Arbitrations CAS 2010/A/2145 Sevilla FC SAD v. Udinese Calcio S.p.A. and CAS 2010/A/2146 Morgan De Sanctis v. Udinese Calcio S.p.A. and CAS 2010/A/2147 Udinese Calcio S.p.A. v. Morgan De Sanctis & Sevilla FC SAD, award of 28 February 2011

Panel: Mr Mark Hovell (United Kingdom), President; Mr José Juan Pintó (Spain); Prof. Massimo Coccia (Italy)

Football
Unilateral termination of the employment contract without just cause
Calculation of the compensation for damages
Liquidated damages clause
Application of the "objective criteria" of Art. 17.1 of the Regulations
Replacement costs
Method of calculation of the compensation for damages
Deduction of the remuneration under the former employment contract
Specificity of sport
Important contribution of the player
Dies a quo *for the awarding of interests*

1. **It is the panel's role to consider each of the criteria within Art. 17.1 of the Regulations and indeed any other objective criteria in the light of the specific facts of the case and to determine how much weight, if any at all, to apply to each in determining the amount of compensation due in the particular case. In addition, the onus is on the parties to provide the evidence for the panel to carry out this task. Although the facts involved in previous awards, and those in cases to follow, are and will be different from each other, the role of a panel remains the same, to apply all of the Art. 17.1 criteria and any other objective criteria to the specific facts and determine which are relevant and which are not and to ensure the calculation made shall be not only just and fair, but also transparent and comprehensible, with a view to putting the injured party in the position it would have been in had no breach occurred.**

2. **It is only the previous employment contract that is relevant when seeking if the parties have agreed a contractual remedy for the breach of the employment contract; such a clause in the new employment contract may only assist a judging authority in seeking to assess the value of the player's services.**

3. **The list of "objective criteria" of Art. 17.1 of the Regulations is not intended to be definitive. Indeed, if the positive interest principle is to be applied, then other objective criteria can and should be considered, such as loss of a possible transfer and replacement costs. However, for compensation to be due in such instances there must be the logical nexus between the breach and loss claimed.**

4. **Whilst there is an obligation on the old club to mitigate its position, how this is done in practice will vary from case to case. In all instances it is the judging authorities' role to review the particular facts of the case concerned, with the benefit of being able to look back at what actually was done and how that worked out in the specific case. What is normal in football today is the shortage of time available for the injured party in which to make replacements. Therefore the speed in which the injured party acts and the fact that the position of the player to be replaced is specific (goalkeeper) will make it easier for the injured party to make the logical nexus between the replacement costs/loss and the breach, and for the judging authorities to see whether or not the replacement strategy eventually worked.**

5. **There is not just one and only calculation method of the compensation for damages and each case must be assessed in the light of the elements and evidence available to each CAS panel. In the absence of any concrete evidence with respect to the value of the player's services, the panel shall use a different calculation method to determine the appropriate compensation, the one which would be the closest to the amount that the injured party would have got or saved if there had been no breach by the player, for instance by using the value of the replacement costs.**

6. **A panel can still use the remuneration of the former employment contract, as directed by Art. 17.1 of the Regulations when considering the issue of whether the injured party has saved the remuneration that it would have paid the player. It is correct to deduct these as part of the calculation of compensation.**

7. **The specificity of sport is not an additional head of compensation nor a criterion allowing to decide in equity, but a correcting factor which allows the panel to take into consideration other objective elements which are not envisaged under the other criteria of Art. 17 of the Regulations. However, in no case does the specificity of sport enable a transfer fee through the back door.**

8. **At any club, when a key player is sold or goes and time is required for a new "hero" to materialise, revenues will be affected, the injured party will suffer losses which it may not be able to prove in Euros. This is where the specificity of sport can be used and should be used.**

9. **The *dies a quo* from which interest should run is the first day following the date on which the player is considered to have been in breach of the employment contract.**

Sevilla Fútbol Club SAD ("Sevilla") is a Spanish football club currently competing in La Liga. It is a member of the Real Federación Española de Fútbol (RFEF), which is affiliated to the Fédération Internationale de Football Association (FIFA).

Udinese Calcio S.p.A. ("Udinese") is an Italian football club currently competing in Serie A. It is a member of the Federazione Italiana Giuoco Calcio (FIGC), which is affiliated to FIFA.

Morgan De Sanctis is a professional footballer, born on 26 March 1977 ("De Sanctis" or "the Player"), currently playing for Napoli in Serie A of the Italian Leagues, having previously played for Udinese and then Sevilla.

On 5 July 1999, the Player joins Udinese from Juventus Turin, in the position of goalkeeper, signing his first contract with Udinese, for a period of 5 years effective from 1 July 1999. At that time, Udinese acquires 50% of his economic rights from Juventus Turin for the sum of EUR […].

The remaining 50% of the economic rights in the Player were acquired by Udinese from Juventus Turin on 30 May 2000 for the sum of EUR […].

On 10 November 2000, the Player and Udinese sign a second contract, for 5 years and with effect from 1 July 2000.

On 18 October 2003, the Player and Udinese sign a third contract, for 5 years and with effect from 1 July 2003.

The Player reaches the age of 28 on 26 March 2005.

On 20 September 2005, the Player and Udinese sign a fourth and final contract, for 5 years and with effect from 1 July 2005 (the "Udinese Contract" or the "Old Contract"), under which the Player was to be paid a gross annual salary of EUR 630,000 along with an annual contribution to his rent of EUR 9,700 and the opportunity to participate in certain squad performance bonuses. On the same day the Player and Udinese sign a loyalty bonus agreement, under which the Player would receive the gross sum of EUR 350,878 for each year he remained at Udinese.

Udinese also submitted that the agent was to be paid EUR 60,000 (including VAT at 20%) for his part in the signing of the Udinese Contract.

The Udinese Contract was registered with the FIGC on 22 September 2005.

On 7 July 2006, Udinese loans out another of their goalkeepers, S., to FC R. Within the loan arrangement was an option for FC R. to acquire the economic rights of S. for EUR 1,200,000 and a

counter option for Udinese to take the player back, but at a cost of EUR 250,000, which Udinese would then have to pay to FC R.

The last match of the 2006/2007 season for Udinese was on 27 May 2007. Udinese shortly thereafter, on 7 June 2007, writes to FIFA regarding an alleged approach by Sevilla to the Player.

Around that time, FC R. exercises its option in relation to S.

On 8 June 2007, the Player writes to Udinese to terminate the Udinese Contract. The notice to terminate (the "Notice") was with effect from the end of the 2006/2007 and specifically referred to Art. 17 of the FIFA Regulations for the Status and Transfer of Players (the "Regulations").

On 21 June 2007, Udinese exercises its counter option with FC R. and S. rejoins Udinese.

In June 2007, Udinese releases three goalkeepers and, on 29 June 2007, also signs A., a 37 year old goalkeeper, who was at that time without a club.

The Player, on 10 July 2007, signs with Sevilla on a 4 year contract (the "Sevilla Contract" or the "New Contract"), which provided for an annual gross salary of EUR 331,578 and a gross contract premium payment of EUR 1,050,000. In addition, the Sevilla Contract contained a clause stating that if the Player sought to terminate the Sevilla Contract before its expiry, then he would be liable to pay compensation to Sevilla in the sum of EUR 15,000,000.

Sevilla, through the RFEF, applied for the International Transfer Certificate for the Player from the FIGC in July 2007. The FIGC refused and the matter was finally resolved by the Single Judge of the FIFA Players' Status Committee, who issued the ITC on 13 August 2007, subject to any claim of compensation that Udinese may make.

On 18 April 2008, Udinese files its complaint with FIFA's Dispute Resolution Chamber (the "DRC") claiming an amount of EUR 23,267,594 as compensation for the Player's breach. After both Sevilla and the Player were given their respective opportunities to file submissions, the DRC considers the matter on 10 December 2009, circulating the operative part on 13 January 2010 to the parties.

Following the request of the parties to issue a detailed decision (the "Appealed Decision" or the "DRC Decision"), the DRC notified this on 3 June 2010, in which it determined:

> *"1. The claim of the Claimant, Udinese Calcio, is partially accepted.*
>
> *2. The Respondent 1, Morgan de Sanctis, has to pay the Claimant, Udinese Calcio, the amount of EUR 3,933,134, as well as 5% interest per year on the said amount as from 9 June 2007,* ***within 30 days*** *as from the date of notification of this decision.*

3. *The Respondent 2, Sevilla FC, is jointly and severally liable for the payment of the aforementioned sum.*
4. *All other claims lodged by the Claimant, Udinese Calcio, are rejected.*
5. *If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
6. *The Claimant, Udinese Calcio, is directed to inform the Respondent 1, Morgan de Sanctis, and the Respondent 2, Sevilla FC, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

On 24 June 2010, Sevilla, the Player and Udinese all separately filed Statements of Appeal with the Court of Arbitration for Sport (CAS) against the Appealed Decision.

Sevilla filed with the CAS its Statement of Appeal on 24 June 2010, challenging the Appealed Decision, in the matter CAS 2010/A/2145, requesting:

"1. To accept this appeal against the decision of the FIFA Dispute Resolution Chamber dated 10th of December 2009 with grounds given to the Parties on the 3rd of June 2010.
2. *To adopt an award annulling the said decision and adopt a new one stating that the Appellant is not liable to compensate the Respondent for the breach of contract by the Player.*
3. *Further and in the alternative, to adopt an award annulling the said decision and adopt a new one declaring that the Appellant is not liable to compensate the Respondent with EUR 3,933,134 plus 5% annual interest because the amount is disproportionately high and/or incorrectly determined, according to the evidences and the law.*
4. *To confirm the Player was indeed outside of the Protected Period when he breached his contract.*
5. *To fix a sum of 40.000 CHF to be paid by the Respondents to the Appellant, to help the payment of its defence fees and costs.*
6. *To condemn the Respondent to the payment of the whole CAS administration costs and Arbitrators fees".*

On 15 July 2010, Sevilla filed its Appeal Brief with the CAS. This contained the revised prayers for relief, as follows:

"1. To accept this appeal against the decision of the FIFA Dispute Resolution Chamber dated 10th of December 2009 with grounds given to the Parties on the 3rd of June 2010.
2. *To adopt an award annulling the said decision and adopt a new one stating that the Appellant is not liable to compensate the Respondent with EUR 3,933,134 plus 5% annual interest because the amount is disproportionately high and/or incorrectly determined.*

3. *Further and in the alternative, to adopt an award stating that the Player and Sevilla are jointly and severally liable in the amount of EUR 262,500 as payment for the value of 8 months of salaries of Player in accordance with Article 339 c).2 of Swiss law.*

4. *Further and in the alternative, to adopt an award stating that the Player and Sevilla are jointly and severally liable in the amount of EUR 1,050,500 as payment for the value of the residual salaries of the Player.*

5. *To confirm the Player was indeed outside of the Protected Period when he breached his contract and as a result neither Sevilla FC nor Morgan De Sanctis should receive any sporting sanctions.*

6. *To fix a sum of 40.000 CHF to be paid by the Respondent to the Appellant, to help the payment of its defence fees and costs.*

7. *To condemn the Respondent to the payment of the whole CAS administration costs and Arbitrators fees".*

The Player filed with the CAS his Statement of Appeal on 24 June 2010, also challenging the Appealed Decision, in the matter CAS 2010/A/2146, requesting:

"1. The appeal is confined to Section III, paragraph 2 of the DRC Decision relating to the award of financial compensation. The Appellant requests that the CAS Panel makes an order quashing Section III, paragraph 2 of the DRC Decision and finds that in view of the facts the compensation awarded was incorrectly determined and/or erroneously calculated and is in any case disproportionately excessive.

2. The CAS Panel, in accordance with R57 of the CAS Statutes should review the pertinent facts and law, annul Section III, paragraph 2 of the DRC Decision and issue a new decision in this regard.

3. The costs of this arbitration procedure should be borne by the Respondent, which shall include all the costs and expenses of the CAS and the CAS Panel and the legal fees and expenses of the Appellant".

On 15 July 2010, the Player filed his Appeal Brief with the CAS. This contained the revised prayers for relief, as follows:

"1. To accept and uphold this appeal against the decision of the FIFA DRC of the 10th of December 2009.

2. To overturn the following provision contained in the decision of the FIFA DRC and which forms the subject of this appeal:

"Section III. Decision of the Dispute Resolution Chamber

3. Udinese 1 [sic], Morgan de Sanctis, has to pay the Claimant, Udinese Calcio, the amount of EUR 3,933,134 as well 5% interest per year on the said amount as from 9 June 2007, within 30 days, as from the date of notification of this decision".

on the basis that the said amount of EUR 3,933,134 is excessive and has been incorrectly determined.

3. *To otherwise endorse and concur with the considerations made by the DRC with express reference to the finding that the termination of the contract was effected outside the protected period and the refusal to take into consideration the requests by Udinese for further and other compensation as contained at Section II, paragraphs 27, 31, 33, 34 and 36 of the DRC decision.*

4. *In the event that an award of compensation is made in favour of Udinese, to make an award in the amount of Euro 233.333,00 further to Article 339c.2 of the Swiss Code of Obligations.*

5. *In the alternative to make an award in favour of Udinese, by way of compensation, in the amount of EUR 1.050.500 being the residual value of the Player's contract.*

6. *To order that Sevilla FC is jointly and severally liable, together with the Player for the payment of any compensation that the Player may be directed to pay to Udinese.*

7. *To make an order that Udinese is liable to pay the entire of the costs and expenses of the Court, including those of the Panel, including any advance of costs paid by the Player together with all and any legal fees and expenses of the Player to be submitted upon request".*

31. Udinese filed with the CAS its Statement of Appeal on 24 June 2010, also challenging the Appealed Decision, in the matter CAS 2010/A/2147, requesting:

"1. The appeal is upheld.

Ruling de novo

2. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D are ordered to pay, jointly and severally, EUR 23,267,594 (twenty-three million two hundred and sixty-seven thousand, five hundred and ninety-four Euro), plus interest at 5% from 8 June 2007.*

3. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D shall bear all the costs of this arbitration.*

4. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D shall be ordered to pay Udinese Calico S.p.A. compensation towards the legal and other costs incurred by the latter in this arbitration".*

On 15 July 2010, Udinese filed its Appeal Brief with the CAS. This contained the revised prayers for relief, as follows:

"1. The appeal is upheld and the decision issued on 10th December 2009 by the FIFA Dispute Resolution Chamber is varied in part.

Ruling de novo

2. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D are ordered to pay, jointly and severally, EUR 10,000,000 (ten million Euro), plus interest at 5% from 9 June 2007.*

3. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D shall bear all the costs of this arbitration.*

4. *Morgan De Sanctis and Sevilla Fútbol Club S.A.D shall be ordered to pay Udinese Calico S.p.A. compensation towards the legal and other costs incurred by the latter in this arbitration".*

On 17 August 2010, Sevilla filed its Answer to Udinese's Appeal, the details of which are contained in the summary of Sevilla's submissions below. In its Answer, it confirms its prayers for relief contained in its Appeal Brief, as set out above.

On 18 August 2010, the Player filed his Answer to Udinese's Appeal, the details of which are contained in the summary of the Player's submissions below. In his Answer, he repeats his prayers for relief as in his own Appeal Brief, as set out above

On 18 August 2010, Udinese filed its joint Answer to both Sevilla's and the Player's Appeals, the details of which are contained in the summary of Udinese's submissions below. In addition, the Answer slightly modified Udinese's prayers for relief, as it no longer claimed there were any unamortised Agent's fees to consider.

The parties requested a hearing and all duly signed the Order of Procedure beforehand.

A hearing was held on 16 November 2010 at the CAS premises in Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

There were no witnesses or experts providing evidence or opinions at the hearing, but the Player and the representatives of Sevilla and Udinese all spoke and were examined by the Panel and the other parties. The parties were given the opportunity to present their cases, submit their arguments and to answer any questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its decision to its written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed between the parties, derives from Art. 62 and 63 of the FIFA Statutes (August 2008 edition) as well as Art. R47 of the Code.

2. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one. The parties confirmed this position by all signing the Order of Procedure in this matter.

Applicable law

3. Art. 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".

4. Moreover, Art. 62 para. 2 of the FIFA Statutes provides that the:

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

5. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss Law shall apply subsidiarily.

6. The dispute at hand was submitted by Udinese to the DRC on 18 April 2008, as was confirmed by FIFA in the DRC Decision. As the filing date occurred after 1 January 2008, which is the date the 2008 version of the Regulations came into force, the 2008 version of the Regulations is relevant for this case.

Admissibility

7. The hearing relating to the DRC Decision was held on 10 December 2009, and the findings were notified to the parties shortly thereafter. The detailed version of the DRC Decision was notified to the parties on 3 June 2010. The parties, therefore, had under Art. 63, para. 1 of the FIFA Statutes, until 24 June 2010 to file their Statements of Appeal, which they all did. Hence, the three Appeals are admissible as they were filed within the stipulated deadlines.

8. The Appeals were filed within the deadline provided by the FIFA Statutes and stated in the DRC Decision. The parties complied with all other requirements of Art. R48 of the Code, including the payment of the CAS Court Office fees.

Joinder

9. The appeals procedures CAS 2010/A/2145, CAS 2010/A/2146 and CAS 2010/A/2147 shall be conducted jointly, as the three appeals arise from the same circumstances and are directed at the same DRC decision; the parties are the same in the procedures, being the old club, the player and the new club; the same panel of arbitrators has been appointed for the three appeals; and pursuant to Art. R50(2) of the Code, the parties have all expressly agreed to the joinder, confirming the same by signing the Order of Procedure. The Panel will therefore render one common award.

New Documents

10. At the hearing, Udinese initially claimed it had never seen the FIFA file, or a copy of the Sevilla Contract. It later discovered the same had been sent to its attorney's offices, but temporarily mislaid. Time was given to Udinese to review these and the Sevilla Contract, in particular.

11. Sevilla objected to Udinese seeking to amend its submissions, particularly referring to the liquidated damages clause in the Sevilla Contract. The Panel, however, noted Udinese did not seek to add to its claims or prayers at the hearing, merely to rely upon a document within the CAS file.

The Merits

12. The Panel noted in this instance the parties all agreed that the Player had breached the Udinese Contract without just cause and that compensation was due to Udinese. Whilst Sevilla had initially submitted that it should not be responsible for the Player's breach, it was confirmed at the hearing that any award for compensation should be made joint and severally against the Player and Sevilla. In addition, none of the parties agreed with the DRC's method of calculation within the DRC Decision and as such, the Panel had to determine the following:

    A. Is the method of calculation within the DRC Decision correct?

    B. If not, how should the compensation be calculated?

    C. In particular, is there any liquidated damages clause?

    D. If not, then how should the *"objective criteria"* of Art. 17 of the Regulations be applied?

    E. Is the *"law of the country concerned"* of relevance and if so, how should it be applied?

F. What is the relevance of *"the specificity of sport"* and how should it be applied?

G. Should interest accrue on any compensation and, if so, at what rate and from what date?

H. Any other prayers for relief?

A. Is the method of calculation within the DRC Decision correct?

13. All of the parties took issue with the averaging aspect within the DRC Decision, that is to say, the main part of the compensation calculation made by the DRC as set out in para. 40 of the Appealed Decision:

"In sum, the Chamber concluded that the amount of compensation for breach of contract without just cause to be paid by the Respondent 1 to the Claimant is firstly composed of the amount of EUR 3,547,134 being the reflection of the average remuneration and other benefits due to Respondent 1 under the previous and the new contract and the value attributed to his services by the both clubs as well as EUR 36,000 being the non-amortized agent fee over the term of the contract. Equally, the amount of compensation needs to include EUR 350,000 reflecting the sports-related damage caused to the Claimant by the Respondent 1 in the light of the specificity of sport. On account of the above, the Chamber considered that the total amount of EUR 3,933,134 is to be considered an appropriate and justified amount of compensation to be awarded to the Claimant".

At the hearing, Udinese submitted that perhaps the DRC had been confused by the averaging of the CAS panels in both the CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881 decisions, when they respectively looked at the range of fees that the new clubs were willing to pay to acquire the services of the players in those cases and took the mid point in each instance. However, in both of these cases, in order to calculate the value of those players' services, they also took the remuneration under the new contracts and then deducted the remuneration from the old contracts – in neither case did they take the average of the remuneration between the old and the new contracts.

14. The Panel notes that there is no written reasoning behind the DRC's key decision to take the average of the remuneration under the New Contract and the Old Contract in this case, despite the wording of Art. 14.4 of the FIFA Rules which provides that decisions of the DRC must contain *"reasons for the findings"*. Much as it has used part of the Art. 17.1 criteria, that is *"…the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract…".,* the DRC has not given any detailed reasoning behind the decision to take the average, as opposed to using the total left under the Old Contract (as in CAS 2007/A/1298 & 1299 & 1300) or the total due under the New Contract less the total under the Old Contract for those 3 remaining years (as formed part of the calculation for the value of the players' services in CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881). The Panel also noted Udinese's contentions regarding the sum

awarded for the specificity of sport, i.e. EUR 350,000. Again, there was no explanation as to how this figure was arrived at, again falling short of the requirements of Art. 14.4 of the FIFA Rules.

15. Finally, the Panel notes the parties' requests and its ability under Art. 57 of the Code to issue a new decision to replace the DRC Decision, and determines that the DRC should not have taken the average remuneration in this instance and should have produced detailed reasons for its findings on the specificity of sport criterion, so the parties could understand how the sum of EUR 350,000 had been arrived at.

B. How should the compensation be calculated?

16. The Panel notes, and each of the parties submits, that the compensation for the Player's breach of the Udinese Contract is to be determined in accordance with Art. 17 of the Regulations. For completeness, Art. 17 of the Regulations states the following:

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

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Article 20 and Annexe 4 in relation to Training Compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the contractual breach falls within a Protected Period.

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

3. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period. This sanction shall be a restriction of four months on his eligibility to play in Official Matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season of the New Club. Unilateral breach without just cause or sporting just cause after the Protected Period will not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the Protected Period for failure to give due notice of termination (i.e. within fifteen days following the last match of the Season). The Protected Period starts again when, while renewing the contract, the duration of the previous contract is extended.

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the Protected Period. It

shall be presumed, unless established to the contrary, that any club signing a Professional who has terminated his contract without just cause has induced that Professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two Registration Periods.

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

17. The Panel notes that there have been a number of previous awards delivered by CAS panels on this very issue (CAS 2007/A/1298 & 1299 & 1300, CAS 2008/A/1519 & 1520, CAS 2009/A/1880 & 1881 and CAS 2007/A/1358 & CAS 2007/A/1359, to mention a few where the breach is on the part of the player). The Panel also notes both the different facts and outcomes in these awards, and the views of those panels in relation to the method of calculation, i.e. that *"each of the factors listed in Article 17 is relevant, but that any of them may be decisive on the facts of a particular case … Article 17.1 does not require the judging authority ... to necessarily evaluate and give weight to any and all of the factors listed therein"* (paras. 201 and 202 of CAS 2009/A/1880 & 1881); *"Article 17.1 includes a broad range of criteria … some of which may be appropriate to apply to one category of case and inappropriate to apply in another"* (para. 135 of CAS 2007/A/1298 & 1299 & 1300); and *"the task for the body assessing the entity of the compensation due is therefore to verify and analyze as carefully as possible all the elements above and take them in due consideration"* (para. 77 of CAS 2008/A/1519 & 1520).

18. The Panel also notes the "positive interest" principle that was referred to in CAS 2008/A/1519 & 1520 and equally applied in CAS 2009/A/1880 & 1881, as such a panel *"will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly"* (para. 86 of CAS 2008/A/1519 & 1520).

19. As such, it is this Panel's role to consider each of the criteria within Art. 17.1 of the Regulations and indeed any other objective criteria in the light of the specific facts of this case and to determine how much weight, if any at all, to apply to each in determining the amount of compensation due in this particular case. In addition, the onus is on the parties to provide the evidence for the panel to carry out this task. The Panel notes the facts involved in the previous awards, and suspects that those in cases to follow, are and will be different from each other, but that the role of a panel remains the same, to apply all of the Art. 17.1 criteria and any other objective criteria to the specific facts and determine which are relevant and which are not and to ensure *"the calculation made … shall be not only just and fair, but also transparent and comprehensible"* (para 89 of CAS 2008/A/1519 & 1520) with a view to putting the injured party in the position it would have been in had no breach occurred.

C. Is there a liquidated damages clause?

20. The Panel noted that it is to look at the Old Contract first, to see if the parties have agreed a contractual remedy for the breach of the Old Contract. Such a clause is often referred to as a penalty clause or a liquidated damages clause.

21. In this instance, there was nothing in the Old Contract, but the Panel did note that there was one in the New Contract. It is only the Old Contract that it is relevant for this question; such a clause in the New Contract may assist a judging authority if it follows CAS 2008/A/1519 & 1520 principles in seeking to assess the value of the player's services.

22. With no such clause in the Old Contract, the Panel returns to Art. 17.1 of the Regulations for the criteria to follow.

D. How should the "objective criteria" of Art. 17 of the Regulations be applied?

23. The Panel notes that Article 17.1 of the Regulations states: *"These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the contractual breach falls within a Protected Period"*. It is clear to this Panel that the list is not intended to be definitive. Indeed, if the positive interest principle is to be applied, then other objective criteria can and should be considered, such as loss of a possible transfer and replacement costs, as were considered in the CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881 cases. However, the Panel also notes that for compensation to be due in such instances there must be the logical nexus between the breach and loss claimed. The loss of a transfer fee was awarded in CAS 2009/A/1880 & 1881, where the new club and the old club had been directly negotiating a fee at the time of the breach (*"it appears to the Panel that, as a consequence of the early termination of the Player's employment contract, Al-Ahly was deprived of the opportunity to obtain a transfer fee of USD 600,000"*, para. 221 of CAS 2009/A/1880 & 1881). The Panel also noted that within FIFA's commentary on the Regulations, such matters as whether a collective bargaining agreement is in force could be considered.

24. In the jurisprudence available and referred to by the parties in their submissions and during the hearing, the Panel notes that previous panels did not feel bound to consider the Art. 17.1 criteria in a strict order, but rather consider the most appropriate to the facts of their case first. Udinese in both its submissions and at the hearing provided the Panel with details of the replacement costs it had incurred, it alleged, as a direct result of the Player's breach. Whilst replacement costs are not referred to in Art. 17.1 of the Regulations, these have been considered in previous CAS jurisprudence (such as CAS 2008/A/1519 & 1520, CAS

2009/A/1880 & 1881 and CAS 2009/A/1856 & 1857) in order to establish the "positive interest", and it thus seems a logical place to start – to see what loss the injured party has actually suffered as a result of the breach, before comparing this with the theoretical calculations a judging authority is directed to make under Art. 17.1 of the Regulations; as stated by the panel in CAS 2009/A/1880 & 1881 (para. 200) *"… Article 17.1 of the FIFA Transfer Regulations is an attempt by FIFA to give some directions on how to calculate the damage suffered"*. The Panel also notes that in these type of cases, which have different facts from others and will have been through the DRC, a panel has the benefit of hindsight or the benefit of seeing how the breach of contract has actually effected the injured party, as the CAS panel may be looking at a breach that happened many years ago. Indeed, in CAS 2008/A/1519 & 1520, the panel was able to derive a lot of information from that player's next contracts.

25. The Panel notes that in the event that a player waits until the last match of a season, at the end of the protected period and then hands in his notice within 15 days thereof, he avoids the sporting sanctions as set out in Art. 17.3 of the Regulations. However, it then leaves the old club in the position where it is obliged to mitigate its position, but in a short period of time. As detailed in para. 111 of CAS 2008/A/1519 & 1520, *"... any injured party has the obligation to take reasonable steps to mitigate the effects and loss related to his or her damage. This well-recognized principle is confirmed by art. 44 para. 1 of the Swiss Code of Obligations, which states that a judge may reduce or completely deny any liability for damages if circumstances for which the injured party bears the responsibility have aggravated the damage"*.

26. Whilst there is an obligation on the old club to mitigate its position, how this is done in practice will vary from case to case. In some instances the breach is not in accordance with the notice "window" detailed in Art. 17.3 of the Regulations and the old club may find it impossible to mitigate immediately, as they are outside a transfer window; in other cases clubs may do nothing, when they could have or may seek to bring in a replacement player of greater value than the player in breach – in all instances it is the judging authorities' role to review the particular facts of the case concerned, with the benefit of being able to look back at what actually was done and how that worked out in the specific case. What is normal in football today is the shortage of time available for the injured party in which to make replacements.

27. In this case, Udinese had argued before the DRC that the breach had resulted in certain losses such as sponsorship, ticket sales and the like, but the DRC had rejected these in the Appealed Decision and the claims were not made to the CAS. However, Udinese submitted and provided evidence to support the claim that they had to bring back one of their squad who was on loan to FC R. as a replacement. That player, S., was subject to a loan agreement between Udinese and FC R., under which FC R. could acquire his transfer for the sum of EUR 1,200,000. During the hearing, the representative of Udinese confirmed that FC R. had exercised its option prior to Udinese's receipt of the Player's Notice and this evidence has not been contradicted by the other parties. Udinese had a right to counter offer, by which it could

reject FC R.'s transfer, waive the sum of EUR 1,200,000 and take the player back, but that required an additional payment to FC R. of EUR 250,000, which they duly made and paid, as a result of the Player's breach.

28. Udinese also submitted that it felt S. would be too inexperienced to be the immediate direct replacement for the Player. He was 22 years old in that moment and he had never played in Serie A or in another primary European league, whereas the Player was 30 years old, the regular starting keeper in a Serie A team for many years, with international experience. As such, they also brought in an experienced goalkeeper, A., aged 37, on a free transfer. The representative of Udinese explained at the hearing that their tactic was to have the older, experienced goalkeeper to be the initial replacement for the Player, whilst continuing to train and develop the younger one, so he could takeover during the next 3 years, the unexpired period of the Player's Old Contract. The Panel noted Udinese acted quickly to bring these players in, both before the Player had signed with Sevilla, but after the receipt of the Player's Notice. The Panel also noted the specific position of the Player – a goalkeeper. Only one is on the pitch at anytime for a club and they tend to be rotated less. Outfield players can often play in different positions and are easier to replace from a squad.

29. The Panel noted the comments of Sevilla during the hearing, stating that three other goalkeepers had left Udinese at the end of the 2006/2007 season, and, as such, queried whether these two goalkeepers were direct replacements for the Player or whether Udinese would have brought these players back/in anyway. In addition, the Panel noted the submissions of the Player that one player should not be replaced by two new ones. The representative of Udinese at the hearing confirmed their submissions that these two players, S. and A., were brought in specifically as a result of the Player's breach. On balance, the Panel feels that in this instance Udinese had acted reasonably, immediately upon receipt of the Player's Notice, and forgone the transfer fee for S., paid the counter offer fee and then committed itself to S.'s wages for the next 3 years, to fill the gap left by the Player. The Panel also accepts that Udinese had not replaced like with like and further mitigated its position by bringing in the more experienced goalkeeper as the starting replacement for the Player. Ordinarily, replacing one player with two might seem odd, but the Panel considers as reasonable the strategy of Udinese to replace the Player with both the young player, with potential eventually, and the old player, with experience immediately. Udinese therefore committed itself to the additional costs of A.'s salary. The speed in which Udinese acted and the fact that we are dealing here with a goalkeeper and not a midfield player, for example, made it easier for the injured party to make the logical nexus between these replacement costs/loss and the breach, proving that these two new players were hired in direct substitution for the Player; done as a result of the Player's termination of the Old Contract; and Udinese was able to produce copies of the agreements with FC R., which expressly set out the sums payable to bring S. back and copies of the new players' contracts. In addition, Udinese did bring in other goalkeepers over the remainder of the Old Contract period, just as other

goalkeepers went. Using the ability to look back at how things turned out, the Panel can see that Udinese's strategy here worked, as eventually S. replaced A. as first team choice and remained in that position as at the date of the hearing.

30. The Panel notes that Udinese did not directly claim the sums it paid out from the Player and Sevilla, but instead sought to use these sums as a reason for the Panel not to look to deduct any savings Udinese made, by not having to pay the Player's remuneration and benefits under the Old Contract. The Panel felt Udinese was still looking for these sums to be taken into account in the overall scheme of calculating compensation, so the Panel does not consider that taking them into account would constitute an *ultra petita* ruling; in addition, the Panel notes that under Swiss law the *ultra petita* doctrine applies only with reference to a party's motions and not to its reasoning and arguments supporting those motions. Therefore, it accepts that Udinese suffered and awards as compensation, the following replacement costs:

Lost transfer fee from FC R. for S.	EUR 1,200,000
Additional counter offer fee paid for S.	EUR 250,000
Salary of S. (3 years)	EUR 1,179,000
Salary of A. (3 years)	EUR 1,881,000
Total	EUR 4,510,000

31. Whilst the Panel notes Udinese has suffered some direct loss, which it has been able to quantify, the purpose of Art. 17.1 of the Regulations is to lay out some criteria by which a judging authority, be it the DRC or a CAS panel, can look to establish the total loss or damage suffered by the Player's breach. The Panel should look to see if an injured party has in fact suffered more loss than the direct losses; roughly the same; or, indeed, should the injured party have brought in a new player of greater value than the one in breach, whether in fact it should be compensated for all its replacement costs. As stated by the panel in CAS 2008/A/1519 & 1520 (para. 114) *"…the judging authority will have a wide discretionary power to decide on the appropriate amount, taking into consideration the specific circumstances of the case and the responsibilities of both the parties"*. The injured party has a well established duty to mitigate and the level to which this has been done has to be considered by the judging authority. Each case will turn on its own facts, so this Panel will now review these in light of the Art. 17.1 criteria.

32. The Panel also notes the burden of proof is with the injured party, as it requests the compensation for the Player's breach.

a) Loss of transfer fee

33. The Panel notes the different approaches of previous panels – on the one hand, the CAS 2007/A/1298 & 1299 & 1300 case where that panel felt transfer fees were not a possible factor in assessing compensation; whereas, in both CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881, the panels felt it was possible, if the injured party could provide sufficient evidence.

34. In this case, none of the parties produced any evidence of any offers made or pending for the Player. Udinese did produce the details of 3 other international goalkeepers that had transferred between clubs over the previous couple of years; however, this was not taken by the Panel as evidence of any loss suffered by Udinese in relation to this Player, more background information to be used in assessing the specificity of sport criterion below.

35. As such, as no party advanced any submissions under this criterion, the Panel did not use it as part of assessing the compensation due to Udinese.

b) Remuneration and other benefits

36. The Panel notes that this criterion has proved the most contentious to date. The panels in CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881 both sought to calculate the value of the services of the player looking at the amount the injured party, the old club, would have to pay to replace the player. Those panels felt there were two components, the wages of the replacement player and the cost to acquire him. They felt that the amount the new club were willing to pay the player in breach gave the best indication of what a theoretical replacement player would be paid. Those panels then had to look for evidence as to what the old club would have to pay to acquire a replacement player. In CAS 2009/A/1880 & 1881, the two clubs had started negotiations as to a transfer fee the new club would pay the old; in CAS 2008/A/1519 & 1520, the panel took the evidence from the contracts the new club entered into with a third club. In both instances the remuneration under the old contract was treated as being saved and deducted. This all contrasts with the CAS 2007/A/1298 & 1299 & 1300 decision, in which compensation was the remuneration for the unexpired part of the old contract, not the new (as it could be *"potentially punitive"*) and that panel did not look at what the old club might have to pay to acquire a replacement player and queried whether the costs of acquiring any player should be amortised beyond the protected period. The protected period being defined in the Regulations as *"a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, if such contract was concluded prior to the 28th birthday of the Professional, or to a period of two entire Seasons or two years, whichever comes first, following the entry into force of a contract, if such contract was concluded after the 28th birthday of the Professional"*.

37. In this matter, Udinese claimed that the compensation should be the remuneration under the New Contract, for the 3 years that were unexpired on the Old Contract. It felt that any savings made under the Old Contract should not be deducted, as they had been used to acquire the replacement players, S. and A. Udinese did not request the acquisition costs of a replacement player be used in addition to calculate the value of the Player's services, rather submitted that his market value should be awarded as compensation, under the specificity of sport criterion.

38. On the other hand, both Sevilla and the Player submitted that the facts of this case were closer to those in CAS 2007/A/1298 & 1299 & 1300 and that the compensation should be limited to the net remuneration payable under the Old Contract, over the 3 year unexpired term, and disregarding other benefits, such as rent and the loyalty bonus (if not reduced further pursuant to their arguments that using the Swiss Code of Obligations any award should be limited to 8 months salary, as a maximum).

39. The Panel has determined that the applicable law in this matter is contained within the Regulations, with Swiss Law applying subsidiarily. The Panel did not believe that there was any gap or *lucuna* within the Regulations that required the Panel to utilise Art. 339c(2) of the Swiss Code of Obligations when assessing any damage under this criterion and further notes Udinese's submission that Art. 17.1 actually directs a judging authority to look at *"the time remaining on the existing contract up to a maximum of five years"* as opposed to placing any maximum limit. As such the Panel rejects the claims of Sevilla and the Player to limit the amount of compensation awarded to a maximum of 8 months salary.

40. The Panel has determined that in this specific case, there are considerable actual damages suffered as a result of the breach. The Panel further notes that it had limited evidence provided to it by the parties in order to attempt to calculate the theoretical calculation of the value of the services of the Player in order to put the injured party, Udinese, back in the position it would have been if there had been no breach by the Player.

41. If the Panel attempted to follow a CAS 2008/A/1519 & 1520 or CAS 2009/A/1880 & 1881 type calculation, then it would need to look at the remuneration under the New Contract, submitted as:

Annual salary	EUR 331,578
Annual contract premium	EUR 1,050,000
Annual total	EUR 1,381,578
Three year total	EUR 4,144,734

To complete the theoretical calculation, that sum would be less the savings under the Old Contract, but then the Panel would seek to assess the acquisition costs Udinese would have to pay for a replacement goalkeeper by looking at the value of the Player.

Quite apart from the fact that Udinese did not actually advance the argument that the Panel should look to calculate the value of the Player's services, as would be requested under the CAS 2008/A/1519 & 1520 approach, and that both Sevilla and the Player argued the CAS 2007/A/1298 & 1299 & 1300 principles should be followed here instead, the Panel were not provided with clear evidence that would enable them carry out this task, in particular what would the acquisition costs of a theoretical replacement player be. During the hearing the Panel were made aware of the amount Napoli paid for the Player, 2 seasons after he left Udinese, i.e. EUR 1,500,000 – if Napoli signed him for a 3 year contract, does that place his acquisition value at EUR 500,000 per season? Indeed, the Panel noted Sevilla loaned the Player out to Galatasaray for the 2008/2009 season, for a loan fee of EUR 500,000.

42. The Player at the hearing submitted that he had become a far better player after he left Udinese, so was the transfer fee paid by Napoli something that should be used to compensate Udinese? Would he have received as much remuneration and contract premium in the New Contract by Sevilla if they had paid to acquire him? Is it safe for a judging authority to use a transfer fee paid 2 years after the breach as evidence as to the amount a replacement player might have cost Udinese at the time of the breach? – a lot can happen in football in 2 years. How much of that transfer fee was down to the Player's *"own efforts, discipline and natural talent"* or from his *"charisma and personal marketing"* (see para. 142 of CAS 2007/A/1298 & 1299 & 1300)? On the other hand, if Napoli paid EUR 1,500,000 for the Player when he was 2 years older, might they have paid more at the time of the breach?

43. Udinese did not produce concrete evidence of any offers for the Player, just the details from a website of some other transfers of goalkeepers over the last few years, where the Panel had no details of those players' salaries, unexpired terms, etc. There was no expert evidence provided. If this was a personal injury claim for damages, one might expect the judging authority to be provided with expert evidence, reports and statements. Here, the Panel was not put in a position by Udinese where it could safely value the services of the Player. In the absence of any concrete evidence with respect to the value of the Player, the Panel cannot apply exactly the same calculation as in CAS 2008/A/1519 & 1520 and shall use a different calculation method to determine the appropriate compensation, the one which would be the closest to the amount that Udinese would have got or saved if there had been no breach by the Player. By using the value of the replacement costs only rather than the estimated value of the Player, the Panel does not seek to depart from the CAS 2008/A/1519 & 1520 jurisprudence but wishes to emphasize that there is not just one and only calculation method and that each case must be assessed in the light of the elements and evidence available to each CAS panel.

44. The Panel can still use the remuneration of the Old Contract, as directed by Art. 17.1 of the Regulations when considering the issue of whether Udinese has saved the remuneration that it would have paid the Player. The Panel believes it is correct to deduct these as part of the calculation of compensation, but also to give credit for the actual replacement costs incurred. In this case, keeping the consistent approach (see for example the grossing up in CAS 2009/A/1856 & 1857 decision, at paras. 196 and 197) of looking at the gross sums (as tax rates differ from country to country and, more basically, in any playing contract, the club's obligation is to pay the whole contract sum, and the tax liability is the player's; for convenience and usually as a result of tax legislation, the club deduct the tax at source and pay it on the player's behalf to the government), Udinese have saved the following:

The yearly salary of the Player	EUR 623,000
The yearly loyalty bonus	EUR 350,878
The annual rent contribution	EUR 9,700
A yearly total	EUR 983,578
The total for the 3 years	EUR 2,950,734

The Panel determined that the loyalty bonus and the rent should be treated as remuneration, whether they were detailed in the Udinese Contract or an agreement between the same parties, supplemental to the Udinese Contract. The Panel did not agree with Sevilla's submissions that the loyalty bonus *"is effectively an appearance bonus"*. If the Player had remained, yet never physically played again, say due to an injury or loss of form, that bonus would still be due. Only the squad bonuses were uncertain and required participation in matches. The Panel very much doubts whether the Player would not have made a claim for the loyalty bonus, had it been Udinese that breached the Old Contract prematurely.

So at this juncture, the Panel has determined to award Udinese as compensation for the Player's breach:

The replacement costs	EUR 4,510,000
Less, the savings made	EUR 2,950,734
Sub total	EUR 1,559,266

c) Time remaining under the Old Contract

45. The Panel noted that the time remaining under the Old Contract is taken into account when looking at the period for replacement costs, i.e. 3 years of the replacement costs, less 3 years of the savings made.

46. However, the Panel also notes that the Player had concluded 2 years of his 5 years on the Udinese Contract. In certain previous cases, such as CAS 2008/A/1519 & 1520, this was dealt with in the specificity of sport and the Panel determined to deal with the same below.

d) Fees and expenses amortised

47. Udinese had argued before the DRC that the initial fees paid to Juventus Turin should have been amortised over the entire period the Player was under contract with it. In addition, it claimed the agent's fees paid in relation to the Udinese Contract should be amortised over the 5 year period of that contract on a pro rata basis, year by year. In the DRC Decision, it was decided that the fees paid to Juventus Turin had been amortised over the first 5 years of the Player's time with Udinese, but EUR 36,000 was allowed as part of the compensation for the agent's fees.

48. However, Udinese did not appeal the DRC's Decision in regard of the unamortised fees and expenses; the Player and Sevilla both submitted that there was no proof the agent was actually paid; and Udinese confirmed at the hearing that it no longer made any claim in relation to the agent's fees. As such, no party made any claim under this criterion and the Panel therefore determined it had no relevance in assessing the level of compensation due to Udinese.

e) In or out of the protected period

49. Whilst Udinese had argued before the DRC that the breach occurred within the protected period, this had been disputed by the Player and Sevilla, and the DRC, in the Appealed Decision, determined that the breach was outside of the protected period. As such the arguments were not advanced to the CAS. It was therefore common ground that the breach occurred outside of the protected period.

50. The Panel noted that in certain previous cases, such as CAS 2008/A/1519 & 1520, this was dealt with in the specificity of sport criterion and determined to deal with the same below.

E. Law of Country concerned

51. None of the parties made any submissions on this criterion, despite Art. 17.1 of the Regulations requiring the judging body to consider the law of the country concerned. In this instance, the law would be Italian Law, as it has the closest connection to the injured party, the party in breach and the employment contract itself.

52. The Panel finds this criterion is of no relevance for the calculation of the compensation due in this matter and agrees with the CAS 2009/A/1880 & 1881 conclusion in para. 208, *"that law of the country concerned may be relevant in favour of the player or in favour of the club, or be utterly irrelevant. It is up to the party which believes that such factor could be in its favour to make sufficient assertions in this regards. If it does not, the judging authority will not take that factor into account in order to assess the amount of compensation. In no way does this mean that the judging authority failed to properly evaluate this matter".*

F. Specificity of Sport

53. The Panel noted it *"should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case"* (para. 155 of CAS 2008/A/1519 & 1520 and confirmed at para. 233 of CAS 2009/A/1880 & 1881). The Panel agreed with the jurisprudence set out in previous cases mentioned herein that the specificity of sport is not an additional head of compensation nor a criterion allowing to decide in equity, but a correcting factor which allows the Panel to take into consideration other objective elements which are not envisaged under the other criteria of Art. 17 of the Regulations.

54. In this specific case, Udinese has suffered loss as a result of the Player's breach. Udinese has mitigated its position, in a reasonable way. It did not go out and acquire a more expensive replacement; instead it brought in an experienced, older goalkeeper on a free transfer and brought back a younger goalkeeper with prospects. However, the Panel is not convinced that these direct replacement costs have fully compensated Udinese for the loss it suffered as a result of the breach.

55. At the hearing, Udinese submitted that the market value of the Player was evidenced by the liquidated damages clause in the New Contract, a sum of EUR 15,000,000. However, Udinese also conceded that this was set at an artificially high level and that a more realistic level would be a third or half of this sum. So should the Panel look at the value set in the New Contract, should the Player have looked to breach that, i.e. EUR 15,000,000? Or perhaps the lower of the suggestions made by Udinese, i.e. a third of that sum (as all parties agreed at the hearing that clubs tended to set the sums in a liquidated damages clause far in excess of the player's true market value – these clauses are more a deterrent than a price tag), so EUR 5,000,000 and should the Panel, as suggested by Udinese, use the specificity of sport criterion to award that sum to Udinese? To further their position, Udinese also submitted that the Panel should look at the market value/transfer fees paid for other goalkeepers in the market around that time and use the specificity of sport to award between EUR 5,000,000 and EUR 10,000,000 to Udinese.

56. The Panel, in addition to being unimpressed by a few pages downloaded from a sporting website as evidence to support this submission, did not find that there was any similarity between those transfers and this specific case, and also determines that the specificity of sport is a correcting factor, and not one that enables a transfer fee through the back door. The Panel noted that Udinese quoted para. 156 of CAS 2008/A/1519 & 1520 in its submission, in which that panel stated this head of compensation is limited, that it serves to correct and should not be misused, yet then Udinese request between EUR 5,000,000 and EUR 10,000,000 under this criterion.

57. In addition, the Panel did consider the parties' submission regarding the time left unexpired on the Old Contract – 3 years left of a 5 year contract; the special role of the Player in the eyes of sponsors, fans and his colleagues at Udinese; the position he played on the pitch and the success he had brought to Udinese; whether it was felt there was any evidence that the Player and Sevilla had met before the Player handed his notice in (and on that point, the Panel noted the lack of evidence produced by Udinese to back up its allegations); but also the time he had given to the club; whether he was a "model professional" or not; the fact he was outside the protected period; that he felt he followed a "process" set out in Art. 17.3 of the Regulations; whether the Player felt as Udinese had not offered him a new deal, after 2 years on the 4th contract, it was a sign he was not their future or whether any renegotiation would typically have occurred a few months later; and the like. On balance, the Panel felt that a downside of Udinese's strategy to replace the Player with the older, experienced goalkeeper and with the younger goalkeeper with potential was a factor that is specific to football and sport in general, that is the effect it will have on the fans and sponsors.

58. The Panel noted that Udinese had attempted to quantify such losses before the DRC – a near impossible task. However, the Panel notes that the Player was a senior professional, with whom the club had enjoyed some of their greatest successes. The fans and sponsors of all clubs demand immediate success and results. The Panel believes that at any club, when a key player is sold or goes and time is required for a new "hero" to materialise, revenues will be affected, the injured party will suffer losses which it may not be able to prove in Euros. This, in the opinion of the Panel, is where the specificity of sport can be used and should be used.

59. The Panel notes that in the various previous cases mentioned above, only the panels in CAS 2007/A/1358 & CAS 2007/A/1359 and CAS 2008/A/1519 & 1520 awarded any sum for the specificity of sport, where the breach is by the player. The Regulations offer no express guidance as how a judging authority should calculate compensation under this basis. However, the commentary to the Regulations states, as a footnote on the specificity of sport:

"… Furthermore, there was also the possibility of awarding additional compensation. This additional compensation may, however, not surpass the amount of six monthly salaries …".

In the Appealed Decision, the DRC awarded a sum of EUR 350,000, but did not offer any detail as to how they arrived at this sum. In CAS 2007/A/1358 & CAS 2007/A/1359, the panel rounded the compensation up – having worked from the remuneration due under the old contract, but then reviewing the increased remuneration the player received at his new clubs. In CAS 2008/A/1519 & 1520, the CAS panel considered Swiss Law as guidance, to fill that gap or *lacuna*, in particular, Art. 337c(3) and article 337d(1) of the Swiss Code of Obligations. Further, two of the parties in their submissions referred to the Swiss Code of Obligations as being applicable in this case. The Player did in his written submissions put forward an excerpt from academic paper, suggesting Swiss Law had no place here, but the author referred to was actually a panel member in the CAS 2008/A/1519 & 1520 case, so without the entire paper, the Panel decided to follow the jurisprudence. That panel stated *"… the specific circumstances of a case may lead a panel to increase the amount of the compensation, by letting itself inspire, mutatis mutandis, by the concept of fair and just indemnity in the … Swiss Code of Obligations"*. In that instance that panel awarded additional compensation in the form of an additional indemnity amount equal to 6 months of the salary under the new club's contract. That panel used as further support Art. 42 para. 2 of the Swiss Code of Obligations, stating *"if the exact amount of damages cannot be established, the judge shall assess them in his discretion, having regard to the ordinary course of the events and the measures taken by the damaged party to limit the damages"*. The Panel in this determines to follow the specificity of sport jurisprudence detailed in CAS 2008/A/1519 & 1520. So, taking into account the specific facts of this matter, determines the additional compensation for Udinese shall be EUR 690,789, being 6 months remuneration under the New Contract.

60. As such, the total compensation due to Udinese is:

The replacement costs	EUR 4,510,000
Less, the savings made	EUR 2,950,734
	EUR 1,559,266
Add, the specificity of sport	EUR 690,789
Total	EUR 2,250,055

Such sum being payable jointly and severally by the Player and Sevilla.

61. The Panel noted that whilst Sevilla had initially claimed in its statement of appeal that it should not be liable to compensate Udinese for the Player's breach, at the hearing, it confirmed that claim was withdrawn; the Panel notes, for good order, that under Art. 17.2 of the Regulations, the new club is jointly and severally liable for the payment of any compensation, regardless of any involvement or inducement of the Player to breach his contract.

G. Interest

62. In the parties' submissions, the right for Udinese to claim interest and the rate of interest, being 5% per annum, were not disputed. However, the date from which interest should run was.

63. The Panel referred to the Player's Notice given on 8 June 2007. It stated that the *"… contract will have to be considered as finally cancelled at the end of the 2006/2007 sporting season …"*. At the hearing there was a debate as to whether the 2006/2007 season ended on 30 June 2007, or, as the last match of that season had been played, it had already ended, and as such the Notice took effect on the date it was received. The Panel note the definition of a "Season" in the Regulations, as being *"… ending with the last Official Match of the relevant national league championship",* which had been played before the Notice was given.

64. As such, the Panel confirms the DRC's finding that compensation awarded shall bear interest at 5% each year from 9 June 2007, that date being the first day following the date on which the player is considered to have been in breach – the *dies a quo* – as confirmed by the CAS 2007/A/1298 & 1299 & 1300 and CAS 2008/A/1519 & 1520 decisions.

H. Other Prayers for Relief

65. The Panel determines that following the above conclusions, it makes it unnecessary for the Panel to consider the other requests submitted by the parties to the CAS. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules with a majority decision, jointly, with respect to the three proceedings:

1. The appealed decision of the FIFA Dispute Resolution Chamber dated 3 June 2010 is set aside.

2. Mr Morgan de Sanctis and Sevilla Fútbol Club SAD are jointly and severally liable to pay Udinese Calcio S.p.A. an amount of EUR 2,250,055 as compensation, with interest at 5% a year from 9 June 2007.

(…)

5. Any and all other motions or prayers for relief are dismissed.