



Arbitration CAS 2016/A/4794 Club X. v. Z., award of 5 October 2017

Panel: Mr José María Alonso Puig (Spain), President; Mr Michele Bernasconi (Switzerland); Mr Herman Verbist (Belgium)

Football

Termination of the employment contract

Condition precedent

Under Swiss law, Article 152.1 of the Swiss Code of Obligations regarding condition precedent establishes not only a negative obligation to refrain from specific acts which could prevent the condition from being fulfilled, but also establishes positive duties of the Parties to do what is appropriate to safeguard the prospect of that fulfilment. If the Parties agree to sign an agreement subject to two conditions precedent, they have an obligation to take every reasonable step to allow for these conditions to be fulfilled. In the case any of the Parties did not do so, the condition will be deemed to have been fulfilled or the party will be liable to compensate for its non-fulfilment.

I. PARTIES

A. The Appellant

1. Club X. (the “Appellant” or “X.” or the “Club”), is a professional football club based in X, [Club X.’s country].

B. The Respondent

2. Z. (the “Respondent”, the “Player” or “Z.”), is a former professional football player, now retired.
3. X. and Z. are referred collectively as the “Parties”.

II. FACTUAL BACKGROUND

4. On 5 January 2013, the Parties signed an employment contract (the “X. Agreement”), which would remain in force for two seasons, starting on 1 January 2013 and ending on 31 December 2014.

5. For the purposes of the present dispute, the relevant clauses of the X. Agreement are the following:
 - *Salary* - Clause Three (1) - whereby the Player was entitled to a yearly net salary of USD 81,000 payable in twelve equal and successive monthly instalments, each in the amount of USD 6,750;
 - *Bonuses* - Clause Three (3) - whereby the Player was also entitled to performance-related bonuses;
 - *Extraordinary award and image rights* - Clause Four (1) - whereby the Player was entitled to an extraordinary award for the signing of the contract and image rights in the amount of USD 150,000 per sports season.
6. Throughout the beginning of the 2013 season, the Player was not a regular starter for X. and suffered a series of injuries.
7. In June 2013, the Player expressed his desire to leave the Club. As a result, the following negotiations began between the Parties. In a first moment, there seemed to be a possibility of a transfer for the Player. However, the Player failed to secure a deal matching the earnings he was obtaining in [Club X.'s country]. Then Parties agreed that the Player would leave by the end of the season and X. would not oppose or restrict such a move. Furthermore, X. indicated that it would not seek to obtain compensation for the Player's departure.
8. On 2 February 2014, X. signed [...], a Cameroonian professional football player, in order to replace the Player.
9. On 12 February 2014, the Parties signed a mutual agreement for the termination of the X. Agreement (the "Mutual Termination Agreement"). For the purposes of the present dispute, the relevant clauses of the Mutual Termination Agreement are the following:
 - *Compensation* - Clause Three (1) - whereby the Parties agree that the Player shall be entitled to a compensation in the amount of USD 26,666.66 for payments, premiums, subsidies, expenses, subsistence allowances or any other costs;
 - *Mutual release of all rights and obligations* - Clause Five - whereby the Parties mutually release themselves from all rights, duties and obligations under the referred X. Agreement;
 - *Conditional validity* - Clause Six - whereby the Parties expressly and irrevocably agree to condition the validity of the Mutual Termination Agreement to:
 - i. The verification of the signing of an employment contract with the club Y. ("Y.") (the "Y. Agreement"); and
 - ii. The effective registration of the Y. Agreement with the [...] Football Federation.
10. On 13 February 2014, the Player and Y. signed the Y. Agreement, although this contract was dated 1 January 2014.

11. According to X., the Player did not inform X. of the signing of the Y. Agreement.
12. According to the Player, however, the signing of the Y. Agreement was the result of a tripartite negotiation between the two clubs (X. and Y.) and the Player.
13. On 21 February 2014, X. proceeded with the payment of USD 35,000 to the Player. X. paid an amount exceeding the compensation agreed in the Mutual Termination Agreement. This was due to the fact that internal accounting had concluded that the Player was entitled to an amount exceeding that which had been originally calculated, based on performance bonuses.
14. On 28 February 2014, the General Secretariat of the [...] Football Federation issued its Official Communication N. [...] (the “Official Communication”). Said Official Communication contains a list of the national transfers which have been approved by the General Secretariat of the [...] Football Federation. In the Official Communication the name of the Player and his transfer from X. to Y. is indicated as having been provisionally approved.
15. On 7 March 2014, Mr. Luis Cassiano Neves, X.’s lawyer, sent the Player a statement authorizing the Player to be on leave of absence from the training sessions, games and other official events organized by X. from that date until 15 March 2014, by which time he had to be in [Club X.’s country] with the team, unless an extension of said authorization would be granted or the Mutual Termination Agreement is set into force between the Parties. The purpose for said leave of absence was due to personal reasons of the Player but it was also in the interest of X.
16. On 10 April 2014, the Player contacted X. via email claiming that his salaries for January, February and March 2014, as well as the first instalment of USD 50,000 of the extraordinary award for the 2014 season pursuant to the X. Agreement, were outstanding. The Player also warned that if said payment was not fulfilled within the following five (5) days, he would unilaterally terminate his employment contract with X.
17. On 15 April 2014, X. answered indicating its understanding of the situation, as well as indicating that the amount of USD 35,000 had already been paid to the Player.
18. On 21 April 2014, the Player replied, informing that the Mutual Termination Agreement was subject to the condition that the Y. Agreement be registered with the [...] Football Federation and said condition had not been fulfilled. The Player claimed therefore that the X. Agreement was still valid and in force, and warned the Club that if the payment of his salaries for January, February and March 2014 as well as the above-referred amount USD 50,000 was not made within the following two (2) days, he would unilaterally terminate his employment contract with the Club.
19. On 28 April 2014, the Player terminated the X. Agreement unilaterally and with immediate effect, invoking just cause, on the basis that X. had failed to pay the amounts outstanding and due.
20. The proceedings for the Player’s registration with Y. were suspended by the [...] Football Federation.

21. The [...] Football Federation informed X. that although the registration had indeed been officially confirmed, the [...] Football Federation had decided to suspend the registration because it was still awaiting for certain required documentation to be provided.
22. The Player did not inform X. of the suspension of his registration with Y. at the [...] Football Federation.
23. On 11 June 2014, the [...] Football Federation notified X. of the Player's unilateral termination and the initiation of the corresponding disciplinary proceedings, giving the club a deadline to present its defence.
24. On 17 June 2014, X. submitted its defence to the [...] Football Federation.
25. On 22 January 2015, the Player filed a claim before FIFA against X.
26. Upon notification of the claim, X. requested the [...] Football Federation to provide an official clarification on the circumstances in relation to the registration of the Player with Y.
27. On 4 March 2015, the [...] Football Federation issued a declaration which aimed at clarifying the situation (the "Clarification Statement"). Said Clarification Statement included (i) the registration file that was submitted to the [...] Football Federation for the registration of the Player with X.; and (ii) the registration file that was submitted for the registration of the Player with Y.
28. The Clarification Statement concluded the following:

"4 – However, the CDT-SPORTING TECHNICAL COMMITTEE/[...] Football Federation verified that the personal documentation of the player Z. contained irregularities or features that required confirmation from the state authorities, such as:

 - a) – Update of the Identity Card, since the submitted copy was OUT OF DATE, i.e. the Identity Card has been issued on [...] and valid until [...], which did not enable the APPROVAL OF THE REGISTRATION.*
 - b) – Also, the date and place of birth did not coincide in the submitted documents.*

5 – For the above reasons, the CDT/[...] Football Federation did not APPROVE the registration until Club Y. would submit the referred document of identification".
29. On 28 January 2016, the FIFA Dispute Resolution Chamber issued a decision with regards to the dispute between the Player and X. (the "Appealed Decision").
30. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant, Z. is partially accepted.

2. *The Respondent, Club X., has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 77,000, plus 5 % interest p., until the date of effective payment as follows:*

- a. *5 % p.a. as of 1 February 2014 on the amount of USD 50,000;*
- b. *5 % p.a. as of 11 February 2014 on the amount of USD 6,750;*
- c. *5 % p.a. as of 11 March 2014 on the amount of USD 6,750;*
- d. *5 % p.a. as of 11 April 2014 on the amount of USD 6,750;*
- e. *5 % p.a. as of 11 May 2014 on the amount of USD 6,750;*

3. *The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 154,000, plus 5 % interest p.a. on said amount as from 22 January 2015 until the date of effective payment.*

4. *In the event that the aforementioned sums plus interest are not paid within the stated limits, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

5. *Any further claim lodged by the Claimant is rejected.*

6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".*

31. The grounds of the Appealed Decision were notified to the Parties on 22 August 2016.

III. PROCEEDINGS BEFORE THE CAS

32. On 12 September 2016, the Appellant lodged a Statement of Appeal before the CAS against the Appealed Decision.

33. On 20 September 2016, the Appellant requested a five-day extension to file its Appeal Brief.

34. On 26 September 2016, the CAS Court Office, on behalf of the CAS Secretary General, granted the five-days extension requested by the Appellant to file its Appeal Brief.

35. On 27 September 2016, the Appellant filed its Appeal Brief.

36. On 24 October 2016, the Respondent requested a 20-day extension of the time limit to file his Answer and that the time limit to file the Answer should be fixed after the payment of the advance of costs by the Appellant. On 26 October 2016, the CAS Court Office informed the Parties that the time limit for the filing of the Answer shall be fixed upon the Appellant's payment of its share of the advance of costs.

37. On 14 December 2016, the CAS acknowledged receipt of the Appellant's payment of the entire advance of costs for the procedure and advised the Respondent that the time limit for the filing of the Answer would start running that day.
38. On 19 December 2016, the Respondent requested an extension of the time limit for the filing of the Answer until 30 January 2017. The Appellant objected to such request on 21 December 2016.
39. On 23 December, the CAS Court Office informed the Parties that the Panel had partially granted the request of the Respondent to extend his time limit to file the Answer until 11 January 2017.
40. On 11 January 2017, the Respondent filed his Answer.
41. On 20 January 2017, the Respondent informed the CAS Court Office of its preference for the Panel to render an award based solely on the Parties' written submissions.
42. On 23 January 2017, the Appellant requested that a hearing be held in view of the significant discrepancies between the Parties.
43. On 26 January 2017, the CAS Court Office informed the Parties of the Panel's decision to hold a hearing.
44. On 18 April 2017, the CAS Court Office sent to the Parties the Order of Procedure, requesting them to sign and return a copy by 25 April 2017.
45. On 20 April 2017, the CAS Court Office acknowledged receipt of the Order of Procedure signed by the Appellant on 18 April 2017 and by the Respondent on 20 April 2017.
46. On 9 May 2017, the Respondent informed that his proposed witness (V.) could not attend the hearing, and had sent an email providing justification and confirming the authenticity and the content of the emails already submitted to the file.
47. On 10 May 2017 the hearing took place at the Lausanne, Switzerland. At the beginning of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. After the opening statements made by the Parties, the following witnesses were heard: B., manager of X. (called as a witness by the Appellant); A. (called as a witness by the Appellant); C., vice-president of Y. (by skype, called as a witness by the Respondent); N., the Player's Agent (called as witness by the Respondent); Z., i.e. the Player. Finally, also Mr. Luis Cassiano Neves (i.e. the Appellant's attorney), who had been called by Respondent to be a witness, accepted to be heard as a witness. The hearing was further attended by Messrs. Bernardo Palmeiro (counsel for the Appellant), Nuno Rego, José Carlos Oliveira and Serge Vittoz (counsels for the Respondent) and by Ms Paula Carvalho (interpreter). At the end of the hearing, the Panel granted the parties a time limit to file post-hearing briefs. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions asked by the Panel. At the conclusion of the hearing the Parties confirmed that they had no complaint regarding the conduct of the proceedings.

48. On 2 June 2017, both the Appellant and the Respondent filed their post-hearing briefs.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

49. The following is a brief description of the Parties' submissions in this arbitration. It does not depict in detail all of the Parties' arguments. However, they have all been taken into consideration by the Panel in its deliberations and drafting of the present award.

A. The Appellant

50. Firstly, regarding the termination of the X. Agreement, the following arguments are presented by Appellant:

- The unilateral termination by signing the Y. Agreement - Attention is drawn to the fact that the Player signed an employment contract with Y. while he was under a contract with X., without informing X. This constitutes a breach of contract, a violation of the FIFA Regulations on the Status and Transfer of Players and CAS case law.
- The Mutual Termination Agreement became effective and the conditions were fulfilled - In any event, the Mutual Termination Agreement became effective and, thus, the Respondent is not entitled to receive any further amounts from the Appellant. In this sense, it must be noted that the effectiveness of the Mutual Termination Agreement was subject to two conditions: (i) The signature of the Y. Agreement; and (ii) The registration of the Y. Agreement with the [...] Football Federation. It is indisputable that both conditions were fulfilled. Moreover, the conditions must be deemed to have been fulfilled in light of the provisions of Swiss law.
- The lack of just cause for termination - In any event, the circumstances alleged by the Respondent do not constitute just cause to terminate the X. Agreement following the definition of "just cause" under Swiss law and its interpretations in CAS jurisprudence.
- The lack of grounds for any compensation - As a consequence of the lack of just cause, the Respondent is not entitled to any compensation. However, in the unlikely event that it could be considered that X. had somehow contributed to the existence of a just cause to terminate the X. Agreement, it is argued that the Respondent must be deemed to have been the major contributor to the existence of said just cause. It is argued that in these cases, the CAS has stated that in circumstances where the cause for termination did not arise from the behaviour of only one of the parties, the Panel shall determine at its discretion the financial consequences of a termination, taking into account all the circumstances of the case.

51. Secondly, with regards to the Player's behaviour, the Appellant argues the following:

- The alleged attempt to obtain [Club Y.'s country] citizenship - The conditions set in the Mutual Termination Agreement were not subject to the Player necessarily becoming an

[Club Y.'s country] citizen. On the contrary, the Respondent could have signed and registered the Player under the Y. Agreement as a Portuguese citizen. The Player never mentioned to X. that the Y. Agreement was allegedly subject to him acquiring [Club Y.'s country] citizenship and that he was unsure that he would obtain it. As a matter of fact, the Y. Agreement does not include any condition nor does it express any reservation.

- The bad faith of the Player - Furthermore, the Respondent is solely responsible for the suspension of his registration as a [Club Y.'s country] citizen and, ultimately, for the succession of events. It seems clear that:
 - The Player attempted to circumvent the applicable rules and procedures, since there is a misrepresentation of the Player's place and date of birth and the filing of an [Club Y.'s country] identification document that appears to be forged.
 - Before the FIFA, the Player confirmed that he did not have [Club Y.'s country] citizenship, therefore, it must be concluded that he consciously sought to misrepresent his status towards the [...] Football Federation.
 - If proper procedure would have been followed, the Player would have had a possibility to obtain the [Club Y.'s country] citizenship.
 - The statement authorizing the second leave of absence was not signed by the Parties. In particular, it was never signed by B. in representation of X. Therefore, one can only conclude that there was an attempt to falsify his signature. In this regard, the Appellant draws attention to the fact that FIFA dismissed the issue of assessing whether the signature was false or not, by stating that the matter was irrelevant.
 - In any event, between 22 January 2014 (the Player's first request for an absence of leave) and 7 March 2014 (the date on which the Player requested again for an absence of leave), X. never questioned the Player's absence, acting under the sole reason that the Player had signed with Y. and had terminated his contract with X.

52. In view of the above submissions, X. requests the CAS to:

- a) Set aside the decision of the FIFA Dispute Resolution Chamber dated 28 January 2016, which ordered Club X. to pay Z. the amount of USD 231,000 (two hundred and thirty-one thousand American dollars) plus interest;*
- b) Confirm that Club X. is not liable to pay Z. any amounts in connection with the employment contract signed between the Parties on 9 November 2012 and/or the termination agreement signed between the Parties on 12 February 2014;*
- c) Subsidiarily, and in the event that the Panel finds that Club X. owes Z. certain amounts in connection with the employment contract signed between the Parties on 9 November 2012 and/or the termination agreement signed between the Parties on 12 February 2014, to decide that no compensation for breach of contract is due by the Club;*

- d) *Order Z. to pay the full amount of the CAS arbitration costs; and*
- e) *Order Z. to reimburse Club X. of legal costs incurred and other related expenses, at least in the amount of €40,000 (forty thousand euros)”.*

B. The Respondent

53. Firstly, regarding the termination of the X. Agreement, the Respondent submits as follows:

- There was not a unilateral termination by signing the Y. Agreement - The Respondent accepts that a football player may not enter into more than one contract covering the same period. However, it is clearly demonstrated by the notarization of each of the contracts that the Y. Agreement was signed on 13 February 2014, after the Mutual Termination Agreement, which was signed on 12 February 2014. More importantly, both documents entered into force with all three parties in perfect harmony on the objective thereof, which was the transfer of the Player from X. to Y. subject to the condition that the Player would acquire the [Club Y.'s country] citizenship.
- The Mutual Termination Agreement did not become effective and the conditions were not fulfilled - It is undisputed that the validity of the termination agreement signed between the Parties was made subject to two specific conditions (i.e. (i) that the Player would be transferred and sign with Y. and (ii) that he would acquire the [Club Y.'s country] citizenship). However, the fulfilment of these two cumulative conditions did not occur. On the one hand, the Player did sign the Y. Agreement. However, on the other hand, the [...] Football Federation did not approve the registration of the Player for the Y., as confirmed in the [...] Football Federation Official Statement. Thus, the conditions cannot be deemed to have been fulfilled according to the facts and the jurisprudence of the Swiss Federal Tribunal.
- The just cause for termination - There is no dispute between the Parties as to the fact that the Respondent terminated the X. Agreement on 28 April 2014. Therefore, the question which needs to be addressed is whether the Respondent had just cause to terminate said contract, since he bears the burden of proof of a just cause. The existence of just cause becomes apparent in two facts which are supported by CAS jurisprudence: (i) the non-payment of salaries; and (ii) the breach of the Player's personality rights by preventing him from coming back to X. The latter is supported by the fact that X. had already hired a replacement player for the Respondent.
- The grounds for any compensation - As a consequence of the previous point, the Player shall be fully compensated in accordance with the FIFA Regulations on the Status and Transfer of Players. With regards to the exact amount of compensation, the Player simply refers to the calculation made in the Appealed Decision, as the calculation by itself has not been challenged by the Appellant.

54. Secondly, with regards to the his own behaviour, the Respondent argues the following:

- The attempt to obtain [Club Y.'s country] citizenship - The Respondent highlights that a request for his registration with Y. was actually filed before the [...] Football Federation, a process that was made in full knowledge of all parties involved (including the Appellant). Moreover, contrary to the Appellant's argument, it is unlikely that the Respondent could have obtained [Club Y.'s country] nationality, especially in the short-term, to eventually allow him to file a new document to the [...] Football Federation, for validation of his transfer to Y. All in all, the Respondent requests that this argument is dismissed, since he actually made what was in his power to allow registration. Furthermore, it is wide and common practice that the registration procedure is handled by the professional football clubs and not by the players themselves.
- The good faith of the Player - The Player claims to have always acted in good faith, being in harmony with X.'s instruction and knowledge at all times. However, in any case, the Appellant was perfectly aware that the document filed with the request for registration in Y. before the [...] Football Federation was an expired ID. In any case, the Appellant bears the burden of proof of demonstrating whether the Respondent acted in bad faith, a burden which the Appellant failed to discharge.

55. In view of the above submissions, the Respondent requests the CAS:

1. *To dismiss the appeal and uphold the decision of the Dispute Resolution Chamber;*
2. *To order the Appellant to pay the Player's legal costs and other expenses incurred in connection with the present arbitration proceedings, or a contribution thereto in the minimum amount of CHF 40.000,00;*
3. *To order the Appellant to pay the full arbitration costs”.*

V. JURISDICTION OF CAS

56. Pursuant to Article R47 of the Code of Sports-related Arbitration (the “CAS Code”):

“An appeal against the 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 it prior to the appeal, in accordance with the statutes or regulations of that body”.

57. In addition, pursuant to Pursuant to Articles 66.1 and 67.1 of the FIFA Statutes (April 2015 edition):

“66.1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, intermediaries and licensed match agents”.

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

58. Based on the above, the Panel holds that the CAS has jurisdiction to hear this case. This is confirmed by the fact that no party has raised any objection to the jurisdiction of the CAS and by the signature of the Order of Procedure.

VI. ADMISSIBILITY OF THE APPEAL

59. Article 67.1 of the FIFA Statutes (April 2015 edition) provides as follows:

“Appeals against final decision 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”.

60. The Appealed Decision was notified to X. on 22 August 2016, and on 12 September 2016 X. filed its Statement of Appeal.

61. Therefore, the appeal is admissible. This is also confirmed by the fact that Respondent has not raised any objection to the admissibility of the case.

VII. APPLICABLE LAW

62. Pursuant to Article R58 of the CAS Code:

“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

63. In this case, the applicable rules are the FIFA regulations. Subsidiarily, pursuant to Article R58 of the CAS Code and Article 66.2 of the FIFA Statutes (April 2015 edition), Swiss Law is applicable.

VIII. THE MERITS OF THE DISPUTE

A. The Mutual Termination Agreement

64. It is undisputed that the Mutual Termination Agreement was signed on 12 February 2014.

65. Clause 6 of the Mutual Termination Agreement provides as follows (in the English translation provided by the Appellant):

“The Parties expressly and irrevocably agree to condition the validity of the termination of this contract to the verification of the signing of the sports contract by the Player with Y. and its effective registration with the [...] Football Federation, for the purpose of participating in competitions organised by the latter as from February 2014, in representation of said club. It is hereby established that the termination agreed upon herein will not

come into effect should the Player not actually be registered pursuant to the terms indicated above, thus restoring the legal effects of the sports contract now terminated”.

66. In consequence, the effectiveness of the Mutual Termination Agreement was subject to two events:

(i) The signing of the Y. Agreement

(ii) The effective registration of the Y. Agreement with the [...] Football Federation, including the actual registration of Z. as a Player of Club Y. with the [...] Football Federation.

67. The Mutual Termination Agreement was dependent on the occurrence of the two conditions set out above. Under Swiss law, it must therefore be considered that Clause 6 of the Mutual Termination Agreement sets forth two conditions precedent. In this respect, Article 151(2) of the Swiss Code of Obligations (the “SCO”) states the following:

“The contract takes effect as soon as this condition precedent occurs, unless the parties clearly intended otherwise”.

68. No evidence of contrary intentions to setting these conditions has been presented before the Panel. Consequently, the Panel is satisfied that the Mutual Termination Agreement contained two conditions; accordingly, it shall now be analysed whether these conditions have been fulfilled or not and, if not, which consequences this can have.

B. The Y. Agreement

69. With regard to the first condition, the Y. Agreement was signed on 13 February 2014. Therefore, there was no overlapping between the Mutual Termination Agreement and the Y. Agreement. The Parties first signed the Mutual Termination Agreement on 12 February 2014 and then, the day after, the Player signed with Y.

70. Once the Player signed the Y. Agreement, the X. Agreement is terminated and, pursuant to Article 18.5 of the FIFA Regulations on the Status and Transfer of Players, a player can only enter into one employment relationship at a time.

71. The Y. Agreement is not subject to any condition precedent and therefore became immediately effective, fully valid and enforceable.

72. As a consequence, independently on the effectiveness of the Mutual Termination Agreement, the signing of the Y. Agreement ends the validity of the X. Agreement.

C. The registration of Z. as player of Y. at the [...] Football Federation

73. In order to decide if the second condition of the Mutual Termination Agreement was fulfilled, the Panel shall analyse if the Player was effectively registered with the [...] Football Federation and, if not, why this happened and what are the legal consequences.

74. Y. was only interested in the Player if he had [Club Y.'s country] nationality, in order not to have more than five foreign players in its roster. However, the Y. Agreement contains no such clause that Y. only wanted to employ the Player if he had [Club Y.'s country] nationality or making the Y. Agreement be valid only under such a condition. Likewise, the Mutual Termination Agreement contains no provision stating that the Player had to be [Club Y.'s country] national.
75. It is clear to the Panel that there was an attempt to register the Player at the [...] Football Federation. In fact, the Panel is satisfied that the Player has been registered, provisionally, with the [...] Football Federation. However, the final registration eventually did not occur, since the Player was not able to submit to the [...] Football Federation a valid document proving the [Club Y.'s country] citizenship requested by the Player.
76. Article 152.1 of the SCO provides as follows:
- “Until such time as the condition precedent occurs, the conditional obligor must refrain from any act which might prevent the due performance of his obligation”.*
77. Article 152.1 of the SCO establishes not only a negative obligation to refrain from specific acts which could prevent the condition from being fulfilled, but also establishes positive duties of the Parties to do what is appropriate to safeguard the prospect of that fulfilment (cf. CAS 2014/A/3647-3648, at paragraph 65).
78. The Parties agreed to sign the Mutual Termination Agreement subject to two conditions precedent. Accordingly, the Parties had an obligation to take every reasonable step to allow for these conditions to be fulfilled. In the case any of the Parties did not do so, the condition will be deemed to have been fulfilled or the party will be liable to compensate for its non-fulfilment.
79. The registration at the [...] Football Federation was not completed and this could only have happened because (i) either the Player has [Club Y.'s country] nationality and there is no reason why he was not able to provide a copy of his [Club Y.'s country] identification card to the [...] Football Federation, or (ii) the Player does not have [Club Y.'s country] nationality and did misrepresent his status at a first stage before the [...] Football Federation in an attempt to deceive the [...] Football Federation in processing his registration. The Player confirmed that he has not [Club Y.'s country] nationality and that he is a [...] citizen. Therefore, it seems that the Respondent misrepresented his status in order to be registered at the [...] Football Federation but the federation did not move forward with the registration process because the Player did not provide the necessary documentation (i.e. a valid [Club Y.'s country] identification document).
80. On the basis of all information and evidence submitted, the Panel is satisfied that the condition precedent of the Mutual Termination Agreement that the Player had been registered would have been easily fulfilled if the Player had requested to be registered as a [...] citizen, using his valid passport or other valid document proving his [...] nationality. Had the Player used any such valid document, there would not have been any discrepancy between his information and the documentation he presented.

81. Therefore, while it cannot be disputed that the second condition precedent (i.e. the registration at the [...] Football Federation of the Respondent as player of Y.) was not fulfilled, the Panel is of the view that such non-fulfilment must be attributed to the Player's behaviour. The Player is the only person responsible for providing an apparently invalid [Club Y.'s country] identification card to the [...] Football Federation: had the Player filed his [...] passport or other valid identification documents, he would have been registered as a [...] player, so as he was when he was registered for the Appellant.
82. In addition, the Panel believes that the Player failed to make all reasonable efforts to ensure that he obtained [Club Y.'s country] citizenship in order to conclude his registration with Y. as an [Club Y.'s country] national. Therefore, the Respondent is in breach of Article 152.1 of the SCO and must be held responsible for it. The Appellant cannot be held responsible for the fact that the Player was not able to prove an [Club Y.'s country] nationality and because he was not able to be registered with Y. at the [...] Football Federation. To another conclusion one could only come if the Appellant, the Player and Y. would have explicitly agreed to another consequence of a non-registration of the Player on the basis of the invalid document. However, there is no reliable evidence showing the existence of any such contractual arrangement.

IX. CONCLUSION

83. In summary, the Mutual Termination Agreement had two conditions precedent in order to become effective: (i) the signing of the Y. Agreement, and (ii) the registration of the Respondent at the [...] Football Federation as a player of Y. The first condition occurred on 13 February 2014. The second condition did not happen because, regardless of the fact that the Player was provisionally registered with Y., the final registration did not occur. The final registration was refused, because the Player on one side claimed to be [Club Y.'s country] national and, on the other side, he did not provide the [...] Football Federation with a valid [Club Y.'s country] nationality identity document. However, the Player could have been easily registered with the [...] Football Federation as a [...] national citizen, so as he was registered when playing for the Appellant. The fact that the Player, possibly with Y.'s support, tried to be registered as an [Club Y.'s country] player and failed to reach such outcome, cannot be held against the Appellant. In lack of any reliable evidence that the Player was acting in bad faith, the Panel is of the view that Article 156 of the SCO ("*A condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith*") cannot be applied. However, based on Article 152.1 of the SCO, the Panel is satisfied that the Player shall be held responsible for causing the non-finalization of his registration with the [...] Football Federation. Based on this, the Player is not in a position to claim the fulfilment of his agreement with the Appellant, while he did not comply himself with the duties arising from the Mutual Termination Agreement.
84. In view of this, and taking in consideration the fact that the Player concluded a valid employment agreement with Y. and that the Player himself decided not to make use of his employment rights towards Y., the Panel does not find any valid legal basis to grant to the Player a right to request any further payment from Appellant.

85. Thus, the appeal must be upheld and the decision by the FIFA Dispute Resolution Chamber dated 28 January 2016, which ordered Club X. to pay Z. an amount of USD 231,000 plus interest, must be set aside.
86. Against this background, any and all other prayers for relief and request shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Club X. on 12 September 2016 against the decision rendered by the FIFA Dispute Resolution Chamber dated 28 January 2016 is upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber dated 28 January 2016, which ordered Club X. to pay Z. an amount of USD 231,000 plus interest, is set aside.
3. Club X. is not liable to pay Z. any amount as outstanding remuneration or breach of contract.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.