Arbitration CAS 2008/A/1453 Elkin Soto Jaramillo & FSV Mainz 05 v/ CD Once Caldas & FIFA and CAS 2008/A/1469 CD Once Caldas v/ FSV Mainz 05 & Elkin Soto Jaramillo, award of 10 July 2008

Panel: Mr Michael Beloff QC (United Kingdom), President; Mr Hendrik Willem Kesler (Netherlands); Ms Margarita Echeverria Bermudez (Costa Rica)

Football
Contract of employment
Unilateral termination of the contract without just cause during the protected period
Validity of an amendment to the contract of employment that was not deposited
Calculation of the compensation for breach of the contract

1. **Colombian law does not require an amendment to the contract of employment to be deposited for it to be valid. Neither does Art. 8 of the FIFA Regulations, which only requires deposit as a matter of administration, but not as a condition of validity.**

2. **The compensation of the former club for breach of the employment contract by the player can be calculated as the amount of money that the player would have earned with his former club until the end of his contract deducted from the amount of money that he earns with his new club for the same period.**

The first Appellant ("the Player") is a Colombian professional football player.

The Second Appellant is a football club which has its seat in Mainz in Germany affiliated to the German Football Association ("the German club") which in turn is a member of FIFA.

The First Respondent is a football club which has its seat in Manizales Colombia ("the Colombian club") affiliated to the Colombian Football Association, which in turn is also a member of FIFA.

The Second Respondent, Fédération Internationale de Football Association (FIFA; "the second Respondent") is the international federation of football which is registered in Zürich, Switzerland.

In 1999 the player signed for the Colombian Club for a transfer fee of USD 7,000.

On 5th January 2005, the Player and the Colombian Club signed a one year employment contract, valid from 5th January 2005 until 3rd January 2006.

On 19 October 2005 the Player and the Colombian club signed a one year employment contract, valid from 3 January 2006 until 3 January 2007 ("the October contract"). The second paragraph of clause 2 provided:

> *"The work object of the present contract (football player in the club Once Caldas) is for a predetermined deadline of one (01) year, it will start on the day three (3) January 2006 and will end the day three (03) January 2007.*
>
> *If before the expiry date of the deadline stipulated in this clause, none of the parties will notify the other party in writing of its/his decision of not extending the contract with an advance not inferior to thirty (30) days, the contract will be understood as renewed for the same period as initially agreed."*

At the start of 2006 while the Player was at a training centre, he was informed by a representative of the Colombian Club that Sporting Club Barcelona, ("the Ecuadorian club") were interested in taking him on loan for a year. A new coach had been appointed for the Colombian Club and his prospects of regular play had in consequence diminished. Moreover, he thought that at that stage in his career it would be advantageous for him to play elsewhere after half a decade at the Club. Therefore he agreed to the arrangement proposed. At that stage there was no document to confirm it.

On 16 January 2006 the Player signed a letter to the Colombian club asking for a licence to play for the Ecuadorian club for one year and asserting, *inter alia* that after the loan period with the Ecuadorian club, he intended to renew his contract with the Colombian club ("the January letter"). The last paragraph stated [in translation]

> *"once the period of the temporary licence from work has elapsed, my services as a professional football player of [the Colombian club] will recommence on the same terms on which they have been suspended and on the same condition, so that the contract will be in force until (3) January 2008".*

The interpretation of that letter (but not its authenticity) is in issue. However the Player was not given a copy of it.

On the same day the Colombian club asserts (but the Player denies) that the Player signed a document called *"Otrosí al contrato de trabajo a término fijo de tres (03) anos suscrito entre la Corporation Deportiva Once Caldas y Ekin Soto Jaramillo"* (In translation: "Annex to the three-year employment contract signed between Corporation Deportiva Once Caldas and Elkin Soto Jaramillo") ("the *Otrosí*"), countersigned on behalf of the Colombian Club. The authenticity of the *Otrosí* is in issue.

On 18 January 2006 the Player signed a tripartite agreement with the Ecuadorian and the Colombian Club providing that he would play for the Ecuadorian Club ("the Barcelona Contract"). It contained the following provision (in translation):

> *"5th Clause: Purchase Option*
>
> *"Once Caldas grants to THE CLUB a purchase option regarding the federative and economic rights of THE PLAYER, for the amount ONE MILLION FIVE HUNDRED THOUSAND UNITED STATE DOLLARS (1.500.000 USD).*

The said option can be exercised by THE CLUB while the contract is in force, and will be ineffective after its expiry.

In this same act, the labour contract is signed between THE PLAYER and THE CLUB".

In September 2006, the Colombian club president travelled to Ecuador and proposed to the Player that he sign a one-year employment contract dated 18 September 2006 that would be valid for one year after the loan of the Player to the Ecuadorian Club, i.e. from 3 January 2007 until 2 January 2008 ("the September proposal"). The Player rejected the proposal and never signed the proffered document.

On 30 November 2006 i.e. more than 30 days prior to the expiry of the employment contract with the Colombian club, the Player notified the Colombian club that he renounced any extension of his contract with the Colombian club for one further year, in accordance with the second paragraph of clause 2 of the October contract ("the November letter").

On 1 December 2006 the Colombian club refused to acknowledge the non-renewal of contract, referring in that context to the January letter.

At the end of 2006 the German club were seeking a left footed midfielder. The Player fitted that criterion.

On 5 January 2007 the Player signed an employment contract with the German club valid for one year and a half, until 30 June 2008.

On the 7th January 2007 the Colombian Club disputed the German Club's ability right to enter into such a contract on the ground that the Player was still under contract with it.

On 5 January 2007 the German Football Association (DFB) asked for the Ecuadorian Football Federation to issue the international transfer certificate (ITC) for the Player, as he was last registered with the Ecuadorian Club.

On 12 January 2007, the DFB contacted FIFA and informed the latter that it had neither received the requested ITC nor any response from the Ecuadorian Football Federation.

In the latter part of January 2007 there was correspondence passing between the Columbian Football Federation, the Colombian Club, the German Club (with FIFA acting as a communication centre) in which the German Club pressed for an ITC and the Colombian entities denied their entitlement to the same.

On 1 February 2007, dealing with the matter with commendable celerity in the light of the German Club's urgent need for the Player's services, the Single Judge of the Players' Status Committee (PSC) authorised the DFB to register the Player with the German club.

In the event the Player played only 8 games for the German Club in the first season and could not save them from relegation from the Bundesliga.

On 28 September 2007 the FIFA Dispute Resolution Chamber (DRC) decided that the Player breached his contract with the Colombian without just cause. The DRC held that he was therefore liable to pay the Colombian club compensation in the amount of EUR 300,000 and imposed a restriction of four months on his eligibility to play in official matches ("the restriction"). The German club was declared jointly and severally responsible for the payment of the compensation to the Colombian club.

On 18 December 2007 the DRC decision was notified to the Player.

The decision of the DRC found that the Player had a subsisting contract with the Colombian club primarily by reference to the January letter. It stated, materially:

> *"10. The Chamber then started extensive deliberations as to whether the employment relationship between the player and CD Once Caldas had been renewed or extended beyond 3 January 2007. In this respect, the Chamber first and foremost took note that the player had signed declaration (declaration of suspension) according to which the employment contract with CD Once Caldas would be suspended during the loan period for one year and that the contract would be extended under the same conditions for one more year until 3 January 2008. The player never contested having signed this declaration of suspension. Furthermore, the Chamber took note that the club had accepted the declaration of suspension by including the annotation "aceptado" and countersigning it. The Chamber particularly referred to the fact that the declaration of suspension mentioned the new date of the ordinary expiration of the contract, i.e. 3 January 2008.*
>
> *11. In respect, the Chamber was eager to emphasise that it could not follow the argumentation of the player and the German club that the declaration of suspension cannot be considered an extension of contract but solely a unilateral and informative declaration. In fact, as mentioned before, it bears the signature of both Parties and clearly indicates the new date of expiry of the contractual relationship. Even if it should originally have been a unilateral proposal from the player, the club had explicitly accepted it in writing by means of the relevant annotation.*
>
> …
>
> *15. […] Furthermore, the Chamber emphasised that the declaration of suspension alone would already be a sufficient document to prove the extension of the contractual relationship until 3 January 2008. […]".*

Furthermore (but secondarily), the DRC deemed that the subsistence of the Player/Colombian club relationship until 3 January 2008 could be based on the *Otrosí*:

> *"14. Bearing in mind the above, and in particular also the fact that the Columbian club had, upon request, immediately produced the original copy of the document which was now on file, the members of Chamber unanimously deemed that they had no genuine reasons to doubt on the authenticity of the relevant document. Effectively, the quite singular signature of the player appears to be identical to other signatures of the player on other documents on file, the expiry date of the extended contract is the same*

like mentioned in the declaration of suspension (3 January 2008), both documents mention that the contract is extended under the same conditions and both documents bear the same type face. […]".

On 4 January 2008, the Player and the German Club filed with the Court of Arbitration for Sport (CAS) an appeal against the Decision. Both applied that the Decision of the DRC set aside and asked for a stay of execution of the restriction. On 8 January 2008 the Colombian Club filed its own statement of appeal.

On 14 February 2008 this Panel granted a stay. In the event the Panel's ruling proved of little practical effect. The Player was injured in the second season and only played for 30 minutes for the German Club.

As the appeals procedures CAS 2008/A/1453 and CAS 2008/A/1469 opposed similar parties in appeal and cross-appeal, challenging the decision issued by the DRC on 28 September 2008, the Panel decided that these two disputes would be conducted jointly and disposes of by a single award. The Parties accepted this decision by signing the Order of Procedure.

The parties, experts and witnesses were heard at the hearing on 30 April 2008 in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Art. 47 of the Code of Sports-related Arbitration ("the Code") and from Art. 59 ff of the FIFA Statutes.

2. It follows that, in principle, CAS has jurisdiction to decide the present dispute.

Applicable law

3. Art. R58 of the Code provides as follows:

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

4. Art. R59 para. 2 of the FIFA Statutes provides as follows:

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

5. The parties have not expressly chosen any specific rules of law to be applicable to these proceedings. The FIFA Regulations necessarily apply.

6. As the seat of the CAS is in Switzerland, this arbitration is subject to the rules of the Swiss private international law (LDIP). Art. 187 para. 1 LDIP provides that the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any choice, in accordance with the rules with which the case has the closest connection.

7. In the event that no special request regarding the applicable law was made by the Appellant, the general rule of Art. R58 of the Code applies. It follows that the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily. The contractual relationship (actual or alleged) between the Player and the Colombian club is *prima facie* governed by the Colombian law, which may therefore also be relevant.

Admissibility

8. The statements of appeal filed by the parties were lodged within the deadline provided by Art. 61 of the FIFA Statutes, namely 21 days from the notification of the Decision. Furthermore, they comply with the requirements of Art. R48 of the Code.

9. It follows that both the appeals are admissible.

Liability

10. The outcome pivots on two documents dated the 16th January 2006, the interpretation of the January letter and the authenticity of the *"Otrosí*".

11. If the October Contract had been the only contract between the Colombian Club and the Player at the time he wrote the November letter, that letter would have been effective to procure his release from further service with the Colombian Club as from 4 January 2007. Indeed according to Mr Heidel of the German Club, it was this document, which he saw prior to signature that satisfied him that the Player was indeed a free agent. The Panel has to decide whether either or both of the documents of January 16th altered the legal position from that created by the October Contract.

12. The 2006 letter provides as follows:

Manizales, 16 January 2006

Gentlemen
CORPORACION DEPORTIVA ONCE CALDAS
GERMAN CARDONA GUTIERREZ
President

ELKIN SOTO JARAMILLO, person of full age, identified with the citizenship card no. 75.096.251, by means of the present writ and based on article 51 and following of the Colombian Labour Code, ask you to be granted temporary unpaid license from work, between the sixteenth (16) January 2006 and the thirtieth (30) of December of the same year, in order to be able to offer my services as a professional football player to BARCELONA SPORTING CLUB, affiliated to the Ecuadorian Football Federation.

In advance I accept that for the termination of the license, Corporacion Deportiva Once Caldas will be exempted from the payment of all economical duties of salaries and social securities and of any other kind of obligation that will result from the employment contract for the predetermined period of one (1) year that is bounding us.

Once the period of the temporary license from work has elapsed, my services as professional football player of Corporacion Deportiva Once Caldas will recommence on the same terms on which they have been suspended and on the same condition, so that the contract will be in force until third (3) January 2008.

Yours faithfully,

ELKIN SOTO JARAMILLO

It was on its face countersigned on the Colombian Club's behalf.

13. A variety of points were taken on behalf of the Player and the German Club on that letter which the Panel set out together with their response.

(i) it was not an offer or another document capable of being contractual, but was no more than a declaration of intent or comfort letter.

The Panel does not so read it. On its face it was an undertaking which confirmed that in consideration of the Player's release on license to play for the Ecuadorian Club, the Colombian Club was freed from the obligation to play him while on loan, but would have the benefit of his services at the expiry of the loan.

(ii) it was not signed by the Colombian Club at the time.

It is arguable that the Colombian Club's signature was not required at the time since it reflected an agreement already orally concluded. But even if it were better construed as an offer capable of acceptance it was an open offer and was on its face accepted by the Colombian Club's signature whenever appended.

(iii) it did not satisfy the formalities required by (1) Colombian domestic law; (2) FIFA regulations; (3) Art. 9 of the October contract.

As to (1) Colombian law requires a deposit of a contract and it is common ground such document was not in fact deposited. The Panel has not however been shown any provision of Colombian law which stipulates that such deposit was a precondition of

validity as distinct (for example) a means of committing a player to play for a particular club – a matter of no importance in this instance to the Colombian club until January 2008 since in the intervening period the player was playing in Ecuador.

As to (2) Art. 8 of the FIFA Regulations for the Status and Transfer of Players ("the FIFA Regulations") provides:

"The application for registration of a professional must be submitted together with a copy of the player's contract. The relevant decision making body has discretion to take account of any contractual amendments or additional agreements that have not been duly submitted to it".

FIFA Commentary on its Regulations stipulates regarding the quoted article that:

"(...) In the event of a dispute, the decision-making body has the discretion to evaluate how it will consider documents that have not been deposited. The employment contract is the basis as well as the starting point for calculating the compensation due to the damaged party in the event of a contractual breach. Any amendment of the terms of the employment relationship will therefore have a direct impact on the amount that the deciding body will establish. If, however, the parties fail to deposit the new contract with the relevant authorities, the deciding body is free to decide that the parties may lose their entitlement to claim their rights out of the amended (but not deposited) contract".

Even though this Commentary is no more than a guideline for the interpretation of the FIFA Regulations, the Panel agrees with this analysis and considers that the effect of this Regulation again is to require deposit as a matter of administration but not as precondition validity.

As to (3) Art. 9 of the October contract provides as follows (in translation):

"The present contract integrally replaces and leaves without effect any previous other oral or written contract celebrated between the parties. The agreed amendments to this contract will be noted in continuation of this text".

The Panel does not consider that the absence of a document formally entitled annexure has the consequence that January letter, if otherwise contractual would for that reason not be so. This would surely be to elevate form above substance. In any event the two parties', Player and Colombian Club were competent to enter into an agreement on 16 January if they so chose.

(iv) The Player was required to sign the document as a precondition of allowing him to sign for the Ecuadorian Club.

Assuming this to be so - and there was no direct evidence to contradict it - it seems to the Panel to be a factor without legal weight. It would have been odd indeed if the Colombian club had not sought to reduce to writing the terms upon which the Player could temporarily depart from the club. The Panel cannot characterise the demand for his signature in that context as a form of duress vitiating his consent.

(v) The Colombian club's interest in the Player was purely economic i.e. they had already decided he had no future playing for them.

But again, assuming this to be so – which is not improbable – they were entitled, if they could, to bind him to them so they could take advantage of that status as being still on their books in the transfer market.

(vi) To attribute contractual force to the January or indeed the *Otrosí* would be inconsistent with the Colombian club's effort to procure the Players signature to another contract in September (which did not differ in any material way in its terms).

But the Colombian club might sensibly have sought to close off any possible argument of a kind which has in fact been advanced. No conceivable forensic ingenuity would have sustained a challenge to a document of the kind proffered to the Player in September.

14. There are, in any event, a variety of points which positively favour the Colombian Club's position.

(i) A loan is intrinsically consistent with a temporary, not a permanent release of a player. It *prima facie* implies that he will return when his loan expires.

(ii) The provision of the Barcelona contract which gave the Ecuadorian Club the option to purchase the player at the conclusion of the loan period would make no sense if the player was to be free at the end of the loan period. The player claims that he did not read (and therefore appreciate) that provision of the Barcelona contract. But even if he did not, the provision suggests that at the very least that the Colombian Club anticipated that he would return, which can only have been on the basis of one or other of the 16 January documents.

15. As to the *Otrosí*, the main thrust of the argument of the Player and the German Club was that it was a forgery brought into existence to fill a legal vacuum. It would need strong evidence to sustain such serious allegations and in the Panel's ruling on the stay, it signalled the need for such evidence. But although the player and the German Club have throughout this procedure volunteered to submit it to a graphological test, in the end they decided not to do so themselves, apparently (the Panel were told by the Counsel), because of lack of confidence in a graphologists ability to provide a direct answer to a direct question. This was a matter for their decision. This Panel cannot constitute itselves as an amateur graphologist, nor is there any obligation upon it – although it has under R44.3 and R57 of the Code of Sports-related Arbitration the power - to procure evidence that a party is not willing to procure for itself.

16. A variety of points were taken by the Player and the German Club on the *Otrosí*, which again the Panel set out, together with their response.

(i) That there was no club logo on it.

But neither was there on the October contract.

(ii) There was an unexplained space at page two before the last paragraph.

This may well be the responsibility of the typist or word processor even, if unexplained, it has no necessarily sinister significance.

The *Otrosí* was not signed or paragraphed on each page contrary to the practice of the Colombian Club: see eg: the October contract.

The Panel has insufficient evidence of such a practice as to cast doubt in the *Otrosí* for this reason above.

(iii) The *Otrosí* describes itself as an annexe to a three year contract whereas on any view there was only a one year contract (i.e. the October Contract) in being.

That seems to the Panel to point away from forgery and towards incompetence.

(iv) The signatures of the Player on both January documents are identical rather than similar.

If the two were signed at the same time that might provide an explanation; but, as has been already stated, this Panel is not in the business of graphology.

(v) There was no mention of the *Otrosí* in the December letter although the January letter was referred to.

This could be explained by simple forgetfulness. It is consistent with but not by itself probative of the January contract being a creation after the event.

17. The Panel must also take cautious note of the fact that Counsel for the Colombian club told us that he had certainly seen both documents in the Club's files shortly after the time when they purportedly signed (although he was not present on 16 January). The arbitral formation would be loath to assume that a member of the legal profession would deliberately mislead them - indeed tell them a lie – unless there was compelling evidence that he or she had done so.

18. Although then there are oddities, this Panel are not persuaded on balance that the *Otrosí* is other than a genuine document. The presumption of regularity has not been displaced. It follows that it is not accepted that the Player did not sign the *Otrosí* although it is possible that he may have truly forgotten that he did so since no copy was provided to him. It is also plausible that the Colombian Club should wish to dot the I's and cross the T's. In particular an annexe or addendum would on any view satisfy the requirements of article 9 of the October Contract. In short the Panel's preferred view is that the *Otrosí* was a bilateral contract duly signed. But it has to be stressed that it is not essential to the Panel's conclusion which, like that of the DRC can be based on the January Letter alone.

19. One possible interpretation of those controversial events is that it was only when the Colombian Club sought to procure the Player's signature to a new contract in September that the Player realised that there might be doubt as to whether, one way or another, on January 16 he had committed himself to a further year playing for them. He raised the matter with his adviser Mr. Villareal (a scout) who in turn sought the opinion of an Argentinean lawyer whom

he habitually used. That lawyer saw the January letter but not *Otrosí* and that lawyer supplied the seed of the arguments which have been developed before us by Mr. Monteneri.

20. Given that the Panel has found, when the Player signed for the German Club, he was not a free agent, it follows inevitably that he was in breach of contract.

21. The Panel find however that the German Club were innocent of any complicity in breach for the following reasons.

(i) The Player himself told Mr Heidel that he was a free agent.

(ii) That it would appear to be supported by the November letter which Mr Heidel says (and the Panel accepts) he saw at the material time.

(iii) There was no evidence before the German Club to contrary effect.

(iv) The first letter from the Colombian club which suggested that there could have been an impediment to the Players signature for the German Club post-dated the contract which he had entered into with it.

(v) Subsequent correspondence is entirely consisting with the German Club's having acted in entire good faith when signing, the contract with the Player but finding themselves caught up in a dispute not of its making. Their protestations of innocence seem to the Panel entirely sincere not least because they were volunteering practical proposals for resolution.

Sanction

22. The FIFA Regulations provide so far as material as follows:

Art. 17 Consequences of Terminating a Contract Without Just Cause

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

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Art. 20 and annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specific city of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, The time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

3. *In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season at the new club. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*

4. *In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods.*

5. *Any person subject to the FIFA Statutes and regulations (club officials players' agents, players, etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned.*

23. It follows from the Panel's conclusion that a mandatory sanction must be imposed on the Player of four months, but no sanction on the German Club who have satisfactorily rebutted the presumption that they induced the contract, see Art. 17 para. 2 of the FIFA Regulations.

Compensation

24. The FIFA Regulation quoted in para. 22 above provides compensation for which both the Player and the German Club are jointly and severally liable.

25. Art. 17 para. 1 has produced a considerable range of case jurisprudence all of which exemplified the difficulty in its application [see e.g. TAS 2005/A/902 and, most recently, CAS 2007/A/1298 (*"Webster"*)].

26. The Article bears the hallmark of a compromise to which the proposals of all parties whose interests diverge has contributed. The result is a hotch potch of criteria. The criteria cited which are to be taken into account are exemplary and not exhaustive with no priority or means of reconciliation identified. The concept of compensation suggests the sum should equate as closely as possible to the loss and damage suffered by the Club, but not all of the criteria e.g. the remuneration to the Player under the existing contract, seem to us to be directly relevant to such an exercise [there are, however, provisions in some national labour laws, e.g. in Holland, where such amount (remaining value) is the indemnification for the employer in cases where the employee is held to have breached his contract].

27. *Webster* establishes at least the following propositions:

    (1) What is in issue is the interpretation of the FIFA Regulations governed by Swiss law (paras. 115 and ff.).

    (2) Compensation is not intended to deal directly with Training Compensation, which is specifically regulated elsewhere (para. 84).

    (3) Any provisions in the employment contract have primacy (para. 121).

    (4) Three categories of factor must be considered:
        (i) the law of the country concerned.
        (ii) the specificity of sport.
        (iii) any other objective criteria (with examples) (para. 125).

    (5) As to (i) the Panel has discretion as to whether to apply such law (para. 126).

    (6) As to (ii) it seeks a reasonable balance between the needs of contractual stability and the need of free movement of players (para. 132).

    (7) With regard to the other objective criteria (iii) the deciding authority has a substantial degree of discretion (para. 134).

    (8) Art. 17 para. 1 provides a broad range of criteria, many of which cannot in good sense be combined, and some of which may be appropriate to apply to one category of case, and inappropriate to apply in another (para. 135).

28. The Contract between the Player and the Colombian Club is clearly governed by Colombian law; there is no alternative candidate. The Panel has not had any evidence as to how Colombian law would assess any compensation, so need not, indeed cannot, consider that factor.

29. The Colombian Club considers that the amount of compensation to be awarded should be USD 1.500.000 as this is the amount that was established in the Barcelona's Purchase Option. The Panel considers in this regard that the jurisprudence of CAS is not strictly consistent with regard to the issue whether a club can request the compensation for an opportunity of a transfer fee which was lost because of the breach of the contract by the player. However, this issue does not need to be resolved by this Panel, as (i) the purchase option was fixed only for the Ecuadorian club, which decided not to exercise it, and (ii) the said option is *"res inter alios acta"* and does not affect by any means to the German club which is not part of the Barcelona contract. Therefore this figure will not be taken into account by the Panel.

30. The Colombian Club also failed to prove any offer made for the Player by any club.

31. Of the particular criteria listed by way of example, the amortisation of the transfer fee is irrelevant, given the duration of the Player's employment with the Colombian club.

32. The remaining value of the Players contract with the Colombian Club can be computed as twelve times EUR 11,000 i.e. EUR 132,000 [it is clear that the DRC did not apply such reasoning since it calculated an amount of EUR 300,000 as compensation].

33. Approaching the matter from another perspective also vouched by that Article the salary that the Player was going to earn in Germany at the German Club was six times EUR 30,000 in the Bundesliga and six times EUR 17,000 in the second League i.e. total EUR 282,000; exactly the same amount as is mentioned in the DRC Decision.

34. The Panel has already recorded that the Player was injured several times and only played eight games in Bundesliga. According to para 12 of his employment agreement with the German club, he was therefore not entitled to extra bonuses because it was a condition that he plays more than 16 matches in the season.

35. If the money that the Player would have earned with Colombian Club - if they had not loaned him to the Ecuadorian Club - is deducted from the money he would have earned with the German Club, the extra money would have been EUR 150,000. This explained why the Player preferred to go to Mainz, because he earned some EUR 150,000 more in Germany than in Colombia.

36. Although the Panel learned at the hearing (see above) that because of his injury the Player's salary was reduced as from May 2007 to 'only' EUR 5,900[1], this is not a factor that this Panel considers that should take into account. This occurred after the signing of his contract with the German Cub. This misfortune for both Player (and German Club) should not fairly be used to lower the level of compensation otherwise due to the Colombian Club. This is again, in legal terminology, *res inter alios acta.*

37. In *Webster* the Panel left open whether aggravating factors were relevant to the compensation under Art. 17 para. 1 (para. 10). As regards the present appeals the DRC concluded that the German Club could not be held responsible for inducement, and the Player was apparently advised that he was at least arguably a free agent. The Panel too does not need, in the light of those facts, to resolve the issue left open in *Webster*.

38. The DRC took account of alleged general damages for loss of the Colombian Clubs reputation for a year.

39. With respect to this Panel that assessment appears to be doubtful, if not in principle, certainly on the evidence, and it has not added any sum to reflect it.

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[1] Because of the special characteristics of German law insurance, the insurers paid the Player's salary after six weeks absence injury.

40. The resulting calculation then would be as follows:

Salary Mainz:	6 x EUR 30,000 =	EUR 180,000
	6 x EUR 17,000 =	EUR 102,000
	in total =	EUR 282,000
Deducting the salary he would have earned with the Colombian Club:		EUR 132,000
The remaining amount is:		**EUR 150,000**

41. Taking into account that the German contract signed with the player will end on the 30th of June 2008 the Panel considers that a compensation for the Colombian Club of EUR 150,000 is the most reasonable and reflects most the recent jurisprudence of CAS.

The Court of Arbitration for Sport rules:

1. The appealed decision of 28 September 2007 of the FIFA Dispute Resolution Chamber is set aside.

2. Mr Elkin Soto Jaramillo shall pay EUR 150,000 to CD Once Caldas as compensation, within the next 30 days as from the date of the notification of this decision.

3. FSV Mainz 05 is jointly and severally liable with Mr Elkin Soto Jaramillo to pay CD Once Caldas the amount of EUR 150'000.

4. If the said amount is not paid within the stated deadline, an interest rate of 5% per year shall apply.

5. Elkin Soto Jaramillo is suspended for 4 months (discounting the period already served). This sanction shall take effect as from the notification of the present decision

6. All other prayers for relief are dismissed.

(…)