



Arbitration CAS 2015/A/4358 Kedah Football Association v. Adriano Pellegrino, award of 13 May 2016

Panel: Mr Rui Botica Santos (Portugal), President; Ms Thi My Dung Nguyen (Vietnam); Mr Edward Canty (United Kingdom)

Football

Termination of a player's employment contract based on mutual agreement

Jurisdiction of FIFA Dispute Resolution Chamber

International Transfer Certificate (ITC)

- 1. It is only the contract governing the relationship between a club and a player at the time a dispute arose that can be referred to in order to assess whether or not the FIFA Dispute Resolution Chamber (FIFA DRC) has jurisdiction, and not a different contract concluded between the same parties at a different time.**
- 2. Pursuant to Article 9.1 of the FIFA Regulations on the Status and Transfer of Players it is the duty of the former association of a player to send the ITC to the player's new association. No - express or implied - obligation is placed on the player to secure the ITC.**

I. THE PARTIES

1. Kedah Football Association (hereinafter the "Appellant" or "Kedah") is a Malaysian professional football club and a member of the Football Association of Malaysia (hereinafter the "FAM"). The latter is a member of the Fédération Internationale de Football Association (hereinafter "FIFA").
2. Adriano Pellegrino (hereinafter the "Respondent" or the "Player") is an Australian professional football player.

II. THE FACTUAL BACKGROUND

3. This matter is related to an appeal filed by Kedah against the decision rendered by the FIFA Dispute Resolution Chamber (hereinafter the "FIFA DRC") on 23 July 2015 (hereinafter the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Appellant on 1 December 2015.

4. The facts leading to the present arbitration as presented by the Parties can be summarized as follows.

II.1 The Player's status before joining Kedah Football Association

5. In June 2011, the Player entered into a 2 year employment contract with the Australian A-League club Central Coast Mariners FC (hereinafter "Mariners") valid until June 2013. The A-League is Australia's highest professional men's football league and its season runs from October to May, taking a break from June to September.
6. The Player represented Mariners in both the A-League and the AFC Champions League 2012-2013 competitions. His last match for Mariners in the AFC Champions League was on 22 May 2013 against the Chinese Super League club Guangzhou Evergrande FC.
7. After the end of the 2012-2013 A-League season, the Respondent played 7 matches for Central Coast Mariners Academy (hereinafter "Mariners Academy") purportedly in order to maintain his fitness in preparation for the upcoming 2013-2014 A-League season. The Mariners Academy is a youth investment club attached to Mariners with the aim of training and educating young players for the purposes of feeding Mariners' professional team. Mariners Academy plays in Australia's second tier league, the Australian National Premier League.
8. In an undated letter addressed to "whom it may concern", Mariners Academy confirmed that they had released the Player from all his playing duties and that he was "(...) *available to return and play for the Central Coast Mariners FC if required as of the 18th August 2013*".
9. The Player was officially released by Mariners on 18 August 2013.

II.2 The contractual relationship between the Parties

10. On 21 November 2013, the Parties entered into an employment contract (hereinafter the "First Employment Contract") valid for the period 1 December 2013 to 30 November 2014 under which the Appellant agreed to employ the Respondent as one of its professional players on a monthly salary of USD 12,000 net.
11. Pursuant to clause 9 of the First Employment Contract, it was agreed that "[d]uring the term of this agreement, [Kedah] shall register the Player with FAM in accordance with FAM regulations (...)".
12. Article 4.5 of the FAM regulations states as follows:

*"Foreign Player to be employed must comply with the following playing status:
(...)*

(iii) Only Foreign Players playing for the top Division are allowed from the Confederations listed below: -

- a) Asian Football Confederation (AFC);*
- b) Oceania Football Confederation (OFC);"*

(...)"

13. On 26 January 2014, Kedah informed the Player that they were unable to register him in accordance with Article 4.5 (iii) of the FAM regulations.
14. Consequently, on 7 February 2014, the Parties agreed to terminate the First Employment Contract by mutual consent and signed an agreement to this effect (hereinafter the "Mutual Termination Agreement"). The relevant parts of the Mutual Termination Agreement provided as follows:

"1. The Club and the Player are parties to a Foreign Player's Contract dated 21 November 2013 for the period 1 December 2013 until 30 November 2014 ("the contract").

2. The Club and Player agree to mutually terminate the Contract effective from 7 February 2014.

3. The Club will pay the Player USD\$120,000 on or before 1 April 2014.

4. The Player agrees to enter into a Foreign Player's Contract with the club on or before 23 March 2014 if the Player is a free player and the Foreign Player's Contract contains terms no less favourable than those contained in the Contract dated 21 November 2013.

5. The amount payable under paragraph (3) will not be payable if the Player becomes a registered and contracted player with the Club on or before 23 March 2014.

(...).

8. If there is any dispute or if the Club or the Player fails to comply with the Agreement, the matter shall be referred to the FIFA Dispute Resolution Chamber".

15. On 11 February 2014, the Player entered into an employment contract with Asia Euro University FC (hereinafter "Asia Euro"), a Cambodian football club playing in Cambodia's top division, the Metfone Cambodian League. The contract was valid for the period 11 February 2014 to 3 March 2014.
16. On 17 February 2014, the Player informed Kedah via a WhatsApp message that his International Transfer Certificate (hereinafter "ITC") was "*with the first league in Cambodia*" and that it "*will be okay [for the Player] to return [to Kedah]*".
17. On 15 March 2014, and following the expiry of his contract with Asia Euro, the Player entered into an employment contract with Kedah (hereinafter the "Second Employment Contract") valid for the period 15 March 2014 to 30 November 2014. For purposes of this appeal, the relevant parts of the Second Employment Contract provided as follows:

"(...)

5. DISCIPLINE AND DISCIPLINARY PROCEDURE

(...)

5.7 (iii). If disciplinary action has been taken against the Player or if this Contract has been terminated, the Player may appeal in accordance to Article 6 of this Contract.

6. GRIEVANCE AND PROCEDURE

If there is any grievance relating to the Player's terms and conditions of service under this Contract, the following procedure shall apply:

6.1 A formal written notice of complaint must be submitted to the Team Manager within 7 days of the grievance arising.

6.2 If the grievance is not resolved to the Player's satisfaction within 7 days after the notice is given, a formal written notice of the grievance must be given to the Secretary of the Member [Kedah] so that the Member may consider the matter. (...).

6.3 If the grievance is not resolved by the Member or the Member's decision does not satisfy the Player, the Player may then appeal to FIFA Players' Status Committee and the decision meted out by the FIFA Players' Status Committee will be final".

18. On 25 March 2014, Kedah requested the Player's ITC from the Football Federation of Cambodia (hereinafter "FFC").
19. On the same day (25 March 2014), Kedah informed the Player that according to the FAM, he had been playing in Cambodia without the FFC having requested his ITC from the FAM. Kedah asked the Player to address the ITC issue before 27 March 2014, failing which the Appellant could be forced to make alternative arrangements. The aforementioned letter partially read as follows:

"3. (...) we were been informed by Football Association of Malaysia (FAM) that Football Federation of Cambodia (FFC) did not make any request for your ITC. In other words, you did not obtain ITC while playing in Cambodia.

4. As such, I truly hope you can sort out the matter before 27 Mac [March] 2014, failing which, KFA has no choice but to make alternative arrangement".
20. On 1 April 2014, Kedah wrote to the FFC seeking further clarification on the Player's ITC. The FFC did not reply to this enquiry.
21. On 3 April 2014, the Player's lawyer informed Kedah that pursuant to clause 9 of the Second Employment Contract, Kedah was obliged to register the Player with the FAM. The Player's lawyer insisted that although the Player had made every effort to assist Kedah in meeting its contractual obligations, the delay in registration could not be attributed to the Player but was rather an issue to be sorted out between the FAM and the FFC. The letter further informed Kedah that its failure to register the Player could cause the Player to seek payment of USD 120,000 pursuant to the Mutual Termination Agreement.
22. In a letter dated 2 April 2014 but received by the Respondent on 10 April 2014, the Appellant informed the Player that they had terminated the Second Employment Contract on grounds that Kedah had been *"unable to register [him] with Malaysia Football Association (FAM). The reason given by Malaysia Football Association (FAM) is [the Player] not having International Transfer Certificate (ITC) while playing with Asia Euro University (AEU) in Cambodia".*

II.3 The FIFA Dispute Resolution Chamber proceedings

23. On 8 September 2014, the Player filed a claim against Kedah before the FIFA DRC. He sought to enforce the Mutual Termination Agreement and requested USD 120,000 plus interest as of 2 April 2014. In the alternative, and in addition to sporting sanctions against Kedah, the Player sought USD 95,454 plus interest as of 2 April 2014 from the Second Employment Contract, which he argued had been terminated without just cause broken down as follows:
- USD 17,600 corresponding to his outstanding remuneration made up of:
 - o USD 10,000 corresponding to his signing on fee; and
 - o USD 7,600 corresponding to his salary for the period 15 March 2014 - 2 April 2014;
 - USD 77,854 (*i.e.* USD 95,200 less the remuneration of USD 17,346 received from his new club) as compensation.
24. In defence, Kedah relied upon clause 6 of the Second Employment Contract, arguing that the claim was premature and the Parties had to first resolve the dispute internally. Kedah further argued that:
- a) The Player misrepresented himself to them, saying his former club was Mariners as opposed to Mariners Academy. The effect of this was that Kedah were unable to register him with the FAM, whose regulations (Article 4.5 (iii)) required him to have played for a top division club in Asia;
 - b) It could not register the Player pursuant to Article 9 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the “FIFA RSTP”) because the FFC was unable to issue an ITC in favour of the FAM since the FFC had in the first place never requested this ITC from the FAM when the Player signed for Asia Euro; and
 - c) The above constituted a breach by the Player of the Mutual Termination Agreement and clause 3.2 (iii) of the Second Employment Contract, thereby entitling Kedah to terminate the Second Employment Contract.
25. In reply, the Player rejected Kedah’s assertion that the claim was premature, arguing that it would be illogical to file an appeal to the same body that decided to unilaterally terminate the Second Employment Contract. He also took issue with Kedah’s ability to guarantee fair proceedings and the principle of equal representation. The Player reiterated that he met the requirements of Article 4.5 (iii) of the FAM regulations because he played for Mariners in the 2012-13 season and only played for Mariners Academy in the A-League off season in order to maintain his fitness in readiness for the upcoming season. He further argued that pursuant to the Mutual Termination Agreement, Kedah undertook to register him upon signing the Second Employment Contract and that he was in any case not responsible for the ITC or registration issues.
26. On 8 May 2014, the Player joined Cambodian club Phnom Penh Crown FC, signing a contract valid from 8 May 2014 to 8 August 2014 on a net monthly salary of USD 1,800. On 9 August

2014, he extended this contract to 8 August 2015 in exchange for a net monthly salary of USD 3,200 and a signing on fee of USD 1,200.

27. On 23 July 2015, the FIFA DRC rendered the Appealed Decision on the same date and held as follows:

“1. The claim of the Claimant, Adriano Pellegrino, is admissible.

2. The claim of the Claimant is accepted.

3. The Respondent, Kedah Football Association, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of USD 120,000 plus 5% interest p.a. on said amount as from 2 April 2014 until the date of effective payment.

(...)”.

28. The Appealed Decision was based on the following grounds:

- a) The Mutual Termination Agreement did not contain any clause obliging the Parties to resort to internal dispute resolution mechanisms before approaching FIFA, which was therefore competent in accordance with Article 22 (b) of the FIFA RSTP;
- b) Kedah had failed to discharge its burden of proving that the Player was to blame for the failed registration. In general, players have no influence in the registration procedure in international transfers, which is the sole responsibility of clubs; and
- c) By failing to register the Player, Kedah had failed to meet one of the two cumulative conditions established under clause 5 of the Mutual Termination Agreement. Kedah was therefore liable to compensate the Player as agreed in the Mutual Termination Agreement.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 17 December 2015, the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (hereinafter the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (2013 edition) (hereinafter the “CAS Code”). The Appellant nominated Ms. Thi My Dung Nguyen, attorney-at-law in Hanoi, Vietnam, as arbitrator. The Appellant also applied for a stay of the execution of the Appealed Decision.
30. On 23 December 2015, the Appellant filed its Appeal Brief together with the documents and evidence it intended to rely on.
31. On 28 December 2015, the CAS Court Office drew the Appellant’s attention to CAS jurisprudence, pursuant to which a decision of a financial nature rendered by a private Swiss association is not enforceable while under appeal, meaning the Appellant’s request for a stay was moot. The Appellant was therefore granted 3 days to state whether it still maintained its application for stay.

32. On 30 December 2015, the Appellant informed the CAS Court Office that it wished to maintain its application for a stay. The Respondent was granted 10 days to file his submissions on the Appellant's request for stay.
33. On 7 January 2016, the Respondent objected to the Appellant's application for a stay. In support, the Respondent cited CAS jurisprudence, pursuant to which a decision of a financial nature rendered by a private Swiss association is not enforceable while under appeal and therefore any such application for a stay is not applicable and must be dismissed. In addition, the Respondent argued that the reasons put forward by the Appellant were not sustainable as the Appellant will not suffer any serious or irreparable harm (as the decision is not enforceable while under appeal), there is no *prima facie* likelihood of success and the interests of the Appellant do not outweigh those of the Respondent.
34. On 11 January 2016, the President of the CAS Appeals Arbitration Division rendered a ruling on the Appellant's application for a stay (hereinafter the "Order on Request for a Stay") and dismissed the Appellant's application, stating that "(...) *a decision of a financial nature issued by a private Swiss association is not enforceable whenever it is appealed against*".
35. On 14 January 2016, the Respondent acknowledged receipt of the Statement of Appeal and Appeal Brief by courier on 4 January 2016, and confirmed that his 20 day deadline for filing his Answer would expire on 24 January 2016. The Respondent also nominated Mr. Edward Canty, solicitor in Manchester, United Kingdom, as arbitrator.
36. On 25 January 2016, FIFA informed the CAS Court Office that it had renounced its right to invoke Articles R54 and R41.3 of the CAS Code to intervene in these proceedings.
37. On 27 January 2016, the CAS Court Office supplied a copy of the Respondent's Answer (dated 22 January 2016) together with exhibits he intended to rely on to the Appellant.
38. On 17 February 2016, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:
 - a) President: Mr. Rui Botica Santos, attorney-at-law, Lisbon, Portugal
 - b) Ms. Thi My Dung Nguyen, attorney-at-law in Hanoi, Vietnam
 - c) Mr. Edward Canty, solicitor in Manchester, United Kingdom.
39. The Respondent informed the CAS Court Office that an award could be rendered on the basis of the written submissions, but also agreed to a hearing in the event the Panel decided to hold one. The Appellant did not state its position despite several reminders from the CAS Court Office.
40. On 26 February 2016, the CAS Court Office informed the Parties that pursuant to Article R57 of the CAS Code, the Panel deemed itself sufficiently informed to decide the matter based on the written submissions without holding a hearing.

41. On 29 February 2016, the CAS Court Office issued an Order of Procedure, which was duly signed by the Parties in which they assented to the Panel deciding the matter based on the written submissions and also confirmed that their right to be heard had been respected.

IV. THE PARTIES' RESPECTIVE POSITIONS

42. Below is a summary of the facts and allegations raised by the Parties. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

IV.1 The Appellant's submissions

43. The Appellant essentially avers as follows:
- a) The claim filed by the Player at FIFA was premature. The FIFA DRC lacked jurisdiction to adjudicate upon the Player's claim because pursuant to clause 5 and 6 of the Second Employment Contract, the Parties had agreed on the manner of resolving any grievances prior to seeking legal recourse at FIFA. This procedure entailed giving written notice to the club's team manager and then, if not resolved to the Player's satisfaction, to the Secretary of the Club for it to be considered by the Club at a meeting. If still not satisfied, the Player can then refer the matter to FIFA. The Player agreed to these contractual provisions and he cannot argue that the internal dispute resolution mechanisms stipulated therein do not guarantee equal representation. In addition, the aforementioned clauses are clear that the FIFA Players' Status Committee (and not the FIFA DRC) had jurisdiction to resolve any dispute to a final conclusion.
 - b) The Second Employment Contract was terminated with just cause owing to the Player's breach and/or failure to meet the FAM regulations. In fact, under clause 3.1 (ii) of both the First and Second Employment Contract, the Player "*agree[d] and pledge[d] that he will at all time comply with FAM Regulations (...)*", with the Mutual Termination Agreement making clear that it was subject to the Player being "eligible".
 - c) The Player particularly breached the FAM regulations by:
 - i. Frustrating Kedah's efforts to register him with the FAM by failing to produce an ITC from the FFC, thereby preventing Kedah from registering him with the FAM;
 - ii. Misrepresenting himself to Kedah as an A-League/division one player with Mariners whereas he had since left Mariners and joined Mariners Academy. It was this misrepresentation which led to the termination of the First Employment Contract because Mariners Academy did not meet the criteria set out under Article 4.5 (iii) of the FAM Regulations; and
 - iii. Neglecting his obligation (as agreed in the Mutual Termination Agreement) to play elsewhere until he became eligible for registration with the FAM under Article 4.5 (iii) of the FAM Regulations.

- d) Kedah took all reasonable steps to assist in the procurement of the ITC, but this process was ultimately beyond the club's control. In fact, pursuant to Article 9 of the FIFA RSTP, the Player bears the onus of providing the ITC.
- e) Kedah submits that in the event the Panel finds that the termination was without just cause, the compensation awarded by the FIFA DRC is disproportionate and should be reduced as the same is excessive *vis-à-vis* Kedah's status, geographical and economic background. Kedah invokes Article 17 of the FIFA RSTP, which it says contains fair guidelines for arriving at a just compensation.

44. The Appellant concludes its submissions by requesting the CAS:

"i) To fully accept the present Appeal;

- a. As a consequence, to fully set aside the Decision of the Dispute Resolution Chamber dated 23rd July 2015".*

IV.2 The Respondent's submissions

45. The Respondent essentially avers as follows:

- a) The Player's FIFA DRC claim was not premature because clause 6 of the Second Employment Contract does not contain a framework guaranteeing fair proceedings as required by FIFA Circular No. 1010 of 20 December 2005. In any case, the dispute pertains to the execution of the Mutual Termination Agreement which does not contain a "grievance procedure" clause providing for prior and mandatory internal dispute resolution procedure. Therefore, FIFA DRC rightly asserted its jurisdiction, as derived from Article 22 (b) of the FIFA RSTP given the international dimension of the dispute.
- b) The Player did not misrepresent his status as a professional footballer under the First Employment Contract as Kedah's failure to register him at this point is not attributable to the Player. The Player met all the requirements of Article 4.5 (iii) of the FAM regulations. He was a member of the Mariners' squad that won the 2012/2013 A-League and also played in the 2013 AFC Champions League. He merely played for Mariners Academy so as to maintain his fitness due to the long break between seasons in the A-League.
- c) Even if the Player had not met the requirements of Article 4.5 (iii) of the FAM regulations, Kedah freely signed the Mutual Termination Agreement without raising any issue regarding the alleged misrepresentation.
- d) Upon execution of the Mutual Termination Agreement, the Player again met the requirements of Article 4.5 (iii) of the FAM regulations when he signed for Asia Euro. Given that he had played for Asia Euro, he had every reason to believe that the FAM had issued his ITC to the FFC and he was therefore properly registered; as such he could not be held responsible for the inaction of the two national associations. In addition, Article 9 of the FIFA RSTP is clear that the process of issuing and receiving the ITC is the administrative responsibility of the national associations.

- e) Although he was not under a duty to do so, he made every effort to assist Kedah in meeting its contractual obligation to register him including having direct contact with Kedah, the FAM and the FFC to try to resolve the ITC problem.
- f) Kedah however failed to meet its obligations under the Mutual Termination Agreement when it failed to register the Player with the FAM. As a consequence, Kedah's termination of the Second Employment Contract was unjustified and the Appellant must compensate him with USD 120,000 pursuant to the Mutual Termination Agreement.

46. The Respondent concludes his submissions by requesting the CAS to:

- “(a) dismiss the appeal filed by the Appellant on 17 December 2015;*
- (b) award the Respondent the amount of USD 120,000;*
- (c) award interest on the amount in paragraph (b) above at the prevailing rate awarded by the FIFA DRC of 5%p.a., payable from 2 April 2014;*
- (d) order the Appellant to pay all costs incurred in relation to the appeal; and*
- (e) order the Appellant to pay all legal expenses of the Respondent in relation to the appeal”.*

V. JURISDICTION OF THE CAS

47. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

48. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2015 edition) which states as follows:

“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”.

49. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

51. The grounds of the Appealed Decision were communicated to the Appellant on 1 December 2015. The Statement of Appeal was filed on 17 December 2015. This was in accordance with the 21-day deadline fixed under Article 67.1 of the FIFA Statutes.

52. The admissibility of the appeal is further confirmed by the Order of Procedure duly signed by the Parties and by the lack of any objection by Respondent.
53. It follows that the appeal is admissible.

VII. APPLICABLE LAW

54. Article R58 of the CAS 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

55. Article 66.2 of the FIFA Statutes states that:

“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”.

56. Therefore, the Panel finds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary.

VIII. MERITS OF THE APPEAL

57. The Parties have extensively addressed the Panel on the issues they consider to be key to these proceedings. Kedah in particular contends that it had just cause to terminate the Second Employment Contract, arguing that the Player breached the FAM Regulations by misrepresenting himself as an A-League player, frustrating Kedah’s efforts to register him with the FAM and neglecting his obligation (as agreed in the Mutual Termination Agreement) to play elsewhere until he became eligible for registration with the FAM.
58. The Player refutes the above, saying he was an A-League player and that he had no control over the release of his ITC which led to the problem of registration with the FAM.
59. Upon a careful review of the facts at stake, the Panel is of the opinion that the issue is not whether Kedah had just cause to terminate the Second Employment Contract, or whether the Player misrepresented himself at the time of entering into the First Employment Contract, but rather whether Kedah breached its obligations under the Mutual Termination Agreement.
60. Therefore, the Panel shall not enter into the issues regarding misrepresentation, given that it relates to the First Employment Contract which had already been terminated by the time the facts in issue arose. The key document for determining this appeal is the Mutual Termination Agreement which the Player seeks to enforce.

61. The following procedural and substantive issues therefore fall for determination:

- a) Was the Player's FIFA DRC claim premature?
- b) Did Kedah breach the Mutual Termination Agreement?
- c) Depending on the answer to (b) above, what are the legal consequences?

a) Was the Player's FIFA DRC claim premature?

62. Kedah cites clauses 5 and 6 of the Second Employment Contract, pursuant to which it argues that the Parties had agreed to resort to internal dispute resolution mechanisms before filing the case at FIFA. It therefore states that the Player's FIFA DRC claim was premature. In addition, it asserts that pursuant to clause 6.3 of the Second Employment Contract, any dispute which the Parties could not resolve through the internal dispute resolution mechanisms could only be settled by the FIFA Players' Status Committee and not the FIFA DRC, meaning the FIFA DRC erred in asserting its jurisdiction.

63. The Player refutes Kedah's assertions, arguing that clause 6 of the Second Employment Contract does not contain a framework guaranteeing fair proceedings as required by FIFA Circular No. 1010 of 20 December 2005, and that FIFA's jurisdiction is in any case rightly derived from Article 22 (b) of the FIFA RSTP given the international dimension of the dispute.

64. The Panel however finds Kedah's reliance on the Second Employment Contract to be misleading. The relevant document for establishing whether or not the FIFA DRC had jurisdiction to entertain the Player's claim is the Mutual Termination Agreement.

65. Pursuant to clause 8 of the Mutual Termination Agreement, the Parties agreed that "[i]f there is any dispute or if the Club or the Player fails to comply with the Agreement, the matter shall be referred to the FIFA Dispute Resolution Chamber".

66. It therefore follows that the Player's FIFA DRC claim was not premature, and the FIFA DRC rightly asserted its jurisdiction.

b) Did Kedah breach the Mutual Termination Agreement?

67. It is noted that pursuant to the Mutual Termination Agreement, Kedah would be relieved from its obligation to pay the Player USD 120,000 if the following two key cumulative conditions were met:

- a) The Parties signed an employment contract on or before 23 March 2014; and
- b) The Player became registered with Kedah on or before 23 March 2014.

68. Whereas the first requirement was met when the Parties signed the Second Employment Contract on 15 March 2014, the second requirement (registration) was clearly not met.

69. Kedah attributes the failed registration to the Player, saying he frustrated the club's efforts in this regard by failing to produce an ITC from the FFC. Kedah reiterates that Article 9 of the FIFA RSTP places the burden of securing the ITC on the Player.
70. The Player insists he is not responsible for securing the ITC, a duty he claims is the administrative responsibility of the national associations. In any case, he says he made every effort to assist Kedah in meeting its contractual obligation to register him.
71. Was the Player under a duty to secure the ITC?
72. Pursuant to Article 9.1 of the FIFA RSTP, "[p]layers registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association".
73. Article 9.1 of the FIFA RSTP places no express or implied obligation on a player to secure the ITC. To the contrary, it places a duty on the former association to send the ITC to the new association. In fact, Annexe 3 Article 3 paragraph 3.2 (1) of the FIFA RSTP is clear that "[a]ssociations (...) are responsible for conducting the electronic ITC process".
74. In exercising its duty to conduct the process of requesting the ITC, the new association is to be assisted by the new club, as set out in Annexe 3 Article 8 paragraph 8.2(1) of the FIFA RSTP "[a]ll data allowing the new association to request an ITC shall be entered into TMS, confirmed and matched by the club wishing to register a player (...)".
75. It was the obligation of the FFC to request the ITC on behalf of Asia Euro, and for Asia Euro to confirm the relevant request via the TMS system. The fact that, seemingly, this did not occur rendered the FAM unable to register the Player such that he would satisfy the criteria set out in Article 4.5 (iii) of the FAM Regulations.
76. To sum up, the Panel finds that the Player was under no duty to assist in the process of securing the ITC (despite the fact that he did attempt to do so once the problem of the ITC became known). Therefore, the FFC's failure to request and receive the Player's ITC when he transferred to Asia Euro was the true cause for the failure of Kedah to register the Player pursuant to the Second Employment Contract and as such cannot be attributed to the Player.
77. Since one of the two key cumulative conditions provided for under clause 5 of the Mutual Termination Agreement, *i.e.*, the player being registered with Kedah on or before 23 March 2014, was not met, Kedah shall be liable to pay the Player USD 120,000 on or before 1 April 2014 as provided for under clause 3 of the Mutual Termination Agreement.
78. The Panel therefore finds Kedah to be in breach of its obligation to pay the Player USD 120,000 as agreed under the Mutual Termination Agreement.

c) The legal consequences

79. Clause 3 as read together with clause 5 of the Mutual Termination Agreement is clear on the consequences of the Player's failed registration, this being Kedah's liability to pay the Player USD 120,000.
80. The above clauses, and the Mutual Termination Agreement as a whole provide no room for mitigation as requested by Kedah. They must, in the Panel's opinion, be enforced in accordance with the principle of *pacta sunt servanda*.
81. In any event, the Panel does not find the sum of USD 120,000 fixed in the Mutual Termination Agreement to be excessive. In fact, it is less than the residual value of the First Employment Contract, which amounted to a minimum of USD 144,000 and reflects the actual damages that the Player stood to suffer at the time the Parties entered in to the Mutual Termination Agreement. Notwithstanding this, Kedah has not adduced any substantial facts or evidence that would persuade the Panel to regard the amount agreed as excessive.
82. It therefore follows that Kedah must pay the Player USD 120,000 as provided for under the Mutual Termination Agreement.

IX. CONCLUSION

83. The Panel finds that the Player was not under a duty to secure his ITC from the FFC. Therefore, he is not responsible for the failure to have the Second Employment Contract registered with the FAM.
84. Kedah must therefore pay the Player USD 120,000 as agreed in the Mutual Termination Agreement together with interest running from 2 April 2014 until the date of effective payment. Kedah's appeal against the FIFA Dispute Resolution Chamber decision dated 23 July 2015 is dismissed and the said decision upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Kedah Football Association against the FIFA Dispute Resolution Chamber decision dated 23 July 2015 is dismissed.
2. The FIFA Dispute Resolution Chamber decision dated 23 July 2015 is upheld.
- (...)
5. All other motions or prayers for relief are dismissed.