



Arbitration CAS 2010/A/2079 Ricardo David Pàez Gómez v. Baniyas Sports Club & Fédération Internationale de Football Association (FIFA), award of 12 April 2011

Panel: Mr Manfred Nan (The Netherlands), President; Mr Pedro Tomàs Marques (Spain); Mrs Margarita Echeverria (Costa Rica)

Football

Contract of employment

Admissibility of a request to produce documents

New evidence

Witnesses

Burden of proof regarding the existence of a loan agreement

Breach of contract without just cause

1. Pursuant to Article R44.3 of the Code of Sports-related Arbitration (CAS Code) a party may request a panel to order the other party to produce documents in its custody or under its control. However a panel has no jurisdiction to compel a third party to produce documents or provide information.
2. Pursuant to Article R56 CAS Code the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer unless the parties agree otherwise or the President of the CAS panel orders otherwise on the basis of exceptional circumstances. A party shall nevertheless be able to raise its arguments and/or clarify some factual and legal issues at the hearing.
3. Under Article R51 CAS Code, witnesses not mentioned at all in the Appeal Brief shall not be allowed to testify at the hearing as long as the parties did not give their consent to hear these witnesses.
4. Under Article 10 of the FIFA Regulations for the Status and Transfer of Players (RSTP), a professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Under Article 8 of the Swiss Civil Code, any party claiming a right on the basis of an alleged fact shall carry the burden of proof. Consequently, the onus is on the player who claims the existence of loan agreements or of a transfer to provide the evidence of the existence of such agreements. In this respect, the fact to send an offer or an unsigned agreement to a party does not prove the existence of a loan agreement or of the consent of a club to the transfer of a player.
5. According to Article 18 para. 5 RSTP in connection with item 7 of the Definitions RSTP, the fact for a player to conclude an employment contract with a club, although at that

moment an employment contract was already in force between that player and another club amounts to a breach of contract without just cause.

The Appellant Ricardo David Pàez Gómez, born on 9 February 1979 (“the Player”), is a Venezuelan professional football player. He currently plays in the Primera División for the Venezuelan club Atlético Club Mineros de Guayana. Between 2000 and 2007 he gained 64 international caps for the national team of Venezuela.

The First Respondent Baniyas Sports Club (“Baniyas”) is a football club affiliated with the United Arab Emirates Football Association (UAEFA), with headquarters in Abu Dhabi, United Arab Emirates.

The second Respondent Fédération Internationale de Football Association (FIFA) is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zürich, Switzerland.

The circumstances stated below are a summary of the relevant facts, as established by the Panel on the basis of the parties’ written and oral submissions.

On 5 October 2003, the Player signed an employment contract as a professional football player with Baniyas, valid for four (4) years. Article 10 of the employment contract provides as follows: “*This Contract is valid for **Four (4) years** – as from the date of entering into force (...)*”.

According to article 2 iii of the employment contract, Baniyas was obliged “*To pay to the player, at the end of each calendar month, the following: A salary amounting or equivalent to AED/USD 10.000 (...) for the starting 10 months, and USD 5.000 will be paid for the remaining each month, during this contract period*”.

According to a signed, but undated “*written agreement*” between Baniyas and the Player, the latter was also entitled to a “*down payment of this Contract*” of USD 200.000 (“*- US\$ 100,000/= will be paid on signing the contract – US\$ 100.000/= will be paid, when the Club receive the Transfer certificate*”).

In March 2004, the Player was transferred on a loan basis from Baniyas to the Ecuadorian club Barcelona Sport Club for a period of nine months as from 30 March 2004 until 31 December 2004.

On 18 March 2004, the Player and Barcelona Sport Club concluded an employment contract, which was apparently signed by Barcelona Sport Club only, valid until 31 December 2004, according to which the Player was entitled to receive a monthly salary of USD 7.000 plus bonuses.

In August 2004, after the Player and Barcelona Sport Club mutually agreed on the early termination of their contract, the Player was transferred from Barcelona Sport Club to the Colombian club Corporación Deportivo America (“America”). The Player and America concluded an employment

contract as from 23 August 2004 until 23 December 2004 and the Ecuadorian Football Federation (“FEF”) issued the International Transfer Certificate on 30 August 2004.

On 18 January 2005, the Player signed an employment contract as a professional football player with the Colombian club Corporación Deportivo Pereira (“Pereira”), valid until the end of Pereira’s participation in the 2005 national Championship “Copa Mustang II”. According to the employment contract, the Player was entitled to receive a salary of COP 400.000 (approximately USD 197) as well as two bonifications of COP 300.000 each (approximately USD 157), related to transport and alimentation. Furthermore, the Player and Pereira concluded an image rights agreement of a monthly value of COP 14.000.000 (approximately USD 7.311).

In September 2005, the Player concluded an employment contract as a professional football player with the Romanian club, FCU Politehnica Timisoara (“Timisoara”).

On 12 October 2006, Baniyas filed a complaint with the FIFA Dispute Resolution Chamber (“the DRC”) asking for compensation from the Player and the imposition of sporting sanctions on the Player following his alleged breach of contract without just cause during the protected period, the payment of an amount of USD 200.000 as compensation from Barcelona Sport Club, based on the fact that the latter had supposedly breached the loan agreement, as well as the payment of an amount of USD 200.000 as compensation from Pereira, *“which signed the player without advising Baniyas”*.

The main issues raised in front of the DRC were (1) whether Baniyas had agreed upon the transfer of the Player to Pereira in January 2005 and if not (2) which compensation has to be paid by whom and are there sporting sanctions to be imposed on the Player or on any club.

As to the first issue, the DRC rejected the Player’s submission that Baniyas had agreed upon the transfer of the Player to Pereira from January 2005 on: *“In that regard, the Chamber deemed it appropriate to refer to the general principle of burden of proof, stipulated in art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof and pointed out that the Respondent 1 (=the Player) had not submitted any convincing documentary evidence undoubtedly establishing that the Claimant (= Baniyas) was not interested in the Respondent 1’s services and that it had expressly consented on this transfer to the Respondent 4 (= Pereira). The Dispute Resolution Chamber was thus of the opinion that it could not follow the Respondent 1’s argumentation in this respect. In view of the above, the members of the Chamber had no other alternative but to consider that it was likely that some contacts had occurred between the Claimant and the Respondent 4 but that it was unlikely that the relevant parties had reached an agreement upon the transfer of the Respondent 1 to the Respondent 4 and, consequently, that the Claimant had approved the said transfer and the conclusion of an employment contract between the Respondents 1 and 4”*.

Consequently, on 17 September 2009, the DRC decided that the Player had breached the contract concluded with Baniyas without just cause within the protected period. Therefore the claim of Baniyas was accepted in this respect.

As to the second issue, the DRC decided that – based upon Article 17 par. 1 of the 2005 FIFA Regulations for the Status and Transfer of Players (“the Regulations”) – the Player has to pay to Baniyas the amount of USD 162.500 and that Pereira is jointly and severally liable for the payment of

the aforementioned compensation. Furthermore, the DRC decided that – based upon Article 17 par. 3 of the Regulations – a restriction of four months on the Player’s eligibility to play in official matches is imposed (the “Appealed Decision”).

The Player and Baniyas were notified by fax dated 23 February 2010 of the Appealed Decision.

In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (“the Code”), on 16 March 2010, the Player filed with the Court of Arbitration for Sport (CAS) a statement of appeal. Together with his statement of appeal, the Player applied for a stay of the Appealed Decision pursuant to Article R37 of the Code.

In accordance with Article R51 of the Code, on 26 March 2010, the Player filed his appeal brief.

On 30 March 2010, FIFA refrained from objecting to the Player’s request for a stay of the Appealed Decision.

Baniyas did not submit any answer with respect to the Player’s request for provisional measures.

On 1 April 2010, the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Arbitration Division confirmed that the decision of 17 September 2009 of the FIFA Dispute Resolution Chamber was stayed pending the CAS proceedings.

In accordance with Article R55 of the Code, on 26 April 2010, FIFA filed its answer.

In accordance with Article R55 of the Code, on 4 May 2010, Baniyas filed its answer.

On 30 November 2010, – pursuant to Article R56 of the Code – the Panel rejected the Player’s request to be allowed to file a complimentary brief because no exceptional circumstances were mentioned to justify an additional round of submissions. The Panel considered that the Player shall be able to raise his arguments and/or clarify some factual and legal issues at the hearing. However, should the Player waive his right to such hearing, the Panel considered to allow the Player to file final observations and written witness statements.

On 30 November 2010, – pursuant to Articles R57 and R44.3 of the Code – the Panel rejected the Player’s request for disclosure because it considered it is for the party which raises an argument to prove it, given that the Appellant’s requests were directed at third parties in order to obtain some confirmations or information which were not privileged. Moreover, the Panel emphasized that it does not have the power to constrain third parties to provide documents and/or information.

On 7 December 2010, upon request of the Panel – pursuant to Articles R57 and R44.3 of the Code – , FIFA produced the complete case file regarding the Appealed Decision.

On 7 December 2010, the Player requested the Panel to reconsider its position on the second round of submissions and disclosure of documents.

On 8 December 2010, the Panel informed the parties that there are no exceptional circumstances justifying an additional round of submissions, pursuant to Article R56 of the Code. The Panel repeated that the Player shall be able to raise his arguments and/or clarify some factual and legal issues at the hearing. With respect to the Player's requests for disclosure, the Panel informed the parties that – pursuant to Article R44.3 of the Code – a party may request the Panel to order the other party to produce documents likely to exist in its custody or under its control. The Panel considered it has no jurisdiction to compel a third party to produce documents or provide information. Moreover, the Panel emphasized that the information requested by the Player may be provided by Baniyas or FIFA at the hearing. The Panel noticed that should the Respondents be unable to provide the requested information or should the information be contested by any of the parties, the Panel will request the parties to provide their final position in this respect together with the necessary evidence, should such information be deemed useful by the Panel before rendering the award.

On 3 January 2011, the CAS issued an Order of Procedure which confirmed, amongst other matters, that CAS has jurisdiction to rule on this dispute, that the applicable law would be determined in accordance with Article R58 of the Code and that a hearing was scheduled for 17 February 2011.

At the outset of the hearing, the parties did not raise any objection with respect to the formation of the Panel or to the jurisdiction of the CAS to rule on this dispute. During the hearing all parties made full oral submissions.

The Player submits the following requests for relief:

- a) *“The decision of the FIFA Dispute Resolution chamber, passed on 17th September 2009, in the matter of Mr. Ricardo David Pàez Gómez is set aside.*
- b) *To issue a new decision which replaces the challenged decision and in which: a. it declares that a breach of the employment contract between Mr. Ricardo David Pàez Gómez and Baniyas Sports & Cultural Club did not take place. b. That the economic and disciplinary sanctions imposed on the Player be lifted. c. That the Player be exempted from any further responsibility.*
- c) *That Baniyas Sports & Cultural Club bear the costs of the present arbitral proceedings.*
- d) *That Baniyas Sports & Cultural Club be ordered to pay the legal expenses of Ricardo David Pàez in the sum of CHF 50.000”.*

Baniyas submits to the Panel the following prayers for relief:

- a) *(...) that the CAS rejects the present appeal and confirms the decision passed by FIFA's DRC on 17 September 2009 in its entirety.*
- b) *(...) that the CAS orders the Appellant to bear all the costs to the payment of the proceedings before the CAS as well to condemn the Appellant to the payment of the legal expenses incurred by the first Respondent in the amount of USDollars 10.000”.*

FIFA submits to the Panel the following prayers for relief:

- “1. *(...) that the CAS rejects the present appeal and confirms the decision passed by the Dispute Resolution Chamber on 17 September 2009 in its entirety.*

2. (...) that the CAS orders the Appellant to bear all the costs incurred with the present procedure as well as all legal expenses of FIFA related thereto”.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Articles 62 and 63 of the FIFA Statutes (in their version entered into force on 2 August 2009) and R47 of the Code, and it is further confirmed by the Order of Procedure duly signed by all parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under Article R57 of the Code, the Panel has full power to review the facts and the law.

Applicable Law

4. Article R58 of the Code reads as follows:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
5. Then, Article 62 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”.
6. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall govern primarily, whereby Swiss law shall apply in the event the interpretation or construction of the FIFA rules and regulations is required. The Panel observes that the “applicable regulations” are indeed all FIFA rules material to the dispute at stake, including in particular the Regulations entered into force on 1 July 2005.

Admissibility

7. The appeal was filed within the deadline provided by Article 63 para. 1 of the FIFA Statutes (version 2009) and stated in the Appealed Decision, i.e. within 21 days after notification of such decision. It complied with all other requirements of Article R48 of the Code.

8. It follows that the appeal is admissible.

Procedural motions

8. In its written and oral submissions, the Player asked the Panel to request the UAEF, the CFF and VFA to produce documents and provide information to submit to the file. With respect to this request for disclosure, the Panel informed the parties that – pursuant to Article R44.3 of the Code – *“a party may request the Panel to order the other party to produce documents in its custody or under its control”*. The Panel considered it has no jurisdiction to compel a third party to produce documents or provide information.
9. In addition, in his written and oral submissions, the Player asked the Panel to be authorised to supplement its argumentation, to file new exhibits and to specify further evidence. The Panel points out that Article R56 of the Code is applicable. Article R56 of the CAS Code reads as follows:
“Unless the parties agree otherwise or the President of the Panel order otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer”.
10. The Panel informed the parties that there are no exceptional circumstances justifying an additional round of submissions, pursuant to Article R56 of the Code. The Panel considered that the Player shall be able to raise his arguments and/or clarify some factual and legal issues at the hearing.
11. Furthermore, in his Appeal Brief, the Player reserved his rights *“to call as witness the following individuals (...): Mr. Mel Goldberg, Mr. Luis Aparicio (...), Mr. Mohamed Subail Al Katheiry, H.H. Sheikh Omar Bin Zayed Al Nahyan, or any other person of Baniyas (...)”*.
12. By letter dated 17 January 2011, the Player requested the following witnesses to be heard at the hearing: *“Mr. Mel Goldberg (...), Mr. Luis Aparicio (...), Mr. Ricardo David Paez Gomez (...), Mr. Felipe Restrepo (...), Mr. Jesus Garcia Regalado (...), Mr. Fransisco Javier Lopez Bedoya (...), Mr. Mario Arboleda (...)”*.
13. By letter dated 16 February 2011, the Player informed the Panel that the following witnesses were available for questioning at the hearing: *“Mr. Felipe Restrepo (...), Mr. Fransisco Javier Lopez Bedoya (...), Mr. Ricardo David Paez Gomez (...), Mr. Jesus Garcia Regalado (...), Mr. Luis Aparicio Echezuria”*.
14. At the hearing, the Player confirmed that he relies on the witnesses as listed in his letter dated 16 February 2011.
15. Both Baniyas and FIFA opposed the witness requests of the Player.

16. The Panel noticed that Mr Ricardo David Paez Gomez is not a witness, but the Player himself. Therefore the Panel had no hesitation at all to give Mr Paez Gomez the full opportunity to give his statement, which he did by telephone.
17. With regard to the Player's request for the witnesses, the Panel refers to Article R51 of the Code, which reads as follows (as relevant): *"(...) In its written submissions, the Appellant shall specify any witnesses, including a brief summary of their expected testimony, and experts, stating their area of expertise, whom he intends to call and state any other evidentiary measure which he requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise"*.
18. The Panel notes that from the witnesses mentioned in the Appellant's letter dated 16 February 2011, only Mr Aparicio was mentioned in the Appeal Brief, but without a brief summary of his expected testimony as Article R51 of the Code prescribes. However, the Panel is of the opinion that – on the basis of the written submissions and the documents in the file – it is obvious what Mr Aparicio will testify about. Therefore, the Panel decided to allow Mr Aparicio to testify at the hearing, which he did in person.
19. In compliance with Article R51 of the Code, the Panel determined not to allow the other requested witnesses to testify, because these witnesses were not mentioned at all in the Appeal Brief and both Baniyas and FIFA did not give their consent to hear these witnesses.

Merits

20. The following line of events is undisputed:
 - on 5 October 2003, the Player signed an employment contract for four years with Baniyas, valid until October 2007;
 - in March 2004, the Player was (internationally) transferred with consent of Baniyas on a loan basis to Barcelona Sport Club for a period of nine months as from 30 March 2004 until 31 December 2004;
 - in August 2004, the Player concluded an employment contract with America as from 23 August 2004 until 23 December 2004 and was (internationally) transferred to America;
 - on 18 January 2005, the Player signed an employment contract with Pereira valid until the end of Pereira's participation in the 2005 national Championship "Copa Mustang" and was (nationally) transferred to Pereira;
 - in September 2005, the Player concluded an employment contract with Timisoara and was (internationally) transferred to Timisoara.
21. The Player argues that Baniyas was not interested in the Player anymore from February 2004 on and that Baniyas eventually concluded a loan agreement with Pereira in January 2005 after expiry of the original loan period with Barcelona, and that Baniyas was well aware of and authorized all above mentioned transfers. Baniyas argues that it had no knowledge of and never gave its consent to any transfer of the Player to another club after the expiry of the loan

agreement with Barcelona. Both Baniyas and FIFA are of the view that the Player breached his contract with Banyias without just cause within the protected period because the Player did not return to Banyias after expiry of the loan agreement with Barcelona on 31 December 2004.

22. In view of the above, the main questions to be resolved are (a) whether the Player breached his contract with Banyias without just cause in the protected period by not returning to Banyias after expiry of the loan period with Barcelona Sports Club on 31 December 2004, but signing an employment contract with Pereira in January 2005 and (b) if yes, are there reasons for the Panel to differentiate with respect to the decision rendered by the DRC as to the amount of compensation and the imposition of sporting sanctions.

A. Did the Player breach his contract with Banyias without just cause in the protected period?

23. The Panel observes that Banyias and Barcelona concluded a written loan agreement for a period of nine months as from 30 March 2004 until 31 December 2004. For the duration of the loan, the effects, rights and obligations of the employment contract concluded between the Player and Banyias were temporarily suspended. The Panel notes that the file contains a letter dated 24 March 2004 of the Player, by means of which the Player committed himself, inter alia, to return to Banyias at the expiry of the loan period. Also, the file contains a letter dated 30 March 2004, addressed by the UAEFA to the FEF, by means of which it informed the FEF that it had issued the relevant International Transfer Certificate (ITC) and that it requested the return of the ITC at the end of the loan period on 31 December 2004. It is obvious for the Panel that the Player basically had the obligation to return to Banyias after the expiry of the loan period on 31 December 2004, but instead of returning to Banyias he concluded an employment contract with Pereira on 18 January 2005.
24. The Player argues that in August 2004, Banyias first consented a loan agreement with America and authorized the international transfer of the Player from Ecuador to Colombia and subsequently – in January 2005 – concluded a one-year loan agreement with the Colombian club Pereira.
25. To determine whether a loan agreement did exist between the clubs involved, the Panel first has to look if a written loan agreement was concluded. The Panel refers to Article 10 of the Regulations which states that “*A Professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned*”. The Panel notes that it is undisputed that no written loan agreement between Banyias and America and/or Banyias and Pereira did exist.
26. In addition, the Panel applies the general principle of burden of proof as stipulated in Article 8 of the Swiss Civil Code, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof. Consequently, the onus is on the Player to provide the evidence of the existence of the loan agreements.
27. With regard to the alleged loan agreement between Banyias and America, the Panel concurs with the considerations of the DRC that the employment contract of the Player with America

for the period between 23 August 2004 and 23 December 2004 could not affect the contract between the Player and Baniyas, since the application of the contract of the Player with Baniyas was suspended during the period between 30 March 2004 and 31 December 2004. Therefore, the Panel agrees with the DRC that there is no relevance to enter into the substance of the alleged loan agreement, although the Panel notes that the Player did not bring forward any document to support his position.

28. With regard to the alleged loan agreement between Baniyas and Pereira, the Player defends his submissions by pointing out to the following circumstances based on the documents in the file and the witness statement of Mr Aparicio:
- At the end of December 2004, the Player contacted Baniyas by telephone for the purpose of arranging his return, but Baniyas was still not interested in his services and therefore consented and authorized the loan of the Player to Pereira;
 - by letter dated 4 February 2005, Pereira offered Baniyas an amount of USD 170.000 for the definitive transfer of the Player to Pereira;
 - by letter dated 8 February 2005, the FIFA agent Mr Gonzalo Gonzalez sent the transfer agreement to Baniyas;
 - by letter dated 2 July 2005, Mr Aparicio confirmed Baniyas that Timisoara has agreed to sign the Player for an agreed fee of USD 180.000;
 - by letter dated 2 July 2005, Baniyas agreed to release the Player to Timisoara;
 - by letter dated 6 July 2005, Mr Aparicio asked Baniyas to send *“an official correspondence to the Colombian FA stating that the Player must return to BSCC immediately for the reason that the Pereira club has not honoured their agreement with BSCC”*;
 - by letter dated 7 July 2005, Baniyas informed Pereira that *“it rescinded the one-year loan agreement with CDP due to urgent circumstances, and that this decision was based on CDP’s failing to fulfil its part of the said agreement”*;
 - by letter dated 7 July 2005, Mr Aparicio asked Baniyas to send their correspondence with Pereira to the UFA;
 - by letter dated 12 July 2005, Baniyas informed Mr Aparicio that Mr Goldberg was allowed to represent Baniyas in the negotiations of the transfer of the Player to Timisoara;
 - by letter dated 24 July 2005, the UFA requested the FEF to return the ITC;
 - by letter dated 28 July 2005, the FEF informed UFA that the ITC was sent to the FCF on 30 August 2004;
 - by letter dated 22 August 2005, Mr Aparicio informed Baniyas that the Player had received the ITC clearance from Pereira.
29. The Panel observes that the Player submits two letters sent in February 2005, i.e. a couple of weeks after the Player had signed the employment contract with Pereira. The letter dated 4 February 2005 relates to an offer made by Pereira to Baniyas for the transfer of the Player. The letter dated 8 February 2005 relates to a transfer agreement that obviously was never signed by

Baniyas. The Panel is of the view that sending an offer or an unsigned agreement to a party does not prove the existence of an agreement.

30. In continuation, the Panel notes that the letters dated 2 July, 12 July, 24 July, 28 July and 22 August 2005 all are related to the transfer of the Player to Timisoara. The Panel considers these letters not relevant with regard to the question whether Baniyas concluded a loan agreement with Pereira.
31. Subsequently, the Panel turns its attention to the letters dated 6 and 7 July 2005. The Panel also believes that these letters are written with regard to the possible transfer of the Player to Timisoara. The Panel observes that these letters also refer to the relationship between Baniyas and Pereira with regard to the Player. In the letter dated 6 July 2005, Mr Aparicio asks Baniyas to send *“an official letter/fax to the Colombian Federation, stating that Ricardo David Paez must return to your club as of immediate effect. For the reason that the Pereira club has not honoured their agreement with your club”*. In the letter dated 7 July 2005, Baniyas informs Pereira that *“the Club has rescind its decision to transfer its Football Player, Riccardo Paez, due to some urgent circumstances. This decision was taking due to failure to the agreement we made his transfer has elapsed. Kindly note that we agreed on 1 year transfer agreement which was completed on January, 2005. The other party has failed to fulfilling its part of the agreement. We therefore need our player back as quickly as possible, to join the club in its preparation for the next football season which will start soon. We will appreciate if you allow the player to quickly returned to us here in Baniyas as soon as possible”*. In the letter dated 7 July 2005, Mr Aparicio asks Baniyas to sent the *“letter dated 7 July 2005, addressed to the President of Pereira Club, to the United Arab Emirates Football federation (...) This is so it can be officially recognised at federation level”*.
32. Although the content of the letter dated 7 July 2005 from Baniyas to Pereira refers to a possible agreement between the parties *“on 1 year transfer agreement which was completed on January, 2005”*, the Panel is of the opinion that the content of this letter alone or in combination with the other letters and the witness statement of Mr Aparicio do not prove the existence of a loan agreement between Baniyas and Pereira.
33. The Panel feels supported by the following facts:
 - during the proceedings in front of the DRC, the Player did not mention he was loaned to Pereira;
 - during the proceedings before the DRC, Pereira did not invoke the alleged loan agreement, but expressly stated that it never had any contact with Baniyas;
 - the file contains a letter dated 20 January 2006 from Mr Francisco Javier Lopez Bedoya, President of Pereira, to the DRC, in which Mr Bedoya clarifies that Pereira *“has not had any negotiations”* with Baniyas regarding the Player;
 - Pereira did not appeal the decision of the DRC in which it is held jointly and severally liable for the payment of compensation of the amount of USD 162.500 for the breach of contract without just cause by the Player;

- the Player did submit letters of his father and himself to Baniyas with regard to the loan agreement between Baniyas and Barcelona Sports Club, but did not submit any correspondence with regard to the alleged loan agreement between Baniyas and Pereira.
34. In the light of the above mentioned circumstances, the Panel remarks that it would have been appropriate for the Player to produce more specific and substantial documents to support his view that Baniyas and Pereira concluded a loan agreement and that Baniyas consented in the transfer of the Player to Pereira. Although it is – with reference to the witness statement of Mr Aparicio and the correspondence between Baniyas, Pereira and Mr Aparicio – likely that some contacts had occurred between Baniyas and Pereira, the Panel agrees with the DRC that it is unlikely that Baniyas and Pereira “*had reached an agreement upon the transfer*” of the Player to Pereira and, consequently, that Baniyas had approved both the transfer of the Player to Pereira and the conclusion of an employment contract between the Player and Pereira.
 35. Therefore, the Panel has no other option than to consider that the Player did not provide clear evidence to establish the existence of a loan agreement between Baniyas and Pereira, nor did the Player provide clear evidence to establish that Baniyas agreed on the transfer of the Player to Pereira after 31 December 2004.
 36. The Panel observes that the Player and Pereira concluded an employment contract in January 2005, although at that moment an employment contract was in force between the Player and Baniyas until October 2007.
 37. As a consequence and referring to Article 18 par. 5 of the Regulations in connection with item 7 of the Definitions of the Regulations, the Panel agrees with the considerations of the DRC and holds that the Player has breached the contract with Baniyas without just cause within the protected period. The Panel adds that the Player did not raise any objections with regard to the finding of the DRC that the breach of contract without just cause had occurred within the protected period.
- B. *Are there reasons for the Panel to differentiate with respect to the decision rendered by the DRC as to the amount of compensation or the restriction on the Player’s eligibility to participate in official football matches?*
38. The Panel observes that the amount of compensation and/or the duration of the restriction on the Player’s eligibility to participate in official football matches have not been contested by any of the parties; nor did the Player request for reduction. Given the above conclusions concerning the issue of the breach of the employment contract between the Player and Baniyas without just cause, the Panel finds that the Appealed Decision must be upheld in its entirety, without any modification.

C. Other prayers for relief

39. These conclusions make it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by Ricardo David Paez Gomez on 16 March 2010 against the Decision issued on 17 September 2009 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued by the FIFA Dispute Resolution Chamber on 17 September 2009 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.