the Appellant, was raised only at the hearing session, so the Panel shall presume that before the hearing, the Appellant fully understood the content of the documents concerned and did not consider necessary to require a translation to the Respondent for the correct preparation of the hearing. In any case, it shall be also recalled that in accordance with article R29 of the Code of Sports-related Arbitration (the "Code"), the Panel may order that translations are filed, and that in accordance with the Order of Procedure duly signed by the parties without objections, if the documents are not accompanied by an English translation, the Panel may decline to consider them. In the present case the Panel neither considered that such translations were necessary nor was requested to order the Appellant to bring them to the file, and it also understands that there is no reason to decline to consider those documents in French language not accompanied by a translation into English. Therefore the objection of the Appellant in this respect is disregarded.

After dealing with these procedural/formal issues, the Panel invited the parties to try to settle the dispute, but finally no agreement was reached. Therefore the hearing continued and the parties made their initial statements, the witnesses Mr. Dick De Jong and Mr. Theo De Jong were examined, the Coach was heard and finally the parties made their respective closing statements.

At the end of the hearing the parties expressly declared that they were satisfied with the way in which the proceedings had been conducted.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS to decide on the present case arises out of Articles 62 and 63 of the FIFA Statutes and Article R47 of the CAS Code. In addition CAS jurisdiction has been expressly accepted by the parties, which signed the Order of Procedure of the present case.

2. Therefore, the Panel considers that CAS is competent to decide on this case.

Applicable law

3. Article R58 of the CAS reads as follows:

   "The Panel shall 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".

4. Article 62.2 of the FIFA Statutes states the following:

   "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".

5. In accordance with such provisions the Panel understands that the present dispute shall be resolved according to the FIFA Regulations (in particular the FIFA RSTP) and additionally Swiss Law.

The object of the dispute

6. According to the parties' written submissions and the arguments raised by them in the hearing, the object of the dispute may be briefly summarized as follows: the Appellant considers that

the Appealed Decision shall be revoked as (i) FIFA did not have jurisdiction to deal with the case, (ii) in the event that it had jurisdiction, the claim would be time-barred, and (iii) even considering the case on its merits, no compensation should accrue in favour of the FECAFOOT. On the other hand the FECAFOOT requests that the Appealed Decision be confirmed.

The jurisdiction of FIFA

7. The Panel will address the issue of the jurisdiction of FIFA by checking (i) the Agreement's provisions on jurisdiction, (ii) the FIFA regulations, and (iii) the allegations made and the evidence provided by the parties.

8. In such review, the Panel firstly notes that Article 9 of the Agreement provides for the jurisdiction of FIFA as a possible forum to solve disputes arising out of its terms and conditions. In particular the referred Article reads as follows:

"En cas de litige résultant de l'exécution des clauses et conditions du présent contrat, les parties ont l'obligation d'un règlement à l'amiable, et à défaut, ***elles saisiront les tribunaux*** *de Yaoundé* ***et/ou de la FIFA****".*

In English (free translation)

"In case of dispute arising from the performance of the terms and conditions of this Agreement, the parties have an obligation to find an amicable settlement, failing which, ***the parties will submit their dispute to court*** *in Yaounde* ***and / or FIFA****"* [emphasis added].

9. It is also noticed by the Panel that in accordance with the FIFA RSTP, disputes between coaches and national associations of an international dimension fall within the scope of competence of FIFA. In particular article 22c of the referred FIFA RSTP reads as follows:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, ***FIFA is competent to hear****: […]*

Employment-related disputes between a club or ***an association and a coach*** *of an* ***international dimension****, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level"* [emphasis added].

10. The Appellant is contesting FIFA jurisdiction by basically holding that the claimant in the FIFA proceedings (FECAFOOT) is not a party to the Agreement but rather it is the Ministry, which is an entity not subject to FIFA jurisdiction.

11. The Respondent intends to justify the participation of both the FECAFOOT and the Ministry in the Agreement on the basis of certain alleged "agreements" taken by these entities with FIFA in 2004, which in the pertinent part reads as follows:

"Equipes nationales

La FIFA déclare que la gestion des équipes nationales revient aux fédérations et non pas à des entités externes. A cet effet, la convention FECAFOOT/MINJES devra préciser que la fédération assume l'intégralité de la

gestion administrative, sportive et technique des équipes nationales alors que les instances gouvernementales compétente en assument la gestion financière et les aspects liés à la sécurité".

In English (free translation):

"National teams

FIFA declares that the management of the national teams corresponds to the federations and not to external entities. To such purpose the agreement FECAFOOT/MINJES shall precise that the federation assumes the whole administrative, sportive and technical management of the national teams, while the competent governmental instances assume the financial management and the aspects related to security".

12. The Panel, having reviewed the content of the Agreement, notes the following:

- The Coach, the Ministry and the FECAFOOT appear in the headings of the Agreement as follows:

  "Entre les soussignés:

  Le Ministère des Sports et de l'Education Physique du Cameroun représenté par son Ministre; Monsieur Philippe Mbarga Mboa d'une part,

  Et

  Monsieur Arie Haan, entraîneur de nationalité néerlandaise d'autre part;

  En présence de la Fédération Camerounaise de Football (…)".

  In English (free translation)

  "Between the undersigned:

  The Ministry of Sports and Physical Education of Cameroon represented by its Minister, Mr Philippe Mbarga Mboa on one hand,

  and

  Mr. Arie Haan, coach of Dutch nationality on the other;

  In the presence of the Cameroon Football Federation (…)".

- The Agreement was signed by the three of them.
- In accordance with the Agreement's provisions, it is the Ministry which is engaging the Coach, but "under the recommendation" of the FECAFOOT (Article 1).
- Article 3 of the Agreement foresees a list of specific obligations for both the Ministry and the Coach, but not for the FECAFOOT. Notwithstanding this, references to the FECAFOOT are made in several parts of the Agreement (vide Article 2.1. last bullet, Article 3.A.4 or Article 3.B).

13. In light of the foregoing, the Panel considers that (i) from the wording of the Agreement it is not clear that the FECAFOOT was a "real party" to it, and (ii) the grounds given by the Respondent, that both the FECAFOOT and the Ministry had to sign the Agreement are at least not conclusive.

14. However, the analysis of the facts which subsequently occurred and of the evidence brought to the proceedings has led the Panel to believe that, irrespective of the literal wording of the Agreement, in practice, for the Coach, the FECAFOOT was the counterparty (or at least one of the counterparties) of the Agreement, as:

- First and foremost, the termination of the Agreement was communicated by him to the FECAFOOT (not to the Ministry).
- In the termination notice of 31st January sent by email, the Coach announced that the registered termination letter would be sent to the FECAFOOT's headquarters in Yaoundé. No reference was made to the Ministry again on this occasion.
- Most of the correspondence regarding the organisation and development of his activity as Cameroon national team's coach was held with the FECAFOOT.
- The Coach never contested the FECAFOOT's contractual party status when the FECAFOOT sent to him notices of default of his contractual obligations.
- The witnesses brought to the proceedings confirmed that the professional relationship was in practice held with the FECAFOOT. It is to be highlighted that Mr. Theo De Jong (the Appellant's assistant coach), in his witness statement, expressly refers to *"my job for FECAFOOT"* or *"work reasonably for FECAFOOT"*.
- Finally, in the first instance proceedings conducted in FIFA the Coach never contested the FECAFOOT's status as a party.

15. Given the above-mentioned background and the principle that a party cannot *venire contra factum proprium*, the Panel is of the opinion that the present claim is one between a coach and an association of international nature, which in accordance with article 22 of the FIFA RSTP falls within the scope of competence of FIFA. Thus FIFA was entitled to hear the claim filed by FECAFOOT against the Coach and to issue the Appealed Decision.

16. Therefore the allegations of lack of jurisdiction raised by the Appellant are rejected.

Time limit for appeal

17. The provision to be taken into account in this respect is article 25 of the FIFA RSTP, which reads as follows:

"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these Regulations if more than two years have elapsed from the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case".

18. On the basis of this provision, the Appellant holds that the FECAFOOT's claim is to be considered time-barred as it was lodged in February 2010, i.e. more than 2 years after the termination of the Agreement (31st January 2007), the event giving rise to the dispute. The letters sent to FIFA by the FECAFOOT in 2007 cannot be considered, in the Appellant's view, as a

material claim likely to delay or interrupt the referred 2 year term. On the contrary the FECAFOOT contests such allegations by stating that the claim was filed in 2007, i.e. within the 2 year period stipulated in article 25 FIFA RSTP.

19. The Panel shall firstly state that it is unquestionable that the event giving rise to the dispute is the termination of the Agreement effected by the Coach, and that this termination took place on 31st January 2007. In consequence the *dies a quo* for the calculation of the 2 year period is clear and conclusive.

20. This being said, the Panel shall decide if the FECAFOOT's claim against the Coach was filed in FIFA in 2007 (as the Respondent holds) or if on the contrary, such claim is to be considered as filed in 2010 (as contended by the Appellant).

21. In this decision it will be crucial to ascertain if the letters sent by the FECAFOOT to FIFA in the period March-April 2007 are to be considered as a claim apt to start a case in FIFA or not.

22. To such purpose the Panel has analysed the content of the letters of the FECAFOOT dated 9 March 2007 and 9 April 2007.

23. With regard to the letter of 9 March 2007, the Panel has finally come to the conclusion that this letter, by itself, is not to be considered a claim. It is true that by means of this letter, the FECAFOOT makes FIFA aware of an existing dispute with the Coach, but such letter neither contains a specific request for relief nor the production of evidence on which the FECAFOOT intends to rely. In this letter the FECAFOOT roughly describes the situation created with the Coach and vaguely applies for the intervention of FIFA in the case (*A cet effet, nous avons l'honneur de solliciter votre intervention afin que le préjudice subi par nôtre Fédération soit réparé*), but does not request that the Coach is ordered to pay an amount as regards the alleged breach of contract. It is therefore not surprising that FIFA, in its letter dated 19 March 2007, asked the FECAFOOT to complete the claim in order to enable FIFA's services to start investigations.

24. However, the letter of 9 April 2007 is to be considered a claim, especially if combined with the previous letter of 9 March 2007. This letter of 9 April, in the Panel's opinion, contains the basic elements of a claim: description of the facts and grounds (completing the ones previous referred to in the letter of 9 March), production of evidence (the Agreement and cross-correspondence between the parties were attached to the letter) and request for relief (in which, even if the request for damages is not quantified, at least the other petition in the letter of 9 April 2007 - reimbursement of 4 months of salary- is clearly defined and quantified). In addition, it satisfies the requests made by FIFA in the letter of 9 March 2007 in which the FECAFOOT is asked to complete the claim.

25. It is true that on 2 February 2010 the FECAFOOT filed a new letter to FIFA in which the facts and grounds of the case were explained again and the request for relief was precised and quantified. However, this does not mean that the claim against the Coach was filed then.

26. On the contrary, the Panel is convinced that the claim was filed (and the proceedings were started) in 2007, not only for the reasons above explained but also because the FIFA file so reveals: the referred file contains the submissions and documentation produced both by the FECAFOOT and FIFA from 2007 on, and the reference number of the proceedings is a 2007 one (07-00666). This was FIFA's understanding and also the FECAFOOT's understanding, as in the same letter of 2 February 2007, it made an express reference to the fact that the denouncement of the breach of the Agreement was brought to FIFA in 2007 (vide para. 1 of the letter). Probably this was also (at least initially) the Coach's understanding, and may explain why he did not refer to matters of prescription or timeliness in the proceedings before FIFA. These matters were raised only before the CAS.

27. The reasons why FIFA did not notify the letters of 2007 to the Coach and did not progress with the proceedings until 2010 are unknown to the Panel, but this inactivity of FIFA shall not carry as a consequence that the claim is deemed to be filed in 2010 instead of in 2007. The Panel shall recall in this respect that in the CAS award rendered in the case CAS 2007/A/1270 it was stated that:

"The Panel had the opportunity to review all evidence produced and accepted the fact that the claim was brought before FIFA within the period provided by the FIFA Procedural Regulations, FIFA being the party which delayed to promote the same consequently the two year prescription period as of the date when the dispute arose did not lapse even though the Appellant became aware of the matter after the two year period lapsed.

The Panel furthermore acknowledged that the delay was not the Respondent's fault and should not suffer any adverse consequences".

28. Therefore the Panel understands that the claim (at least as it pertains to the request of reimbursement of 4 months of salary) was filed within the period stipulated in article 25 of the FIFA RSTP and thus, that such claim shall not be considered time-barred.

Merits: the termination of the Agreement and its consequences

29. Given that the "formal aspects" raised by the Appellant in his Appeal Brief have been rejected, the Panel shall now deal with the merits of the case.

30. In this respect, the Panel notes that it is not disputed that the Agreement was terminated by the Coach on 31st January 2007, and that such termination was based on Article 4.2 of the Agreement, which reads as follows:

"2.- Toutefois, le présent contrat peut prendre fin à tout moment par la volonté de l'une ou l'autre des parties notamment en cas d'inexécution des obligations contractuelles à charge de chacune d'entre elles.

Dans ce cas la partie qui désire dénoncer le contrat avisera l'autre trente jours avant par lettre recommandée avec accusé de réception".

In English (free translation)

"2. However, this contract may be terminated at any time by the will of either party including for breach of contractual obligations payable by each of them.

In this case the party seeking rescission shall notify the other party thirty days in advance by registered letter with acknowledgment of receipt".

31. Additionally, it is clear to the Panel that in accordance with Article 4.2 of the Agreement, any of the parties was entitled to terminate the Agreement for any reason (for instance in case of breach, but not only in this case - the term *"notamment"* contained in the clause so reveals -) by giving the 30 days prior notice foreseen in such Article.

32. It is true that Article 4.1 of the Agreement states that the Agreement is *"conclu pour un période de deux ans renouvelable"* ("concluded for a renewable period of two years") and that thus the parties were probably thinking about the theoretical or potential framework of a 2-year of relationship, but immediately after this Article 4.1, the parties expressly and clearly agreed in Article 4.2 to have the faculty of terminating the Agreement at any time and for whatsever reason, with a prior notice of 30 days. This faculty of termination, in addition, has not been contested by the Respondent in these proceedings.

33. Therefore in the Panel's opinion, the discussions about (i) the valid or invalid reasons of the Coach to terminate the Agreement, and (ii) the potential breaches of the parties' respective contractual obligations while the Agreement was in effect become somehow irrelevant, as the Coach was entitled to terminate the Agreement at any time and for whatever reason with a prior notice of 30 days.

34. The Panel is well aware that the Appealed Decision (i) devotes lengthy explanations on what the parties have accredited or not with regard to the reciprocally alleged contractual breaches of the counterparty while the Agreement was in effect, and (ii) states that the Appellant terminated the Agreement "without any just cause". However, as mentioned in the preceeding paragraph of this award, the debates on these issues are not pertinent in light of the wording of Article 4.2 of the Agreement. In any case and just for dialectical purposes, the Panel wishes to briefly point out that from the analysis of the evidence brought to the proceedings, none of the parties was in "full compliance" of their respective contractual duties during the efficiency of the Agreement: the FECAFOOT, for instance, did not put at the Coach's disposal a residence for living in Cameroon, and the Coach, for example, has not duly proven having submitted the annual plan for obtaining the approval of his activities and professional travels despite (i) being obliged to do so under the Agreement, and (ii) having been requested by the FECAFOOT to submit it.

35. This being said, the Panel has focussed on the Agreement's termination process and after examining the evidence provided by the parties to the file, it concludes that indeed the Coach did not fulfil his duties under Article 4.2 of the Agreement: he did not grant the 30 days prior notice of termination to the FECAFOOT (the email of 31st January is self-explanatory) and did not communicate such termination by registered letter (no evidence has been brought to the contrary by the Appellant).

36. Hence the Panel shall determine the consequences of the breach of such contractual provision related to the Agreement's termination in accordance with the petitions made by the parties, i.e. what compensation, if any, is to be granted to the FECAFOOT.

37. In the referred task the Panel shall take into account that under Swiss Law, the infringing party has the duty to repair the damages caused (art. 97 et seq. of the Swiss Code des Obligations) and that the CAS jurisprudence has repeatedly stated that existence and the amount of the damages claimed as compensation shall be duly proven by the party requesting them (*ad exemplum*, CAS 2004/A/662).

38. The Panel is aware that in accordance with the Appealed Decision, the Coach is ordered to pay compensation in the sum of € 500.000 to the FECAFOOT (€ 40.000 corresponding to the salary of February 2007 received by the Coach in advance and € 460.000 -equivalent to 11½ monthly salaries- for breach of contract).

39. Firstly, the Panel has analyzed the consequences of the lack of remmittance of the notice of termination by registered letter, and has concluded that no damage likely to be compensated shall arise from it. Indeed it has not been proven by the Appellant that such registered letter was sent to the FECAFOOT, and this constitutes an infringement of the last paragraph of Article 4.2 of the Agreement. Notwithstanding this, (i) it has been acknowledged that the FECAFOOT became duly aware of the termination on 31st January by means of the e-mail sent by the Coach (it has expressly admitted this), and (ii) the FECAFOOT has not proven having suffered any damage deriving from the Coach's failure to send the termination notice by registered letter. Therefore no compensation is due to the FECAFOOT for that.

40. Secondly, the Panel has examined the consequences of the infringement of the duty of giving a 30-day prior termination notice to the FECAFOOT. In this respect, the Panel is of the opinion that the immediate termination of the Agreement by the Coach on 31st January 2007 without granting the 30 days prior notice implied that the Coach did not render his services in the month of February 2007. Given that the Coach had received 6 months of salary in advance upon the signing of the Agreement, the Panel understands that the FECAFOOT is entitled to receive the reimbursement of the part of salary paid in advance corresponding to the period in which the Coach did not render services, that is to say the salary of February 2007 (€ 40.000), with no discount of the potential salaries that the Coach potentially had to pay to his assistant, as under the Agreement, this assistant was at his exclusive charge (vide Article 6a of the Agreement *in fine*).

41. In the Panel's view, no further consequences and duties to compensate shall arise in favour of the FECAFOOT as regards to the facts that gave rise to this dispute. In particular the Panel points out that:

- The compensation of € 460.000 for "breach of contract" as deemed by the Appealed Decision is not to be awarded, as in its determination, the deciding body took, in the Panel's opinion, a wrong premise as its standpoint. FIFA's Single Judge took it for granted that the employment relationship between the parties should have ended in August 2008 (2 years after the execution of the Agreement) and thus considered it appropriate and

reasonable to grant a compensation based on the "total value of the contract" taking as reference the mentioned theoretical remaining contractual period. This, in the Panel's view, cannot be acceptable in light of the content of Article 4.2 of the Agreement. The parties were not bound to keep the Agreement in effect until August 2008. On the contrary, either of them could terminate the Agreement in advance for whatever reason at any time with a prior 30-day advance notice, which in the Panel's view, impedes to consider or project the production of damages until the theoretical end of the 2 years period established in Article 4.1 of the Agreement.

- The FECAFOOT has not accredited, neither in the present proceedings nor in the proceedings before FIFA, the existence of further damages and even if these existed, what would be the amount of these damages. The FECAFOOT simply mentioned in its letter to FIFA dated 9 April that it was entitled to *"le remboursement de quatre mois de salaire et des dommages et intérêts que nous vous laissons le soin de fixer"* ("reimbursement of four months salary and damages and that we leave to you to establish"), but brought no evidence or explanation on the existence and quantification of such alleged *dommages et intérêts*. Afterwards, in its letter to FIFA dated 2nd February 2010, the FECAFOOT claimed, apart from the reimbursement of the salary of February 2007, *"le paiement de la somme de 760.000 € au titre d'indemnité de rupture abusive du contrat (19 mois) et de son salaire mensuel (€ 40.000)"* ("payment of the sum of € 760,000 in respect of indemnity for breach of contract (19 months) and his monthly salary (€ 40,000)"), but again provided no proof at all of the existence and production of such damages. Finally, at the CAS stage the FECAFOOT has just requested the confirmation of the Appealed Decision, again without grounding which damages had been allegedly suffered by it and how these damages were to be calculated.

42. On the basis of the foregoing, the Panel considers that the Appealed Decision shall be revoked and replaced by the present award, and that the Appellant shall be ordered to pay to the FECAFOOT the amount of € 40.000.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr. Arie Haan is partially upheld.

2. The Decision of the Single Judge of the FIFA Player Status Committee dated 16 November 2010 on the claim filed by the Cameroon Football Federation against Mr. Arie Haan is set aside.

3. Mr. Arie Haan is ordered to pay to the Cameroon Football Federation the amount of € 40.000 (forty thousand Euro).

(…)

7. All other or further petitions and claims are dismissed.