



Arbitration CAS 2011/A/2539 Borussia VfL v. Boca Juniors & Fédération Internationale de Football Association (FIFA), award of 12 July 2013

Panel: Mr José Juan Pintó Sala (Spain), President; Mr Efraim Barak (Israel); Mr Michele Bernasconi (Switzerland)

Football

Cooperation agreement between two clubs

Legal nature of the agreement

Termination of the agreement

Consequences of the termination

Effects of the termination

1. Under Swiss Law, the nature of hybrid agreements (“innominate contracts”), and the legal provisions applicable to them, is to be determined as a general rule on the basis of their main or predominant element(s) and consideration(s). The general rules on obligations and contracts apply to these agreements, but also those which are specific for the contractual type corresponding to such predominant element.
2. One of the main characteristics of the contract of mandate under Swiss Law is the possibility of terminating it at any time. This right to terminate is of absolute nature.
3. Under Swiss Law, if the termination of a mandate contract is timely inopportune, the terminating party is obliged to compensate the damages caused as a result of the termination.
4. Under Swiss Law, the contractual “extinction” by cancellation or termination implies a reclaim of mutual considerations, generally with effects *ex tunc* (retroactive up to the beginning of the contract) in the cases of cancellation, and *ex nunc* (that is to say, from the moment in which the termination takes place) in the cases of termination.

I. THE PARTIES

1. Borussia VfL 1900 Mönchengladbach GmbH (hereinafter “Borussia” or the “Appellant”) is a professional football club with seat in Mönchengladbach (Germany), affiliated to the German Football Association.

2. Club Atlético Boca Juniors (hereinafter “Boca” or the “First Respondent”) is a professional football club with seat in Buenos Aires (Argentina), affiliated to the Argentinean Football Association.
3. Fédération Internationale de Football Association (hereinafter “FIFA” or the “Second Respondent”) is an association in accordance with Swiss law; it is the governing body of football on worldwide level and has its registered office in Zurich, Switzerland.

II. FACTS OF THE CASE. THE PROCEEDINGS BEFORE FIFA AND THE CAS

4. A summary of the facts and background giving rise to the dispute will be developed below based on the parties’ submissions and the evidence taken up to this stage of the proceedings. Additional background may be also mentioned in the legal considerations of the present award. In any case, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

II.1 THE AGREEMENTS SIGNED BY BORUSSIA AND BOCA. THE EVENTS GIVING RISE TO THE DISPUTE

5. On 6 June 2006, Borussia and Boca signed an agreement (hereinafter the “Transfer Agreement”) by virtue of which the Argentinean player F. (hereinafter the “Player”) was transferred from Boca to Borussia on a definitive basis for a fixed price of USD 3.500.000.
6. In accordance with clause 6 of the Transfer Agreement, in case Borussia transferred the Player to a third club, Boca would be entitled to receive 15% of the total transfer fee paid by such third club to Borussia.
7. On 27 July 2006, Borussia and Boca signed another agreement, which the parties named (and which it will be referred to here as) the “Cooperation Agreement”, comprising, among others, the following clauses:

Clause 1 (Fundamentals of cooperation):

“1. BOCA and Borussia agree on a qualified exchange of ideas and experience in the performance division for the new generation and youth soccer by taking especially into account:

- *Training and development methods;*
- *Organization and planning;*
- *Integration of youth players in the performance and professional area;*
- *Education and advanced training of trainers and support staff;*
- *Advanced training and development of the youths in the area of soccer training, in the area of physical training regarding fitness and physical shape as well as in the area of tactics and play system;*

- *In the medical area as well as in the area of school and professional training of soccer talents.*
- 2. *The Clubs Boca and Borussia assure each other full confidence and comprehensive cooperation in connection with this exchange of ideas and experience and the related cooperation.*
Borussia shall receive the opportunity to send talents from the performance division of its own soccer youth to Argentina to integrate them for a limited time into the training and educational program of BOCA for the purpose of advance training.
- 3. *Borussia shall receive the opportunity to send senior employees and trainers from the training and youth division to Argentina to integrate them for a limited time into the training and educational program of BOCA for the purpose of advance training.*
- 4. *Borussia shall receive the opportunity and BOCA undertakes to integrate outstanding talents into its youth teams in compliance of the national and international regulations of soccer sports in accordance with the athletic and economic realities and the relevant requirement, in each case in detail pursuant to the provisions of this Cooperation Agreement.*
- 5. *In connection with this cooperation Boca and Borussia agree on further cooperation in important areas, such as for example the opportunity to hold a friendly match in Monchengladbach as part of BOCA's tour in Europe and, on this occasion, have a comprehensive exchange of ideas in the youth, educational and professional sector".*

Clause 2 (Services of BOCA in detail):

- "1. *BOCA and Borussia agree on the implementation of a joint qualification program for trainers and educational staff from the performance division of the soccer youth and professionals. Subsequently, for every contract year Borussia shall receive the opportunity to integrate up to 4 qualified workers from the division of trainers and educational staff into the training and educational program of BOCA for the duration of 3 months. Borussia shall assume the costs for the trip, BOCA shall assume all local costs such as accommodation, housing, food, equipment, etc. In this connection BOCA undertakes to grant the trainers and support staff carefully chosen by Borussia comprehensive insight into the training and educational system of BOCA.*
- 2. *Borussia shall receive the opportunity to send select and talented youths up to 20 years of age from the performance division of Borussia to BOCA in Argentina, so that they will be integrated there by BOCA in the training, educational and competitive area of the BOCA for the intended duration of 2 months, in order to develop and optimize their theoretical and practical training in everyday life. To this end, Borussia shall assume the costs for the trip, BOCA shall assume the costs for accommodation, housing, food, equipment etc. In this connection, BOCA shall be responsible for the diligent supervision and accommodation of the youths in Argentina in educational and personal terms. In this regard, it is intended that every year some 10 youth soccer players of Borussia have the opportunity to utilize this area of cooperation in groups of 2 youths, in each case.*
- 3. *As part of qualified exchange program BOCA and Borussia shall exchange concrete and qualified ideas about the practical and theoretical training of their youths and next-generation talents and see to it that experience, knowledge and skills can be used on a mutual basis through regular visits of trainers, senior instructors and support staff.*
- 4. *The youth soccer players and the trainers, instructors and support staff sent to Argentina as part of this cooperation between Borussia to BOCA in accordance with the regulations of the Agreement, shall be cared for*

onsite at BOCA in Buenos Aires by BOCA comprehensively and professionally, with BOCA assuming, among other things, the following services and duties in this regard:

- *Receiving and seeing the members of the delegation of Borussia off at the International airport of Buenos Aires and transport to the housing facilities;*
- *Accommodation at the residential complex Casa Amerilla of BOCA, in each case in double rooms including cleaning;*
- *Technical and athletic instructions, practical and theoretical lessons;*
- *Participation in the training units at the various youth teams of BOCA;*
- *Organizing soccer trips including friendly matches, participation in national tournaments with full integration of the members of the delegation of Borussia in the soccer club of BOCA;*
- *Regular performance valuation of the members from the delegation of Borussia by qualified education and advanced training staff of BOCA;*
- *Covering of medical needs, including medical treatment of illness and injuries during the stay of the members of Borussia at BOCA; they shall receive the same medical care (health insurance) as the youth players of BOCA;*
- *Free access for all members from the delegation of Borussia to the games of the professional team at the home stadium of BOCA in Buenos Aires.*

5. On the other hand, in connection with the implementation of this cooperation concerning the dispatch of youth players, instructors, trainers, etc. Borussia undertakes to assume the following services:

- *Timely and complete submission of a list with the names of the youth athletes, trainers and instructors, at least 10 business days before the arrival in Argentina, including the personal data, photographs, the medical confirmation for the participation in the professional and performance-related training and education program of BOCA, a list with the personal family history and presentation of the necessary identification papers for entry into Argentina;*
- *Provision of a Spanish-to-German interpreter who will accompany the youth soccer players, the trainers, instructors, etc. through their entire stay in Argentina;*
- *Taking out qualified, adequate insurance in coordination with BOCA in time before arrival in connection with covering against the risks of accidents, illness, death, liability, etc. on an international standard, with BOCA supporting and advising Borussia in this regard;*
- *Compliance with the provisions for entering and leaving Germany and Argentina by observing the relevant regulations for minors and their representation through parents, legal guardians, etc.*
- *Wording of the submitted papers and documents in Spanish and, if need be, certification of the translation by the Argentinean Embassy of Berlin.*
- *[...].*

6. BOCA is seriously seeking to hold a friendly match during a tour of its professional team in Europe with the best possible team at Borussia in Monchengladbach, with Borussia and BOCA agreeing at this point in time that BOCA shall receive 50% of the remaining proceeds for this game after deduction of all costs,

including the proceeds for advertising and marketing the TV rights for this game, with Borussia completely leaving marketing the TV rights for Argentina solely and exclusively up to BOCA”.

Clause 3 (Transfer of soccer players from Boca to Borussia):

“1. BOCA and Borussia agree in connection with this cooperation that Borussia has the option and the right to integrate qualified and outstanding soccer players trained by BOCA above the age of 18 years (expanded team of the first team of BOCA) into Borussia’s own professional team in the German Soccer League, in each case pursuant and according to the arrangements of this Agreement.

2. In this connection it is planned for Borussia to receive the right and the option to integrate into its own professional team, during the term of this Cooperation Agreement and after a decision by Borussia, one – at least 18-year old – player from BOCA (expanded team of the first team of BOCA) per season in Germany in the German Soccer League (thus from 7/1 to 6/30 of a particular year), however two players for the 2006/2007 season. These players shall be selected according to the wishes of Borussia in coordination with BOCA. Initially, these players shall receive firm agreements at Borussia as soccer professionals for one season, with Borussia assuming the costs for the compensation and the other obligations under labour law according to the official German statutes and the regulations of DFL Deutsche Fussball Liga GmbH (German Soccer League) for their stay in Germany.

3. BOCA’s making these players available in favor of Borussia for the period of a soccer season in German Soccer League shall be free for Borussia. No loan fee and no other compensation shall accrue.

4. After the end of the first season Borussia shall have the right to take over these players completely and permanently into its own team. Borussia must declare to BOCA in writing by May 15 of the first season whether the so transferred players, in each case, will be finally taken over by Borussia into its team, or whether they will return to BOCA from Borussia on June 30 of the respective season. In case of a turn to BOCA, Borussia shall owe BOCA nothing. In case Borussia declares to BOCA on time the final takeover of these players into its own team, all transfer and federative rights to these players shall pass from BOCA to Borussia. Simultaneously, 70 % of the economic rights of BOCA to these players shall pass to Borussia. For the passage of all transfer rights and all federative rights as well as passage of 70% of the economic rights Borussia shall pay BOCA a net amount of USD [...] per player, payable ten days after the expiration of the transfer period on loan. Borussia must inform BOCA in writing about exercising its option vis-à-vis BOCA.

The parties involved determine that the players mentioned here concern players trained by BOCA.

5. If, during the employment between the player finally taken over by Borussia and the latter, the transfer rights and the economic rights to the player are further assigned to another club and/or another natural person in Germany or abroad, Borussia, in this case, undertakes to pay 30% of the proceeds from the transfer compensation with such third party, which flows to Borussia itself, to BOCA.

6. In case Borussia does not exercise the agreed option and the player returns to Argentina to BOCA, Borussia undertakes to make all statements under association law for an immediate return of the player to BOCA and safeguard the rights of BOCA. In this case no costs and compensation shall accrue for Borussia. For this case the contracting parties BOCA and Borussia determine that all transfer and federative rights as well as all economic rights shall lie exclusively with BOCA for this case of the player’s return from Borussia to BOCA.

7. During the selection of the players in accordance with this area of the cooperation, BOCA and Borussia shall collaborate closely and with trust, and conduct the selection carefully and professionally for optimal use by

Borussia. Borussia shall be under no obligation to exercise and exploit its rights according to this portion of the cooperation. This shall merely concern a right, but no obligation of Borussia. The contracting parties BOCA and Borussia assume that these select players are outstanding talents of BOCA (expanded team of the first team of BOCA), who on the basis of their training condition, are suited to live up to the standard of performance of the German Soccer League and to strengthen the German Soccer League team of Borussia”.

Clause 4 (Payments from Borussia to BOCA):

“1. Borussia commits to BOCA to make payments for the fulfilment and the provision of the services under this Cooperation Agreement.

2. BOCA shall use these payments to develop and enhance its own soccer school and ensure that the services and obligations vis-à-vis Borussia set forth here shall be fulfilled fully and professionally.

3. In connection with the conclusion, the implementation and the fulfilment of this Cooperation Agreement Borussia shall pay to BOCA the total sum of USD 1,315,000.00.

This amount shall be paid in instalments and require the fulfilment of the obligations by BOCA in accordance with this Cooperation Agreement. For the payment of this sum the following instalments shall be arranged between Borussia and BOCA:

- *1. instalment: USD 765,000.00, payable 10 days after conclusion of this Cooperation Agreement;*
- *2. instalment: USD 200,000.00 on 6/30/2007;*
- *3. instalment: USD 200,000.00 on 6/30/2008;*

[...]”.

Clause 5 (Contract term):

“1. Cooperation shall begin on 06/30/2006

2. Cooperation shall be firmly agreed upon for a period of four play seasons, thus until 06/30/2010

3. During this contract term all mutual obligations and services in accordance with this Cooperation Agreement must be fulfilled.

4. Cooperation shall end on 6/30/2010

The contracting partners BOCA and Borussia shall communicate in time about the continued cooperation beyond such time”.

Clause 6 (Miscellaneous):

“[...]

4. FIFA rules and regulations shall apply without limitation.

[...]

6. For disputes in connection with this Agreement the contracting parties arrange for the competent FIFA bodies to have exclusive jurisdiction, although both contracting parties may submit the legally binding and final FIFA decisions, if necessary to CAS for review. Unless stated, the Parties establish their seat at the abovementioned places. Court and out-of court services effected to these places shall be deemed legally binding.

For all legal disputes arising from this Agreement the Parties expressly arrange for the competent FIFA bodies based in Zurich/Switzerland to have jurisdiction”.

8. On 16 May 2007, Borussia sent a letter to Boca concerning the clubs’ cooperation, in which it made some requests related to such cooperation. The relevant part of this letter (translation into English of the original letter in Spanish) reads as follows:

“[...] The Cooperation that has existed for almost one year by now has not been exploited thus far from either club as intended at the time when the agreement was signed.

As you told us on the occasion of our trip to Buenos Aires, your U-19 team will participate in a tournament in Ennepetal from May 27 to May 29, 2007, which we would very much like to use as an occasion to deepen our cooperation.

We would be glad if you could send a list by fax in the next few days with the names of the players of Boca Juniors that will take part in the tournament. This tournament will also be watched by executives from our club, so that would be pleased to have discussions with those responsible at your U-19 team.

In connection with our concluded Cooperation Agreement, Borussia Monchengladbach was given the opportunity to resort to players from your club, so that they may be deployed at Borussia Monchengladbach. For this reason, we ask you to let us know if there is a possibility to borrow the player M., [...], for one year. We also ask you to list additional players that could be possibly be borrowed.

To make it possible for the players to acclimatize in Germany, already before the beginning of the season and taking into account the transfer period (8/31/2007), it would be helpful to handle the transfer of a player to Borussia Monchengladbach as quickly as possible.

We hope to hear from you soon and assure you that, as a partner of Borussia Monchengladbach, you are always welcome to our club”.

9. On 4 June 2007, Borussia sent a new letter to Boca expressing certain complaints about their cooperation. This letter, in its pertinent part, reads as follows:

“We had written to you on May 16, 2007 and asked you, among other things, for a list containing the players of your U-19 team that stayed at Ennepetal from May 27 to May 29, 2007.

Unfortunately, we received no response at all.

To our great astonishment we have learnt in the meantime from other sources that your U-19 team had already been staying in Germany and neighboring countries since approximately mid May and we, as your cooperation partner, received absolutely no information whatsoever.

Your team was, for example, in Doetinchem/Holland from May 18 through May 20 and played friendly in Bocholt on May 23. Doetinchem is located about 140 km from and Bocholt about 100 km from Monchengladbach. Ennepetal, where the tournament took place, is only about 80 km from Monchengladbach.

It is certainly difficult to have any cooperation given the great distance between Germany and Argentina. However, it is completely incomprehensible for us that we were not informed during our stay in Argentina in April of 2007 that the U-19 team would be in Germany for about two weeks.

The players of this team specifically travel to Europe to present themselves to the local club. As your cooperation partner we believe that we can expect that we would be your first contact for young players that come into consideration for Germany.

For the conclusion of the Cooperation Agreement Borussia Mönchengladbach is paying a total amount of USD 1,315,000.00 to you. Unfortunately, there has not been any consideration on your part thus far, making the partnership very unilateral.

We ask you once again to let us know how you envision any future cooperation.

In addition, we are once again inquiring about the possibility of a transfer of the player M. We had also addressed this question to you in our letter dated 5/16/2007”.

10. On 21 June 2007, Borussia sent another letter of complaint to Boca with regard to their cooperation relationship, in the following terms:

“We are once again referring to our letters dated 5/16/2007 and 6/4/2007, to which we have received no response from you to date.

Please let us know how you envision the course of our continued cooperation. Thus far, you have made no efforts whatsoever to fill this cooperation with life.

We had asked you on May 15 to no avail to send us a list with players from the team that was to take part in a tournament at Ennepetal from May 27 to May 29, 2007. We were also not informed about your participation in games in Doetinchem/Holland and Bocholt.

Moreover, our questions regarding the possibilities of signing the player M. or other U-19 players were also unanswered.

Please let us know by the end of this month how you envision the future cooperation between our two clubs.

It cannot be the purpose of cooperation to receive payments without providing the services as promised. If you fail to signal any willingness by 6/30/2007 to cultivate any cooperation on your part as well, we will no longer make additional payments to you.

In that case we will be forced to cancel cooperation prematurely for breach of contract”.

11. On 3 July 2007, Boca replied to the abovementioned letters of Borussia as follows:

“We are addressing you in response to your letters concerning the Cooperation Agreement.

We would like to respond in this regard: although you are right concerning our lack of response as well as concerning the player M. and the list of potential players that could play at your club, we do not agree with your statement in your letter dated June 4 that you received nothing in return from us to all.

First of all personally, and also along with the president of the youth division, we provided you with all our knowledge and experience, we especially gave you explanations about the work we handled in the past, and about the work we currently handle in our club; not without reason did I give 20 years to the club, during which I took part in the positioning of Boca as a global soccer club.

We are quite familiar with the reason why we signed the Agreement with you, which is the subject today; we respect what we signed without reservation, and will adequately fulfil the Agreement.

Regardless of our abovementioned statement and without trying to find an excuse for our delayed response, we ask that you accept our sincere apology and note that we had difficult tasks during the months of May and June; in addition there were all the trips due to participation in the “Copa Libertadores de America,” which we won.

In terms of the player M.: we cannot transfer him, since he will be directly used as a substitution for one of our center backs, who is a regular player, in case of a possible transfer.

Nevertheless, we are in the position to suggest the following players: E. (center back), S. (midfielder), A. (left midfielder), C. (key player), T. (center forward).

Tomorrow, we will send you the address and the homepage where you can watch the personal profiles and videos of the abovementioned players, with the exception of the player C., for whom we need some time to be able to provide the corresponding video”.

12. In July 2007, the Player was transferred from Borussia to Club de Fútbol América for a transfer fee of USD 4.600.000.
13. Immediately after the execution of such transfer, Boca claimed from Borussia the payment of 15% of such transfer fee.
14. On 1 August 2007, Borussia sent another letter to Boca making new requests complaints regarding their cooperation relationship. This letter, in its pertinent part, reads as follows:

“We are unable to detect much initiative on the part of your club to “fill the Agreement with life”.

After much effort BORUSSIA Mönchengladbach managed to arrange a visit for two of our gentleman, Max Eberl (youth and amateur director) and Mario Vossen (chief coordinator for scouting), from April 25, 2007 to April 30, 2007. The background was to have an exchange about the existing cooperation and effect a start of the measures described in the Agreement. In order to be able to conduct effective discussions, the two gentlemen were accompanied by an interpreter, Antonio Bercely.

Unfortunately, during our visit to Argentina we were not convinced that Boca was interested in fulfilling the Cooperation Agreement. Mr. Clemente, you received the gentlemen from our BORUSSIA once. The other three visits came about only due to our persistent inquiries and without your participation. The visitor’s program that had been communicated to us was not organized. Rather, the representatives from our club had to take responsibility to organize their own schedule. Invitations to a dinner extended by us were not answered, just like the invitation to you, Mr. Clemente, to attend the game against FC Bayern München was ignored. You provided tickets to our representatives at the fan block to watch a game on 4/29/2007. No official from your club was available.

Luckily, Mr. Antonio Bercely was present in his function as an interpreter — as it turned out the most important component of the trip to find our way around.

Please allow us the remark that BORUSSIA Mönchengladbach has a different concept of hospitality.

The trip by the U19 to Germany and Holland could have been connected with a visit to Mönchengladbach. Why did this trip not come about? From the perspective of BORUSSIA Mönchengladbach we could have exchanged ideas ahead of time. Potential players could have learnt the modalities in Mönchengladbach and we could have met the players.

Why don't you hand over the promised player lists? We received video material of two players. Additional, announced video material has thus far not been provided. After his test training in Cologne the player Tripoldi did not make it into the Bundesliga (German Soccer League). What are criteria you use to offer your players?

Dear Mr. Clemente, with so many question marks concerning our mutual cooperation, we expect a statement from you as to how you will fulfil our cooperation, which exists until 6/30/2010".

15. On 18 October 2007, Borussia terminated the Cooperation Agreement and requested from Boca the reimbursement of the amount received from Borussia upon the signature of the agreement. The letter of termination, in its pertinent part, reads as follows:

"Clause 2 of the Cooperation Agreement very specifically establishes the obligations, which your club entered into with us, and the fulfilment of which is the precondition for all our payments. At no time have you met these obligations, so that we are now forced to end the cooperation and bring about the reimbursement of the amount of USD 765.000.

[...]

In light of these facts we find that we have not received a consideration from your club arising from the Cooperation Agreement thus far, and that we can also not assume that such a consideration will ever be forthcoming. Accordingly, we suggest to you to formally rescind the Cooperation Agreement and ask for your consent by 9/25/2007.

In the alternative, we hereby declare cancellation without notice of the Cooperation Agreement for cause, that - despite several requests to this effect- you have neither met your obligations from the Cooperation Agreement nor specifically explained how this could happen in the future. We ask you to repay the amount of USD 750.000 by 9/25/2007 to one of the accounts listed in this letter, and we point out once again that any payment by our club to you, pursuant to the express content of the Cooperation Agreement, required for you to meet your obligations".

II.2 THE PROCEEDINGS BEFORE FIFA

16. On 28 November 2007, Boca filed a claim against Borussia before FIFA, requesting the payment of USD 655.500 (*i.e.* 15% of the Player's transfer compensation minus 5% of solidarity contribution) plus interest.
17. On 25 September 2008, Borussia filed its response to the referred claim, in which it acknowledged owing the amount of USD 655.500, but also argued via counterclaim that Boca should be ordered to pay Borussia the sum of USD 765.000 plus interest based on Boca's breach of the Cooperation Agreement. Therefore Borussia asked FIFA to set off the first amount against the second and thus, to order Boca to pay USD 109.500 plus interest.
18. On 24 January 2011, the Single Judge of the FIFA Players' Status Committee decided to accept Boca's claim and not to admit Borussia's counterclaim. The operative part of this decision (hereinafter the "Decision") reads as follows:

1. The claim of the Claimant/Counter-Respondent Atlético Boca Juniors, is accepted.

2. *The Respondent / Counter-Claimant, Borussia VfL 1900 Mönchengladbach, has to pay to the Claimant / Counter-Respondent, Atlético Boca Juniors, the amount of USD 655.500 as well as 5% interest per year on the said amount from 28 July 2007 until the date of effective payment, within 30 days as from the date of notification of this decision.*
 3. *The counter-claim of the Respondent / Counter-Claimant, Borussia VfL 1900 Mönchengladbach is not admissible.*
 4. *If the aforementioned sum plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
 5. *The Claimant / Counter- Respondent, Atlético Boca Juniors, is directed to inform the Respondent / Counter – Claimant, Borussia VfL 1900 Mönchengladbach, immediately and directly of the account number to which the remittance is to be made and to notify the Player's Status Committee of every payment received.*
 6. *The costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent / Counter-Claimant, Borussia VfL 1900 Mönchengladbach within 30 days as from the notification of the present decision [...].*
19. The referred inadmissibility of Borussia's counterclaim was based on the fact that the Cooperation Agreement, in the Single Judge's view, falls outside the scope of the FIFA Regulations on the Status and Transfers of Players (hereinafter the "RSTP") and, correlatively, of FIFA's competence to know about disputes deriving from it, since such agreement does not *per se* relate to the transfer or loan of a particular player.

II.3 THE PROCEEDINGS BEFORE THE CAS

20. Borussia did not agree with the Decision and on 16 August 2011 appealed against it before the CAS, requesting in its Statement of Appeal that an award be rendered in the following terms:
1. *The before-mentioned decision of the Respondent n° 2 is annulled, the Respondent n° 1's claim is rejected, the Respondent n°1 is ordered to pay USD 109.500 USD (net) plus 5% interest as of October 26, 2007, subsidiarily:*
 2. *The decision of the Respondent n° 2's Single Judge of the Player's Status Committee is annulled and the case is referred back to FIFA for a decision about the merits of the case, while FIFA being ordered to obey the CAS' opinion about the admissibility of the (counter)claim.*
 3. *The Respondent shall bear all costs before FIFA and the CAS as well as the fees of the Appellant's counsel in the CAS procedure.*
21. On 26 August 2011, Borussia filed its Appeal Brief before the CAS.

22. On 7 September 2011, Boca, in light of the arguments raised and petitions made by the Appellant in its submissions, requested the CAS, among other issues, to render a preliminary award on jurisdiction.
23. On 13 September 2011, Borussia supported Boca's request for a preliminary award on jurisdiction.
24. On 16 September 2011, FIFA agreed that the CAS rendered an award resolving the dispute arising out of the Cooperation Agreement.
25. On 20 September 2011, the CAS sent a letter to the parties noting their agreement concerning the issuance of a preliminary award on jurisdiction in the present case.
26. On 7 December 2011, Boca filed before the CAS written submissions concerning jurisdiction issues, in which it requested the CAS to:
 1. *Uphold FIFA's decision to consider the so-called "collaboration agreement" outside the scope of the Players' Status Committee.*
 2. *Impose Borussia the total costs of this arbitration.*
 3. *Impose Borussia a contribution towards our legal fees in connection to the preliminary award in the amount of CHF 10.000.*
27. On 8 December 2011, FIFA filed before the CAS written submissions providing its position with regard to the present arbitration procedure, in which FIFA basically (i) confirmed its agreement to the CAS rendering an award resolving the dispute arising out of the Cooperation Agreement, (ii) reiterated that it would not make any allegations with regard to substance of such agreement and (iii) requested that the costs of the present proceedings are imposed to the Appellant and that such Appellant is also ordered to cover all legal expenses of FIFA related to the present procedure.
28. On 15 December 2011, the CAS invited the parties to inform whether they preferred a hearing to be held concerning the jurisdiction issues or the issuance of an award on jurisdiction based on the parties' written submissions. All the parties finally communicated that they preferred that the Panel rendered an award on jurisdiction based upon the parties' written submissions.
29. On 29 December 2011 FIFA reiterated its position on the jurisdiction issues previously expressed in its letters dated 16 September 2011 and 8 December 2011.
30. On 16 January 2012, the Panel dealing with the present case was constituted as follows: Mr. José Juan Pintó (President of the Panel), Mr. Efraim Barak and Mr. Michele Bernasconi.
31. On 16 January 2012, Borussia filed new written submissions making some remarks on the jurisdiction issues based on a recent Decision of the Swiss Federal Court (case 4A_246/2011, decision dated 7 November 2011). These submissions were accepted by the Panel pursuant to

article R57 of the Code of Sports-related Arbitration (the “CAS Code”). The Respondents were given a deadline to comment on such submissions and on the decision of the Swiss Federal Tribunal (hereinafter the “TF Decision”), which the parties did in due time.

32. On 23 April 2012, the Panel and the parties’ legal counsel informally discussed in a conference call on some procedural aspects of the case at stake, after which the CAS sent a letter to the parties in the following terms:

“As explained during the conference call, in case the Panel decides that FIFA was competent to deal with both the transfer agreement of the Player F. and the cooperation agreement signed between the Appellant and the First Respondent, the Panel, under article R57 has two options:

(i) Refer the case back to FIFA for a new analysis of the matter;

(ii) Follow up the case at CAS level and issue a new decision on the merits.

The CAS Court Office requests to the parties to inform, on or before 3 May 2012, their position with respect to the two options mentioned above.

Finally, the parties are advised that the Panel shall communicate its decision related to the conduction of the present case, after having received the parties’ position on the above-mentioned queries, and having rendered a preliminary award on jurisdiction”.

33. The parties’ replies to the request made in the referenced letter of 23 April 2012 were the following:

- Borussia stated its preference for this case being decided on the merits by the CAS.
- Boca alleged that the case cannot be sent back to FIFA since the latter is not competent to deal with a dispute arising out of the Cooperation Agreement, and that the case cannot be handled by the CAS either as its involvement in this case would be understood as the one of a body of appeal of a non-competent court. If the Panel found that the precedent of the TF Decision is applicable to this case, the claim of the Appellant could be dealt with in another ordinary procedure before the CAS, but such claim cannot be resolved in this procedure via counterclaim. Therefore both options are inoperative for Boca.
- FIFA sustained that even in the event that the CAS should consider that FIFA had jurisdiction over the Cooperation Agreement (*quod non* in FIFA’s view), it should directly deal with the dispute arising out of such agreement and pass a decision as to the merits.

34. On 3 September 2012, an Award on Jurisdiction was rendered in the present case, ruling that CAS has jurisdiction to decide in the present proceedings on the claim filed by Borussia, and not to refer the case back to FIFA but to follow-up the case at CAS and issue a new decision on the merits of the case.

35. On 27 September 2012, following procedural orders issued by the Panel regarding the parties’ further submission on the merits of the case, FIFA reiterated the position held in its previous

letters and thus informed that it had no further statements to add concerning the dispute at hand.

36. On 3 October 2012, Boca filed written submissions under the title “Statement of defense”, in which the following requests were made:
 - “1. *Be aware of the reservation of actions Boca Juniors has against the Appellant, with cause in the same cooperation agreement.*
 2. *Reject the counterclaim and compensation raised by the Appellant.*
 3. *Impose Borussia the total costs of this arbitration.*
 4. *Impose Borussia a contribution towards our legal fees of CHF 20.000.-”.*
37. On 22 October 2012, CAS invited the parties to add or extend their submissions as to the merits, which the Appellant did on 8 November 2011 and Boca did on 29 November 2012.
38. The hearing on the merits in the present case took place in Lausanne on 8 March 2013. The Appellant and Boca attended the hearing. FIFA declined to attend the hearing despite being aware of the hearing date. At the beginning of the hearing, the parties’ counsel made their respective opening statements, after which, the witnesses Mr. Max Eberl, Mr. Mario Vossen, Mr. Rómulo Zemborain (by teleconference) and Mr. Jorge Clemente (also by teleconference) were cross-examined and finally the parties’ respective counsel made their closing statements. The Panel invited the parties to try to settle the dispute, but after some discussions, they did not reach an agreement. Before closing the hearing, the Panel requested the parties to allege or comment on the specific rules, regulations and law applicable to the case, which the parties did.
39. Both at the beginning and at the end of the hearing, the parties expressly declared that they were satisfied with the way in which the proceedings had been conducted.
40. On 16 April 2013, CAS invited the parties to submit their comments on the nature of the Cooperation Agreement under Swiss Law, which Borussia and Boca did in their respective written submissions dated 29 and 30 April 2013.

III. SUMMARY OF THE PARTIES’ POSITIONS

III.1 BORUSSIA

41. Even if Borussia owes the amount claimed by Boca, this amount is to be set off with the sum that Boca owes to Borussia as regards the breach by the latter of the Cooperation Agreement. The result of such a set-off is that Boca shall pay to Borussia the amount of 109.500 USD.
42. Boca neither rendered the services foreseen in the Cooperation Agreement nor fostered its execution in spite of the repeated requests made by Borussia in this respect. Therefore, it did

not comply with its obligations under the Cooperation Agreement, became in breach and thus the termination executed by Borussia is justified.

43. Borussia paid a sum of money to Boca as regards the Cooperation Agreement and in exchange did not receive the services and considerations agreed therein. It is thus against contractual good faith that Boca could keep the amounts paid by Borussia.
44. Borussia showed interest in the execution of the Cooperation Agreement. For instance, it sent members of its technical staff to Buenos Aires several times and intended to join Boca's players. On the contrary, Boca's attitude was not consistent with the interest in complying with the Cooperation Agreement. Boca did not treat Borussia's staff in an adequate way in Buenos Aires, did not warn Borussia about a trip to Germany of one of its youth teams, did not provide proper information on players likely to be transferred to Borussia and remained silent to Borussia's complaints made in several letters. Only after receiving the letter of termination of the Cooperation Agreement Boca had some initiative in this respect, but then it was too late and irrelevant.
45. The execution of Boca's obligations under the Cooperation Agreement did not depend on previous initiatives or acts of Borussia, as Boca intends to sustain. However, in any case, it is proven that Borussia was proactive and demanding in the performance of the referred Agreement.
46. Concerning the reserve of actions made by Boca with regard to the unpaid instalments of the Cooperation Agreement, this claim is not only unfounded on the merits but also time-barred in accordance with the FIFA Regulations.

III.2 BOCA

47. Borussia terminated the Cooperation Agreement without just cause, so this termination cannot ground the existence of a credit in favour of Borussia to be compensated with the amount that Borussia has acknowledged to be due to Boca.
48. The real intent of Borussia with the termination of the Cooperation Agreement was to avoid the payment of the outstanding amounts under the referred Agreement and the payment of the USD 655.500 owed as regards the transfer of the Player to Club de Fútbol América.
49. The grounds raised by Borussia in its letter of 18 October 2007 (summarizing, lack of information on players of potential interest for Borussia, not having communicated to Borussia the presence of a Boca's youth team in a championship in Germany and the fact that no transfer of Boca players took place) do not justify the termination of the Cooperation Agreement. In any case, it shall be stated that (i) Boca offered up to 12 skilled players to Borussia for a potential transfer, all of which were rejected by Borussia, (ii) Borussia was aware that Boca's sub-19 team would play in Germany and decided not to come and scout players, and (iii) the fact that no transfer finally arose out of the Cooperation Agreement was

not Boca's fault, given that under the Cooperation Agreement, for a transfer to be effected it was necessary that both parties agreed on it, irrespective of the fact that the player had to consent to it as well.

50. In fact it was Borussia the one breaching the Cooperation Agreement's commitments. For instance, Borussia (i) never answered to Boca's invitation to send a coach and other staff to its facilities, (ii) did not organize a friendly match with Boca, (iii) and did not pay the remaining instalments under the Cooperation Agreement.
51. In accordance with the Cooperation Agreement, most of the activities to be performed by Boca depended on a previous performance of Borussia, which did not take place. Therefore, Borussia cannot claim that Boca breached its contractual obligations when it did not make the previous acts that were necessary for the performance of the relevant services under the referred Agreement. Needless to say that in the few cases in which Borussia requested some performance from Boca, it did the necessary to comply with it, as happened when Boca hosted Borussia's staff in Buenos Aires each time they went there.
52. Borussia did not try to resolve the problems with Boca amicably as foreseen in clause 6.3 of the Cooperation Agreement. In lieu of it, it simply decided to terminate the referred Agreement directly, without even warning Boca in advance. This reveals the bad faith of Borussia in the matter at stake.
53. The lack of cooperation of Borussia in the execution of the Cooperation Agreement and the correlative termination of it without just cause is depriving Boca to receive the remaining price instalments.

III.3 FIFA

54. Given that the CAS has ruled that it has jurisdiction to decide on Borussia's claim, FIFA agrees that an arbitral award on the substance of the dispute as to the Cooperation Agreement is rendered, but has declined to allege on the merits and to attend the hearing that took place in this case.

IV. LEGAL CONSIDERATIONS

IV.1 CAS JURISDICTION

55. The jurisdiction of the CAS to decide on the present case arises out of Articles 62 and 63 of the FIFA Statutes (2011 Edition) and Article R47 of the CAS Code. Furthermore, pursuant to the Award on Jurisdiction rendered on 3 September 2012, it was held that the CAS has jurisdiction to decide in the present proceedings also on the claim filed by Borussia against Boca. It is to be additionally mentioned, that all the parties signed the relevant Order of Procedure in the present case.

56. Therefore, the Panel considers that the CAS is competent to decide on this case.

IV.2 APPLICABLE LAW

57. Article R58 of the CAS Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

58. Article 62.2 of the FIFA Statutes (2011 Edition) states 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”.

59. In accordance with these provisions, the Panel understands that the present dispute shall be resolved according to the FIFA Regulations and, additionally, Swiss Law.

IV.3 ABOUT THE DISPUTE SUBMITTED TO THE PANEL BY THE PARTIES

IV.3.1. The object of the dispute

60. According to the parties’ written submissions and the arguments raised by them in the hearing, the object of the dispute may be briefly summarized as follows:

- (i) The Appellant considers that the Decision shall be revoked and that Boca shall be ordered to pay the amount of 109.500 USD, as even if it acknowledges to owe to Boca the amount of 655.500 USD, this amount is to be set off with the (higher) amount of 765.000 USD that Boca should refund to Borussia as a consequence of the termination of the Cooperation Agreement.
- (ii) The Respondent rejects owing any amount to Borussia and thus requests that the Appellant’s claim is dismissed.

IV.3.2 The Cooperation Agreement: terms, nature and execution

61. The Panel shall start its considerations and the examination of the *quaestio litis* by assuming that it is undisputed, and expressly accepted by all the parties, that Borussia owes to Boca the amount of 655.500 USD arising out of the transfer of the Player from Borussia to Club de Fútbol América. This is thus not an issue in the case at stake.

62. *De facto*, therefore, the only remaining disputed element between the parties is on the potential “counter-obligation” of Boca to pay to Borussia the amount of 765.000 USD on the basis of the termination of the Cooperation Agreement. The Appellant holds that such an obligation indeed exists and is to be set off with the credit of Boca towards Borussia amounting 655.500 USD, while the First Respondent rejects the existence of Appellant’s claim, but does not explicitly dispute the possibility to set off the claims, if admitted.
63. In light of the above and in order to decide the dispute, the Panel will analyze the circumstances surrounding the termination of the Cooperation Agreement and the consequences of such termination.
64. To such purpose and as a previous stage, the Panel shall examine the terms and nature of the Cooperation Agreement, as well as the events which occurred while the Agreement was in effect and at its termination.
65. As mentioned in the Award on Jurisdiction dated 3 September 2012, the Cooperation Agreement foresees several reciprocal commitments of the parties of diverse nature. This mixture of matters in one single agreement makes it difficult to determine the nature of this agreement and especially under which rules of law it is to be analyzed.
66. After having checked the details and particularities of the Cooperation Agreement, the Panel is of the opinion that under Swiss Law, this Agreement is to be considered a hybrid agreement, *i.e.* an “innominate contract”, and thus shares the opinion, in this specific respect, of the Swiss expert brought by the Appellant to the file with its letter of 29 April 2013.
67. Under Swiss Law, the nature of this kind of agreements, and the legal provisions applicable to them, is to be determined as a general rule on the basis of their main or predominant element(s) and consideration(s). The general rules on obligations and contracts will of course apply to these agreements, but also those which are specific for the contractual type corresponding to such predominant element.
68. In the case at hand, the variety of features existing in the Cooperation Agreement does not help to clearly ascertain which specific rules are to be applied to it as a hybrid agreement.
69. However, after having analyzed not only the Cooperation Agreement’s terms but also the practical development of it, the Panel is of the opinion that the predominant element of the agreement is the rendering of services from Boca to Borussia.
70. The Panel has firstly taken into consideration that several contractual provisions make direct reference to these services. Among others:

Clause 1

Borussia shall receive the opportunity to send talents from the performance division of its own soccer youth to Argentina to integrate them for a limited time into the training and educational program of BOCA for the purpose of advance training.

3. Borussia shall receive the opportunity to send senior employees and trainers from the training and youth division to Argentina to integrate them for a limited time into the training and educational program of BOCA for the purpose of advance training.

4. Borussia shall receive the opportunity and BOCA undertakes to integrate outstanding talents into its youth teams in compliance of the national and international regulations of soccer sports in accordance with the athletic and economic realities and the relevant requirement, in each case in detail pursuant to the provisions of this Cooperation Agreement.

Clause 2

Subsequently, for every contract year Borussia shall receive the opportunity to integrate up to 4 qualified workers from the division of trainers and educational staff into the training and educational program of BOCA for the duration of 3 months. Borussia shall assume the costs for the trip, BOCA shall assume all local costs such as accommodation, housing, food, equipment, etc. In this connection BOCA undertakes to grant the trainers and support staff carefully chosen by Borussia comprehensive insight into the training and educational system of BOCA.

2. Borussia shall receive the opportunity to send select and talented youths up to 20 years of age from the performance division of Borussia to BOCA in Argentina, so that they will be integrated there by BOCA in the training, educational and competitive area of the BOCA for the intended duration of 2 months, in order to develop and optimize their theoretical and practical training in everyday life. [...]

4. The youth soccer players and the trainers, instructors and support staff sent to Argentina as part of this cooperation between Borussia to BOCA in accordance with the regulations of the Agreement, shall be cared for onsite at BOCA in Buenos Aires by BOCA comprehensively and professionally [...]:

Clause 4

1. Borussia commits to BOCA to make payments for the fulfilment and the provision of the services under this Cooperation Agreement.

71. In addition the Panel has also considered that most of the letters exchanged between the parties refer to the mentioned services provision as well. For instance:

- Letter of 16 May 2007:

We would be glad if you could send a list by fax in the next few days with the names of the players of Boca Juniors that will take part in the tournament.

- Letter of 4 June 2007:

We had asked you on May 15 to no avail to send us a list with players from the team that was to take part in a tournament at Ennepetal from May 27 to May 29, 2007. [...]

It cannot be the purpose of cooperation to receive payments without providing the services as promised.

- Letter of 3 July 2007:

First of all personally, and also along with the president of the youth division, we provided you with all our knowledge and experience, we especially gave you explanations about the work we handled in the past, and about the work we currently handle in our club; not without reason did I give 20 years to the club, during which I took part in the positioning of Boca as a global soccer club.

72. Finally it is also noted that the Cooperation Agreement establishes the possibility of transferring players from Boca to Borussia under certain conditions. These transfers, if finally executed, would have implied the payment of a specific and separate transfer price, which enables to hold, in the Panel's opinion, that the payment made by Borussia under the Cooperation Agreement was not essentially made in consideration to, or as part of, future transfers or the right to execute them, but in exchange of provision of services from Boca to Borussia.
73. Once established that the provision of services from Boca to Borussia is the predominant feature of the Cooperation Agreement, the Panel is of the opinion that the provisions on the mandate contract (articles 394 *et seq.* of the Swiss Code des Obligations – hereinafter the “CO”) are to be applied to the Cooperation Agreement, being this contract defined in article 394.1 CO as follows:
- “le mandat est un contrat par lequel le mandataire s’oblige, dans les termes de la convention, à gérer l’affaire dont il s’est chargé ou à rendre les services qu’il a promis”.*
- In English (free translation):
- “the mandate is a contract by virtue of which the mandataire commits itself, under the terms of the contract, to manage the affair entrusted to him/her or to render the services promised by him/her”.*
74. For the sake of clarity and in light of some statements made by the First Respondent in its letter dated 30 April 2013, the Panel shall emphasize that it did not state at all in the Award on Jurisdiction that the Cooperation Agreement was not a mandate contract. The approach made in this respect by Boca in the mentioned letter of 30 April 2013 is incorrect. What the Panel clearly said in para. 67 of the referred Award was that the Cooperation Agreement was not “*a mere «commercial agreement» or «service contract»*”, in the sense that such agreement had also a sporting-related nature which justified the recourse to sporting resolution bodies to deal with the disputes arising out of it and thus establishing the jurisdiction of such bodies over the dispute at stake. It is thus clear that the Panel never meant in the Award of Jurisdiction to exclude the possibility that the Cooperation Agreement is a mandate contract, as Boca repeatedly intends to hold in the referred letter.

IV.3.3 The termination of the Cooperation Agreement and its consequences

75. One of the main characteristics of the contract of mandate under Swiss Law is the possibility of terminating it at any time (article 404.1 CO: “*le mandat peut être révoqué ou répudié en tout temps*”).
76. This right to terminate, as sustained, *ad exemplum*, at THEVENOZ/WERRO (Commentaire Romand, Code des Obligations I, article 404), is of absolute nature:
- “Selon CO 404 I, chaque partie peut résilier le contrat à **n’importe quel moment, sans raison particulière**. Cette disposition fonde ainsi la faculté inconditionnelle pour les parties de mettre fin au contrat” [...].*

*“Le Tribunal Fédéral considère au demeurant que les deux parties ont **impérativement dans tous les mandats le pouvoir de résilier** le contrat en tout temps, et cela sans égard au caractère gratuit, personnel ou non du service”* (emphasis added by the Panel).

In English (free translation):

“In accordance with CO 404 I, each party can terminate the contract at any time and with no particular reason. This provision also grounds the unconditional faculty of the parties to terminate the contract” [...].

“The Federal Tribunal considers, in summary, that the two parties imperatively have, in all the mandates, the faculty of terminating them at any time, irrespective of their free, personal or non-service nature”.

77. Notwithstanding the above, Swiss law is concerned about the way in which a mandate contract may be terminated, and thus provides that if the termination of the contract is timely inopportune, the terminating party is obliged to compensate the damages caused as a result of the termination (article 404.2 CO: *“celle des parties qui révoque ou répudie le contrat en temps inopportun doit toutefois indemniser l'autre du dommage qu'elle lui cause”*).
78. On the basis of the above mentioned, the Panel is satisfied that Borussia was entitled to terminate the Cooperation Agreement at any time and without having to ground the reasons for the termination.
79. However, Borussia certainly gave reasons for the termination in the letter of 18 October 2007, most of which in addition were not new for Boca, which had been made aware of them in previous correspondence exchanged between the parties. These reasons raised in the termination letter are, in the Panel's view, in any case sufficient to consider that Borussia terminated the Cooperation Agreement with just cause, as the level of performance of Boca's duties under the Agreement was below any reasonable expectation of an objective contractual party, especially of Borussia, which was, in the Panel's opinion, quite active and demanding with regard to the services to be rendered by Boca. This, together with Borussia's attitude of having warned Boca about its dissatisfaction in previous correspondence and having tried to amend the situation in an amicable way, makes the Panel also believe that the termination was not timely inopportune.
80. Being it clear that Borussia was entitled to terminate the Cooperation Agreement, the Panel shall analyse the consequences of such termination.
81. Under Swiss Law, the contractual “extinction” by cancellation or termination implies a reclaim of mutual considerations, generally with effects *ex tunc* (retroactive up to the beginning of the contract) in the cases of cancellation, and *ex nunc* (that is to say, from the moment in which the termination takes place) in the cases of termination.
82. In the present case, the Cooperation Agreement was terminated, so the effects that such termination should produce are, in the Panel's opinion, that (i) the amounts already paid for the time in which the Cooperation Agreement was in effect are not to be refunded, (ii) the amounts paid in excess for contractual periods that will not take place anymore as regards the

termination are to be refunded and (iii) that the amounts to be paid for periods beyond the termination date become not payable.

83. Applying the following principles to the specific figures and payments involved in the Cooperation Agreement, the Panel notes that :
 - (i) The total consideration to be paid by Borussia in accordance with clause 4 of the Cooperation Agreement for the whole duration of the Agreement (4 years) was of 1.315.000 USD.
 - (ii) The sole amount paid by Borussia was the one corresponding to the first instalment under clause 4 of the Cooperation Agreement (765.000 USD).
 - (iii) The Cooperation Agreement remained in effect for 16 months (end June 2006 until mid/end October 2007).
84. Taking the aforementioned parameters into account:
 - (i) If the total consideration is split on a monthly basis, the amount per month theoretically payable by Borussia to Boca under the Cooperation Agreement would have been 27.395,83 USD (1.315.000 / 48 months).
 - (ii) As the Cooperation Agreement remained in force for 16 months, the amount that would correspond to such period is 438.333,28 USD (27.395,83 x 16 months).
 - (iii) Given that Borussia already paid to Boca an amount exceeding these 438.333,28 USD (765.000 USD), the latter should refund to Borussia the difference between this sum of 438.333,28 USD and the referred first instalment paid (765.000 USD), that is to say 326.666,72 USD.
85. In accordance with articles 102 and 104 CO, interest on this amount of 326.666,72 USD is to be applied at the rate of 5% from 26 October 2007, as in the Cooperation Agreement's termination letter, Borussia expressly requested Boca to refund the amounts already paid by Borussia in accordance with clause 4 of said Agreement and fixed a term for payment of such amount which ended on 25 October 2007. As for the interests due on the amount to be paid by Borussia, the Panel is satisfied that no valid reason has been submitted to justify a different decision than the one taken by FIFA, *i.e.* interest shall be due as from 28 July 2007.

IV.3.4 Decision

86. Taking the above mentioned legal considerations into account, the Panel has decided to partially uphold the appeal, and thus, to confirm the Decision (except for section 2 of its operative part, with respect to the time limit for payment, and section 3, which is removed), which means that Borussia is ordered to pay to Boca the amount of 655'500 USD plus 5% interest per year on said amount from 28 July 2007, and to order Boca to pay to Borussia the sum of 326.666,72 USD plus 5% interest per year on said amount from 26 October 2007. This of course does not limit the right of either party to set off its claims against the claim of the other party, in accordance with applicable rules.

87. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Borussia VfL 1900 Mönchengladbach GmbH against the Decision of the Single Judge of the FIFA Players' Status Committee dated 24 January 2011 is partially upheld.
 2. The Decision of the Single Judge of the FIFA Players' Status Committee dated 24 January 2011 is confirmed, except for sections 2 and 3 of the operative part of such Decision, which are replaced by the following:
 2. *Borussia VfL 1900 Mönchengladbach GmbH has to pay to Club Atlético Boca Juniors the amount of USD 655'500 plus 5% interest per year from 28 July 2007 until the date of effective payment.*
 3. *Club Atlético Boca Juniors is ordered to pay to Borussia VfL 1900 Mönchengladbach GmbH the amount of USD 326.666,72 plus 5% interest per year from 26 October 2007 until the date of effective payment.*
- (...)
5. All other motions and/or prayers for relief are rejected.