



Arbitration CAS 2013/A/3375 KSC Lokeren v. Omer Golan & Maccabi Petach Tikva FC & CAS 2013/A/3376 Omer Golan & Maccabi Petach Tikva FC v. KSC Lokeren, award of 22 August 2014

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Olivier Carrard (Switzerland), Mr Manfred Nan (The Netherlands)

Football

Termination of a contract of employment without just cause

Validity of a unilateral option to extend an employment contract

Responsibility of a party signing a document of legal significance

Club's conduct and attitude as just cause to terminate the contractual relationship

Purpose of the specificity of sport

Specificity of sport as a correcting factor

1. Unilateral options to extend contracts of employment in favour of football clubs are not *per se* invalid and incompatible with the FIFA Regulations on the Status and Transfer of Players (RSTP) and the principle of global labour law. This notwithstanding the well-established jurisprudence of the FIFA DRC that unilateral options are problematic since they limit the freedom of the party that cannot make use of the option in an excessive manner, and CAS case law according to which a system allowing the contract of a player to be extended with limited salary adjustments to the only benefit of the club is not, in principle, compatible with the time frame that the FIFA RSTP. The jurisprudence does not absolutely preclude the valid operation of such a clause; each specific clause and the circumstances of its purported exercise must be examined on a case by case basis. In this respect, a clearly and validly drafted clause as well as the factual circumstances of its exercise may justify the finding that the unilateral option was validly exercised.
2. Even if a player does not understand the languages in which the documents are drafted, a party signing a document of legal significance, as a general rule, does so on its own responsibility and is liable to bear the possible legal consequences arising from the execution of the document.
3. The club's conduct and apparent indifference towards the player and his professional career must be of sufficient severity in order to undermine the integrity of the contractual relationship between the parties or to make it untenable for the player and his career as a professional football player to remain as an employee of the club. If it is not the case, the player has no just cause to terminate the contractual relationship.
4. In accordance with CAS case law, the specificity of sport must obviously take the independent nature of the sport, the free movement of the players but also the football

as a market, into consideration. The specificity of sport does not conflict with the principle of contractual stability and the right of the injured party to be compensated for all the loss and damage incurred as a consequence of the other party's breach. This rule is valid whether the breach is by the player or a club. The criterion of specificity of sport shall be used by a panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world. The judging body must therefore give due consideration to the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the player and the club, but also those of the whole football community.

5. By taking into account the specific circumstances of the matter and the course of events giving rise to the dispute, a CAS panel may either increase or decrease the amount of awarded compensation because of the specificity of sport. The concept of specificity of sport only serves the purpose of verifying that the solution reached otherwise, prior to assessing the final amount of compensation, is fair. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors to be taken account of. This criterion is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account where calculating a specific damage head.

I. PARTIES

1. K.S.C. Lokeren ("Lokeren") is a professional football club with its registered office in Lokeren, Belgium, which is affiliated to the Belgian Football Association, Union Royale Belge des Sociétés de Football Association (hereinafter "URBSFA"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").
2. Mr Omer Golan (the "Player") is a professional football player of Israeli nationality.
3. Maccabi Petach-Tikva ("Maccabi") is a professional football club in the Liga Leumit, with its registered in Tikva, Israel, which is affiliated to the Israeli Football Federation, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. The following is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.

While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 19 December 2007, Lokeren and Maccabi concluded a transfer agreement (the “Agreement”) by which the Player was transferred to Lokeren. The Agreement provided *inter alia* as follows:

Article 2: The player will be considered as a Lokeren player until 30.6.2010, subject to this agreement and to the agreement between Lokeren and the player.

Article 2.1 and 2.2: Lokeren will have options for another two seasons, subject to the agreement between Lokeren and the player.

Article 3: Lokeren will pay to MPT (i.e. Club MACCABI) transfer fees for the total amount of 890,000 Euro, as follows: (...)

Article 4: In case the player will stay for another two seasons in Lokeren, Lokeren will pay 55,000 € each season until 1.9 of each season.

Article 10: The player will approve this agreement.

6. On the same date, Lokeren and the Player signed an employment contract (the “Employment Contract”), written in French and Dutch, under which the Player was employed as a professional footballer from 1 January 2008 to 30 June 2010, subject to an option to extend the Employment Contract for two further seasons.

Clause 2 of the Employment Contract provided that:

The Agreement is entered into for a specific period. It is renewable by virtue of the law of 24 February 1978.

This Contract is entered into for a period of 3 seasons, namely 2007/2008, 2008/2009 and 2009/2010 with an option for 2 additional seasons, i.e. 2010/2011 and 2011/2012.

Option: see attached appendix.

Thus it commences on January 1, 2008 and ends ipso jure on 30/06/2010 except in the case of exercise of the option.

Clause 11 of the Employment Contract provided that:

Contractual remunerations:

1. *Fixed monthly remuneration: $\times 12$*

€ 15,000.00

2. *Variable remunerations: match bonuses*

- *1st team: € 1,000.00 draw and € 3,000.00 in the case of a win*
- *€ 125.00 per point as 15th, 17th or 18th player on the match sheet (...)*
- *€ 25.00 per point in reserves (...)*

Clause 22 of the Employment Contract provided that:

According to the provisions of the law, any party who terminates the employment agreement entered into before the end of the agreed term shall pay a compensation. Such compensation is equal to the amount of the salary due until the end of the said term, with a maximum being double what is fixed according to Section 5, Sub-section 2 of the law of February 24 1978

Clause 27 of the Employment Contract provided that:

To the extent that this Contract has come into being through an authorized employment broker, the full identity and the authorisation number of such broker shall be mentioned.

This agreement has been entered into without the intervention of a broker.

The appendix to the Employment Contract (the “Appendix”) provided that:

RENEWAL — OPTION

The signatories to the above contract and to this Appendix expressly declare to refer to the law of 24 February 1978, that in Section 4 acknowledges the validity of the renewal of contracts entered into for a specific term. The renewal of the contract, for a new specific term of 2 football seasons, that is the seasons: 2010 / 2011 and 2011 / 2012 seasons, shall be notified by the Club to the Player at the latest on March 31, 2010 by registered letter or by another equivalent means of notification. The financial and economic terms and conditions of the renewed contract shall be the subject matter of the following adjustments, terms and conditions for which the Player gives his consent and that are considered by him as being essential, and in the absence of which he would not have given an option for renewal of the contract.

1. *Fixed monthly remuneration:*

€16,500.

2. *Variable remunerations:*

1st team €1,150 draw and €3,450 per win

If 16th, 17th or 18th player on the referee's sheet: €125

2nd team €25 draw and €75 per win

3. *Miscellaneous – benefits:*

See basic contract

This appendix constitutes an integral part of the contract referred to and all other provisions shall remain applicable in full and complete, except express and written agreement by the parties.

Made and entered into at Lokeren, on December 19, 2007, in two original copies, of which the Club and the Player each acknowledge having received the copy that is due to them.

7. It is not disputed by the parties that the Player speaks neither French nor Dutch.
8. The Employment Contract and its Appendix are the “standard” documents formulated by the Professional League and are used by all Professional League clubs in Belgium.
9. On 4 January 2008, the Employment Contract and Appendix were filed for registration with URBSFA, with both Lokeren and the Player endorsing the regulatory administrative document approving both documents. The regulatory document included the following statement:

“(…) The contract contains an option clause: YES (…).”
10. On 24 March 2010, Lokeren notified the Player of its intention to renew his Employment Contract for the 2010/2011 and 2011/2012 seasons. The Player did not immediately accept delivery of the registered letter, but subsequently had the content translated for him.
11. On 12 April 2010, Lokeren notified URBSFA of its intention to extend the Player's Employment Contract. The letter expressly confirmed that the Player refused to sign acceptance of delivery of the letter.
12. On 27 April 2010, the Player and Lokeren, through its President, Mr R. Lambrecht, signed on oath, a declaration confirming that the extended Employment Contract between the parties complied with the minimum salary conditions required in accordance with Belgian legislation applicable to the employment of a non-EU football player.

This document stated the following:

“The two parties declare their acceptance of all the obligations arising from the law of 24 February 1978 relating to employment contracts for sports professionals. Any other clause of this employment contract that would contravene the provisions of this law must be deemed null and void.

If it were to emerge that the amount of the remuneration is eight times lower than the remuneration provided in accordance with the provisions of article 2, section 1 of the law of 24 February 1978 relating to employment contracts for sports professionals, the employer undertakes to settle the shortfall at the end of the contract”.

The legislation requires that such declaration must be “*attached to the employment contract for sports professionals*”.

13. On 3 May 2010, by registered letter sent to both the Player and Lokeren, the General Secretary of the URBSFA, officially acknowledged: “*we note that following an exercising of an option, the contract of the above mentioned party concerned is extended and shall therefore terminate at federation level on 30/06/2012*”.
14. On or about 3 May 2010, the Player completed and signed an *ad hoc* form intended for obtaining the renewal of his work permit and on or about 18 May 2010, the Player applied in person for the extension of his work permit for the season 2010/2011 to the local municipal authority.
15. After the expiration of the original Employment Contract, Lokeren paid the enhanced salary under the extended contract, but required that the Player train individually and/or as part of the reserves team, excluded the Player from appearing in the group photograph for the team for the 2010/2011 season and imposed a fine of EUR 3,800 for alleged misconduct without consultation with the Player.
16. By letter dated 26 July 2010, the Player’s lawyers wrote to Lokeren intimating that:
 - i. the clause permitting the unilateral extension of the Player’s Employment Contract, by the club was invalid;
 - ii. consequently the purported unilateral extension of the Player’s Employment Contract was invalid;
 - iii. the Employment Contract between the Player and Lokeren should be considered to have expired on 30 June 2010;
 - iv. Lokeren must accept the non-existence of valid Employment Contract between the parties and permit him to leave to join a club of his choice.
17. By letter dated 3 August 2010, the Player’s lawyers wrote to Lokeren reiterating the view that the clause under which Lokeren purported to unilaterally extend the Employment Contract was invalid, or that alternatively, if the Employment Contract was so extended, the conduct of the club was such that the Player was entitled to terminate the Employment Contract with just cause. The letter notified the intention of the Player to move to find another club and requested the issuance of the International Transfer Certificate (the “TTC”).

18. On 8 August 2010, the Player signed a new employment contract with Maccabi, valid until 12 June 2012.
19. On 27 August 2010, following a refusal by Lokeren to issue the ITC and a request made by the Israeli Football Association (the “IFA”), the Single Judge of the Players’ Status Committee (PSC) of FIFA, decided for the registration of the Player with Maccabi, after concluding that *“the Belgian club does not appear to be genuinely interested in the services of the player anymore, but rather in financial compensation. In fact, the documentation received from the URBSFA does not contain any indication as to its club requesting the return of the player. Moreover, with regard to the alleged extension of the term of the contract between the player and the Belgian club, the Single Judge referred to the well-established Jurisprudence of the Dispute Resolution Chamber, which was confirmed by the Court of Arbitration for Sport, according to which unilateral options in favour of clubs are per se, not valid”*.

III. THE PROCEEDINGS BEFORE FIFA

20. On 19 August 2011, Lokeren lodged a claim with the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) seeking compensation from the Player for breach of contract without just cause, induced by Maccabi, pursuant to Article 17 of the Regulations on the Status and Transfer of Players (the “RSTP”), in the sum of EUR 1,130,126.54 plus interest at 4% from 1 August 2010 made up as to:
 - EUR 630,126.54 representing the remaining value of the Employment Contract until 30 June 2012 to be paid jointly and severally by the Player and Maccabi.
 - EUR 500,000, as compensation for inducing the breach of contract from Maccabi.
21. On 8 November 2012, Lokeren amended its claim to request that:
 - i. *the Player and Maccabi should be held jointly liable to pay the claimed EUR 500,000 as additional compensation.*
 - ii. *interest on any award should be applied at the rate of 5%.*
 - iii. *sporting sanctions should be applied, in that the Player should be suspended for at least 4 months and that Maccabi should be prohibited from registration of any players either nationally or internationally, for two registration periods, as from the date of notification of the FIFA DRC decision.*
22. The Player and Maccabi maintained in their Answer that the unilateral contract extension was invalid, that as such the original Employment Contract had expired on 30 June 2010 and that consequently neither the Player nor Maccabi could be in breach of contract; but, that if the FIFA DRC found that the Employment Contract had been validly extended, the extended Employment Contract had been breached by Lokeren without just cause. Thus, the Player and Maccabi lodged a counterclaim seeking compensation from Lokeren in the sum of EUR

631,655.56, payable to the Player, plus interest at 5% from the maturity date of each obligation made up as follows:

- EUR 343,648.39 representing the Player's salary for the remaining period of the Employment Contract from 3 August 2010 to 30 June 2012.
- EUR 198,117.17 representing the other benefits due to the Player for the remaining period of the Employment Contract.
- EUR 90,000 as supplementary compensation due to the specificity of sport.

23. The Player and Maccabi also requested that sporting sanctions should be applied to Lokeren.
24. Additionally, the Player claimed that, in the event that the FIFA DRC considered the extension of the Employment Contract as valid, and that he was consequently in breach of contract, that the maximum compensation payable to Lokeren should be EUR 22,500 representing a notice period of one and a half month.
25. On 31 July 2013, the FIFA DRC handed down its decision (the "Appealed Decision") with, *inter alia* the following operative part:
 - i. The claim of the Claimant/Counter Respondent KSC Lokeren is rejected.
 - ii. The counterclaim of the Respondents/Counter-Claimants, Omer Golan and Maccabi Petach Tikva is rejected.
26. On 16 October 2013, the grounds of the Appealed Decision were communicated to the parties which provided, *inter alia*, the following:
 - i. In respect of whether the Employment Contract had been extended pursuant to clause 2.2 of the Employment Contract dated 19 December 2007, the FIFA DRC was of the opinion "*that the Player's refusal to acknowledge (sic) receipt of the Claimant/Counter-Respondent's letter of 24 March 2010 is to be considered as a clear sign of his disagreement with the execution of the option to extend the employment contract. The fact that the Claimant/Counter-Respondent was aware of the Player's lack of interest in prolonging their contractual relation is confirmed not only by the Claimant/Counter-Respondent's argumentation, but is also clearly stated in its letter of 12 April 2010 to the URBSFA*".
 - ii. In respect of the consequences of the Player resuming training with Lokeren after the Employment Contract had expired, the FIFA DRC was of the opinion that "*the fact alone that the Player resumed trainings with Lokeren for approximately one month does not imply his tacit acceptance of the extension, considering his previous categorical refusal to it, as well as the arbitrary unilateral extension communicated in spite of him to the URBSFA*".
 - iii. Regarding the analysis of whether Lokeren acted in good faith, the FIFA DRC concluded that "*by carrying out the procedure for the extension of the employment contract for seasons 2010/2011 and 2011/2012 before the URBSFA, while being aware of the Player's clear refusal of such extension,*

[Lokeren] acted unilaterally and in bad faith, causing consequently the invalidity of such extension, since it lacks one of the fundamental elements of validity of a contract, namely, the agreement of both contractual parties. In addition, the Chamber concluded that the Player's participation in some of the Claimant/ Counter-Respondent's training sessions for a period of approximately one month, after the extension had already been unilaterally concluded by the Claimant/ Counter-Respondent cannot be considered as a sign of the Player's acceptance of the extension of the contract".

- iv. Regarding the Player's argument that he was unaware of the existence of an extension option in the Employment Contract since the latter was drafted in French and in Dutch, which languages he did not speak, the FIFA DRC was of the opinion that *"a party signing a document of legal importance, as a general rule, does so on its own responsibility and is consequently liable to bear the possible legal consequences arising from the execution of such document. Therefore, based on its well-established jurisprudence, the DRC concluded that the aforementioned argument of the Player had to be rejected"*.
- v. The consequence of the finding that the Employment Contract was not unilaterally extended was that *"on 8 August 2010, the player was no longer contractually bound to the Claimant and, as such, he was free to enter an employment relationship with any club of his choice. As a consequence, the Chamber deemed that neither the Player breached his contract with the Claimant/ Counter-Respondent, nor had Maccabi induced any type of breach"*.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 27. On 31 October 2013, Lokeren filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration ("the Code"). In this submission Lokeren nominated Mr Bernard Hanotiau, attorney-at-law in Brussels, Belgium, as arbitrator.
- 28. On 5 November 2013, the Player and Maccabi filed a Statement of Appeal with the CAS against the Appealed Decision pursuant to Articles R47 and R48 of the Code. In this submission the Player and Maccabi nominated Mr Manfred Nan, attorney-at-law in Arnhem, Netherlands, as arbitrator.
- 29. On 8 November 2013, the CAS Court Office informed the parties that the respective Appeals had been lodged by the parties and invited the parties to agree to consolidate the Appeals in accordance with Article R52 of the Code.
- 30. By letters dated 11 November 2013, the lawyers to the parties confirmed with the CAS Court Office their agreement to the consolidation of the Appeals.
- 31. On 12 November 2013, Mr Bernard Hanotiau declined the appointment as arbitrator and on 19 November 2013 Lokeren nominated Mr Guido de Crook, attorney-at-law in Aalst-

Moorsel, Belgium, as arbitrator and in the event that Mr de Crook declined the appointment, that Mr Olivier Carrard, attorney-at-law in Geneva, Switzerland, be appointed as arbitrator.

32. On 15 November 2013, Lokeren filed its Appeal Brief. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision, submitting the following requests for relief:

1. DECLARE the appeal admissible and unfounded

2. SUBSTANTIALLY MODIFY the decision passed by the FIFA Dispute Resolution Chamber on 31 July as follows:

PRIMARILY:

ACKNOWLEDGE the agreement of Mr O GOLAN and Club LOKEREN regarding the extension of the employment contract until 30 June 2012

SECONDARILY (IF REQUIRED):

ACKNOWLEDGE the validity of the option exercised by Club LOKEREN both on a legal and regulatory level which extended the employment contract signed with Mr O GOLAN until June 2012

IN ANY CASE

ACKNOWLEDGE the illegal termination of the employment contract (without just cause) by Mr O GOLAN through his signature of a (sic) employment contract on 08/08/2010 with Club MACCABI (pursuant to article 18(5) of the FIFA Regulations (October 2010 edition))

SENTENCE in solidum Mr O GOLAN and Club MACCABI to pay a sum of €1,130,126.54 (pursuant to 17(1) and (2) of the FIFA Regulations (October 2010 edition) which is broken down as follows:

€630,126.54 (pursuant to article 22 of the employment contract);

€500,000 (pursuant to the specificity of Sport)

SENTENCE in solidum Mr O GOLAN and Club MACCABI to add to the above-mentioned sum default interest of 5% per year from the lodging of the compliant (sic) of Club LOKEREN with the FIFA Dispute Resolution Chamber (on 19/08/2011) until full payment of the sum concerned.

REJECT all other claims of Mr O GOLAN and Club MACCABI against Club LOKEREN.

SENTENCE in solidum Mr O GOLAN and Club MACCABI to pay all arbitration expenses (including the court office fee).

SENTENCE in solidum Mr O GOLAN and Club MACCABI to pay defence costs (and other miscellaneous costs) incurred by Club LOKEREN which ex aequo et bono amount to CHF 10,000.00.

33. On 17 November 2013, the Player and Maccabi filed their Appeal Brief. This document contained a statement of the facts and legal arguments seeking to uphold the decision of the FIFA DRC and submitted the following requests for relief:
 - a. The Appellants will argue that the Appealed Decision of the DRC was correct in deciding that the Respondent “acted unilaterally and in bad faith, causing consequently the invalidity of such extension ...”. [Section 41 of the Appealed Decision] and that “on 8 August 2010 the Player [the Appellant] was no longer contractually bound to the claimant [Respondent] and, as such, he is free to enter an employment relationship with any club of his choice” [section 44 of the Appealed decision].*
 - b. If however the CAS will set aside the Appealed Decision and decide that there was a valid extension of the agreement between the Respondent and the Player and that there was a valid agreement between the respondent and the Player, then the Appellants will ask the CAS to decide:*
 - i. That the part of the Appealed Decision that concluded that the Appellants counterclaim is to be rejected will be set aside.*
 - ii. That the contract has been breached without just cause by the Respondent.*
 - iii. To order the Respondent to pay the amount of EUR 631,665.56 to the Player plus interest of 5% p.a. as from the maturity date of each obligation.*
 - iv. To impose sporting sanctions upon the Respondent.*
 - v. To order the Respondent to bear all the costs of the arbitration in accordance with R.64(4) of the Code.*
 - vii. To order the Respondent to grant the Appellants a contribution towards their legal fees and other expenses incurred in connection with the proceedings in the amount of at least CHF 20,000.*
34. On 26 November 2013, the Player and Maccabi challenged the appointment of Mr Guido de Crook, who withdrew his acceptance of the nomination on 27 November 2013 and Mr Olivier Carrard was appointed in his place.
35. Upon the failure of Lokeren to file exhibits to its Appeal Brief, by letter dated 5 December 2013, the Player and Maccabi requested that the exhibits to Lokeren’s Appeal Brief be rendered inadmissible pursuant to Article R56 of the Code, or alternatively, that if the exhibits were agreed as admissible by agreement between the parties or alternatively the President of the Panel, that pursuant to Article R32 a new deadline for filing their Answer be extended to 20 days after receipt of the exhibits pursuant to Article R51 of the Code.
36. On 6 December 2013, the CAS Court Office informed the parties that a new deadline of 20 days from the receipt of the exhibits to Lokeren’s Appeal Brief was granted to the Player and

Maccabi to file their Answers and that thereafter it would be for the Panel, once constituted, to decide on the admissibility of Lokeren's exhibits to the Appeal Brief.

37. On 11 December 2013 Lokeren filed its Answer to the Appeal lodged by the Player and Maccabi in which it sought the following relief:

UNDER RESERVATION OF ANY AND ALL RIGHTS ACCORDING TO THE SEVERITY OF THE CASE WITHOUT ANY PREJUDICIAL ACKNOWLEDGEMENT,

DECLARE the appeal admissible and unfounded.

SUBSTANTIALLY MODIFY the decision passed by the FIFA Dispute Resolution Chamber on 31 July 2013 as follows:

PRIMARILY:

ACKNOWLEDGE the agreement of Mr O. GOLAN and Club LOKEREN regarding the extension of the employment contract until 30 June 2012.

SECONDARILY (IF REQUIRED):

ACKNOWLEDGE the validity of the option exercised by Club LOKEREN both on a legal and regulatory level which extended the employment contract signed with Mr O. GOLAN until 30 June 2012.

IN ANY CASE:

ACKNOWLEDGE the illegal termination of the employment contract (without due cause) by Mr O. GOLAN through his signature of a (sic) employment contract on 08/08/2010 with Club MACCABI (pursuant to article 18 (5) of the FIFA Regulations (October 2010 edition)).

*SENTENCE **in solidum** Mr O. GOLAN and Club MACCABI to pay a sum of €1,130,126.54*

(pursuant to article 17 (1) and (2) of the FIFA Regulations (October 2010 edition)) which is broken down as follows:

€630,126.54 (pursuant to article 22 of the employment contract);

€500,000.00 (pursuant to the specificity of the sport).

*SENTENCE **in solidum** Mr O. GOLAN and Club MACCABI to add to the above-mentioned sum default interest of 5% per year from the lodging of the compliant of Club LOKEREN with the FIFA Dispute Resolution Chamber (on 19/08/2011) until full payment of the sum concerned.*

REJECT all other claims of Mr O. GOLAN and Club MACCABI against Club LOKEREN.

SENTENCE in solidum Mr O. Golan and the club Maccabi to pay all arbitration expenses (including the court office fee)

*SENTENCE in solidum Mr O. GOLAN and Club MACCABI to pay defence costs (and other miscellaneous costs) incurred by Club LOKEREN, which **ex aequo et bono** amount to CHF 10,000.00.*

38. On the same day, Lokeren filed the exhibits to its Appeal Brief with the CAS Court Office and by letter of the same date, the CAS Court Office confirmed that the Player and Maccabi were to file their Answers within 20 days of receipt of the letter.
39. On 12 December 2013, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings and that with regard to the Player and Maccabi's request for the imposition of sporting sanctions, that only FIFA has standing to decide on this issue. As FIFA had not been designated as a respondent to the Appeals lodged against the Appealed Decision, FIFA asserts that the question of the imposition of sporting sanctions falls outside the scope of the Panel's power of review.
40. By letter dated 12 December 2013, the lawyers to the Player and Maccabi informed the CAS Court office that the exhibits to Lokeren's Appeal Brief filed on 11 December 2013, had been filed in "*languages other than that of the proceedings (English) without an English translation*" and requested that all exhibits filed without English translation be deemed inadmissible, or alternatively, requested that a new deadline of 20 days from the receipt of all the exhibits into English be imposed within which the Player and Maccabi should file their Answers.
41. On 12 December 2013, the CAS Court Office informed the parties on behalf of the Division President that pursuant to Article R29 of the Code, Lokeren should file, by 20 December 2013, translations into English of all exhibits to the Appeal Brief it filed in languages other than the operative language of the proceedings and that the Player and Maccabi should have 20 days from receipt of such translated exhibits to file their Answers.
42. On 12 January 2014, the Player and Maccabi filed their Answer to Lokeren's Appeal and sought that the CAS would rule as follows:
 - a. *Accept the Present Answer to the Appeal Brief presented by the Appellant.*
 - b. *The Appeal filed by Lokeren on 15 November 2013 is dismissed.*
 - c. *Adopt an award in order to uphold the decision of the Dispute Resolution Chamber taken on 31 July 2013.*
 - d. *To Order Lokeren to bear all of the costs of the arbitration in accordance with R.64(4) of the Code.*
 - e. *To Order Lokeren to grant O. Golan and Maccabi a contribution towards their legal fees and other expenses incurred in connection with the proceedings in the amount of CHF 30,000. As legal fees plus CHF 10,000 for the expenses incurred in respect of the attendance of the parties and their lawyers in the hearing.*

43. On 15 January 2014, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

Mr Stuart McInnes, Solicitor in London, United Kingdom, as President;

Mr Olivier Carrard, attorney-at-law in Geneva, Switzerland, and;

Mr Manfred Nan, attorney-at-law in Arnhem, The Netherlands; as arbitrators.

44. On 24 January 2014, the CAS Court Office notified the parties that the Panel had decided that the issue of admissibility of the exhibits to Lokeren's Appeal Brief had become without object as the same exhibits were exhibited to its Answer to the appeal of the Player and Maccabi.

45. On 17 and 18 February 2014, Lokeren, the Player and Maccabi respectively signed and returned copies of the Order of Procedure.

46. On 24 February 2014, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.

47. The following persons attended the hearing:

For Lokeren: Mr Louis Horemans, General Secretary of Lokeren;

Mr Laurent Denis, Counsel for Lokeren

For the Player and Maccabi: Mr Amos Luzon, Former President of Maccabi;

Mr Omer Golan, the Player;

Advocate Yohai Hurvitz, Counsel for the Player and Maccabi;
and

Advocate Felipe de Macedo Pinto Pereira, Counsel for the
Player and Maccabi

48. Mr William Sternheimer, Managing Counsel and Head of Arbitration, assisted the Panel at the hearing.

49. At the hearing, the Panel heard detailed submissions of counsel as well as the evidence of Mr Horemans, Mr Luzon and Mr Golan. The witnesses called were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Each party and the Panel had the opportunity to examine and cross-examine the witnesses.

50. The parties were afforded ample opportunity to present their cases, submit their arguments, and answer the questions posed by the Panel.
51. Before the hearing was concluded, the parties expressly stated that they did not have any objection with the manner in which procedure was conducted and that their right to be heard had been respected.
52. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

V ADMISSIBILITY

53. The appeals were filed on 31 October, 4 November and 5 November 2013 by Lokeren, the Player and Maccabi respectively, all within the deadline of 21 days set by Article 67(1) FIFA Statutes (2012 edition). The appeals complied with all other requirements of Article R.48 of the Code, including the payment of the CAS Court Office fees.
54. It follows that the appeals are admissible.

VI. JURISDICTION

55. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2012 edition), as it determines that appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question, and Article R.47 of the Code.
56. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
57. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

58. Article R58 of the Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

59. The Panel notes that Article 66(2) FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

60. Lokeren submits that in the application of Article 25(6) of the FIFA Regulations (2010 edition), Belgian law and/or collective bargaining agreements in force at the time of signing of the Employment Contract are to be applied supplementarily insofar as they do not conflict with the FIFA Regulations and Swiss law.

61. The Player and Maccabi maintain that the law applicable to the present dispute shall be the FIFA Regulations and, subsidiarily, Swiss law. Further, *“it is constant DRC and CAS Jurisprudence that national provisions can only be taken into account if the parties adopted an express choice of law in the contract and if a lacuna in the FIFA regulations exists. In the material employment contract there is no express choice of law adopted and therefore Belgian law does not cover this contract. Article 24 of the employment contract only refers to the Act of 24 February 1978, the Act of 3 March 1978 and the CBA. In the event (...) it is necessary to refer to Belgian national law in addition to the FIFA Regulations, only these two national laws and the CBA can be taken into account”.*

62. The Panel observes that Article 25(6) of the RSTP determines as follows:

“The Players’ Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decisions, apply these regulations while taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport”.

63. In the light of the parties’ agreement to the application of the various regulations of FIFA and the subsidiary application of Swiss law, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA. Additionally, the Panel observes that both parties partially rely on Belgian law and the Belgian Collective Bargaining Agreement for professional football players. As such, and with reference to its authority to do so under Article R58 of the Code and article 17 of the RSTP, the Panel confirms that it will subsidiarily also apply the material provisions of Belgian law and the Collective Bargaining Agreement for professional football player in Belgium, if it is of any relevance to do so.

VIII. THE SUBMISSIONS OF THE PARTIES

64. The following outline of the parties' submissions is illustrative only and does not necessarily comprise every contention put forward by the parties.

A. Lokeren's Submissions in CAS 2013/A/3375

65. *a. The Player's agreement to and acceptance of the Option Clause to extend the Employment Contract dated 19 December 2007*

- i. Lokeren's principal submission is that the Employment Contract and its Appendix are "standard" documents formulated by the Pro League and used by all Pro league Clubs in Belgium, which were duly filed for registration with URBSFA, after Lokeren and the Player had endorsed the administrative document approving the content of the documents.
- ii. The option to extend the Employment Contract in the Appendix to the Employment Contract was validly exercised by Lokeren, in compliance with Belgian law, (c.f. the law relating to Sports Professionals dated 24 February 1978, the law relating to employment contracts dated 03 July 1978, the collective labour agreement signed with the National Sports Parity Commission and the labour regulations) the application of which is mandatory to sporting professionals and those of collective labour agreements and from which, the Player and Lokeren may not derogate.
- iii. The Player was notified of the option exercised by Lokeren on 24 March 2010, but failed to read the registered letter sent to him. He did not formally express his disagreement, but instead confirmed his agreement by signing the declaration dated 27 April 2010, by which the Player and Lokeren committed themselves within the scope of an Employment Contract in accordance with the law of 24 February 1978, relating to contracts for sports professionals, the purpose of which was to effect the renewal of the Player's Employment Contract for the 2010/2011 season.
- iv. The *ad hoc* form dated 3 May 2010, signed by the Player seeks the extension of his work permit for the 2010/2011 season, which was valid only for his occupation as a professional footballer with Lokeren and for which he subsequently applied in person to the Local Authority on 18 May 2010.
- v. Lokeren's option to extend the Employment Contract was accepted expressly and unequivocally by the Player, such that the Employment Contract was extended with the full agreement of the parties until 30 June 2012 without exception or reservation.
- vi. Following the extension of the Employment Contract, the Player's monthly remuneration was increased from EUR 15,000 to EUR 16,500 and the variable match

bonuses were increased by 15% which payments were made into the Player's bank account and accepted by the Player.

- vii. After the extension of the Employment Contract, the Player trained with Lokeren between July and August 2010.

66. ***b. The legal validity of the Option Clause to extend the Employment Contract dated 19 December 2007***

- i. Notwithstanding the jurisprudence of the FIFA DRC and CAS, which view unilateral options to extend contracts of employment as problematic, as they are not based on reciprocity and limit the freedom of the party that cannot make use of the option, with the right to extend a contract exclusively at the discretion of one party; there is no express mandatory prohibition against their use in contracts of employment providing that the option to extend the contract is neither oppressive or disproportionate to the original contract.
- ii. The Belgian Collective Labour Agreement of 7 June 2006 regarding working conditions of professional football players, fulfils the strict criteria established in the jurisprudence of both the FIFA DRC, CAS and Article 13 of the Collective Labour Agreement enforced by the Royal Decree of 10 November 2006 and entails its legality under Belgian law, which provides that:
 - a. the option clause applies to contracts for paid sports persons signed after the entry into force of the collective labour agreement and must be inserted and endorsed on the day of signature of the employment contract.
 - b. the option must be set out in writing and be an integral part of the contract at the latest on entry into service of the employee.
 - c. the maximum duration of the option must not under any circumstances exceed the duration of the contract.
 - d. the exercise of the option is accompanied by a 15% increase in fixed salary and a 5% increase in match and/or selection bonuses OR a 20% increase in fixed salary, not exceeding EUR 10,000.
 - e. the option must be exercised by means of a registered letter posted at the latest on 31 March of the season during which the contract is set to expire.
- iii. The option contained in the Appendix to the Employment Contract fulfilled each of the conditions and was exercised by Lokeren in a timely manner and no objection to the exercise of the option was made at the time by the Player.

- iv. The inability of the Player to understand either French or Dutch at the time of signature of the Employment Contract is immaterial, as the clear jurisprudence of the FIFA DRC unequivocally considers that one of the parties to an employment contract cannot exempt themselves at a later date from their obligations for the sole reason that they did not understand (due to the lack of knowledge of the language used) the terms and conditions within it.
 - v. Any attempt of the Player to contest the content of the Employment Contract reflects his bad faith.
 - vi. The extension of the Employment Contract following the exercise of the option was endorsed at federal level by URBSFA.
67. ***c. The right to claim compensation under Articles 17 and 18.5 the FIFA Regulations on the Status and Transfer of Players ('RSTP') (October 2010 edition) from the Player and Maccabi.***
- i. The player who signs different employment contracts for the same period with different clubs infringes the terms of chapter IV of the RSTP and is subject to the sanction of Article 17 of the RSTP (Article 18.5 RSTP).
 - ii. By signing the Employment Contract with Maccabi whilst he was still under contract with Lokeren, the Player and Maccabi are obliged to compensate Lokeren in accordance with Article 17 RSTP.
 - iii. The appropriate quantum of compensation for termination of the contract is a minimum of EUR 630,126.54 representing the amount of salary remaining under the contract until 30 June 2012 pursuant to Article 22 of the Employment Contract signed and extended between the parties and pursuant to Article 5, section 2 of the law of 24 February 1978.
 - iv. That having regard to the specificity of sport, Lokeren is entitled to additional compensation in the sum of EUR 500,000 in addition to payment for the residual value of the Employment Contract.
 - v. That pursuant to Article 17(2) RSTP, the Player and Maccabi are jointly and severally liable for the payment of compensation.
 - vi. That interest on the damages is payable at the rate of 5% from the date when Lokeren filed the complaint with the FIFA DRC namely, 19 August 2011, until payment is made.

B. The Player and Maccabi's Submissions in CAS/A/3376

68. a. *The invalidity of the unilateral option to extend the contract of employment dated 19 December 2007*

- i. Due to the fact that the Employment Contract is drafted in Dutch and French, languages which are not understood by the Player, the validity of the Employment Contract, and more specifically the unilateral extension option included in the Appendix to the Employment Contract, is denied.
- ii. The Player was not represented by an agent when the original Employment Contract was signed and the document was not translated into a language understood by the Player.
- iii. The Employment Contract is further invalidated, in that it was made subject to preconditions that the Player was physically fit to play football and that the Player was capable of entering into a valid employment contract subject to Belgian law, contrary to Article 18(4) RSTP.
- iv. Unilateral options to extend contracts of employment are invalid *per se*, but if not accepted as invalid by the Panel, the present unilateral extension option should be declared invalid because, according to the jurisprudence of the CAS, the Player did not accept a unilateral extension before.
- v. The unilateral extension should be considered as invalid because it was exercised at a time when the Player was hardly fielded and Lokeren had no real interest in the professional services of the Player.
- vi. The motivation for Lokeren exercising the unilateral option to extend the Employment Contract, was, to await an offer to generate compensation for the transfer of the Player which operated to the detriment of the Player's career and as such is in bad faith and therefore illegitimate.
- vii. The unilateral option to extend the Employment Contract leads to an employee being tied to a longer contractual term than the employer and this is invalid under Swiss law.
- viii. The extended contract of employment after exercise of the option would exceed a total duration of three years, which is not permitted under article 10bis (3) of the Act of 3 July 1978 in Belgian Law. If the Employment Contract was however extended, by virtue of Article 11 of the Act of 3 July 1978, it would create an open-ended contract, which is in breach of Article 18(5) RSTP which stipulates that the maximum length of employment contracts should be 5 years.

69. ***b. The unilateral breach of contract without just cause by Lokeren***

- i. The Player did not play for much of the 2009/2010 season and was not allowed to train with the first team at the beginning of the 2010/2011 season, which is in breach of the Employment Contract which stipulated that the Player would play in the first league of Belgium.
- ii. Lokeren reduced the remuneration and benefits of the Player as he was ordered to play for the second team.
- iii. The Player was verbally abused by the President of Lokeren.
- iv. The Player was not allowed to appear in the team photograph of the first team for the forthcoming season.
- v. Lokeren deducted EUR 3,800 as a fine from the Player's wages without formal notice or due process; a sum disproportionate to Player's monthly wage.
- vi. The Player was ultimately not selected for either the first or second team.

70. ***c. The amount of compensation due to the Player***

- i. The appropriate quantum of compensation for termination of the contract represents the total salary remaining under the Employment Contract until 30 June 2012, which is EUR 541,665.56 (EUR 343,548.39 + EUR 198,117.17), representing the benefits payable to the Player pursuant to Belgian Law until 30 June 2012, up to a maximum of 2 times that sum (EUR 1,083,331.12) pursuant to Article 22 of the Employment Contract signed and extended between the parties and Article 5 section 2 of the law of 24 February 1978.
- ii. Having regard to the specificity of sport, the Player is entitled to an additional compensation in the sum of EUR 90,000, representing six month's salary under the Employment Contract.

71. ***d. The alleged compensation payable to Lokeren by the Player in the event that the Panel finds that the Player unilaterally breached the contract without just cause***

- i. If the Employment Contract was unilaterally extended, it follows that it was converted into an open-ended contract and, pursuant to Article 32(3) of the Act of 3 July 1978, such contracts can be terminated unilaterally by either party without further restriction provided that written notice is given 1,5 month in advance. Thus, in the circumstances of failure of the Player to give notice 1,5 month in advance, the compensation payable is a maximum of EUR 22,500 subject to mitigation by Lokeren.

- ii. As the breach of contract by the Player gave rise to a saving on the part of Lokeren, no compensation is payable as Lokeren had no intention of fielding the Player.

72. ***e. The involvement of Maccabi in inducing the breach of contract***

- i. If the Employment Contract was unilaterally extended, it was breached by the Player prior to signing his new contract with Maccabi and, accordingly, Maccabi cannot be held jointly and severally liable for the breach of contract by the Player.

C. Lokeren's Answer in CAS 2013/A/3376 insofar as they are at variance to the submissions made in CAS 2013/A/3375

73. ***a. The Player's recording of the conversation with the President of Lokeren***

- i. The recording of evidence by illicit means is inadmissible and evidence of bad faith on the part of the Player.
- ii. The recording must have taken place in January 2010 when Lokeren was in negotiation to loan the Player to another club and not in July 2010 immediately prior to the termination of the Employment Contract.
- iii. The President of Lokeren was 85 years old, in ill health and was provoked into making emotive comments by the Player.

D. The Player and Maccabi's Answer in CAS 2013/A/3375 insofar as they are at variance to the submissions made in chief in CAS 2013/A/3376

74. ***a. The Player was entitled to terminate the Employment Contract with just cause***

- i. Lokeren changed the initial employment conditions to the detriment of the Player.
- ii. Lokeren imposed a fine without notice, disproportionate to the Player's salary.
- iii. The Player was humiliated by the substance of the words of Lokeren's President: *"But no, I tell you what I am sure of. You no more play here, no more no more, no, never. Never will you play here in the first team, never, Never! Never! Never! You had your chance. We have an offer for five hundred thousand. You don't accept it, ok. I lose my money and you lose your money too. And you maybe you lose your career (...)"*.
- iv. The Player was entitled to terminate the Employment Contract with just cause as Lokeren's President threatened him with financial loss and the termination of his career as a professional footballer.

- v. Lokeren's behaviour illustrated its wish to exercise the option to extend the Employment Contract purely to benefit financially on a future transfer of the Player or to gain damages in the event of a future breach of contract by the Player.
- vi. The conduct of Lokeren towards the Player amounted to duress.

75. ***b. The Transfer Agreement date 19 December 2007***

- i. Lokeren did not meet its obligations under the Agreement to extend the Player's Employment Contract in that it failed to pay Maccabi EUR 55,000 each season until 2012.
- ii. Section 2 of the Transfer Agreement provides that: "*Lokeren will have options for another two seasons, subject to agreement between Lokeren and the Player*". The Player did not agree to the exercise of the option.
- iii. Section 9 of the Transfer Agreement provides that: "*After termination of the Agreement between Lokeren and the Player (...) will automatically be transferred to MPT [Maccabi]*". As it is not in dispute that the Employment Contract was terminated, Lokeren cannot have any claims against the Player or Maccabi on his return to Maccabi.

76. ***c. The offer made in January 2010 to the Player to transfer him to another team***

- i. The Player was not bound to accept the offer to transfer to a club for which he did not want to play.

77. ***d. Notification of the exercise of the option by Lokeren on 24 March 2010***

- i. The fundamental principle of acceptance is that it cannot be communicated by silence and Lokeren did not produce evidence to suggest that the parties ever agreed to derogate from that principle.
- ii. The letter from URBSFA and the Player's lack of response cannot support Lokeren's submission that the Player acceded to the exercise of the option.

78. ***e. The declaration dated 27 April 2010, the signed application for renewal of the work permit and the grant of the work permit***

- i. Each document was written in a language not understood by the Player, who placed reliance on Lokeren for all local bureaucratic processes and the documents do not confirm the Player's agreement to the extension of his Employment Contract.

79. ***f. The Player's participation in training session in July/August 2010***

- i. The evidence submitted by Lokeren on the Player's participation in training is misleading and incorrect.
- ii. Lokeren's insistence that the Player train either alone or with the 2nd or reserve teams is a clear indication that Lokeren had no genuine interest in the services of the Player, but is evidence of its attempt to enforce the unilateral option to extend the Player's Employment Contract to obtain financial compensation.

80. ***g. The invalidity of the option clause***

- i. The extension period of the Employment Contract (two years) on exercise of the option is disproportionate to length of the original contract (three years).
- ii. The exercise of the option in March 2010 does not permit the Player to exercise his rights pursuant to Article 18 (3) RSTP.
- iii. A condition of the exercise of the option under Belgian law is that it must include a significant increase in salary. Compelling the Player to play for the 2nd or reserve teams resulted in a significant reduction in the Player's salary.
- iv. Lokeren's failure to draft the Employment Contract in a language not known to the Player means that he was clearly not able to bear responsibility for the content pursuant to the permanent jurisprudence of the FIFA DRC.
- v. The option violates the principle of parity between the parties; a fundamental principle of Swiss Law.
- vi. Section 4 of the Belgian Law of 24 February 1978 only establishes that contracts in general are renewable and does not establish the validity of unilateral extension options.

IX. PRELIMINARY ISSUE

- 81. In correspondence with the CAS Court Office and at the hearing, the Player and Maccabi requested that the Panel should not admit the exhibits enclosed to Lokeren's Appeal Brief submitted in CAS 2013/A/3375 on the basis of Article R57 of the Code.
- 82. The Panel observes that Article R57 of the Code determines *inter alia* as follows:

“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply”.

83. Although Lokeren provided no explanation for the failure to file the exhibits at the time of filing the Appeal in CAS 2013/A/3375, as the documents exhibited to Lokeren’s Answer in CAS 2013/A/3376 were identical, the admissibility of the documents had become without object and the Panel decided to admit the documents to the case file.

X. MERITS

A The Panel’s scope of review

84. Pursuant to Article R57 of the Code, the Panel has full power to review the facts and the law on appeal.

B. The Main Issues

85. The main issues to be resolved by the Panel are:
- a. Was the unilateral option to extend the Player’s Employment Contract valid and if so, was the option validly exercised?
 - b. If the Player’s Employment Contract was so extended after 30 June 2010 which party terminated the Employment Contract and was the termination made with or without just cause?
 - c. What, if any, compensation is payable pursuant to Article 17 RSTP?
86. ***a. Was the unilateral option to extend the Player’s Employment Contract valid and if so, was the option validly exercised?***
- (1) The Panel notes that it is undisputed by the parties that:
 - i. Article 13, paragraph 5 and 6 of the Collective Bargaining Agreement for professional football players in Belgium provide as follows:

“the lifting of option is accompanied by an increase of 15 PC. Fixed wages and of 5 PC. Premiums of match and/or selection, OR 20 PC. Fixed wages, without this increase having to exceed 10.000 EUR;

The lifting of option is however always accompanied by an effective minimal increase in 2.000 EUR. For the clubs of the first division, at least the income guaranteed for full-time remunerated sportsmen is also due to the moment of the lifting of option”.

- ii. Lokeren, the Player and Maccabi signed a transfer agreement, dated 19 December 2007, by which the Player was transferred to Lokeren.
- iii. On 19 December 2007, Lokeren and the Player signed the Employment Contract, which contained an Appendix, in which Lokeren and the Player expressly refer to the Belgian Law of 28 February 1978, acknowledging the validity of the renewal of contracts entered into for a specific term. The Appendix provided that in consideration of upward adjustment of the salary and benefits payable to the Player, the Employment Contract could be extended at the unilateral option of Lokeren for two seasons, namely, the seasons 2010/2011 and 2011/2012.
- iv. By letter, dated 24 March 2010, Lokeren notified the Player of its intention to exercise the option to unilaterally extend the Employment Contract for the seasons 2010/2011 and 2011/2012. The Player declined to accept delivery of the registered letter of notification. The Panel notes however, that in evidence, the Player acknowledged that the letter was subsequently translated for him.
- v. By letter dated 12 April 2010, Lokeren notified URBSFA of the exercise of the option to extend the Employment Contract, but indicated that the Player had declined to acknowledge receipt of the letter of 24 March 2010 and that, on 27 April 2010, the Player and Lokeren signed a declaration confirming that the extended contract complied with the regulations in accordance with Belgian legislation applicable to a non-EU football player.
- vi. On 3 May 2010, the Player completed and signed an *ad hoc* form intended for the renewal of his work permit to work as a football player at Lokeren and that, on 18 May 2010, he applied in person to extend his work permit for the season 2010/2011 with Lokeren.
- vii. On 3 August 2010, the Player informed Lokeren by letter that he considered that there was no longer a valid and existing Employment Contract between the parties, and/or that if the Employment Contract was validly binding, he was entitled to terminate the Employment Contract with just cause in consequence of his exclusion from training with the first team and from the team photo, and the imposition by Lokeren of an unannounced fine and that consequently he was entitled to leave the club immediately to join any other club he chose.
- viii. On 8 August 2010, the Player signed a new employment contract with Maccabi, valid until 30 June 2012.

- (2). Lokeren argues the following:
- i. Lokeren maintains that the Employment Contract was legally and validly extended by operation of Belgian law, which permits the extension of contracts of employment and *de facto* by the conduct the Player, who had previously accepted the extension of the Employment Contract without reservation until his return from Israel in July 2010 when he questioned the validity for the first time, shortly before joining Maccabi.
 - ii. Notwithstanding the standard jurisprudence of the FIFA DRC and CAS, Lokeren argues that there is no express mandatory prohibition of unilateral options to extend contracts of employment in the RSTP, but that such clauses should only be condemned where the clause excessively limits the freedom of a football player and creates an obvious imbalance between the rights and obligations of a club and those of a football player.
- (3). Maccabi and the Player argue the following:
- i. The Player and Maccabi maintain that the Employment Contract expired on 30 June 2010, that the Player was in any event unaware of the existence of the option clause in the Appendix to the Employment Contract, having been unrepresented by an agent at the time the Employment Contract was signed and that there is no mandatory obligation in Belgian law for an employment contract to be drafted in Dutch which was a language unknown to the Player.
 - ii. Further, the Player and Maccabi maintain that the Player explicitly refused to accept the extension by not acknowledging receipt of Lokeren's letter dated 24 March 2010 and that Lokeren acted in bad faith in executing the relevant procedures before URBSFA in spite of the Player's refusal to acknowledge receipt of Lokeren's letter.
 - iii. The Player and Maccabi also maintain that the purported exercise of the option occurred when he was not fielded by Lokeren and was merely undertaken to secure a financial return on a future transfer of the Player.
- (4). Findings of the Panel:
- i. The Panel observes that notwithstanding the well-established jurisprudence of the FIFA DRC that: "*Unilateral options are, in general, problematic, since they limit the freedom of the party that cannot make use of the option in an excessive manner. Furthermore such options are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party*" (DRC, 22/07/2004) and the CAS that: "*(...) a system that allows, for the benefit of the club alone, the contract of a player to be extended with limited salary adjustments, (...) is not, in principle, compatible with the time frame that the FIFA Regulations provide. (...)*" (CAS 2005/A/983 & 984) unilateral options to extend contracts of employment in favour

of football clubs are not *per se* invalid and incompatible with the RSTP and the principle of global labour law. The jurisprudence does not absolutely preclude the valid operation of such a clause and that each specific clause and the circumstances of its purported exercise must be examined on a case by case basis.

- ii. The majority of the Panel finds that, in the instant case, the clause was clearly and validly drafted and that the factual circumstances of its exercise justify a finding that the option was validly exercised.
- iii. The majority of the Panel finds that the option in the Appendix to the Employment Contract is drafted in compliance with Swiss law and Article 13 §5 and §6 of the Collective Bargaining Agreement for professional football players in Belgium and that in addition all relevant circumstances point towards the validity of the unilateral extension in order to establish a valid clause.
- iv. The Panel notes particularly, that both the Transfer Agreement and the Employment Contract clearly anticipate the possibility for Lokeren to unilaterally extend the Employment Contract and that, although it is accepted that the Player did not understand the languages in which the documents were drafted, recognises that a party signing a document of legal significance, as a general rule, does so on its own responsibility and is liable to bear the possible legal consequences arising from the execution of the document.
- v. The Panel considers the conduct of the Player to be material in making its finding whether the unilateral option was validly exercised. Having considered the testimony of the Player, the Panel does not accept the submission that the Player was unaware of the existence of the option.
- vi. The Panel acknowledges that the Player declined to accept receipt of Lokeren's letter of 24 March 2010, but notes that in evidence the Player confirmed that the letter was subsequently collected and translated on his behalf and that he was thus aware of the content. The Player's mere refusal to accept receipt of the letter dated 24 March 2010 is, in the Panel's view, insufficient to justify a finding that he was unaware of the content or objected to the exercise of the extension.
- vii. The majority of the Panel finds the signature by the Player of the declaration, on oath, on 27 April 2010, by which he declared that the extended Employment Contract complied with the provisions of Belgian law applicable to the employment of a non-EU footballer and the application by the Player for an extension of his work permit to continue playing as a professional footballer for Lokeren, are clear indications that he understood the meaning and effect of the option to extend the Employment Contract and that he accepted that it was so extended.

- viii. The Panel does not accept that there is evidence of bad faith on the part of Lokeren in making its submission to URBSFA for registration of the extended Employment Contract, in that Lokeren made clear in its letter of 12 April 2010 that its letter of 24 March 2010 addressed to the Player had not been acknowledged.
 - ix. Further, the Panel notes that the Player did not at any time before 3 August 2010 make any attempt to object to the extension of the Employment Contract. Instead, the majority of the Panel deems it important that the Player accepted payment of salary and benefits in July 2010, after the original Employment Contract was deemed to have expired, and continued or attempted to continue to train with the club as evidence of his acceptance of the extension of the Employment Contract.
 - x. Despite the fact that the Player was referred back to the second team, the majority of the Panel does not accept that Lokeren acted in bad faith causing the consequent invalidity of the extension of the Employment Contract.
 - xi. In summary, the majority of the Panel finds that the particular factual circumstances herein indicate that the option to extend the Employment Contract was valid and exercised with the full knowledge and agreement of the Player. The remainder of the award shall therefore be interpreted as rendered by the majority.
87. ***b. If the Player's Employment Contract was so extended after 30 June 2010, which party terminated the Employment Contract and was the termination made with or without just cause?***
- (1) Lokeren's position:
 - i. Lokeren maintains that by signing the employment contract with Maccabi on 8 August 2010, whilst still under contract with Lokeren, the Player was in breach of Article 18.5 RSTP and thus both the Player and Maccabi are consequently jointly and severally obliged to pay compensation pursuant to Article 17 RSTP.
 - (2) Maccabi's and the Player's position:
 - i. The Player maintains that the Employment Contract was unilaterally breached without just cause by Lokeren, due to its persistent course of misconduct.
 - ii. In evidence, the Player stated that initially he was a respected member of the 1st team and regularly fielded as a player, but that following the arrival of a new coach at Lokeren, the attitude of the club changed towards him and that during the 2009/2010 season he was fielded only occasionally as a player for the first team. The belief of the Player and Maccabi is that Lokeren was not thereafter genuinely interested in the services of Player and was instead anxious only to secure compensation on a transfer of the Player.

- iii. From the beginning of the 2010/2011 season the Player was, without explanation, not permitted to train with the first team and was obliged to train with the reserve team and on occasion alone. He was not included in the first team photograph for the following season.
- iv. Lokeren significantly reduced the Player's remuneration and other benefits as he was obliged to play with the second team and was deducted EUR 3,800 as a fine in July 2010, without formal notice or due process.
- v. That on an unspecified date, the Player was verbally abused by the President of Lokeren, such that it was evident that his position with the club was thereafter untenable and that his future as a professional football player was compromised.
- vi. That on receipt of the Player's lawyer's letter, dated 26 July 2010, the Player was precluded from participation in 2nd team matches.

(3) Findings of the Panel

- i. Having considered all the submissions and evidence of the parties, the Panel is of the view that Lokeren's conduct and apparent indifference towards the Player and his professional career from in or about the 2009/2010 season, as alleged by the Player, is of insufficient severity to undermine the integrity of the contractual relationship between the parties or to make it untenable for the Player and his career as a professional football player to remain as an employee of Lokeren.
- ii. The Panel does not speculate on the motivation of Lokeren's conduct, but finds that neither taking account of the individual or the collective complaints made justify the Player unilaterally terminating the Employment Contract in August 2010.
- iii. The Panel does however believe that such conduct is a mitigating factor to be taken account of when determining what, if any, compensation is due to Lokeren pursuant to Article 17 RSTP.
- iv. The Panel consequently finds that the Employment Contract was terminated without just cause by the Player.

88. ***c. What, if any, compensation is payable pursuant to Article 17 RSTP?***

- i. The Panel observes that the financial consequences of a unilateral breach of contract without just cause are set out in Article 17(1) RSTP, which provides as follows:

"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”.

- ii. The Panel notes that this provision specifically qualifies the method of calculation by the term *“unless otherwise provided for in the contract”* and observes that Clause 22 of the Employment Contract provides as follows:

“According to the provisions of the law, any party who terminates the employment agreement entered into before the end of the agreed term shall pay a compensation. Such compensation is equal to the amount of the salary due until the end of the said term, with a maximum being double what is fixed according to Section 5, Sub-section 2 of the law of February 24 1978”
- iii. The Panel observes that the Law of 24 February 1978 stipulates that:

“... if a contract is signed for a fixed duration, its premature termination without due cause entitles the injured party to compensation equal to the amount of salary remaining until the end of the contract. However this compensation cannot exceed double the amount of that which is stated in the article 5 paragraph 2 of the law of 24 February 1978”.
- iv. The Panel understands this to mean that if a fixed term employment contract is terminated before the expiration date, the injured party shall be entitled to compensation, which compensation shall be equal to the salary due to the Player under the employment contract. This compensation shall, however, not exceed twice the amount of the compensation that would have been due if a contract for an indefinite period was entered into.
- v. The Panel notes however that the parties do not agree the method of calculation of what is payable as compensation and thus adopts the calculation submitted by Lokeren as beneficiary of the compensation.
- vi. Lokeren claims damages for breach of contract of EUR 630,126.54, which it maintains would not exceed twice the amount of damages that would have been payable had a contract for an indefinite period been entered into, together with additional compensation of EUR 500,000 in respect of the specificity of sport representing the lost transfer value of the Player. The total claimed by Lokeren is thus EUR 1,130,126.54 together with interest at the rate of 5% from the date on which the claim was lodged by Lokeren with the FIFA DRC on 19 August 2011.
- vii. The Panel however considers such claim to be excessive for the following reasons:

a. The conduct of Lokeren towards the Player is a mitigating factor. Although there is no suggestion that the Player was unfit or unwilling to play, he was fielded by Lokeren, only rarely in 2009/2010 season and was not permitted to train or play with the 1st team from July 2010, from which, inference must be drawn that he was not highly regarded or valued as a player by Lokeren. In such circumstances, the Panel concludes that Lokeren must mitigate its loss by its saving in wages payable to the Player until the end of the Employment Contract in the sum of EUR 630,126.54.

b. Pursuant to Article 4 of the Transfer Agreement dated 19 December 2007, it was agreed that *"In case the player will stay for another two seasons in Lokeren, Lokeren will pay [Maccabi] 55,000€ each season until 1.9 of each season"*. By virtue of the Players termination, this sum was not paid by Lokeren to Maccabi and the Panel concludes that any compensation payable must be reduced by EUR 110,000.

c. The value attributed to Lokeren's claim for damages due to the 'specificity of sport' in the sum representing the lost "transfer fee" of EUR 500,000 is excessive, given that no tangible evidence was adduced by Lokeren that offers of that value had been made for the Player and that failure to field the Player by Lokeren was likely to impact or negate that value.

d. The Panel bears in mind the existing jurisprudence of the CAS in CAS 2007/A/1359 about the application of the specificity of sport in determining the compensation due in case of unilateral breach of contract without just cause:

"the specificity of sport must obviously take the independent nature of the sport, the free movement of the players (cf. CAS 2007/A 1298, 1299 and 1300 , no.131ff) but also the football as a market, into consideration. In the Panel's view, the specificity of sport does not conflict with the principle of contractual stability and the right of the injured party to be compensated for all the loss and damage incurred as a consequence of the other party's breach. This rule is valid whether the breach is by the player or a club. The criterion of specificity of sport shall be used by a panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interest at stake, and does so fit in the landscape of international football".

The Panel understands this to mean that the judging body must give due consideration to the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the Player and Lokeren, but also, more broadly, those of the whole football community (CAS 2008/A/1644 at para. 139; CAS 2008/A/1568 at paras 6.46-6.47; CAS 2008/A/1519-1520 at paras 153-154).

Based on this criteria, the judging body should therefore assess the amount of compensation payable by a party, bearing in mind that the dispute is taking place in

the world of sport with the aim of reaching a solution that is both legally correct and appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to a single case (CAS 2008/A/1519-1520, at para 155).

e. By taking into account the specific circumstances of the matter and the course of events giving rise to the dispute, this may lead the Panel to either increase or decrease the amount of awarded compensation because of the specificity of sport (CAS 2008/A/1519-1520 at para 156; CAS 2008/A/1644 at para 139).

f. In the Panel's view, the concept of specificity of sport only serves the purpose of verifying that the solution reached otherwise, prior to assessing the final amount of compensation, is fair. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors to be taken account of. In particular, according to CAS jurisprudence, this criterion *"is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account where calculating a specific damage head. Furthermore, the element of specificity of sport may not be misused to undermine the purpose of art. 17 para. 1, i.e. to determine the amount necessary to put the injured party in a position that the same party would have had if the contract was performed properly"* (CAS 2008/A/1519-1520, at para 156).

g. Having taken account of these principles and on the basis of the evidence adduced in this case, the Panel finds that the specific circumstances and the course of events in the present case justify that under the heading of specificity of sport and taking account of the interests of both the Player and Lokeren, that the appropriate compensation payable by the Player to Lokeren should be EUR 16,500 representing a sum equivalent to the salary paid by Lokeren to the Player in respect of the month of July 2012.

89. As such, the Panel sets aside the Appealed Decision and finds, by majority, that the Employment Contract was unilaterally extended by the Appellant with the agreement and consent of the Player and further that the Player unilaterally breached the Employment Contract without just cause in or about August 2010, and considers that Lokeren is eligible to receive, pursuant to Article 17 (1) RSTP, the sum of EUR 16,500 as compensation for the unilateral breach of the Employment Contract by the Player with interest at a rate of 5% per annum from 19 August 2011 until the effective date of payment and that, accordingly, Maccabi shall be jointly and severally liable for its payment.

X1. CONCLUSION

90. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel by majority finds that:

- a) The Employment Contract was validly and legally extended by the parties pursuant to the terms of the option in the Appendix to the Employment Contract.
- b) On 3 August 2010, the Player unilaterally terminated the employment contract without just cause.
- c) Lokeren is entitled to an amount of EUR 16,500 as compensation for the breach with interest at 5% per annum as of 19 August 2011 until the effective date of payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 31 October 2013 by K.S.C Lokeren against the decision issued on 31 July 2013 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
2. The appeal filed on 5 November 2013 by Omer Golan and Maccabi Petach-Tikva Football Club against the decision issued on 31 July 2013 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
3. The decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association dated 31 July 2013 is set aside.
4. Omer Golan and Maccabi Petach Tikva Football Club shall be jointly and severally liable to pay to K.S.C. Lokeren an amount of EUR 16,500 (Sixteen Thousand Five Hundred Euros) as compensation for breach of the Employment contract dated 19 December 2007 plus 5% interest per annum, accruing from 19 August 2011 until the effective date of payment.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.