



Arbitration CAS 2014/A/3739 & 3749 Jonathan Mensah & Evian Thonon Gaillard FC v. Fédération Internationale de Football Association (FIFA) & Udinese Calcio S.p.A, award of 16 July 2015 (operative part of 30 April 2015)

Panel: Mr Mark Hovell (United Kingdom), President; Mr Jean-Paul Costa (France); Mr Rui Botica Santos (Portugal)

Football

Employment contract concluded between a player and a club

Validity of the employment contract

Termination of contract without just cause by the player

Application of the liquidated damage clause

Sporting sanction against the new club

- 1. A contract signed by a player and a club, stipulating the duration of the contract and a detailed representation of the obligations of the respective parties contains *essentialia negotii*. Where the format of such contract could be freely chosen by the parties and where no failure to comply with the RSTP has been demonstrated, the contract is legally binding between the parties.**
- 2. Pursuant to Article 18.5 of the RSTP a player that signs more than one contract is deemed to have terminated the first contract without just cause and the provisions of Chapter IV of the RSTP come into play.**
- 3. The consequences of the breach of contract without just cause, pursuant to Chapter IV of the RSTP are both financial and disciplinary in nature. Article 17.1 is the starting point for the financial consequences. In this regard, a player in breach is liable to pay the sum provided by any clear penalty or liquidated damage clause included in the contract of employment. A liquidated damage clause is not a buy-out clause. In this respect, the payment provided for in the relevant clause of the contract cannot be taken into account as an implementation of a buy-out clause if such a payment occurs after the player has been found liable for breach of contract without just cause.**
- 4. According to Article 17.4 of the RSTP it shall be presumed, unless established to the contrary, that any club signing a professional player who has terminated his contract without just cause shall be presumed to have induced that player to commit a breach. The article provides that the club shall be banned from registering any new players, either nationally or internationally, for two Registration Periods but the RSTP does not make any distinction between an active case of a club poaching a player and one where a club might mistakenly or recklessly induce a player. The new club can face difficulty finding the evidence to rebut the presumption of inducement, whilst the potential sanction may be seen as “strong” for poor due diligence, as opposed to active poaching.**

In such case, before imposing any sanctions, the case should be sent back to FIFA to examine all the circumstances fully.

I. PARTIES

A. CAS 2014/A/3739

1. The Appellant is the professional footballer, Jonathan Mensah, born on 13 July 1990 (hereinafter referred to as “Mensah” or the “Player”), currently playing for Evian Thonon Gaillard FC (hereinafter referred to as “Evian”) in Ligue 1 in France, having previously been at Udinese Calcio S.p.A. (hereinafter referred to as “Udinese”).
2. The First Respondent is Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) and is the world governing body for association football.
3. The Second Respondent is Udinese, an Italian football club currently competing in Serie A. It is a member of the Federazione Italiana Giuoco Calcio (hereinafter referred to as the “FIGC”), which is affiliated to FIFA.

B. CAS 2014/A/3749

4. The Appellant is Evian, a French football club currently competing in Ligue 1. It is a member of Fédération Française de Football (hereinafter referred to as the “FFF”), which is affiliated to FIFA.
5. The First Respondent is Udinese.
6. The Second Respondent is FIFA.

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
8. On 11 November 2009, Free State Stars, a South African football club and Udinese concluded a transfer agreement regarding the Player for a transfer compensation of ZAR 7,000,000

(hereinafter referred to as the “Transfer Agreement”). In accordance with articles 2 and 5 of the Transfer Agreement:

“the SOUTH AFRICAN CLUB and the PLAYER agree on the release and the definitive transfer of the PLAYER to [Udinese] and [Udinese] agrees, subject to the terms and conditions hereof, to engage the services of the PLAYER, effective from 1st July 2010, in compliance with a separate employment contract...

...for the period from 1st January 2010 to 30th June 2010 the parties agree that the PLAYER will play on loan base with the club which will be indicated by [Udinese]”.

9. On 1 January 2010, Free State Stars and Granada Club de Futbol (hereinafter referred to as “Granada”) entered into a loan contract with respect to the Player for the period from 1 January 2010 to 30 June 2010 (hereinafter referred to as the “First Loan Contract”). In accordance with article 3 of the First Loan Contract *“the SOUTH AFRICAN CLUB will authorise the South African Football Association to release the International Transfer Certificate in favour of the Spanish Football Association, to register the PLAYER with the SPANISH Club”.*
10. On 29 January 2010, the South African Football Association (hereinafter referred to as the “SAFA”) issued an International Transfer Certificate (hereinafter referred to as the “ITC”) to the Royal Spanish Football Federation (hereinafter referred to as the “RFEF”). The Player was subsequently registered with Granada as an amateur.
11. On 1 August 2010, the Player entered into a 5 year contract with Udinese from 1 July 2010 to 30 June 2015 (hereinafter referred to as the “Udinese Contract”). In accordance with articles 2 and 5 of the Udinese Contract:

“the PLAYER hereby agrees to be employed by UDINESE, in his capacity of a professional footballer, to play in UDINESE teams from 1st July 2010 until 30 June 2015...

During the football season 2010/2011 (from 1st July 2010 until 30 June 2011) the PLAYER accepts to be transferred to the Spanish club GRANADA CLUBE DE FUTBOL...”.
12. On 19 August 2010, the Player and Granada signed a “temporary” employment contract, valid from 19 August 2010 until 30 June 2011 (hereinafter referred to as the “Granada Contract”). Further, Udinese and the Player entered into a supplemental agreement, by way of a letter, providing that Udinese would pay the Player EUR 20,000 by way of consideration of the “loan transfer” to Granada (hereinafter referred to as the “Udinese Letter”).
13. On 20 August 2010, Udinese and Granada entered into a loan agreement for the loan of the Player to 30 June 2011 (hereinafter referred to as the “Second Loan Agreement”).
14. On 25 August 2010, the RFEF registered the Player with Granada as a professional player.
15. At some time in March 2011, Udinese met with the Player regarding a new 5 year employment contract (hereinafter referred to as “the March Meeting”).

16. On 12 May 2011, Udinese received an offer of EUR 4,500,000, plus EUR 1,000,000 should they qualify for the UEFA Champions League, from FC Villarreal SAD (hereinafter referred to as “Villarreal”) for the Player.
17. On 25 May 2011, Udinese met again with the Player (hereinafter referred to as “the May Meeting”) and produced a written employment contract according to which he would agree to play in Udinese’s teams from 1st July 2011 until 30th June 2016, receive a salary, net of taxes, of EUR 130,000 for the 2011/2012 football season and EUR 140,000 for the four other football seasons, and *“for the football season 2011/2012 (from 1st July 2011 until 30 June 2012) the PLAYER accepts to be transferred to an Italian club”*.
18. At some time in June 2011, the Player changed agents to Mr. Fabien Piveteau and Mr. Antoine Figali (hereinafter referred to as the “New Agents”).
19. On 20 June 2011, the FFF, following a request from Evian, asked the FIGC whether the Player was *“always under contract with Udinese”* and obtained confirmation, on the same date, that *“the player Mensah J. is not registered with our club”*.
20. On 30 June 2011, the Player’s loan period with Granada finished.
21. On 7 July 2011, the Player and Evian signed an employment contract for a term of 5 years (hereinafter referred to as the “Evian Contract”).
22. On 8 July 2011, Udinese sent Evian a letter explaining that the Player was bound to Udinese by an employment contract until 30 June 2015. Further, that during the 2010/11 season he was on loan to Granada. The letter stated that Evian had induced the Player to breach the Udinese Contract and that Udinese reserved its rights to start legal proceedings against Evian and the Player for financial compensation and seeking sporting sanctions against both.
23. On 11 July 2011, Evian responded to Udinese stating that the Player had stated that his contract with Granada was ending and that he was free to sign for whichever club he deemed fit for the 2011/12 season. Further, that the Player had stated that the Udinese Contract was not valid, mainly due to the non-compliance with the regulations of the Italian Football League of the FIGC. The letter also stated that Evian had contacted the FIGC and that they confirmed that the Player was not *“contractually tied”* to Udinese. Further, that *“the TMS data also confirms that the player was never registered with your Club”*.
24. On 19 July 2011, the FFF received the ITC for the Player from the RFEF and registered the Player with Evian.
25. On 28 July 2011, Udinese requested that the Player attend pre-season training.

- A. *Proceedings before the Single Judge of the FIFA Players' Status Committee*
26. On 22 December 2011, Udinese lodged a claim with FIFA stating that the Player had breached the Udinese Contract without just cause by entering into the Evian Contract and that Evian induced the Player to breach the Udinese Contract.
27. On 30 July 2014, the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") held (hereinafter referred to as the "Appealed Decision"):
1. *The claim of the Claimant/ Counter-Respondent is partially accepted.*
 2. *The counterclaim of the Respondent I / Counter-Claimant is rejected.*
 3. *The Respondent I / Counter-Claimant is ordered to pay to the Claimant / Counter-Respondent **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 1,087,200.*
 4. *The Respondent II is jointly and severally liable for the payment of the aforementioned compensation.*
 5. *If the aforementioned amount is not paid within the above-mentioned time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
 6. *The Claimant / Counter-Respondent is directed to inform the Respondent I / Counter-Claimant and the Respondent II immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
 7. *A restriction of four months on his eligibility to play in official matches is imposed on the Respondent I / Counter-Claimant. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.*
 8. *The Respondent II shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
 9. *Any further claims lodged by the Claimant / Counter-Respondent are rejected".*
28. On 11 September 2014, the Appealed Decision was notified to the parties.

B. *Proceedings before the Court of Arbitration for Sport*

29. On 12 September 2014, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”) challenging the Appealed Decision, in the matter CAS 2014/A/3739.
30. On 15 September 2014, Udinese, in CAS 2014/A/3739, objected to French being selected as the language of the procedure.
31. On 18 September 2014, the CAS Court Office confirmed, in accordance with Article R29 of the CAS Code, that the language of the procedure would be in English.
32. On 18 September 2014, Evian filed its Statement of Appeal, also challenging the Appealed Decision, in the matter CAS 2014/A/3749.
33. On 19 September 2014, the CAS Court Office informed the parties, in CAS 2014/A/3739, that Evian had filed an appeal with the CAS challenging the Appealed Decision. The parties were granted a deadline, until 24 September 2014, to state whether they agreed to the present procedure, CAS 2014/A/3739, and the case CAS 2014/A/3749 to be consolidated in accordance with Article R52 of the CAS Code.
34. On 21 September 2014, Udinese, in CAS 2014/A/3749, stated that it was against a consolidation of the matter. Udinese also made points in relation to the language of the procedure and the appointment of arbitrators.
35. On 23 September 2014, Udinese, in CAS 2014/A/3749, objected to French being selected as the language of the procedure.
36. On 24 September 2014, FIFA, in CAS 2014/A/3739, requested further time to respond to the CAS Court Office in relation to the potential consolidation of the matters in light of the issue of the language of the proceedings.
37. On 24 September 2014, the Player wrote to the CAS Court Office confirming that he agreed to the consolidation of the two appeals.
38. On 25 September 2014, the CAS Court Office, in both procedures, provided an update to the parties in respect of the procedures and, in view of the fact that all the parties agreed to English being the language of the proceedings, invited FIFA to provide its position in relation to the potential consolidation of the procedures.
39. On 29 September 2014, the CAS Court Office, in both procedures, noted that FIFA had not responded in relation to the potential consolidation of the matters.

40. On 29 September 2014, the CAS Court Office, in both procedures, informed the parties that, in accordance with Article R52 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to consolidate the procedures. Therefore, the CAS Court Office confirmed that the language of the proceedings would be in English. The Appellants were granted a deadline until 3 October 2014 and subsequently 7 October 2014 to jointly nominate an arbitrator. Further, FIFA was granted a deadline of ten days from the receipt of the letter to file its position on Evian's request for a stay of the Appealed Decision, in accordance with Article R37 of the CAS Code.
41. On 6 October 2014, Evian confirmed that the Appellants wished to appoint Mr. Jean-Paul Costa as arbitrator.
42. On 6 October 2014, the CAS Court Office acknowledged receipt of the Appellants' letter and granted the Respondents a deadline of ten days from receipt of the letter to nominate an arbitrator.
43. On 9 October 2014, FIFA, in response to the CAS Court Office letter of 29 September 2014, referred to the constant and continuous jurisprudence of the CAS according to which requests for stay of execution in case of sporting sanctions are accepted without exception. Without prejudice to its position, FIFA refrained from objecting to Evian's request to stay the execution of the Appealed Decision.
44. On 9 October 2014, the CAS Court Office acknowledged receipt of FIFA's letter and provided the parties with an Order on Request for a Stay.
45. On 10 October 2014, Evian filed its Appeal Brief with the CAS. The Appeal Brief contained the following prayers for relief:

"Primarily,

- *To acknowledge the lack of any valid contract of employment between Mr. Jonathan Mensah and Udinese Calcio;*
- *To therefore cancel the decision dated 30 July 2014 outright.*

In the unlikely event that the CAS should not concur,

- *To acknowledge that the responsibility of Evian Thonon Gaillard Football Club for the purported unilateral termination of the contract of Mr. Jonathan Mensah has not been demonstrated;*
- *To therefore cancel the sporting sanction consisting of a ban on registering new players over two registration periods.*

In the most unlikely event that the CAS should not see fit to agree,

- *To acknowledge the disproportionate nature of the sanctions meted out against Evian Thonon Gaillard Football Club by the decision being appealed;*

- *To substitute to these sanctions a sanction that is more in keeping with the nature and scale of the offense and the degree of responsibility borne by Evian Thonon Gaillard Football Club.*

And in any event,

- *To order Udinese to reimburse to ETG FC the costs incurred by the latter as part of the current appeal proceedings, with all the costs of the proceedings, its attorneys' fees and its travel costs, amounting to 50,000 euros in total”.*

46. On 10 October 2014, the Player filed his Appeal Brief, in accordance with Article R51 of the CAS Code. The Player challenged the Appealed Decision, submitting the following requests for relief:

“In view of the above, the Appellant respectfully asks the Court of Arbitration for Sport:

Principally,

1. *To establish that the Contract dated 1 August 2010 is null and void;*
2. *To establish that, if prima facie valid, the Contract dated 1 August 2010 is unenforceable;*
3. *To reverse the Decision of the DRC dated 30 July 2014;*
4. *To condemn UDINESE to pay to Mr MENSAH EUR 530,000 for failing to initiate the required procedures to ensure the validity and enforceability of the Contract;*
5. *To condemn UDINESE to the payment in favour of Mr MENSAH of the legal expenses incurred;*

Subsidiarily,

1. *To establish that the DRC should have taken into consideration article 7 of the Contract dated 1 August 2010;*
2. *To establish that article 7 of the Contract dated 1 August 2010 prevents any sanctions, either financial or sporting sanction, other than the financial penalty to be pronounced against Mr MENSAH;*
3. *To establish that the financial penalty provided for by article 7 of the Contract dated 1 August 2010 is excessive;*
4. *To reduce the financial penalty provided for by article 7 of the Contract dated 1 August 2010 to its strict minimum;*
5. *To condemn UDINESE to the payment in favour of Mr MENSAH of EUR 30,000 for the legal expenses he incurred”.*

47. On 13 October 2014, Udinese requested the appointment of Mr. Rui Botica Santos as arbitrator. On the same date, the CAS Court Office acknowledged receipt of Udinese's correspondence and granted FIFA a deadline, until 20 October 2014, to advise whether it agreed to the joint nomination of Mr. Rui Botica Santos.
48. On 16 October 2014, the CAS Court Office acknowledged receipt of the Player's and Evian's Appeal Briefs filed on 10 October 2014. Pursuant to Article R55 of the CAS Code, the Respondents were invited, within twenty days of receipt of the letter by courier, to submit their Answers.
49. On 17 October 2014, FIFA, in accordance with Article R55 of the CAS Code, requested that the time limit for filing its Answer be fixed after the payment of the advance of costs by the Appellants.
50. On 20 October 2014, the CAS Court Office confirmed that FIFA's deadline to file its Answer would be fixed after the payments by the Appellants of the advance of costs.
51. On 20 October 2014, FIFA confirmed that it agreed with the appointment of Mr. Rui Botica Santos as arbitrator for the Respondents.
52. On 24 October 2014, Udinese requested, in accordance with Article R55 of the CAS Code, for the time limit for its Answer to be fixed after the payment by the Appellants of the advance of costs. On the same date, the CAS Court Office confirmed that Udinese's time limit for filing its Answer would be fixed after the Appellants' payment of their share of the advance of costs.
53. On 14 November 2014, the CAS Court Office acknowledged receipt of the payments by the Appellants of their shares of the advance of costs. In accordance with Article R55 of the CAS Code, the Respondents were invited to file their Answers within twenty days of receipt of the letter. Further, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to the case was constituted as follows: President, Mr. Mark A. Hovell, Solicitor from England and Arbitrators: Mr. Jean-Paul Costa, former Judge from France and Mr. Rui Botica Santos, attorney from Portugal.
54. On 26 November 2014, Udinese, in accordance with Article R32 of the CAS Code, requested a five day extension to file its Answer. On the same date, the CAS Court Office acknowledged receipt of Udinese's letter and, on behalf of the CAS Secretary General, granted the request for a five day extension to file its Answer.
55. On 4 December 2014, FIFA filed its Answer to both the Player's and Evian's respective appeals, the details of which are contained in the summary of FIFA's submissions below. In its Answer, FIFA made the following requests for relief:

- “1. That the CAS rejects the present appeals and confirms the presently challenged decision passed by the Dispute Resolution Chamber ... on 30 July 2014 in its entirety.
 2. That the CAS orders the Appellants to bear all the costs of the present procedure.
 3. That the CAS orders the Appellants to cover all legal expenses of FIFA related to the proceedings at hand”.
56. On 5 December 2014, Udinese filed its Answer to both the Player’s and Evian’s respective appeals, the details of which are contained in the summary of Udinese’s submissions below. In its Answer, Udinese made the following requests for relief:
- “In view of the above, Udinese respectfully asks the Panel;*
- 1) *to reject the appeals of the Appellants;*
 - 2) *to uphold the Challenged Decision;*
 - 3) *to condemn the Appellants to the payment in the favour of Udinese of the legal expenses incurred;*
 - 4) *to establish that the costs of the arbitration procedure shall be borne by the Appellants”.*
57. On 8 December 2014, the CAS Court Office acknowledged receipt of the Respondents’ Answers. Further, the parties were invited, by 15 December 2014, to state whether they preferred for a hearing to be held or for the Panel to issue an award based solely on the parties’ written submissions. Finally, the CAS Court Office confirmed that further information from the Panel on (i) FIFA’s request to exclude exhibits not filed with a translation in English and (ii) Udinese’s request for disclosure would follow in due course.
58. On 12 December 2014, Udinese confirmed that it wished for a hearing to be held. On the same date, the CAS Court Office, in view of Udinese’s request and without prejudice to the other parties’ positions, suggested the date of 13 January 2015 for a hearing of the matters. The parties were invited to confirm their availability by 17 December 2014. Further, on behalf of the Panel, FIFA was requested to file the complete case file related to the procedure by 23 December 2014. Also, that the Appellants should file, within the same deadline, translations in English of all exhibits they filed in another language together with their Appeal Briefs. Finally, that the Appellants should file a sworn copy of the employment contract concluded between them, translated in English.
59. On 15 December 2014, Evian confirmed that it wished for a hearing to be held. On the same date, FIFA confirmed that it did not believe that a hearing was necessary.
60. On 16 December 2014, Udinese requested that the hearing should not be held in January as it was the winter transfer window. Further, on the same date, the Player confirmed that he would be unavailable due to the Africa Nations Cup.

61. On 17 December 2014, FIFA requested the Panel to inform it of the exceptional circumstances being relied on to give the Appellants the possibility to submit translations into English of the exhibits submitted in other languages. Further, FIFA provided a copy of the files of the procedure. On the same date, the CAS Court Office informed the parties that the Panel was available for a hearing on 13 March 2015 and invited the parties to confirm their availability.
62. On 18 December 2014, the CAS Court Office responded to FIFA stating that the Panel wished to emphasise that the translations of exhibits filed in another language does not fall within Article R56 of the CAS Code as there is no production of new evidence. Further, that the Panel's request for translations fell within Article R29 of the CAS Code.
63. On 22 and 23 December 2014, the Appellants filed translations in English of the exhibits to their Appeal Briefs which were filed in another language. The Appellants also filed sworn copies of the employment contract between them.
64. On 10 March 2015, Udinese confirmed that Mr. Gino Pozzo would be available via telephone conference at the hearing. Further, that Messrs Makaab and Tountoris were not available due to unforeseen professional commitments.

III. THE HEARING

65. A hearing was held on 13 March 2015 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the composition of the Panel. The Panel was assisted by Mr. William Sternheimer, Managing Counsel at the CAS. The following persons attended the hearing:
 - i. Player: Mr. Soiron, Mr. Steinmann, Mr. Ibarrola, all counsel, along with the Player himself;
 - ii. Evian: Mr. Dormat, Mr. Glaser, Mr. Wenzel and Mr. Zbinden, all counsel;
 - iii. Udinese: Mr. Franco Collavino, General Director, Mr. Gino Pozzo, witness and Mr. Monteneri and Ms. Smirnova, both counsel; and
 - iv. FIFA: Mr. Gauthier Bouchat and Mr. Antoine Bonnet, internal counsel.
66. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to this written award.
67. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in its subsequent deliberation all the

evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present award.

IV. THE PARTIES' SUBMISSIONS

A. Appellants' Submissions

a) Player's submissions

In summary, the Player submitted the following in support of his Appeal:

68. The Player never signed the Transfer Agreement nor was he ever transferred to Udinese. The SAFA issued an ITC to the RFEF who registered the Player as an amateur Player with Granada.
69. Although the Player signed the Udinese Contract, Udinese never registered the Udinese Contract with the FIGC nor asked for the issuance of an ITC. Therefore, the Player was not affiliated with the FIGC nor could he play in Udinese's team. Although the Player and Granada signed an employment contract providing for the "transfer" of the Player from Udinese to Granada, in fact no transfer actually occurred as the Player had already been transferred to Granada from Free States Stars and was never transferred from Granada to Udinese prior to the signing of the Evian Contract.
 - aa) The Oral Contract
70. At the hearing, the Player argued that during the March Meeting the Udinese Contract was replaced by an oral contract between himself and Udinese (hereinafter referred to as the "Oral Contract"). At the March Meeting held in the presence of the Player's agent, Udinese offered the Player a new contract for a term from 1 July 2011 until 30 June 2016. Further, under this contract the Player would now play for Udinese's team, in Italy, and would receive a salary, net of taxes, of EUR 130,000 for the 2011/2012 football season; EUR 140,000 for the four other football seasons. The Player accepted and entered into the Oral Contract at the March Meeting and it immediately replaced the Udinese Contract. This was not an extension of the Udinese Contract. It could not be, as the term would then have been for 6 years, which is not allowed by FIFA. Further, pursuant to Swiss Law and as evidenced in the decision in *SFT 2005 4c 189* the Udinese Contract would not have to be terminated in writing, it would be ended implicitly by entering into the Oral Contract.
71. During the May Meeting, a written version of the Oral Contract was put before the Player by Udinese. The parties would need a written contract to register with the FIGC. However, in breach of the Oral Contract, Udinese had inserted a clause stating that the Player would be "transferred" to an Italian Club for the 2011/2012 Season. Udinese refused to provide the Player with additional details regarding which Italian Club the Player would be transferred to.

In addition, Udinese refused all discussions with the New Agents. The Player therefore refused to sign this written version and when Udinese failed to provide the correct written version of the Oral Contract with that clause removed, he treated the actions of Udinese as being in breach of the Oral Contract, enabling the Player to terminate the Oral Contract with just cause. The Player's link of confidence with Udinese was breached.

72. At the hearing, the Player specifically referred to Swiss Law, and in particular the Swiss Code of Obligations (hereinafter the "SCO"). Articles 336 and 337 of the SCO provided guidance to the Panel that Udinese should compensate the Player for this breach.

ab) The effect of the irregularities

73. In the alternative, if the Panel determine that the Oral Contract did not replace the Udinese Contract, then the Udinese Contract was void. Far from being the "victim" of the Player's alleged misconduct, Udinese, who never had the intention to have him play with its team nor solicited the required authorisations to do so, tried to take advantage of the consequence of its own misbehaviour which led to the Udinese Contract being unenforceable. It was the Player that suffered prejudice from Udinese's misconduct.
74. Udinese did not comply with the formalities imposed by both Italian law and by FIFA's Regulations. The Udinese Contract would therefore have been null and void pursuant to Italian law in any event. The Appealed Decision was erroneous in concluding that the DRC was not bound by Italian law. In accordance with Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC (hereinafter referred to as the "Rules") the DRC shall apply the FIFA Statutes and Regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level. Article 7 of the Udinese Contract stated that the applicable FIGC regulations and the collective labour agreement applied. As a consequence, the DRC should have taken into account the relevant rules imposed by Italian law.
75. The DRC could not enforce the Udinese Contract without violating applicable Italian law. The Appealed Decision was incorrect in finding that there was a valid employment contract binding the parties. Such a conclusion should be reversed as, according to the applicable Italian collective bargaining agreement, amongst other applicable Italian regulations, an employment contract, under penalty of nullity, must be drawn up on the specific form of the standard FIGC contract and must be registered with the competent league. In accordance with Articles 2 and 3 of the 2005 edition of the collective bargaining agreement (which was in force at the time of the conclusion of the Udinese Contract) a contract between a club and professional footballer had to be drawn up on that specific form and be registered with the league. Further, Italian statutes provided that the standard contract must be used and that it must be registered with the sports national federation for its approval. Also, FIGC rules provide that the standard type of contract must be used and supplied to the competent league. As the Udinese Contract did not comply with the standard form provided by the Italian League and had not been registered with the Italian league, the Udinese Contract was null and

void with regard to Italian law. It is also voidable with regard to FIFA's Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP").

76. According to Articles 5, 6, 8, 9 and 11 of the RSTP: a Player must be registered at an association to play for a club; may only be registered upon submission of a valid application from a club; the application for registration of a professional must be submitted together with a copy of the player's contract; the player can only be registered at a new association once the latter has received an ITC; and, if a player who has not been registered appears for a club in an official match, the player will be considered as having played illegitimately. The aims of sporting justice shall not be defeated by an overly strict implementation of the principle of the maintenance of contractual stability. Deciding otherwise would allow clubs, such as Udinese, to set up unofficial arrangements with other clubs, such as Granada, providing for a player, such as the Player, to transfer to different clubs through one same "relay" club within which the player will in fact never play, in order to legitimise financial dealings in complete disregard of the RSTP and the player's right to have his contract registered and to play free from any penalties.
77. Had Udinese complied with the RSTP: Udinese would have obtained an ITC from the SAFA; registered the Player with the FIGC; Udinese would have accepted the delivery of an ITC from the FIGC for the loan of the Player to Granada; completed the transfer matching system's (hereinafter referred to as the "TMS") passport of the Player; and, through the FIGC, obtained an ITC from the RFEF for the return of the Player to Italy at the end of the loan period. However, Udinese never submitted an application nor the copy of the Udinese Contract to the FIGC, never asked for the issuance of an ITC regarding the Player and never accomplished TMS requirements to reflect the changes in the Player's situation. Therefore, Udinese never arranged for the Player to be granted eligibility to play with its team, but rather had him play and intended to have him play with other clubs with which it shares financial interests, violated the binding principle of affiliation, and never obtained any enforceable rights over the Player. As a consequence, neither the Player nor Udinese could have performed the Udinese Contract as it did not comply with the above mentioned regulations. Udinese cannot therefore seek to enforce the Udinese Contract.
78. Udinese's "fraudulent behaviour" caused the Player damage that it must compensate. Udinese promised the Player that he would play with its team, at least from the 2011/2012 football season, however Udinese failed to honour this, instead tried to re-negotiate its agreement with the Player, to again loan him to another club as it had already reached its non-European players limit. It also refused to discuss the Player's career with the New Agents and never intended to have the Player play with its team but acted as a "relay" club in the course of its financial dealings with other clubs.
79. As a consequence of Udinese's lack of diligence, the Player could not have played for Udinese or any other football club either as a professional or an amateur for the 2011/2012 season unless otherwise being sanctioned for doing so. Thus the Player lost the opportunity to earn the sum of EUR 370,000 which he would have received had Udinese fulfilled its obligations

under the Udinese Contract. The Player was ultimately misled by Udinese to enter into the Udinese Contract, as he never got the opportunity to actually play with Udinese's main team but instead had to play with Granada, which at the time was a third division club, and, in the May Meeting, he was asked again to be loaned to another Italian club. As a professional football player whose career had just started, the Player suffered sporting prejudice due to Udinese's behaviour which could only be compensated by the award of EUR 100,000. Further, the Player suffered from non-economic loss due to Udinese's claim, as the claim was not only aimed against him but also against his new employer, Evian. Udinese, whose claim put the Player in "quite a difficult position" towards Evian, should be compensated in the sum of EUR 60,000. Thus, the Panel should award the Player damages totalling EUR 530,000.

ac) Just cause existed

80. In the alternative, the Player argued that he had just cause to end the Udinese Contract. This must be examined in light of Article 97 ff of SCO. If a party breaches the contract; causes damage; there is a causal link between the breach and the damages; and that party is at fault (he's presumed to be); then that party has to pay.
81. The Player argued that there was no fault on his behalf. He left the May Meeting anticipating a new written contract, but he heard nothing from Udinese until 28 July 2011, after he had signed with Evian. The Player undertook all due diligence to make sure he was legally free to accept Evian's offer. The FFF asked the FIGC whether the Player was under contract with Udinese and the Player also reviewed the TMS records.
82. The Player signed the Evian Contract, however, before it was registered Evian had to obtain the ITC. It must be noted that Granada, whose owner also owns Udinese, did not oppose the issuance of the ITC by the RFEF to the FFF.
83. The Player believed he was a free agent, so he had no fault.

ad) The buyout clause & sporting sanctions

84. In the alternative, if the Panel determined that the Player breached the Udinese Contract, then the only sanction for terminating the Udinese Contract without just cause lies in the financial penalties stipulated in article 7 of the Udinese Contract. Pursuant to the RSTP, the DRC should have upheld article 7 of the Udinese Contract preventing any sporting sanctions to be imposed, whilst reducing the financial penalty for being excessive.
85. The DRC considered article 7 of the Udinese Contract but decided that it could not be taken into consideration in determining the amount of compensation as it was not "reciprocal" and that it could not be considered as a clause by which both parties to the contract had agreed to the amount due in case of termination of the contract without just cause. The Appealed Decision violated both the common intention of the parties and the binding force of their

agreement. The DRC should have applied Article 17 of the RSTP which has never been conditional upon the application of the principle of reciprocity. In accordance with CAS jurisprudence, and contrary to the Appealed Decision, such a clause did provide for an amount to be paid in case of termination of the contract due to the Player signing with another club. Therefore, the penalty clause is valid and applicable to the case.

86. In addition, according to FIFA's commentary on Article 17, such a clause must be analysed as "a buyout" offered to the Player who can terminate his contract without fearing sporting sanctions.
87. Article 7 of the Udinese Contract provided for the Player to pay a penalty which should be reduced for being excessive. In accordance with CAS jurisprudence, a contractual penalty may be reduced when excessive, where there is a significant disproportion between the agreed amount and the interest of the creditor to maintain his entire claim. In the present case, Article 7 of the Udinese Contract provides for the Player to pay Udinese EUR 1,500,000 in case he signs an agreement with another club. However, in accordance with the Udinese Contract, the Player was to be paid EUR 60,000 for the 2010/11 Season, EUR 70,000 for the 2011/2012 Season and EUR 80,000 for the other 3 seasons for a total of EUR 370,000 for 5 years. The financial penalty thus exceeds 4 times what the Player would have earned by playing with Udinese for 5 years. It must also be recalled that no ITC was delivered to Udinese, the loan of the Player from Udinese to Grenada was free of charge, Udinese has not proven the payment of EUR 150,000 in agent's fees, and Udinese cannot have suffered any sporting prejudice due to the Player's transfer to Evian as it did not arrange for the Player to play with its team.

ae) Proportionality of Sporting sanctions

88. Finally, in case the Panel determines that article 7 of the Udinese Contract was not a buyout clause and that sporting sanctions should be considered, the Player directed the Panel to recent CAS jurisprudence including *CAS 2013/A/3221* in which that panel determined to reduce the 4 month suspension on the player concerned to zero months, and argued that this Panel should do the same. The Player argued that there is no strict liability with regard to these sanctions and that the Panel should take into account the Player's level of fault and apply the principle of *nulla poena sine culpa*.

b) Evian's submissions

In summary, Evian submitted the following in support of its Appeal:

89. At the end of the 2010/2011 playing season, Evian and the Player entered into negotiations over the signature of a fixed term contract of employment. Evian took all necessary steps in order to obtain information about the contractual position of the Player and to ensure that the latter could validly enter into a contract with Evian. The Player, who was playing for

Granada at the time, informed Evian that his contract was due to expire at the end of the 2010/2011 Season (i.e. on 30 June 2011). The Player also stated that Udinese had sent him a draft contract and had asked him to sign it but that he did not wish to join that club.

90. Evian contacted the FFF in order to secure more information about the position of the Player. The FIGC confirmed to the FFF that the Player was not registered with Udinese. Further, Evian consulted the TMS database, which reported that the Player's contract with Granada had expired and that he was not bound by any contract. Thus, all information gathered by Evian seemed to indicate that the Player was not bound by any contract as of 1 July 2011 and that there was no obstacle to the signature of a contract of employment with Evian. Thus, Evian signed the Player.
- ba) The lack of a contractual bond between the Player and Udinese
91. There was no valid contractual tie between the Player and Udinese, both under Italian law, which is applicable in the present case, and under the RSTP. Under Italian law, any working relationship between a professional football club and a professional football player must be formalised using the standard contract of the league involved. The contract must then be registered with the league within 5 days following its signature, any violation of these provisions resulting in the nullity of the contract of employment. Evian referred to a legal opinion it had procured and submitted to the CAS file and concluded that it was clear that Italian law lays down a precise formalism for the signature of a contract of employment between a professional player and a football club, with any failure to comply with this formalism leading to the nullity of the contract.
92. The formalities imposed by Italian law do not constitute mere formal obligations imposed by the authorities but actual conditions for the validity of the contract of employment. Further, the Udinese Contract was not on the standard contract template. Further, it was not registered with the Italian league within 5 days and Udinese never took any steps to regularise the situation to ensure the validity of the contract. Thus, the Udinese Contract is null and void. Evian referred to a number of obligations contained within the RSTP, primarily Articles 9 and 10 of RSTP and its commentary. Transfers should be registered with associations and the details included on the player's passport. This helps other clubs trace the history of players. Evian noted that Udinese had not complied with a number of the obligations and that no steps were taken to register the Player with the FIGC or with Udinese. It was also noted that the Udinese Contract was only signed by the Player. Evian also noted that Udinese never sought an ITC when the Player was transferred from Free State Stars. Ultimately, if Udinese had fulfilled all its obligations under Italian law and the RSTP, then the case at hand would never have come about.
93. Udinese's name does not appear in any official documents and Udinese did not take the steps needed to register the Player. Further, the FIGC confirmed that the Player was not registered with Udinese. Finally, when the Player joined Evian, an ITC was delivered by the RFEF rather than the FIGC. In accordance with CAS jurisprudence, the Player was not transferred to

Udinese. A contract signed without the delivery of an ITC, i.e. in breach of the RSTP, must be declared unenforceable. Therefore, in the absence of reciprocal contractual obligations between the Player and Udinese, the Player cannot be accused of terminating his contract without due cause.

- bb) Lack of liability of Evian for the purported unilateral termination of the Player's contract.
94. Evian raised two arguments here, the first that the joint and several liability under Article 17.2 of the RSTP should not apply and secondly that the sporting sanctions under Article 17.4 should not be applied to Evian.
95. Evian never sought to induce the Player to unilaterally terminate the Udinese Contract and it cannot therefore be held liable for doing so. The Appealed Decision held that Evian was liable for inducing the Player to terminate the Udinese Contract without just cause. However, the DRC simply presumed that Evian had induced the Player to unilaterally terminate the Udinese Contract. This presumption of liability against Evian, as the new club, flies in the face of the fundamental principle of the presumption of innocence, a principle by virtue of which any person must be presumed innocent as long as their guilt has not been firmly established. This presumption was applied in spite of the fact that Evian had adduced evidence of the steps it had taken to investigate the contractual position of the Player and had thereby demonstrated its utter lack of knowledge of the existence of a valid contract of employment between Udinese and the Player. Evian clearly could not have induced the Player to terminate a contract the existence for which it was unaware of.
96. The RSTP infringed the fundamental principle of the presumption of innocence. The European Court of Human Rights has indeed held that the applicability of Article 6 (the presumption of innocence) to a disciplinary dispute is not in doubt. Thus, the principle of the presumption of innocence grants everyone the right not to be presumed guilty until their guilt is established.
97. In order to rebut the presumption at Article 17.4 of the RSTP, the new club would have to demonstrate that it had not engaged in behaviour that induced a player to breach his contract. However, to adduce evidence of a negative is practically impossible. Therefore, it is up to Udinese and FIFA to prove that Evian induced the Player to terminate his contract without just cause. Given that it cannot be shown that Evian had a hand in the Player's unilateral termination of the Udinese Contract, Evian cannot be held responsible for this and no sporting sanction can be meted out against it.
98. Should the Panel hold that the presumption at Article 17.4 of the RSTP is indeed regular, Evian would have to show that it did not induce the Player to unilaterally terminate the Udinese Contract. Evian was unaware of the existence of a valid contract of employment between the Player and Udinese. In order to establish that Evian had induced the Player to terminate his contract, Evian would have to adduce evidence of the existence of both the

material act and of an intention. Yet Evian has demonstrated the absence of these two elements. Evian undertook extensive precautions before signing the Player and therefore it has adduced evidence that its actions were never of a kind that might have induced a player to terminate his contract. Evian only approached the Player to negotiate a contract of employment after his New Agents had certified that there was no contract that might impede the recruitment of the Player. The fact that Evian took such a precaution shows that it never sought to induce the Player to unilaterally terminate the Udinese Contract. In accordance with CAS jurisprudence, unless it is formally demonstrated that the new club was made aware of the existence of a valid contract of employment between the player and another club, a new club cannot be considered guilty of inducing the player to unilaterally terminate his contract. In the present, Evian was careful to ascertain, with the Player and with the football organisations, that there was no valid contract that might impede the recruitment of the Player.

99. Although the Player and his New Agents did mention the existence of a pre-contract with Udinese, they immediately stated that this preliminary contract was not valid, mainly owing to its non-compliance with the provisions of the regulations of the FIGC and that no actual contract had ever been signed. Further, Evian requested sight of the Player's passport. This document did not contain any reference to the existence of a purported contractual tie between the Player and Udinese. Thus, Evian was unable to discover the existence of a contract due to Udinese's failings, in particular the failure to request an ITC. Therefore, Evian has demonstrated the absence of any material act and of any *mens rea* for the offence that it is accused of committing.

bc) Disproportionate nature and effect of the sporting sanctions

100. Should the Panel hold that Evian is in fact liable, the sanctions imposed by the Appealed Decision are disproportionate, in particular in light of the behaviour of Evian in this matter.
101. The automatic application of the sanction as provided at Article 17.4 of the RSTP, in view of the behaviour of Evian in this matter, is clearly disproportionate. Further, Evian noted that in the commentary to this Article in the RSTP, FIFA confirm that such a ban should only be imposed in exceptional circumstances. Evian cited the Cambridge University dictionary for a definition of "inducement" and noted that it referred to an act or thing intended to persuade someone to do something. In the case at hand, the "someone" would be the Player, the "something" would be the breach of the Udinese Contract, so there must be "objective causality" whereby Evian's actions have caused the Player to breach and there must be "wilful influence", whereby Evian encouraged the Player to breach. Evian argued that neither existed.
102. At the hearing it was made clear by Mr. Pozzo, on behalf of Udinese, that the Player and his New Agents considered him to be a free agent before Evian had even spoken to the Player. The Player had severed the Udinese Contract before his first meeting with Evian, so there was no objective causality.

103. Evian did carry out due diligence and was satisfied that there was no contractual bond between the Player and Udinese, so there could have been no intent on its behalf to get the Player to breach something Evian did not believe existed. There was certainly no “bad faith” as FIFA had submitted. This was not a case of a club “tapping up” a player under contract, any contract there was had already ended before Evian even met the Player.
104. Further, Evian noted that there is both DRC and CAS jurisprudence (CAS 2007/A/1358 and CAS 2009/A/1909) that demonstrates that despite the apparent strict wording of Articles 17.3 and 17.4 of the RSTP, FIFA retains discretion as whether or not to issue sporting sanctions. That discretion should have been applied here.
105. Finally, in accordance with CAS jurisprudence, where it is found that the principle of proportionality is not being complied with the CAS has stated that the principle should take precedence over applicable sports regulations. In accordance with CAS jurisprudence, the CAS endeavours to ensure that the sanctions that are meted out are in keeping with the aim that is sought, proportionate to the offence committed and coherent with the specific circumstances of the case at hand. Evian’s responsibility in this matter is extremely low. It is not disputed that Evian was informed by the Player that his contract with Granada was due to end in the 2010/11 playing season, that the FIGC stated that the Player was not registered with Udinese, that the Player passport and ITC does not show that the Player was registered in Italy nor under contract with Udinese. The Appealed Decision strictly applied the RSTP in utter disregard of the facts at hand. Given the very low degree of responsibility of Evian in the present case, the sanctions are particularly severe. Further, a ban on recruitment is likely to have severe consequences for the sporting future and possibly very existence of Evian.

B. Respondent’s Submissions

a) Udinese’s submissions

In summary, Udinese submitted the following in its Answer:

aa) Alleged irregularities

106. When the Player and Udinese entered into the Udinese Contract, there was no collective bargaining agreement existing in Italy (the old collective bargaining agreement was terminated and a new collective bargaining agreement was only signed in September 2011). On 27 November 2014, Mr. Marco Brunelli, the general manager of Serie A, wrote to the clubs of the National League of Professionals confirming this. At that time employment agreements between clubs and players were signed in the form chosen by the parties under consideration of the general provisions of Italian law. In essence, clubs and players were basically free to sign on the former forms or to draft a contract at their discretion.

107. The Udinese Contract was valid and binding. When the Udinese Contract was signed there was no collective bargaining agreement in Italy. Thus, when the Udinese Contract was signed there was no standard contract form in Italy. In accordance with Article 66(2) of the FIFA Statutes, the regulations of FIFA apply and additionally, Swiss law. National Italian legislation has no relevance. However, should Italian law be applicable, then its application leads exactly to the same result as the application of the RSTP; the Player and Udinese were bound by the Udinese Contract.
108. As the Player went on loan from Free State to Granada for the period from 1 January 2010 until 30 June 2010, the ITC was issued by the SAFA in favour of the RFEF. Meanwhile, Free State and Udinese, with the acceptance of the Player, agreed the definitive transfer of the Player starting from 1 July 2010. Due to the agreement and arrangements in place between Udinese, Granada and Free State, it was not necessary for Udinese to apply for an ITC. Therefore, the first registration of the Player in favour of Granada and the RFEF was kept in force whilst the Player went on loan from Udinese to Granada.
109. The lack of registration of the Udinese Contract does not invalidate the contract. From the moment the parties sign a contract, the document is binding on both of them.
110. It was agreed, at the time of signing the Udinese Contract, that the official forms would be signed and filed separately from the execution of the Udinese Contract once the Player returned from the loan period with Granada.
111. For the sake of completeness, in the event of a breach of the Udinese Contract by Udinese, would the Player be in a position to claim for the Udinese Contract to be fulfilled and all financial damage for its premature termination? Udinese confirmed that it believed that the Player could and that this was also in line with FIFA jurisprudence.
112. No sporting justice was impeded with the execution of the Udinese Contract as the Player agreed to go on loan to Granada and was perfectly aware of his employment terms and the plan for his career development. No transfer, either definitive or on a loan basis could ever be arranged without the expressed consent of the Player.
113. The attempt of Evian to request information from the FIGC on the registration of the Player appears to be bizarre in view of the fact that the Player, until 30 June 2011, was on loan with Granada. Pursuant to Article 5(2) of the RSTP, a player may only be registered with one club at a time. In relation to the references to the TMS, it is imperative to note that the TMS system became compulsory only from October 2010.
114. During the March Meeting, in the presence of Messrs Makaab and Tountoris, the two agents who represented the Player at that time, the Player and Udinese agreed that the Player should return to Italy for the season 2011/12 and start playing with Udinese's main team. At that time, it was clear that the player, Christian Zapata, who was playing in the same position as the Player, was leaving Udinese at the end of the Season 2009/2010. Therefore Zapata's

departure opened a space for another non-EU player to be registered for Udinese. It was the clear intention and understanding of the Player and Udinese that the Player would take this place on his return from Granada.

ab) The March/May meetings

115. The Player agreed to his loan to Granada for the 2010/2011 Season and due to his impressive development, in the March and May Meetings, Udinese made a new contract proposal to the Player upon his return from Granada.
116. The March Meeting was in Barcelona. During the meeting, Udinese and the Player discussed the offer made by Udinese with respect of the new employment contract for 5 seasons with enhanced financial terms. It was agreed the terms would be put in writing for the Player and his agents to consider.
117. In May 2011, Udinese received an offer from Villarreal for the amount of EUR 4,500,000 plus EUR 1,000,000 should the club qualify for UEFA Champions League. However, Udinese had no intention to transfer the Player.
118. In the May Meeting, in Granada, the Player expressed his wish to return to Italy. The Player also confirmed that he did not wish to be represented by Messrs Makaab and Tountoris since he had appointed the New Agents. Mr Figali informed Udinese that his partner in Europe was Mr Piveteau and that he would discuss on his behalf with Udinese the situation of the Player. Following this meeting, Udinese became unaware of the Player's whereabouts. Subsequently, it came to the knowledge of Udinese that the Player had concluded an employment agreement with Evian notwithstanding the Udinese Contract. At the hearing Mr. Pozzo, who had conducted both meetings on behalf of Udinese, confirmed that he was not concerned that the written contract he had brought with him to the May Meeting was not signed, as he believed the Udinese Contract remained binding and had many years to run.
119. The dispute in question accrued exclusively because of the Player's reluctance to follow the contractual provisions, to perform his obligations of an employee as well as to communicate appropriately with Udinese in order to solve the dispute amicably and timely.

ac) The breach of the Udinese Contract

120. The Player terminated the Udinese Contract without just cause. The Udinese Contract was signed by and between Udinese and the Player freely and willingly. Through their signatures on the Udinese Contract, the parties expressly consented to its terms and conditions, undertaking to perform it. The Udinese Contract clearly stipulated its duration and amounts of remuneration due to the Player, which terms have never been objected by the Player until the dispute arose. Throughout the entire period of the Udinese Contract's effectiveness, Udinese properly performed its contractual obligations. At all times, the Player was regularly

remunerated and obtained the bonuses in the amounts contractually agreed. Furthermore, the Player was perfectly aware of being sent on loan to Granada.

121. From the outset, Udinese disclosed its intentions to send the Player on loan to Granada and possibly to other clubs in order to provide him with an opportunity to develop and accustom gradually to European football. The Player was perfectly aware of having a valid employment agreement with Udinese. At article 7 of the Udinese Contract, the parties explicitly indicated that such agreement was a final one and that the arrangement was to last until 30 June 2015. When the Player signed with Evian, the Udinese Contract had not expired nor had the parties agreed to an early termination. There were no legal reasons for the Player to consider the Udinese Contract had expired or terminated and by repudiating the Udinese Contract, the Player terminated it without just cause during the protected period.

ad) Sporting sanctions

122. Due to the Player's success at Granada, Udinese offered him enhanced salary terms and the draft contract was provided to him in May 2011. At the May Meeting, it was discussed that the Player could be transferred on loan to another Italian club if he did not feel ready to join Udinese. However, the Player expressed his strong desire to return to Udinese and therefore the draft offer of the employment contract was never executed. Udinese and the Player agreed that they would execute a financially improved contract once the Player joined the main team of Udinese. This is also reflected by the fact that Udinese kept the spot for a non-EU player open until August 2011. In relation to Evian's inducement of the breach of the Udinese Contract, the wording of the RSTP is clear – it shall be presumed, unless established to the contrary, that any club signing a professional has induced that professional to commit a breach. Evian is well acquainted with the relevant regulations in contractual issues. Evian is well aware that it is necessary to receive written authorisation from the club to negotiate with a Player, find a financial agreement with the current club and sign the respective transfer agreement, and execute the termination of employment agreement between the Player and his former club. None of these requirements were met.
123. In Udinese's written submissions, it alleged that Evian approached the Player and induced him to violate the Udinese Contract. However, at the hearing, the evidence of Mr. Pozzo contradicted that. Udinese did note that Evian either failed to carry out due diligence or it was conscious of what it was doing and did it deliberately. Therefore, Evian has blatantly violated the principle of the maintenance of contractual stability.

ae) Compensation for the breach

124. The RSTP set out the consequences of a breach of an employment contract without just cause during the protected period. The Panel should consider the Player's sporting history and developments in order to assess his real value. In light of the Player's attributes and his

sporting history and development, Villarreal made the significant financial offer to Udinese. However, Udinese rejected the offer.

125. The Appealed Decision was correct to determine that the Udinese Contract was unilaterally terminated without just cause and that the Player has to pay compensation in accordance with Article 17 of the RSTP. Whilst establishing the amount due as compensation it is essential to focus on the principle of positive interest which shall put the injured party in the position it would have had if the contract was performed properly. In accordance with the Udinese Contract, the parties had already provided for a penalty fee in the amount of EUR 1,500,000 to be paid by the Player in addition to other possible damage caused. This amount, freely negotiated between the parties, shall be the starting point for the entire financial entitlement of Udinese.
126. The criteria as set out at Article 17 of the RSTP are not limited and grant the deciding body the discretion to have recourse to other objective criteria. In addition to the amount provided as a penalty fee, the first criteria to be examined is the remuneration and other benefits due to the Player under the existing contract, the remaining duration of the employment contract as well as the value of the new contract that he has signed with the new club. The fact that the salary with Evian is higher than the one with Udinese shows that the Player had a financial motive to breach the Udinese Contract. It must also be recalled that Udinese paid the amount of EUR 700,000 to acquire the rights of the Player and, when amortised, results in an unamortised amount of EUR 560,000. Further, Granada invoiced Udinese for the amount of EUR 148,415.64 in relation to the loan of the Player. It should also be noted that the Assessment Committee of the Spanish Professional League assessed the Player's value as EUR 4,500,000.
127. Further the following criteria should be considered in order to evaluate the compensation for the breach of the Udinese Contract: the Player was 21 years old at the time of the breach and had a long promising career both at national and international level; the Player was considered one of the best young players ever to emerge from Africa; Udinese lost the services of the Player for 4 seasons; Udinese lost the opportunity to sell the Player; the Player misled Udinese; Udinese was left buying a new player and incurred this player's higher salary; Udinese has yet to receive any compensation due to the Player's breach; and the termination of the Udinese Contract without just cause occurred during the protected period.
128. The Panel should take into account the specificity of sport. An element to take into account whilst dealing with the specificity of sport is the length of contract still remaining in the contract that was breached. The Udinese Contract was meant to last for a further 4 seasons. Further, the behaviour of the parties involved should be taken into account. The overall assessment of the damage suffered by Udinese following the breach of the Udinese Contract without just cause amounts to around EUR 6,000,000.

129. In light of the above, no compensation is due to the Player. Further, Article 17 of the RSTP provides that sporting sanctions shall be automatically and compulsory imposed on the Player as well as the new club.

B. *FIFA's submissions*

In summary, FIFA submitted the following in its Answer:

130. The Appealed Decision is fully justified, legally valid and must be entirely upheld by the Panel.

a) Irregularities

131. In accordance with the Udinese Contract, there is no reference to Italian law. The Udinese Contract refers to the RSTP and FIGC Regulations. Therefore, the parties did not agree on the exclusive application of the Italian regulations but clearly establish that their contractual relationship shall also be governed by the FIFA regulations. In relation to the legal opinion of the Italian lawyer, FIFA noted that little information had been provided in relation to the lawyer's identity and nationality.

132. In the Appealed Decision, it was held that the validity of an employment contract cannot be made conditional upon the execution of administrative formalities. As pointed out in the Appealed Decision, one of the main purposes of the FIFA regulations is to create a standard set of rules to which all football stakeholders are subject to and able to rely on. This has further been confirmed by CAS jurisprudence. The purpose of the long standing jurisprudence is generally meant to protect professional football players against the consequences of the non-execution by a football club of domestic administrative formalities. Further article 2 of the Rules provides that the various deciding bodies shall apply the FIFA regulations whilst taking into account national laws. The terms of the article precisely reflect the intention to leave scope of discretion to the deciding bodies so as for them to be in a position to apply general legal principles in the international context and not to be bound to national laws. The same principle must also apply to the argument that the Udinese Contract was not on the official standard form of the FIGC. It must be noted that the Player even acted in accordance with the Udinese Contract for more than one season.

133. Both Appellants refer to several provisions of the RSTP and state that as Udinese did not comply with them, the Udinese Contract is not valid. However, it must be noted that all the provisions that the Appellant seek to invoke only set forth that a player needs to be registered at a football association in order to play in organised football. None of the articles mentioned address or make an impact on the validity of a contract signed between a player and a club. Further, the DRC rightly found that the Udinese Contract was signed by both parties, stipulated the duration, and a detailed representation of the obligations of the respective parties. Therefore, it must be concluded that the Udinese Contract at stake contains *essentialia negotii*.

134. The Player complied with all of the terms of the Udinese Contract, in particular by going on loan for a year to the Spanish club.

135. It must be recalled that the Player co-signed the Transfer Agreement between Udinese and Free State Stars. In the Transfer Agreement, it was explicitly agreed between the parties that until 1 July 2010, the Player would be loaned by Free State to a third club. Evian acknowledged in its Appeal Brief that the Player was registered with the Spanish club, Granada. Further, the Player and Udinese signed the Udinese Contract which provides for a term of 5 sporting seasons. The Udinese Contract also provided that the Player would be loaned to Granada for the 2010/2011 Season.

b) Breach of Udinese Contract

136. The Player and Udinese also signed the Udinese Letter that provided that the Player was being transferred to Granada until 30 June 2011. In consideration of the temporary transfer, Udinese agreed to pay additional amounts to the Player. In view of the above, the Player was perfectly aware of the contractual configuration he was finding himself in and that he had to return to Italy at the end of the loan with the Spanish club. The Player's choice to sign an employment contract with Evian is a clear and unjustified breach of contract. The Player did not give any valid explanations before the DRC or before this Panel justifying that he had just cause to breach his obligations towards Udinese. As a result, the Appealed Decision is correct and needs to be confirmed.

c) Joint and several liability

137. In accordance with Article 17 paragraph 1 of the RSTP, the Player is responsible for a breach of contract without just cause and is obliged to pay compensation to Udinese. Further, in accordance with Article 17 paragraph 2 of the RSTP, Evian shall be jointly liable for the payment of the compensation. In accordance with the DRC and CAS jurisprudence, this liability is automatic and independent from the questions to whether the new club has committed an inducement.

d) Sporting sanctions

138. Article 17 paragraph 4 of the RSTP does correspond to exceptional situations and does permit one party facing such a presumption to reverse it. Further, the decision making bodies, such as the DRC or CAS, are not in a position to freely decide to disregard rules or regulations.

139. None of the actions undertaken by Evian could ever have permitted Evian to fully ascertain the Player's contractual situation. In relation to the correspondence between the FFF and FIGC, FIFA noted that the FFF duly asked "*I have another question concerning [the Player] of Udinese lent to Granada (Spain) is it always under contract with Udinese...*". As the FFF wrote that Udinese lent the Player to Granada, it clearly shows that the Player was contractually bound

- to Udinese and loaned to the Spanish club. This information can only have been communicated to the FFF by either the Player or Evian. Furthermore, the answer given by the FIGC to the FFF does not clarify the point as to whether the Player is engaged with Udinese as it simply states the obvious, in that the Player had been loaned to Granada until 30 June 2011, so he was not registered in Italy. As provided by Article 5 of the RSTP, a player can only be registered with one club at a time.
140. The Udinese Contract did exist between the Player and Udinese and Evian was well aware of this fact. It must be noted that Evian itself acknowledged that the Player and/or his agent informed it about the existence of a “pre contract” signed with Udinese. Further, Evian was well aware of the loan of the Player to Granada. Under these circumstances, we find it difficult to accept that Evian could in good faith believe that the end of the loan, the Player would be free to sign for a new club of his choice. Evian’s allegation that it was unable to discover the Udinese Contract is unjustified and cannot be backed. Further, Evian breached the mandatory provisions of Article 18 paragraph 3 of the RSTP which provides that a club intending to conclude a contract with a professional must inform the player’s current club in writing before entering into negotiations with him. It must be concluded that Evian by the stance of not contacting Udinese directly deliberately chose to disregard actual facts in order to claim in bad faith that it was not aware of the Udinese Contract. This behaviour cannot be protected. If it had complied with the RSTP and undertaken some common sense due diligence, Evian would have duly clarified the Player’s contractual status and not induced the Player to breach the Udinese Contract.
141. In response to the Player’s argument that article 7 of the Udinese Contract was in fact a “buy out” clause, FIFA noted, *quod non*, that the amount would have needed to have been paid by the Player prior to leaving Udinese. It is obvious that the payment cannot be taken into account as an implementation of the clause if such a payment occurs after the player has been found liable for breach of contract without just cause. Article 7 of the Udinese Contract is not a buy-out clause. Instead, article 7 of the Udinese Contract is a liquidated damages clause, which has no impact on the possible imposition of sporting sanctions on the party in breach. The DRC correctly applied the RSTP.
142. Should the conditions of a situation of inducement of breach of contract without just cause during the protected period be met, the club responsible for such inducement shall be banned from registering any new players, either nationally or internationally, for two entire effective registration periods. The RSTP did not offer a wide range of sanctions in such situation and the DRC, in its role of decision making body, is bound to apply the RSTP. The Appealed Decision should be upheld.
143. The Appealed Decision was correct to disregard article 7 of the Udinese Contract and to calculate the compensation in accordance with Article 17 of the RSTP.
144. It must also be recalled that the termination of the Udinese Contract without just cause occurred within the protected period. Therefore, in addition to the obligation to pay

compensation, sporting sanctions shall be imposed on the Player. As Evian has not been able to reverse the presumption mentioned in Article 17 paragraph 4 of the RSTP, and in accordance with Article 17 paragraph 4 of the RSTP, the Appealed Decision should be upheld and Evian should be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the respective decision.

V. JURISDICTION OF THE CAS

145. Article R47 of the CAS Code provides as follows:

“An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body”.

146. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2014 edition) as it determines that:

“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”.

147. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

148. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

149. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

150. The Panel notes that Article 66(2) of the FIFA Statutes stipulates 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”.

151. The parties agreed to the application of the various statutes and regulations of FIFA, and in particular the RSTP. The Appellants contended that Italian law was applicable, whereas the

Respondents stated that Italian law had no relevance to the dispute and that Swiss law applied, complimentary. The Panel notes that there is no choice of law clause within the Udinese Contract that provides for application of Italian law, rather it refers to the RSTP.

152. The Panel notes that the matter at hand is from a DRC decision and is therefore satisfied to accept the various Statutes and Regulations of FIFA, primarily the RSTP, as the applicable law, but also the subsidiary application of Swiss law should the need arise to fill a possible gap in the various statutes and regulations of FIFA.

VII. ADMISSIBILITY

153. The Appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes (2014 edition). The Appeal complied with all other requirements of Articles R48 of the CAS Code, including the payment of the CAS Court Office fee.
154. It follows that the Appeal is admissible.

VIII. MERITS OF THE APPEAL

A. The Main Issues

155. The Panel observes that the main issues to be resolved are:

- Did the Oral Contract replace the Udinese Contract?
- If not, is the Udinese Contract a valid contract?
- If so, did the Player have just cause to terminate the Udinese Contract?
- If not, what are the financial consequences of such breach?
- Is Evian joint and severally liable?
- What are the sporting consequences on i) the Player and ii) Evian?

a) The Oral Contract.

156. The Panel notes that, at the hearing, the Player commenced a new line of argumentation, whilst staying within the bounds of his written Appeal and challenging the validity of the Udinese Contract, submitting that at the March Meeting the Udinese Contract was replaced by the Oral Contract between the Player and Udinese. The Player submitted that this is fully compliant with Swiss law, which allows for oral agreements, if there is no other legal requirement for it to be in writing. The Player submitted that there is no such requirement in the RSTP.

157. Udinese submitted that the March and May Meetings were merely part of the negotiation process with the Player. Mr. Pozzo explained that the Player was performing well and a new contract was tabled, but ultimately not signed. It did not concern him, as there was a long time still to run on the Udinese Contract.
158. The Respondents both referred to Article 2.2 of the RSTP, which refers to professional players having “written contracts”, not oral ones.
159. The Panel notes the wording of Article 2.2 of the RSTP – “*A Professional is a player with a written contract with a club...*”. Whilst it does not expressly say that there is a requirement for all professional players to have written contracts *per se*, and the FIFA Commentary recognises that oral contracts may be legally binding under domestic labour law in some jurisdictions, here the Player was a professional. He already had a written contract with Udinese. He had one with Granada too. The latter one was registered and an oral contract would not be capable of being registered by Udinese pursuant to Annex 3, Article 2.1, as a copy of the contract has to be lodged when Udinese would seek to register the Player and procure his ITC.
160. It seems unlikely to the Panel that the Player would have considered the verbal offer of a new contract to become that contract there and then and to immediately replace his existing one. He already had some experience of contractual negotiations. Further, he was represented at the March Meeting by his agents. If the Player wanted to convince the Panel that there was an oral agreement, then the agents could have been called to give evidence on his behalf.
161. Instead, the Panel heard from Mr. Pozzo, who denied there was anything more than talks at the Meetings, and from the Player himself. When the Player was asked about the May Meeting, where Udinese allegedly breached this Oral Contract, by producing a draft written contract which had an offensive term, obliging the Player to go on loan again, this time in Italy, the Panel specifically asked him what his reaction was. Did he point out the offensive clause? Did he state that the written draft did not reflect the Oral Contract? Did he cross that clause out and then sign the written contract? His answer was he did nothing at all.
162. To the Panel the line of argumentation advanced on this point at the hearing was not credible. The Meetings were part of a negotiation process, which was never concluded, neither at the March Meeting, as the Panel determines that no oral agreement was concluded between the Player and Udinese; nor at the May Meeting, as the Player and his New Agents did not sign the draft contract put before them, instead took it away with them. There never was a third meeting, so, at the conclusion of the May Meeting, the Panel are satisfied that the Udinese Contract remained in force, subject to the various irregularities challenge raised by the Appellants, which are now considered:
- b) Is the Udinese Contract a valid contract?
163. The Panel notes that various challenges were put forward by the Appellants, which they claim rendered the Udinese Contract “null and void”. These were that (i) the Udinese Contract

offended Italian law in that it had to be in the format agreed as part of the collective bargaining agreement in Italian football; (ii) that it breached the various requirements of the RSTP; and (iii) the Player made the allegation that he had been misled by Udinese, as he had been promised that he would play for them in Italy, not be constantly loaned out.

164. As noted above, the Udinese Contract did not select Italian law as the applicable law. Even if it had, and that legal system advanced two requirements, namely that the standard league employment contract had to be used and it had to be registered with the league within 5 days, the Panel were not convinced that this would lead to rendering the Udinese Contract “null and void”. Neither Appellant produced a standard employment contract for the Panel to examine, so it could see if there were some mandatory terms that had not been included in the Udinese Contract. The Panel concurs with FIFA that the Udinese Contract has the *essentialia negotii* of an employment agreement between a club and a player. Further, as the Player was on loan with Granada effectively for the time before and after the execution of the Udinese Contract and Udinese were therefore not proposing to play the Player in Italy, the Panel had doubts as to whether his non registration would nullify that agreement. However, the key factor for the Panel was the evidence that Udinese produced, that was not challenged by the Appellants, that the collective bargaining agreement was not in force in Italy at the time the Udinese Contract was executed. The parties could choose what format to use.
165. The Panel notes the convoluted structure of the Player’s move to Udinese. The original transfer agreement between Free State and Udinese was signed, but took effect some months later. In the meantime the Player was loaned by Free State to Granada as an amateur; he was registered in Spain by Granada. When the loan ended, the Player and Udinese signed the Udinese Contract; that was capable of registration at that stage by Udinese in Italy, however, it appears from the Udinese Contract that the Player and Udinese were happy for the Player to play the next season again with Granada, so he is loaned (this time by Udinese and as a professional) to Granada. As Granada already had the Player registered, Granada merely amended the registration details to show the Player was now a professional player. At the end of that loan period, Udinese could and perhaps should have registered the Player in Italy and requested an ITC through the FIGC, but it could have done this from 1 July 2011; on 7 July 2011, the Player signed with Evian.
166. The Appellants submit that Udinese failed to comply with the RSTP, whereas, the Respondents state Udinese complied with the system and the RSTP.
167. The Panel can see that Udinese were looking to sign a new 5 year contract with the Player. Perhaps this is why, over the closed season when there was no football being played, Udinese did not immediately register the Udinese Contract. If Udinese had wanted to play the Player, then it would have needed to register him and apply for the ITC. It was within a week that Evian and the Player signed the Evian Contract. The Panel does not criticise Udinese for such a slight delay.

168. The Panel does not see the fact that Udinese did not seek to register the Player when the Udinese Contract was executed as a breach of the RSTP either. It was clearly the intention of Udinese, the Player and Granada that the Player remained with Granada for the 2010/11 season, so it would seem illogical to take the registration from Spain to Italy, just to then send it straight back to Spain.
169. Finally, the Panel notes that there was no evidence advanced by the Player to support his claim that Udinese misled him by promising him he would play in Italy. The Udinese Contract and the Udinese Letter both demonstrate that the Player was aware and accepting of a further loan to Granada. The Panel noted that the draft contract produced at the May Meeting indicated that the Player would again be loaned out, this time in Italy. Whilst Udinese submitted that he would have joined its team, as another non-EU player was leaving, the reality is that the Player had not signed the draft contract, only the Udinese Contract, so he could have objected to another loan and sought to enforce his right to play and train with Udinese. There is no misrepresentation, the Udinese Contract would, in the Panel's opinion, have left the Player with the right to play and train in Italy. It did exactly what he said was represented to him.
170. In conclusion, the Panel were satisfied that the Udinese Contract was legally binding upon the Player and Udinese as at July 2011.
- c) Was there just cause to terminate?
171. The Panel need to consider how and when the Udinese Contract was brought to an end.
172. It is not disputed that on 7 July 2011 the Player signed the Evian Contract. Pursuant to Article 18.5 of the RSTP a player that signs more than one contract is deemed to have terminated the first contract without just cause and the provisions of Chapter IV of the RSTP come into play.
173. The Panel therefore determine that the Player terminated the Udinese Contract on 7 July 2011 and did so without just cause, when he executed the Evian Contract.
- d) What are the consequences for the breach?
174. The Panel notes that the consequences, pursuant to Chapter IV of the RSTP are both financial and disciplinary in nature. Article 17.1 is the starting point for the financial consequences.
175. The Panel were directed to article 7 of the Udinese Contract by the Player. On the one hand he argued this was a "buy-out" clause, as this would establish the right to end the Udinese Contract, the financial price to pay and would eliminate the need for any disciplinary, or sporting, sanctions. The Panel note the position of the DRC, as supported by the Respondents, that this is a penalty or liquidated damages clause.
176. Article 7 states:

“In case the PLAYER will not fulfil this contract, by signing an agreement with another club (except GRANADA)...he will have to pay to UDINESE a penalty of 1,500,000 Euros...”

177. The clause is not a buyout clause. The wording is clear, if the contract is not fulfilled by the Player, if he signs with another club, he pays the financial penalty. The clause does not give the Player an option to pay a sum of money and then end the contract. The clause refers to non-fulfilment or a breach. As detailed above, Article 18.5 of the RSTP states that signing a second contract breaches the first and that is what the parties covered in the Udinese Contract. As such, the Panel agree with the DRC’s categorisation of the clause as a liquidated damages clause, but would not have agreed with the DRC’s view that it is unenforceable, as it is not reciprocal. The Panel could not find anything within the RSTP that requires such clause to be reciprocal. Rather, the parties agreed between themselves what the financial consequences of a breach of the Udinese Contract by the Player would be. The Panel would have looked at this as the sum to award.
178. Much as Udinese went to great lengths in its submissions to demonstrate that the actual damage suffered by it as a result of the Player’s breach without just cause, Udinese did not appeal against the Appealed Decision and pursuant to Article R55 of the CAS Code, counterclaims are not admissible. As such, Udinese cannot now seek to claim more from the Player (and Evian), not even to claim the sum set out in article 7 of the Udinese Contract. It’s prayers for relief are confined to requesting the Panel to dismiss the Appeals in the matter at hand and to uphold the Appealed Decision and, in particular, the award of EUR 1,087,200 from the Player and Evian.
179. As regards the financial consequences of the Player’s breach of the Udinese Contract, the award of that sum from the Player is confirmed. The Panel will next examine the position of Evian, firstly in regard to that sum.
- e) Is Evian jointly liable?
180. The wording of Article 17.2 of the RSTP is noticeably different from that of Article 17.4. The former makes the next club to register the player jointly liable for the financial consequences of his breach of contract. The latter considers the disciplinary or sporting consequences of the breach for the next club. It is only in Article 17.4 of the RSTP that the actions or involvement of the next club are considered. To receive sporting sanctions, then the next club needs to have played some part in the breach, to have induced it. That will be considered by the Panel below.
181. However, as regards the application of Article 17.2, Evian, as the next club of the Player, are automatically jointly liable for the financial consequences that flow from that breach, regardless of fault or inducement.

182. This is a regulation that has been upheld by many CAS panels over the years and this Panel sees no room to do other than to reject Evian's appeal against being jointly liable for the sum of EUR 1,087,200 and therefore upholds that part of the Appealed Decision.
- f) Sporting sanctions against the Player?
183. Having noted that the breach without just cause took place within the "protected period", the Panel next considers the clear wording of Article 17.3 of the RSTP, that sporting sanctions "*shall also be imposed*" on the Player. That Article provides a range of between 4 months and 6 months. The decision of the DRC was a 4 month suspension.
184. The Player sought to argue that he took reasonable steps to verify whether the Udinese Contract was still binding; that he was not at fault and *nulla poena sine culpa* should apply; and, finally, that the Panel has the ability to ignore the 4 months ban and replace it with such sanction (including none) following the example of the CAS panel in CAS 2014/A/3221.
185. The Panel does not agree that the Player had no fault. It is clear that he signed the Udinese Contract willingly. In the footballing world, a player (even his agent) might not read their contract line by line and study every clause, however, the parts that are always considered say how much the player will get paid, when and for how long. The Player would have been fully aware that the term of the Udinese Contract was 5 years. He was aware that he was to go on loan for the first year and then to come back. There had been talk (and indeed a reference to it in the draft contract) of the Player going out on loan again during the second year. The Player was present at those Meetings. Why would he then believe something had happened to end the Udinese Contract? Why would he think that a search on the TMS system or by looking at the correspondence exchange between the FFF and the FIGC would constitute due diligence regarding his contractual situation? He knew his contractual situation, as he signed the contracts.
186. The Panel did note the decision of the CAS panel in CAS 2014/A/3221. In that case, the panel determined that no ban should be served by the player concerned. The Panel here is facing different facts from those in that case. The player in the other case had waited for over 5 years for his case to be determined by the DRC. By that time the player had moved from the next club to register him to a third club. In that case the third club would suffer the loss of the player's services. In the case at hand, there is no third club. The Player's case was with the DRC for around 2 ½ years. Whilst perhaps not the quickest resolution, not untypical, in the way that 5 years is.
187. The Panel determines that there is no reason to dis-apply Article 17.3 and the 4 month ban in the Appealed Decision is confirmed against the Player.

g) Sporting sanctions against Evian?

188. The Panel notes that Evian sought to appeal the sporting sanctions it faces as a consequence of the Appealed Decision. The sanctions result from Article 17.4 of the RSTP:

“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”.

189. FIFA, at the hearing, described the matter at hand as one of the “*clearest breach of contract and inducement at the DRC in recent years*”. The Panel has already above determined that the Player did indeed breach the Udinese Contract and that such breach was within the Protected Period. It is undisputed that the Player and Evian signed the Evian Contract, so the presumption in Article 17.4 of the RSTP arises.

190. Evian, on the other hand, submitted that this was not a case of a club actively inducing a player to breach his contract with another club. There was no “poaching”, “tapping up” or enticement of the Player away from Udinese. Such encouragement is required pursuant to previous CAS jurisprudence on this part of the RSTP (Evian referred to). Evian submitted that it was not even aware that the Player was under contract with Udinese. The Player and the New Agents had stated that he was a “free agent”. Whilst it was acknowledged by Evian that it could have made more checks, it submitted that it did carry out sufficient checks. Further, Evian argued that the sporting sanctions would be too severe and disproportionate, as Evian are already facing the prospect of losing the Player’s services for 4 months and being jointly liable for the compensation awarded against him, in favour of Udinese. To then face a 2 transfer window ban on top of that would be disproportionate.

191. The Panel noted that Evian referred to FIFA’s own position on Article 17.4, which acknowledged that such a sanction was a “strong” one and that it was to be “*imposed in exceptional circumstances, where there had been severe interference in a contractual relationship*”. Further, Evian’s submissions were that there must be both actions taken by Evian to cause the breach of the Udinese Contract by the Player (referred to as “objective causality”) and an encouragement to breach (referred to as “wilful influence”). Evian submitted that the Player had already breached the Udinese Contract before the New Agents introduced him to it. If the Player had already breached, there could be no objective causality. In addition, if Evian did not know about the Udinese Contract, then there could be no wilful influence either.

192. The Panel noted that the RSTP does not make any distinction between an active case of a club poaching a player and one where a club might mistakenly or recklessly induce a player. Here, the Panel were satisfied that Evian had not sought out the Player and actively induced him to breach the Udinese Contract. The evidence supplied by Udinese’s own witness, Mr. Pozzo, at the hearing assisted Evian’s case. Mr. Pozzo clearly confirmed that at the beginning of June

2011 Udinese were unable to contact the Player directly, but did manage to contact the New Agents. They referred to the Udinese Contract being invalid, due to the irregularities already dealt with by the Panel above. The New Agents, on the Player's behalf, confirmed that he would not be coming back to Udinese. Further, that the Player was not speaking to any other clubs at that time. Mr. Pozzo went on to say that in his opinion the Player was later (in July 2011) introduced by the New Agents to Evian.

193. That noted, the Panel also considers two points. Firstly, Udinese were still attempting to contact the Player. The Udinese Contract was only breached when the Evian Contract was executed, so the Panel disagree with Evian when it submits that the Udinese Contract was already terminated before it had any involvement with the Player. Secondly, that a club that turns a "blind eye" to a player looking to or in the process of walking away from his current club, could and should take appropriate steps to eliminate the risk of being found to have played some part in inducing the breach of his current contract. In the case at hand, it is clear to the Panel that Evian were aware that the Player had been on loan when at Granada and that there was some issue or dispute of a contractual nature with Udinese. Why else would it ask the FFF to write to the FIGC to enquire whether there was any contract between the Player and Udinese?
194. Did Evian go far enough to convince the Panel that it did carry out the appropriate checks? To simply rely upon the Player's and the New Agents' opinions that he was a "free agent", would be unlikely to satisfy the Panel. It certainly could (and should) have contacted Udinese direct and asked about the contractual position of the Player. It should have asked the FFF to seek further clarification from the FIGC, when its response was that the Player was not registered with Udinese. It answered a different question than it was asked. The Panel, however, notes that Evian did look on the TMS, it also consulted the Player's passport (although it is not clear from the print out exhibited to the CAS file whether this was done before or after the Evian Contract was signed); so some steps were taken.
195. Ultimately, Evian faces the presumption that it induced the breach and it bears the burden of proof to convince the Panel that it did not induce the breach. The Panel has an element of sympathy with Evian. Not because the imposition of such sanctions would be part of a triple sanction (as the club lose the services of the Player for 4 months and are jointly liable for the compensation to be paid to Udinese, as well as facing the two transfer window ban. As is noted above, the Panel would have considered awarding more compensation to Udinese had it appealed to CAS and feels that Evian now enjoy the services of the Player and may well enjoy a significant future transfer fee as a result of signing the Player as a "free agent"), but because there was no active poaching of the Player and also because the key evidence to convince the Panel that there was no passive inducement either, would be the evidence of the New Agents, who would be unlikely to come before CAS and incriminate themselves. As such Evian faces difficulty finding the evidence to rebut the presumption, whilst the potential sanction may be seen as "strong" for poor due diligence, as opposed to active poaching.

196. The Panel crucially noted at the hearing that Udinese had since reported the New Agents to FIFA and FIFA are in the middle of a disciplinary process against the New Agents. The Panel are satisfied that the Player breached the Udinese Contract, but feel it is prudent for FIFA to fully examine the circumstances surrounding the breach of the Udinese Contract i.e. the circumstances surrounding the negotiation and signing of the Evian Contract to determine whether the New Agents and/or Evian or, indeed neither, induced the Player's breach. To rely upon a rebuttable presumption to consider the position of Evian, before it reviews the actions of the New Agents strikes the Panel as potentially dangerous and could result in an unjust decision. FIFA acknowledges that a two transfer window ban is a strong sanction, the Panel determines that before imposing any sanctions, if FIFA can examine all the circumstances fully, it should do so and as such, sends this issue back to FIFA to consider at the same time as it considers the position and actions of the New Agents.

B. Conclusion

197. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel:

- a. Dismisses the Appeal in CAS 2014/A/3739;
- b. Partially allows the Appeal in CAS 2014/A/3749; and
- c. Upholds the Appealed Decision in its entirety, save that the sporting sanctions imposed on Evian shall be referred back to the DRC to consider alongside its procedure against the New Agents.

198. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 September 2014 by Jonathan Mensah against the Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
2. The appeal filed on 18 September 2014 by Evian Thonon Gaillard FC against the Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

3. The Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed save for the sporting sanctions that were imposed on Evian Thonon Gaillard FC that are suspended and referred back to the Dispute Resolution Chamber. The Panel hereby requests that the Fédération Internationale de Football Association deals with the issue of any sporting sanctions against Evian Thonon Gaillard FC in tandem with its disciplinary proceedings against Mr. Fabien Piveteau and Mr. Antoine Figali.
4. (...).
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.