Arbitration CAS 2008/A/1534 Sandro da Silva v. Merriekh SC, award of 22 December 2008

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Employment contract
Applicable law in appeals against FIFA decisions in the absence of any choice of law
Party incurring the costs in case of a player's injury
Loss of financial nature and compensation for moral damages

1. **So long as the parties have not expressly or impliedly agreed on any specific national law and the seat of CAS is in Lausanne, Switzerland, the arbitration is subject to the rules of Swiss Private International Law Act. Accordingly, the arbitral tribunal – in the absence of any choice of law by the parties – applies the rules, with which the case has the closest connection. Even if the parties have not expressly chosen any specific law, there is, in cases of appeals against decisions issued by FIFA, a tacit and indirect choice of law. Such tacit and indirect choice of law is considered as valid under Swiss law and complies with the principles of the Swiss private international law.**

2. **A contract between the player and the club not covering the situation where the player has no insurance but needs to be treated abroad in case of an injury needs to be construed according to the conduct of the parties and the general duty of clubs to bear responsibility for their players' welfare during the term of the contract. In this respect, the fact that the club authorizes and pays for the player to be treated abroad, leads to the conclusion that the club should be responsible for these costs.**

3. **If the loss suffered as a result of any breach is of a financial nature, then financial damages awarded suffice and no compensation for moral damages will be granted.**

The Appellant is a Brazilian professional football player ("the Appellant" or "the Player").

The Respondent is Merriekh Sports Club a football club with its registered office at Mail Box 842, Bladia Street, Khartoum, Sudan ("the Respondent" or "the Club"). The Respondent is a member of the Sudan Football Association (the SFA), which has been affiliated to Federation Internationale de Football Association (FIFA) since 1948.

On 4 December 2003, the parties entered into a contract of employment for a period of 1 year for the period 2 January 2004 to 15 December 2004 ("the Contract").

The appendix to the Contract states that the Appellant's remuneration would be a total of USD 90,000, with 50% payable 7 days after the Respondent has received the Appellant's International Transfer Certificate (ITC) and the remaining 50% as monthly salary payments of equal amount, the first such payment payable on 15 January 2004. Furthermore, the Appellant was entitled to match bonuses, return air tickets for his wife and two children, accommodation and transport.

Clause 8 of the Contract states:

> *"Any incapacity or sickness shall be reported by the Player to the Club immediately and the Club shall keep record of any incapability. The Player shall submit promptly to such medical and dental examinations as the Club may reasonably require and shall undergo, at no expense to himself, such treatment as may be prescribed by the medical or dental advisor of the Club in order to restore the Player to fitness. The Club shall arrange promptly such prescribed treatment as long as treatment is taking place in the territory (SUDAN).*
>
> *And shall ensure that such treatment is undertaken and completed without expense to the Player notwithstanding that this agreement expires after such treatment has been prescribed. If treatment is taking place outside the territory, the Club shall undertake the travelling cost and player insurance will take care of the treatment expenses".*

The Respondent states, in its submissions to Dispute Resolution Chamber (DRC) of FIFA, that the Contract was subject to the approval of, and filing with, the SFA in accordance with the provisions of the Sudanese Registration of Contracted Players Regulations.

The Respondent claimed also before FIFA DRC to have presented the Contract to the SFA, and it was rejected and registration as a professional was denied because the Respondent had already registered 3 professional foreign players.

It is then claimed that the Respondent and the SFA agreed that the Appellant should be registered as an amateur and the Respondent states that the Appellant was fully aware of this fact. The Appellant maintains he was registered as a professional on the terms of the Contract.

In mid-February 2004, the Appellant became injured during a training session.

The Respondent granted the Appellant permission to return to Brazil and purchased an airline ticket for him, the original of which is provided at this Hearing.

Once in Brazil, the Appellant alleges that he discovered that the injury was more serious than first thought and as a result, the Appellant remained in Brazil after the expiry of the return leg of airline ticket. The Appellant subsequently underwent surgery on 3 September 2004.

The Respondent claimed before the DRC that it expected the Appellant back in Sudan on 24 May 2004, in accordance with the airline ticket which had been purchased. The Respondent further claimed that it had no contact with the Appellant at all, despite attempts by the Respondent to contact him. As such, the Respondent claimed at the DRC that the Appellant was in breach of the Contract when he failed to return.

On 10 January 2006, the Appellant lodged a claim in front of the DRC for breach of contract by the Respondent, which was received on 31 January 2006, via the Brazilian Football Federation. The Appellant submitted that the Respondent did not respect the contractual obligations of the Contract and he had only received USD 12,000 instead of the USD 90,000 he was entitled to. Further, while he was receiving treatment for his injury in Brazil, he remained eligible for bonuses which have not been paid, and the Respondent was also responsible for the medical costs associated with his injury in the amount of USD 1,900. The Appellant also claimed additional compensation, moral damages, in the amount of USD 45,000.

By letter dated 9 June 2006, FIFA informed the Respondent of the claim and requested payment of the sums referred to above or to provide the DRC with its detailed position justifying non-payment of the sums claimed together with all relevant documentary evidence by 26 June 2006 at the latest.

By fax dated 25 June 2006, the SFA forwarded response of the Respondent's actions via the Respondent's Advocate ("the Response").

The Response stated that the Contract was merely a proposed contract and subject to acceptance by the SFA. As the SFA had rejected registration of the Contract, the player was an amateur and therefore the claim was not within the jurisdiction of the DRC.

Further, it was claimed that even if the Contract was deemed by the DRC to be a professional contract, the DRC still has no jurisdiction as the Appellant had not exhausted the grievance procedures outlined at clause 19 of the Contract, namely; the Appellant had not brought the alleged grievance to the attention of the Manager of the Respondent informally (clause 19(A)); the Appellant had not served a formal written notice of the alleged grievance to the manager of the Respondent (clause 19(B)); the Appellant had not invoked the procedure of informing the Board of Directors (clause 19(C)); and as all the above steps were missed, the Appellant failed to seek the remedy or right of appeal as per clause 19(D) and referring to clause 16(A) and 16(B).

By letter dated 26 September 2006, FIFA forwarded the Response to the Appellant's Attorney and requested comments by no later than 10 October 2006. This letter was copied to the SFA and requested the SFA to forward to FIFA translations of the two Arabic documents appended to the Response into an official FIFA language.

The Appellant's Attorney indicated by letter dated 6 October 2006 to FIFA that the evaluation of the Response was severely harmed by the fact that these documents relied upon were totally in Arabic and a translation had not been received. He requested the translations be obtained and an extension of the deadline by 15 days after receipt of the translation.

FIFA sent a further request to the SFA for the translations by letter dated 15 November 2006 and by letter dated 15 March 2007 confirmed to both parties that no translations had been received. FIFA also requested that should either party wish to add any comments with regard to the Response, those comments be submitted by 26 March 2007.

By letter dated 15 March 2007, the Appellant's Attorney requested the Response be re-faxed due to page number 21 of 23 being missing.

FIFA responded to the letter dated 15 March 2007 by letter dated 25 May 2007 enclosing the complete Response for the Attorney's reference and asking for any further comments to be received by 1 June 2007.

By letter sent via fax dated 25 May 2007, the Attorney for the Appellant confirmed that they did not wish to provide new comments about this matter until the Respondent had first submitted a new statement.

By letter sent to both parties dated 22 June 2007 by FIFA, it was confirmed that the Appellant did not wish to submit any further comments to the Response and therefore FIFA would submit the case to DRC.

Within the Appellant's Appeal Brief, filed with the Court Of Arbitration for Sport ("the CAS"), the Appellant produced a fax (and fax confirmation receipt sheet) dated 26th March 2007 addressed to FIFA, in which the Appellant gave his detailed comments on the Response. It appears that the same was never received or considered by the DRC.

Firstly, the DRC analysed whether it was competent to deal with the matter at stake. It referred to Art. 18 para. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. Given the date of submission of the present matter, edition 2005 are applicable.

With regard to the competence of the DRC, Art. 3 para. 1 of the above-mentioned Rules states that the DRC shall examine its jurisdiction in the light of articles 22 to 24 of the Regulations for the Status and Transfer of Players (edition 2005) ("the Regulations"). In accordance with Art. 24 para. 1 in connection with Art. 22 (b) of the aforementioned Regulations, the DRC shall adjudicate on employment-related disputes between a club and a player that have an international dimension.

As a consequence, the DRC concluded it was the competent body to decide on the dispute between the Respondent and the Appellant.

The DRC then referred to the argument of the Respondent by means of which they disputed the competence of the DRC to deal with this matter. According to the Respondent, the Appellant could only be registered as an amateur with the SFA since the latter had refused his registration as a professional due to the Respondent having already registered 3 foreign players for its team at that time.

In this respect, the DRC deemed it important to emphasize that the mere administrative act of the registration of a player with an Association does not have any effect on the question of the status of a player. As long as the player has signed an employment contract in writing with his employer and receives remuneration in excess of the expenses incurred in return for his footballing activity, he has to be considered as a professional. Moreover, the DRC clarified that the question whether a player

has to be considered an amateur or a professional must only be established pursuant to the applicable regulations, in particular Art. 2 para. 2 of the Regulations, which is binding at national level by virtue of Art. 1 para. 3a) of the Regulations. Consequently, in order to satisfy the requirements to be considered a professional in accordance with Art. 2 para. 2 of the Regulations, a player shall firstly, have a written employment contract with the club employing him based on which he, secondly, receives remuneration in excess of the expenses effectively incurred in return for his footballing activity. Both elements need to be cumulatively met.

The DRC determined that the Respondent's objection to the competence of FIFA to deal with the matter had to be rejected and that it could consider the matter as to the substance.

The DRC focused their considerations on the question whether an unjustified breach of the Contract had occurred and, if in the affirmative, which party is responsible for such breach of contract and to verify and decide the financial consequences of such breach.

The DRC took note that the Appellant and the Respondent signed the Contract.

Moreover, the DRC noted that in accordance with an appendix to the Contract, the Appellant was entitled to receive remuneration of USD 90,000 whereas 50% of that amount should be paid within 7 days after the player's ITC was received and the other 50% would be payable in equal amounts as a monthly salary from 15 January 2004.

The DRC took note of the Respondent's objection according to which the total value of the contract was USD 60,000 and not USD 90,000. The DRC noted that the Respondent submitted a document entitled *"declaration"* to support its allegations dated 22 April 2004 and bearing the signature of the Appellant. According to the terms of the said *"declaration"*, the Appellant serves as a witness regarding his transfer to the Respondent and that, in this transfer, he *"accepted to receive the sum of sixty thousand American dollars (USD 60,000) the difference of the total amount of the contract would be paid to intermediates who helped to effect the transfer…"*.

The DRC studied the relevant *"declaration"* and came to a unanimous conclusion that the Appellant by signing the aforementioned document in fact accepted that he is entitled to receive from the Respondent the total amount of USD 60,000 under the terms of the Contract and not the amount of USD 90,000.

Subsequently, the DRC noted the Appellant's statement that he got injured during training with the Respondent and he was advised to receive treatment in Brazil, and once in Brazil, it was confirmed that the injury was more serious than first thought, for which reason he had to undergo an operation on 3 September 2004. In particular, the Appellant stated that the Respondent had advised him to fully recover and complete his treatment in Brazil before coming back to the Respondent. In this context, the Appellant maintains that he kept the Respondent up-to-date with his situation at all times but the latter failed to communicate and, except for the initial payments of USD 12,000 made before he left Sudan, stopped paying his remuneration. Therefore the Appellant claimed payment of the total remuneration until the end of the agreed duration of the Contract, i.e. the amount of USD 78,000

plus interest as well as compensation amounting to USD 45,000 plus interest and the reimbursement of medical costs of USD 1,900 plus interest.

The DRC also noted the Respondent's objections towards the allegations of the Appellant, while maintaining that, even though the Appellant suffered only a minor injury, it had agreed that the Appellant could return to Brazil for 15 days and even paid for the airline tickets and two monthly salaries. Further, according to the Respondent, the Appellant failed to return at all and all attempts to contact the Appellant were unsuccessful.

The DRC acknowledged that the Respondent was apparently aware of the Appellant's absence, as the Respondent purchased the airline tickets and it was noted that the Appellant's departure was scheduled on 24 February 2004 and his return flight was scheduled on 24 May 2004.

Bearing in mind the above, the DRC established that the Respondent was well aware of and did not object to the Appellant's departure to his home country for medical treatment. In particular, the DRC was of the unanimous opinion that the Appellant was authorised to be absent from the Respondent for this period of time i.e. until 24 May 2004.

In regards to the Appellant's absenteeism after 24 May 2004, the DRC took note of the Appellant's statements according to which he remained in contact with the Respondent and informed the latter of his current state of health at any time. However, the DRC noted that the Appellant did not provide any documentary evidence to prove that he was authorised to be absent from the Respondent after 24 May 2004. Moreover, the first correspondence he sent to the Respondent, that was provided to the DRC, was dated 8 August 2004, more than two months after his airline ticket back to the Respondent.

The DRC emphasised that in accordance with the legal principle of the burden of proof, a party deriving a right from an asserted fact has the obligation to prove the relevant fact (cf. Art. 12 para. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC)). Therefore due to the lack of proof with regard the Appellant's allegations related to his authorised absence after 24 May 2004 and bearing in mind its considerations in connection with the airline ticket, the DRC decided that the Appellant has breached his employment contract without just cause by not returning to his employer, the Respondent, on 24 May 2004.

The DRC went on to emphasise that as a general rule, it comes under the club's obligations to be responsible for its players in case of injury by a player caused during a training session for his club in fulfilment of his contractual obligations. This principle is essential within the scope of the provisions related to the maintenance of contractual stability between professional and clubs as contained in Art. 13 et seq. of the Regulations. As a result, the club is obliged to continue to pay the salaries of a player during the latter's inability to for due to an injury caused during the fulfilment of his employment contract. The DRC noted that this is reflected in the employment contract, which provides that the Appellant shall be entitled to receive full medical and medicine cover.

The DRC reiterated that the Appellant had authorisation to receive treatment in Brazil until 24 May 2004. However, the Respondent would only be liable to pay all outstanding amounts contractually agreed upon by the parties for the relevant period until the end of the Contract, i.e. 24 May 2004.

The DRC stated that until 24 May 2004, the date when the Appellant should have returned to the Respondent, half the contractual term had elapsed. Therefore, the Appellant was entitled to half of the contractual agreed remuneration, which was USD 30,000 from the total of USD 60,000. As the Appellant had received USD 12,000 there was an outstanding USD 18,000.

Finally the DRC considered the Appellant's claim in respect of costs incurred due to medical treatment in Brazil. The DRC referred to the contents of the employment contract, in particular point 8, according to which it does not come under the club's obligation to pay for treatment of its player which is taking place outside the territory of Sudan. Further, the treatments took place after the Appellant committed a breach of the contract. Therefore, the DRC rejected this part of the claim.

On 29 February 2008, the parties were notified of the decision issued by the FIFA Dispute Resolution Chamber ("the Decision") as follows:

> *"The claim of the claimant, player Sandro da Silva, is partially accepted.*
>
> *The Respondent, Merriekh Sports Club, has to pay to the amount of USD 18,000 to the Claimant, player Sandro da Silva, within the next 30 days as from the date of notification of this decision.*
>
> *In the event that the due amount is not paid within the stated deadline, an interest rate of 5% p.a. will apply as of expiring of the fixed time limit and the present shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *The Claimant, player Sandro da Silva, is directed to inform the Respondent, Merriekh Sports Club, immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
>
> *According to Art. 61 para. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the filing of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (cf. point 4 of the directives)".*

The Appellant appealed the Decision before the CAS.

On 21 March 2008, the Appellant filed a Statement of Appeal, dated 21 March 2008, with the CAS, together with supporting exhibits. He made the following prayers for relief:

> *"(a) to declare that the Appellant has not breached the employment contract without just cause;*
>
> *(b) to increase the amount payable by the Respondent to the Appellant according to the agreed contractual remuneration or as compensation ….;*
>
> *(c) to condemn the Respondent to reimburse the Appellant's medical expenses;*

(d) to condemn the Respondent to pay an amount as indemnification for moral damages …;

(e) to set out an interest rate of 5% per year".

On 9th April 2008, the Appellant filed its Appeal Brief, dated 2nd April 2008, together with supporting exhibits.

The Respondent failed to file any answer to the Appeal.

The Sole Arbitrator held a hearing on 27 October 2008 at the CAS premises in Lausanne ("the Hearing"). The Appellant and his Attorney were present. There was no attendance by or on behalf of the Respondent.

The Appellant had the opportunity to be heard and to present his case to the Sole Arbitrator.

The positions of the parties may be summarized as follows:

On 9 April 2008, the Appellant filed his Appeal Brief.

The Appellant's submissions, in essence, were as follows with regard to the facts of the case:

- he acknowledges the facts set out in paras 2.1.1 to 2.1.3 above;
- he maintains that the DRC failed to consider the contents of the fax sent to them by his Attorney on 26th March 2007 and had they considered the same, their findings would have differed;
- the DRC would have concluded that he never breached the Contract; the Respondent authorised him to go to Brazil to receive treatment on his injury;
- the *"declaration"* is not valid;
- the Respondent did not make payments in accordance with the Contract, nor reimbursed him for medical expenses;
- the conduct of the Respondent was that of abandonment.

The Appellant provided additional documentation appended to the Appeal Brief, which purported to demonstrate that he had kept the Respondent informed of his progress during his rehabilitation in Brazil and provided details of the extent and cost of the treatment received.

As no Answer was filed, the Sole Arbitrator assumed the position of the Respondent would be as set out in the Response.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from articles 61 ff. of the FIFA Statutes and articles R47 of the Code. It is further confirmed by the order of procedure duly signed by the Appellant.

2. The Respondent had challenged the jurisdiction of the DRC, however the Sole Arbitrator notes and agrees with the position taken by the DRC in claiming jurisdiction over this dispute.

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

4. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

Applicable Law

5. Article R58 of the Code provides the following:

   "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".

6. Article 62 para. 2 of the FIFA Statutes provides *"[t]he 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".*

7. Considering the facts, the Sole Arbitrator is of the opinion that the parties have not expressly or impliedly agreed on any specific national law. As the seat of CAS is in Lausanne, Switzerland, this arbitration is subject to the rules of Swiss international private law ("PIL"). Article 187 para 1 PIL provides the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any such choice, in accordance with the rules, with which the case has the closest connection. Although the parties have not expressly chosen any specific law, there is, in cases of appeals against decisions issued by FIFA, a tacit and indirect choice of law, in accordance with article R58 of the Code and article 60 para 2 of the FIFA Statutes. Such tacit and indirect choice of law is considered as valid under Swiss law and complies with in particular with article 187 para 2 PIL (see KARRER T., Basler Kommentar zum Internationalen and Privatrecht, 1996, N. 92 & 96, ad Art. 187 LDIP; POUDRET/BESSON, Droit compare de l'Arbitrage International , 2002, N. 683, p. 613; DUTOIT B., Droit international privé Suisse, commentaire de la Loi fédérale du 18 décembre 1987, Bale, N.4 ad Art. 187 LDIP, page 657; CAS 2004/A/574).

8. Therefore, the Sole Arbitrator will decide the dispute according to the law of the domicile of FIFA. FIFA having its registered office in Zurich, the Sole Arbitrator accordingly holds that the issued to be determined in the present matter must be interpreted in accordance with the FIFA Statutes and Regulations. Swiss law shall apply complementarily. There is thus no place for the application of any other national law, such as Sudanese.

Admissibility

9. The Appeal was filed within the deadline provided by the FIFA Statutes and stated in the decision of the FIFA Players' Status Committee. It complied with all other requirements of article R48 of the Code.

10. Whilst the Respondent failed to take part in these proceedings, the sole Arbitrator noted that copies of the Statement of Appeal and the Appeal Brief, along with details of the time and place of the Hearing were sent to the Respondent by courier and signed as received on behalf of it. Rule 57 of the Code states that *"If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing"*. In this matter, the Sole Arbitrator determined to proceed with the Hearing, without the Respondent.

11. It follows that the Appeal is admissible.

Issues to be determined:

12. The Sole Arbitrator has to determine the following:
    - *Was the Contract breached by either party?*
    - *What was the role of the agent and what was the affect of the "declaration"?;*
    - *Who is responsible for the medical expenses?;*
    - *In the event it is determined that the Respondent breached the Contract, should moral damages and/or interest be payable?*

13. When the DRC looked at the matter, albeit without the benefit of the Appellant's additional submissions made on 26th March 2007, they appeared to acknowledge that the Respondent was initially in breach of the Contract by failing to make payments on their due dates, but that the Appellant brought the Contract to an end when he failed to catch the return leg of his flight, on the 24th May 2004. The DRC felt that the Appellant failed to keep in contact with and get the approval of the Respondent, to remain in Brazil.

14. The Appellant produced a number of copy faxes he claimed had been translated for him and sent to the Respondent whilst he was in Brazil. Whilst only one of these was dated (8th August 2004), they all appear to be written after that date.

15. However, the Appellant set out in his Appeal Brief and confirmed during examination by the

Sole Arbitrator at the Hearing, that he had made contact with the agents that took him to the Respondent in the first place, Rossi Abdeliah and Bemjy.

16. He had first met the two whilst playing in San Paula. They were in the business of finding players to play in Sudan and Qatar. All dealings with the Respondent were made through them.

17. The Appellant claimed that once he had returned to Brazil for treatment he was in regular contact with Rossi Abdeliah, as he was requesting him to ask the Respondent to pay him sums due under the Contract.

18. This contact continued until the agents stopped taking the Appellant's calls. This coincided with the signing of the "*declaration*". The Appellant stated that he was told by Rossi Abdeliah that he had to sign this document to enable the Respondent to pay him sums due under the Contract. The document was not in a language that the Appellant could understand; he received it by fax, signed it and returned it by fax.

19. The document does state *"… I accept to receive the sum of sixty thousand American dollars (USD 60,000) the difference of the total amount of the Contract would be paid to intermediaries who helped effect the transfer…"*. The Appellant acknowledges he simply signed this.

20. Rossi Abdeliah is not a party to this matter, nor has he given any evidence. The Respondent had stated to the DRC that they relied on this document and the DRC treated it as varying the Contract.

21. The Appellant pointed out in his Appeal Brief and at the Hearing that the agent had coerced him into signing this; it was in English, not Portuguese; the effective rate of commission for the agents was extortionate; and it should be treated as invalid.

22. Within the Appeal Brief were a number of medical receipts totalling USD 1,900. The DRC concluded that as these were incurred after the Appellant failed to return, and after they felt he had breached the Contract, they could not be claimed. Clause 8 of the Contract deals with the obligation of the Respondent to pay for medical treatment in Sudan. However, if the treatment is outside Sudan, the player's insurance pays. In this case, there was no insurance. The Respondent also appears unable to get the player properly treated in Sudan and the Appellant states that it authorised him to get treated in Brazil. It pays for his flights, the Appellant claimed the Respondent agreed to pay for the treatment too.

23. Weighing up the evidence presented in the Appeal Brief, on the FIFA file and that presented by the Appellant during the hearing, the Sole Arbitrator was satisfied that the Appellant did not breach the Contract and that the Respondent has only paid USD 12,000 to date to the Appellant.

24. The "*declaration*" appears to have been executed by the Appellant and varies the Contract. Whilst the circumstances surrounding its execution may result in an action against the agent, he is not a party to this matter and the Respondent has relied on the document. As such, the Respondent should have paid the Appellant USD 60,000. It has paid USD 12,000 and therefore still owes

the sum of USD 48,000 to the Appellant.

25. The Contract does not cover the situation where the player has no insurance, yet needs to be treated outside of Sudan. The conduct of the Respondent, to authorise and to pay for the Appellant to be treated in Brazil, leads the Sole Arbitrator to the conclusion they were to be responsible for these costs, totalling a further USD 1,900. The Sole Arbitrator also took into account the DRC's comments regarding the general duty of clubs to bear responsibility for their player's welfare during the term of a contract.

26. The Appellant has also claimed moral damages from the Respondent. The Sole Arbitrator has followed the decision in TAS 2007/A/1268 where if the loss suffered as a result of any breach is of a financial nature, then financial damages awarded would suffice. Only evidence of financial loss was provided by the Appellant.

27. Finally, on the question of interest, the Sole Arbitrator determines that this should run from the end of the Contract, the 15th December 2004, at the rate of 5% per annum, as by that date all sums due to the Appellant from the Respondent should have been made.

The Court of Arbitration for Sport rules:

1. The Appeal is partially allowed.

2. The appealed decision issued on by the Dispute Resolution Chamber of the FIFA is to be replaced with the following:

3. The Respondent is ordered to pay to the Appellant the amount of USD 49,900, plus interest at 5% (five percent) per annum as from 15 December 2004.

4. All other or further claims are dismissed.

(…).