Arbitration CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA, award of 30 December 2008

Panel: Mr. Rui Botica Santos (Portugal), President; Ms. Margarita Echeverria Bermúdez (Costa Rica); Mr. José Juan Pintó (Spain)

Football
Unilateral termination of a contract of employment due to a negative medical examination
Validity of the contract of employment
Application of the lex mercatoria *between clubs and players*
Status of loan agreements
Application of the Protected Period provisions to loan agreements
Sporting sanctions

1. **Under the FIFA Regulations, the condition of a successfully passed medical examination imposed by the club for the enforcement of an employment contract is null and void, and should be considered as a non written clause. However, this nullity does not affect the validity of the entire contract; the duties of the parties towards each other under the employment contract remain valid and binding.**

2. **A club cannot justify the termination of an employment contract by relying on an illegal successful medical examination clause contained in the same employment contract or in a loan agreement, to which a player is not party and which is completely autonomous and independent from the employment contract.**

3. **It is, and has always been the buying club's duty to ensure for itself that the player they intend to contract is in good physical condition. The *lex mercatoria* between clubs and players has always seen buying clubs conducting medical examinations on players before concluding any employment contract with the prospective player.**

4. **Loan transfers are contracts and confer upon both parties rights and duties similar to those which would have accrued to them had the employment contract or transfer been signed on a permanent basis. This is corroborated by the FIFA Regulations which subject loan transfers to the same rules which govern ordinary or permanent transfer of players.**

5. **One of the characteristics of a transfer, be it a loan or a permanent transfer, is that it brings with it the effects of contractual stability and the protected period. Therefore, in signing a player on loan, a club was obliged to adhere to the principles of contractual stability and to the protected period. If loan transfers were exempted from the principles of protected periods, then clubs and players would find easy avenues through which they would evade their contractual responsibilities.**

6. When establishing that an employment contract is subject to the protected period and that it was unilaterally terminated by the club, the CAS has no choice but to apply the provisions of art. 17 para. 4 of the FIFA Regulations which imposes a ban from registering players, either nationally or internationally on any club which unilaterally terminates a player's contract within the protected period. Such sanctions are imposed on the basis of strict liability as provided by the FIFA Regulations and a panel has no choice but to impose them. The power to decide whether or not impose such sanctions only lies with FIFA.

Kuwait Sporting Club (the "Appellant" or the "Club") is a Kuwait football club, affiliated to the Kuwait Football Association, registered under the laws of Kuwait and playing in the Kuwait football league. The Kuwait Football Association is affiliated to the Asian Football Confederation.

Z. (the "First Respondent" or the "Player") is a professional footballer player.

The Fédération Internationale de Football Association (FIFA, the "Second Respondent") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football. It exercises regulatory, supervision and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide.

On 1 January 2007, the Player and the Estonian Club FC Flora Tallinn ("FC Tallinn") entered into an employment contract for the period 1 January 2007 to 30 November 2009.

On 26 January 2007, FC Tallinn entered into an agreement with the Club for the loan of the Player for a period covering 26 January 2007 to 31 July 2007 (the "Loan Agreement").

On the same date (26 January 2007) the Player and the Club signed an employment contract for the period from 25 January 2007 until 31 July 2007 (the "Employment Contract"). At the hearing the Parties corrected that the inserted date of the Employment Contract was not 25 January 2007 but 26 January 2007, the same signature date of the Loan Agreement.

According to the Employment Contract the Club undertook to remunerate the Player in the amount of USD 120,000 for the whole contractual period, by means of a monthly salary of USD 20,000 which was payable at the end of every month.

On 26 January 2007, a doctor from the Club examined the Player and passed him to be in good health. The Player consequently took part in four friendly matches and attended training for 15 days with the Club.

On 6 February 2007, the Player was taken out in the middle of a match and was taken to the hospital where a MRI of his knee was done. After the MRI exam the Player was informed by the Club that his knee was in a very bad condition.

On 10 February 2007, the Club proposed to the Player that he signs a contract for a trial period of three weeks (the "Trial Contract") and that he would be sent back to FC Tallinn if he did not prove himself to be a good scorer during this trial period. Furthermore, the Club warned the Player that in case he did not sign the Trial Contract, it would consider the Loan Agreement and the Employment Contract as null and void.

On 11 February 2007, after his refusal to accept the Trial Contract, the Club's director informed the Player about the termination of the Loan Agreement and the Employment Agreement due to his chronic knee injury.

The Club justified its action based on clause 2.2 and 4.2 of the Loan Agreement under which FC Tallinn had affirmed that the Player was in a good physical condition and that he did not suffer from any chronic injury.

Clauses 2.2 and 4.2 of the Loan Agreement read as follows:

- Clause 2.2 of the Loan Agreement:
  "FC Flora Tallinn undertakes that the Physical Condition of the said player is fit, and he is not suffered from any chronic injury".
- Clause 4.2 of the Loan Agreement:
  "The loan agreement comes into force after the player Z. has passed the medical-examinations".

Additionally, the Club put forward that according to clause 4.2 of the Employment Contract, the contract was subject to a positive outcome of the medical examination of the Player and clarified that the MRI could not have been done before 8 February 2007 as the club needed to get an appointment for the MRI at the clinic.

In particular, clause 4(b) of the Employment Contract read as follows:

> *"In all condition, all club's financial obligations are subject to that the player successfully passed the medical examination and his ITC arrived to Kuwait SC no later than 28/01/2007".*

Prior to the MRI exam, the Player had participated in four friendly matches in six days and he had not shown to be in bad condition due to any alleged injury.

On 16 February 2007, the Player filed proceedings against the Club before the FIFA Dispute Resolution Chamber (DRC) claiming compensation for unilateral breach of the Employment Contract. The Player demanded that the Club be condemned to compensate him to the amount of USD 120,000, which was the amount due to him under the whole contract period of the Employment Contract.

The Player had not played for any other club between the dates when the termination was effected and the end of the Loan Agreement, *i.e.* the end of the season in Kuwait. The Player only resumed his duty with FC Tallinn on 31 July 2007.

On 15 February 2008, the DRC issued its decision and ruled as follows:

> *"The Claim of the Estonian player Z. is accepted.*
>
> *The Respondent, Kuwait SC, has to pay the total amount of USD 120,000 as compensation to the player Z., within 30 days following the date of the communication of the present decision.*
>
> *In the event that the above-mentioned amount is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the relevant time-frame.*
>
> *The [Player] is directed to inform the [Club] directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
>
> *A ban on registering new players, either nationally or internationally, for two registration periods, following the notification of this decision shall be imposed on the Respondent, Kuwait SC.*
>
> *In the event that the [Club] does not comply with the present decision, the matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *(…)".*

The DRC based its decision on the following grounds:

- The DRC took note that the Employment Contract was validly concluded between the Club and the Player for the period from 25 January until 31 July 2007 and that the Club had unilaterally terminated this contract on 11 February 2007 without just cause because:
  - i) article 18.4 of the FIFA Regulations on the Status and Transfer of Players precluded clubs from subjecting employment contracts to medical examinations;
  - ii) the Player had on 26 January 2007 been examined by the Club's doctor and found to be medically fit; and
  - iii) it further noted that the MRI had been carried out after the Employment Contract had been signed.
- That the guarantee from FC Tallinn to the Club as to the Player's medical status had no relevance to the Employment Contract concluded between the Club and the Player and as such was not a basis for the termination. The DRC stated that the affirmations of FC Tallinn did not concern the contractual relation between the Club and the Player and that these affirmations of FC Tallinn could therefore in no way be used as an argument against the Player.
- That the unilateral termination of the contract by the Club without just cause constituted a breach of the Employment Contract.
- The DRC considered the length of the contract, the period remaining there under and the salaries due to the Player (USD 120,000) as agreed in the Employment Contract, and arrived at the lump sum of USD 120,000 as compensation due to the Player for the

aforesaid breach of contract by the Club. The DRC took into account the fact that the Player had not played for any other club from the date of the termination of the Employment Contract until 31 July 2007.

Having established that the Club had committed a breach of contract, the DRC sanctioned the Club in accordance with Article 17.4 of the FIFA Regulations, and banned it from registering players, either nationally or internationally for two registration periods.

On 30 June 2008, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (CAS), pursuant to article 60 para. 1 of the FIFA Statutes, and articles R37 and R47 of the CAS Code, which states some facts and legal arguments on which the appeal is based, together with some documents upon which it intends to rely on, plus an application to stay the DRC Decision requesting that the CAS:

> *"(…) promptly orders the stay of the disciplinary sanction contained in the decision appealed from, in view of the fact that the transfer window in Kuwait FA is about to open on 1 August 2008".*

The Club relied on several grounds in support of its application for stay, among which are that it has a *prima facie* case, with a likelihood of success, given the fact that it was wrongly induced by a third party, FC Tallinn, to enter in good faith into the Employment Contract with the Player.

The Club also averred that it is bound to suffer great financial and sporting damages which cannot be compensated in monetary form should the ban imposed on national and international transfers not be stayed. It argues that the harm it is set to sustain as a result of the decision, which was issued just before the Kuwait registration period was opened, cannot be compensated at a later stage. It relies on previous CAS proceedings (CAS 2006/A/1137) where it was held that *"the simple fact that the club would be deprived from its right to register new players, either nationally or internationally, until the end of the second registration period (…) constitutes a risk of irreparable harm pursuant to the definition given by the Swiss Federal Tribunal(BGE/ATF 126 I 207) which must be taken into consideration if the panel to be appointed were to eventually find that the suspension should be set aside".*

In addition, the Club submitted that the balance of interests dictated that the damages it would sustain as a result of an immediate execution of the DRC decision visibly outweighed the disadvantages the Player would sustain if the stay was not granted. In any case, the Club submitted that CAS jurisprudence did not prevent the CAS from re-imposing the aforesaid ban at the end of the proceedings, in case the Club's substantive appeal were to be dismissed on merits.

The Club did not request for a stay of the execution of the monetary award, submitting that only a Swiss Federal judge, and not the CAS had jurisdiction to enforce such a claim (CAS 2004/A/568 and CAS 2004/A/780). It requested the Panel to confirm that it was unable to enforce the execution of this monetary award.

On 18 July 2008, the Club filed its Appeal Brief in which it states a more detailed and complete description of the facts and develops legal arguments on which the appeal is based, appointing several witnesses to be heard which it intends to rely on in support of its case and in which it reiterates its application for a stay of the execution of the DRC Decision. In addition to the request

for stay abovementioned, the Club requested the Panel to stay this appeal proceeding *"(…) until FIFA has passed a final decision in connection with the claim (ref. 07-00194/cru) filed by F.C. Flora Tallinn v. the Appellant club Kuwait Sporting Club, thus allowing the affair to be brought before CAS and merged with the present appeal proceeding"*.

On 11 August 2008 the Player filed its answer in which it states the facts and legal arguments in response to the appeal, together with all documents upon which it intends to rely on and its position regarding the Club's application to stay the execution of the DRC Decision.

On 8 July 2008, before filing its answer, the Player wrote to the CAS, indicating its position regarding the Club's request for stay.

The Player did not object to the Club's request to stay the execution of the monetary compensation awarded to him by the DRC, saying it could not *"say anything but accept the stay of the decision on the amount due to be paid to Z."* in line with CAS jurisprudence (CAS 2003/O/486). The Player made no comment in relation to the Club's request to stay the execution of the ban imposed on the Club from registering players, national or international for two registration periods.

On 18 August 2008 FIFA filed its answer in which it states the facts and legal arguments in response to the appeal on and its position regarding the Club's application to stay the execution of the DRC Decision.

On 14 July 2008, before filing its answer, FIFA sent a letter to the CAS in which it did not object to the Club's request for stay of execution of the challenged decision. In the said letter, FIFA referred *"(…) to the constant and continuous jurisprudence of CAS according to which requests for stay of execution in case of sporting sanctions imposed on players and clubs in football related matters are accepted without exception (…). In view of this fact, (…) [FIFA] refrain[s] from objecting the [Club's] request to stay the execution of the challenged decision in question"*.

Accordingly, via a letter dated 17 July 2008, the Panel confirmed to the parties that it had granted the Club's request for stay of the challenged decision due to the fact that both Respondents had not objected to the said request.

On 30 September 2008, and following consultation of the Parties, the CAS Court Office sent a letter to the Parties confirming that the hearing would take place on 17 November 2008 at the CAS Headquarters in Lausanne, Switzerland and invited the Parties to inform the witnesses that they were offering to be heard.

During the hearing the Parties were invited to present any preliminary remarks or issues in relation to the proceedings. The Club asked the Panel to give its answer in relation to its request to have this appeal stayed until FIFA had passed a final decision in connection with the claim filed by FC Tallinn against the Club (ref. 07-00194/cru) so that the decision from FIFA could be merged with the present appeal proceeding.

The Panel also heard the views of the Player and FIFA in relation to the Club's request for stay and merger of the present appeal proceeding with the FIFA case reference 07-00194/cru. Both Respondents underlined the fact that the dispute pending before the DRC between the Club and FC Tallinn is independent from the present appeal in as far as the subject matter and grounds on which it has been filed relate are concerned. They submitted that the decision rendered by the DRC there from will have no effect on this appeal, and *vice versa*. Accordingly, they requested that the stay sought by the Club in relation to the DRC proceedings case ref. 07-00194/cru be rejected.

The Player on the other hand reiterated its earlier submissions in its answer to the appeal brief and maintained that *"(…) any affirmations to the [Club] by the FC Tallinn did and cannot concern the contractual relation between the [Club] and the [Player]! Therefore the request of the [Club] to stay the proceeding until the FIFA DRC has decided about the claim of the FC Tallinn (ref. 07-00194/cru) is irreproducible and has to be rejected. The behaviour of a third party must not be used as an argument against the [Player]".*

FIFA reiterated its earlier submissions in its answer to the appeal brief and maintained that *"(…) the conclusion that any decision that will be taken in the dispute between the two clubs concerned with respect to the mentioned loan agreement, a matter which is currently pending before FIFA´s Players´ Status Committee will not have any effect on the present matter and vice versa".*

The Panel now addresses the Club's request for a stay and merger of these proceedings with the final decision in the DRC case ref. 07-00194/cru and notes that the parties and issues pending before the DRC case ref. 07-00194/cru are different in nature and substance to this appeal. They are two different disputes related to independently different contracts and claims. The Player was not a party to the contractual Loan Agreement between the Club and FC Tallinn. Neither these two contracts are linked from a legal point of view. Therefore, the outcomes of the rulings in the DRC case ref. 07-00194/cru and of this appeal should have no impact on either of the two cases and vice versa.

Furthermore, there have been no submissions from the Club that the Player will not suffer any harm if these proceedings are stayed. As a matter of fact, what lies in stake for the Player in case of a successful ruling in its favour from this appeal is compensatory damages for the unilateral termination of the Employment Contract. The Club has neither demonstrated that it is likely to sustain harm greater than that which the Player will sustain if these proceedings are not stayed, nor that the interests of the FIFA DRC case ref. 07-00194/cru outweigh the interests of this appeal. In any case, there is no *prima facie* guarantee that the FIFA DRC will rule in favour of the Club in the proceedings pending therein. Accordingly, and on these grounds, the Club's request to stay these appeal proceedings is rejected.

LAW

Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 61 par. 1 of the FIFA Statutes and article R47 of the code of sports related arbitration.

Applicable Law

2. Pursuant to article R58 of the Code a panel is required to decide the dispute:

   "The Panel shall decide the dispute according to the applicable regulations and rules of the law chosen by the parties, or in the absence of such 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 the law, the application of which the panel deems appropriate. In the latter case, the panel shall give reasons for its decision".

3. Pursuant to article 60 par. 2 of the FIFA Statutes in force at the time of the appeal to CAS:

   "CAS shall apply the various regulations of FIFA and, additionally Swiss law".

4. In the present matter, the Panel notes that the Parties agreed under article 25 of the Employment Contract to subject any dispute to the FIFA Regulations.

5. The Panel confirms that in accordance with article 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition 2008) the provision version of the regulations (edition 2005; the "Regulations") is applicable to the matter at hand as to the substance. For any matter not provided under the FIFA Regulations reference shall be made to Swiss Law.

Issues for determination

6. The Panel has identified the following issues for determination in order to arrive at an award:

   A. Whether the Employment Contract between the Player and the Club was valid.

   B. In case the Employment Contract was valid, whether it was justifiably or unjustifiably terminated (breached) by the Club.

   C. If the answer to (ii) above is affirmative, what is the compensation due to the Player?

   D. If the answer to (ii) above is affirmative what are the sporting sanctions applicable to the Club?

A. Whether the Employment Contract between the Player and the Club was valid

7. From the evidences adduced by the Parties in the proceedings it has been confirmed to the Panel that both the Club and the Player voluntarily entered into the Employment Contract accepting the terms and conditions thereunder.

8. It is not disputed by the parties that the Employment Contract was subjected to a successful medical examination. This is evidenced by Clauses 4(b) of the Employment Contract which read *"(…) [i]n all condition, all club's financial obligations are subject to that the player successfully passed the medical examination and his ITC arrived to Kuwait SC by no later than 28.01.2007".*

9. Under article 18.4 of the FIFA Regulations *"the validity of a contract may not be made subject to a successful medical examination and/or grant of a work permit"* and any clause to this effect would effectively be null and void. This nullity does not affect the validity of the entire contract. The duties of the Parties towards each other under the Employment Contract remained valid and binding. Therefore, the condition for a successfully passed medical examination imposed by the Club for the enforcement of the Employment Contract should be considered as a non written clause.

10. The Panel shares the DRC decision in relation to the issue of the invalidity of clause 4.2 of the Employment Contract in accordance with article 18.4 of the FIFA Regulations and confirms the validity of the Employment Contract in relation to the remaining rights and obligations between the Parties.

B. In case the Employment Contract was valid, whether it was justifiably or unjustifiably terminated (breached) by the Club.

11. Having established the Employment Contract valid, except in relation to clause 4.2, the Panel should now assess whether the termination cause invoked by the Club is lawful or unlawful.

12. The Club sustains the termination of the Employment Contract on the grounds adduced in its letter dated 8 February 2007 which read:

"(…) in view of Article (4) paragraph (b) of the contract signed between the club and you, we are very disappointed to inform you that you failed to pass the Medical Examination, as proved that you suffered from a chronic injury and you are not fit at all to take part in the serious matches that our club will be played within the National Championships, as well as the Arab and Asian Championships.

Therefore, and upon this situation, we are obliged to return you back as per your contract.

(…)".

13. A letter with similar contents – on the same date – was also sent to FC Tallinn justifying the grounds for termination the Loan Agreement.

14. The Club submits that it placed heavy reliance on the contractual assurances given to it by FC Tallinn in relation to the Players health in deciding to enter into the Employment Contract with the Player.

15. It is primarily based on the assurances of FC Tallinn and the Players "failure" to meet the contractual conditions of Clause 4.2 that the Club decided to terminate its contract with the Player. In fact, in its termination letter dated 8 February 2007, the Club states that the termination was based on article 4(b) of the Loan Agreement, a contract which the Player was not party to.

16. Nevertheless, as concluded in paragraphs 9 and 10, the insertion of a clause in the Employment Contract which subjected the transfer to a successful medical examination is illegal and contrary to article 18.4 of the FIFA Regulations. The Club cannot therefore justify its termination of the Employment Contract on the basis of an illegal clause contained under the same Employment Contract or in a contract that the Player was not party to.

17. The Loan Agreement and the Employment Contract are completely autonomous and independent contracts, which have no relation to each other. The agreements under the Loan Agreement cannot be applied or invoked to the Employment Contract and vice versa. The Clubs´ arguments in self defence that they were justified in terminating the Employment Contract on the basis of FC Tallinn's false contractual declarations under the Loan Agreement are therefore rejected.

18. It is, and has always been the buying club's duty to ensure for itself that the player they intend to contract is in good physical condition. The *lex mercatoria* between clubs and players has always seen buying clubs conducting medical examinations on players before concluding any employment contract with the prospective player. Unless FC Tallinn was aware of any injuries of the Player which could give rise to the duty to disclose such fact, then they would be obligated to disclose this fact to avoid any liability in result of bad faith conduct. However, from the evidences adduced in the proceedings the Club was not able to prove FC Tallinn was aware and induced the Club in bad faith to contract the Player.

19. On these grounds, the Panel finds that the Club had no justifiable grounds to terminate the Employment Contract. The termination was therefore unilateral and unjustified and, consequently, the Club must compensate the Player for the damages suffered.

C. If the answer to (ii) above is affirmative, what is the compensation due to the Player?

20. Having established that the Club breached the contract, we must assess if compensation is due to the Player.

21. The Club argues that no damages exist to the Player because he was entitled to return to FC Tallinn upon the termination of the contract and that the Player failed to mitigate his own damages by not requesting to be reintegrated into FC Tallinn.

22. The Panel thinks otherwise. Loan transfers are contracts and confer upon both parties rights and duties similar to those which would have accrued to them had the Employment Contract or transfer been signed on a permanent basis.

23. This is corroborated by article 10.1 of the FIFA Regulations which reads in part that *"(...) [a]ny such loan is subject to the same rules as apply to the transfer of players (...)"*. The FIFA Regulations therefore subject loan transfers to the same rules which govern ordinary or permanent transfer of players.

24. The Player's employment contract with FC Tallinn had been temporarily suspended by virtue of clause 11.2 of his employment contract with FC Tallinn, which stipulated that:

"In addition to the bases provided for in the republic of Estonia Employment Contract Act, this employment contract shall also be suspended for the period of engagement of the employee under a lending contract in another football club in accordance with the FIFA regulations".

25. Therefore FC Tallinn was under no obligation to accept the Player back during the period he was entitled to be contracted to the Club on loan. This position is corroborated by Article 10.4 (2) of the FIFA Commentary which reads:

"During the period that the player is on loan, the effects of the employment contract with the club of origin are suspended, i.e. the club of origin is not obliged to pay the player's salary and to provide him with adequate training and/or other privileges or entitlements as foreseen in the contract. It is the responsibility of the new club to pay the player's salary in accordance with the new contract with the player".

26. There is no evidence that the Player undertook any other type of employment or received external remuneration after the termination of the Employment Contract. The Club has failed to prove that the Player received any income from FC Tallinn or from any other club after the termination. For this reason, the Player cannot be said to have failed to mitigate his own damages.

27. On these grounds, the Panel finds that the Player was not obliged to return to FC Tallinn during the period covering his Loan Agreement with the Club and neither was FC Tallinn obliged to accept him back. The Player therefore did not fail to mitigate his own damages by failing to return to FC Tallinn after the termination. The Club's submissions in relation to compensation are therefore rejected.

28. Accordingly having established that the Club unilaterally terminated the Employment Contract without just cause, the Panel is of the view that the compensation due to the Player from the Club for the unilateral termination of the Employment Contract without just cause must therefore be calculated on the basis of the provisions of article 17.1 of the FIFA Regulations.

29. In accordance with article 17.1 of the FIFA Regulations, compensation for unilateral termination of contract must be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. In this case, the law to be

given due consideration is the Swiss Law, in particular article 337c para. 1 of the Swiss Code of Obligations which states, in its English translation [ed. 2005, by the Swiss American Chamber of Commerce], that:

"If the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement".

30. The period remaining under the Player's Employment Contract with the Club was five and a half months, the Player having already spent two weeks at the club. There is however evidence that the Player was never paid for these two weeks. Accordingly, the Panel takes this period (six months) into account and considers that the damage suffered by the Player based on the pecuniary expectations under the contract had it been fulfilled by the Club up to its end.

31. The benefits due to the Player under his existing contract with the Club were salaries of USD 20,000 to be spread over the six months. This totals to USD 120,000. This is the amount due to the Player from the Club as a result of the unilateral termination.

D. If the answer to (ii) above is affirmative what are the sporting sanctions applicable to the Club?

32. Having established that the Club breached the Employment Contract the Panel is now called upon to analyse whether sporting sanctions must be imposed.

33. Article 17.4 of the FIFA Regulations imposes, on the basis of strict liability, a ban from registering players, either nationally or internationally on any club which unilaterally terminates a player's contract within the protected period.

34. The Panel must therefore consider and ask itself whether the termination occurred within the protected period and whether the Employment Contract was subjected to the principles of contractual stability and the protected period.

35. The Club argues that the loan was a temporary rather than permanent because it was for a period of only half a year (six months). It further argues that since the Employment Contract was for six months, and that it was also on a loan basis, the protected period cannot be applied to the Employment Contract because the Player's original employment contract with FC Tallinn remained valid. Therefore, under the principle of contractual stability, the Club argues that the Player would not have remained unemployed as a result of the termination of the contract by the Club, as he would have returned to FC Tallinn.

36. FIFA and the Player are of a different view. According to FIFA, sporting sanctions must be imposed on the Club in accordance with Article 17.4. FIFA avers that the termination occurred within the protected period and that employment contracts which take the form of loan agreements, are neither different from ordinary employment transfer contracts nor are they excluded by the FIFA regulations from the provisions governing protected periods and contractual stability. FIFA argues that if loan agreements were exempted from the protected

period, clubs and players would easily evade their contractual responsibilities. It supports the ban on national and international transfers for two registration periods issued by the DRC.

37. The Player contends that the breach occurred within the first month of the Employment Contract, which was well within the protected period. It argues that the FIFA Regulations do not distinguish between loan contracts and contracts under which a player is loaned to a club. It says that the DRC ban on registering new players, either nationally or internationally for two registration periods is reasonable.

38. The termination took place two weeks into the Employment Contract. This was well within the protected period. The Panel is of the view that loan agreements, regardless of their length, and provided that they run for a minimum period of two registration periods, are contracts and confer upon the loaned party, rights and duties similar to those which would have accrued to it had it been contracted or transferred on a permanent basis.

39. This is corroborated by Article10.1 of the FIFA regulations which, as quoted in paragraph 23 above, subjects loans to the same rules as those which govern ordinary transfer of players.

40. The panel also reiterates that one of the characteristics of a transfer, be it a loan or a permanent transfer is that it brings with it the effects of contractual stability and the protected period. These are the features applicable to the present Employment Contract. The Panel therefore disagrees with the Club's submissions that the protected period was only applicable to the Player's contract with FC Tallinn and not to the Loan transfer. In this regard, the Panel further refers to article 10.4 (2) of the FIFA commentary (which is quoted in paragraph 25 above) and asserts that the effects of the Player's employment contract with FC Tallinn remained suspended during the period when the Player was on loan at the Club.

41. Therefore, in signing the Player on loan, the Club was obliged to adhere to the principles of contractual stability and to the protected period. The Panel also agrees with FIFA´s reiterations that if loan transfers were exempt from the principles of protected periods, then clubs and players would find easy avenues through which they would evade their contractual responsibilities.

42. Having established that the Employment Contract was subject to the protected period and that it was unilaterally terminated by the Club, the Panel has no choice but to apply the provisions of article 17.4 of the FIFA Regulations which imposes a ban from registering players, either nationally or internationally on any club which unilaterally terminates a player's contract within the protected period.

43. Such sanctions are imposed on the basis of strict liability as provided by the FIFA Regulations and the Panel has no choice but to impose them. The power to decide whether or not impose such sanctions only lies with FIFA. This was clearly stated in CAS 2004/A/802 where it was stated that *"(…) the limitation of the suspension asked by the Appellant will suppose that FIFA changes the substance of the decision of suspension pronounced by UEFA Control & Disciplinary Body on 11 November 2004 this will infringe art 141 ff. FDC, pursuant to which, FIFA can only grant or refuse the*

request for a worldwide extension of a sanction against a serious infringement asked by a federation, in the present case UEFA, but cannot review the substance of said sanction(cf. art 144 FDC)".

44. The CAS has therefore no discretion not to impose such sanctions as this is the minimum order it can issue.

45. Accordingly, the Panel upholds the DRC decision and bans the Club for a period of two registration periods following the date of this decision from conducting either national or international registration of players.

The Court of Arbitration for Sport rules:

1. The appeal filed by Kuwait SC against the decision dated 15 February 2008 of the FIFA Dispute Resolution Chamber is rejected.

2. The decision issued by the FIFA Dispute Resolution Chamber on 15 February 2007 is confirmed.

(…)

6. All other prayers for relief are dismissed.