



**Arbitration CAS 2008/A/1544 RCD Mallorca v. Al Arabi, award of 13 February 2009**

Panel: Mr Christian Duve (Germany), President; Mr Michele Bernasconi (Switzerland); Mr José Juan Pinto (Spain)

*Football*

*Solidarity contribution*

*Legality of an internal arrangement between clubs for the financial burden of the solidarity contribution*

*Interpretation of a transfer agreement*

- 1. The 2005 FIFA Regulations on the Status and Transfer of Players, as already foreseen in previous rules and FIFA circulars, foresee that towards third parties, i.e. the clubs entitled to the solidarity contribution, the obligation to pay the contribution remains with the new club. However, the transferring club and the new club are free to agree on a shift of the final, financial burden of the solidarity contribution and, in particular, to agree on a rule regarding any reimbursement due or not due. Therefore, the 2005 FIFA Regulations do not prohibit the parties' stipulations providing that the new club, instead of the former club, will carry the financial burden of the solidarity contribution. Such contractual stipulation is equally allowed under Swiss law.**
- 2. If at the time of conclusion of a transfer agreement, the representatives of both parties, knowing about the existence of the solidarity mechanism, signed the agreement bearing in mind that the former club would not pay the solidarity contribution and would receive the full amount for the transfer of the player without any discounts or deductions, it is the new club that is liable to bear the financial responsibility for the payment of the solidarity contribution. This is based on the real content of the agreement and the real intention of the parties.**

R.C.D. Mallorca S.A.D. (the Appellant, "Mallorca" or the "former club") is a football club competing in the Spanish first division.

Al-Arabi (the Respondent, "Al Arabi" or the "new club") is a football club competing in the Qatari League.

The undisputed facts that are the background of the present dispute can be summarized as follows.

During November 2006, the parties entered into negotiations for the transfer of the Argentine player, L. (the "Player" or "L."), born in 1984. The negotiations took place first in Palma de Mallorca during

two weeks and then continued in Qatar, where finally on 23 November 2006, the parties and the Player concluded a private agreement (“Transfer Agreement”) to transfer the Player.

In Spain, the following persons participated in the negotiations: on Mallorca’s behalf, Mr. Fernando Pons, Sportive Manager of Mallorca, and Mr. Pedro Terrassa Sánchez, Mallorca’s manager; and on Al-Arabi’s behalf, H.E. Sheikh Faisal Bin Mubarak Al-Thani, President of the Board of Directors of Al-Arabi and Mr. Ahmed Rashad, Al-Arabi’s counsel for international players’ transfers, both of them accompanied by a translator. In Qatar, only Mr. Fernando Pons and H.E. Sheikh Faisal Bin Mubarak Al-Thani negotiated the transfer of the Player.

The Transfer Agreement, as drafted during the negotiations held in Spain, stipulated the following:

*“First – Purpose*

*According to the present contract R.C.D Mallorca S.A.D. sell(s) and transfer(s) the Federative Rights of the football professional Player L. to Al-Arabi Sports Club, that they acquire them free of any burden or tax and with exclusiveness.*

*Second – Price*

*The NET price of the present transfer is agreed in Four Million Six Hundred Fifty Thousand USA Dollars (4.650.000\$) that will be paid:*

*Two Million four hundred thousand USA Dollars NET (2.400.000) cash, through bank transfer.*

*The remaining amount, two Million two hundred fifty thousand USA Dollars NET (2.250.000), will be paid the 31<sup>st</sup> of July of 2007 and guaranteed by bank of prime bank.*

*[...]*

*R.C.D Mallorca S.A.D. will request to Real Federación Española de Fútbol [Royal Spanish Football Federation] the delivery of the International Letter of Transfer of the player to the Qatar Federation when the bank is in its possession and also the approval by R.C.D. Mallorca and its bank of the bank guarantee (sent) by the bank that guarantees this situation.*

*[...]*

*Fourth – Players acceptance*

*The Player L. accepts and allows specifically the present Transfer of Federative Rights, knowing and agreed with all the stipulations of the present contract, and from this moment he will be subjected to the discipline of the acquired organization.*

*[...]*

*Sixth – Privilege*

*For all the questions that could result [from the interpretation] or the application of the present Contract, the parties [waive their right to bring a claim before the jurisdiction that could be competent and subject themselves] to FIFA arbitration, that will take place in accordance with its Arbitration Regulations.*

*[...]*”

[Emphasis and modifications made by the Panel].

According to the evidence submitted by the parties and the testimonies heard during the hearing, Appellant drafted the Transfer Agreement in Spanish and gave a copy of it to Respondent in Palma de Mallorca that had it translated into English. Respondent then gave this translation to its lawyers in Qatar and travelled back to Qatar with the Player to do the medical examination. Once in Qatar, Respondent requested to include an additional clause in the Transfer Agreement expressing that Mallorca would be liable to pay the solidarity contribution but Appellant refused to do so. Mr. Fernando Pons, who was negotiating the transfer at the time on behalf of Mallorca, explained that he had a copy of the Transfer Agreement which had already been signed by Mr. Pedro Terrassa and expressed that he would not accept any modifications to the contract. In his words, either Al-Arabi signed the Transfer Agreement as it was or the deal was off. The negotiations continued for a few days in Qatar. In the end, no express clause concerning the solidarity contribution was included in the contract.

Both parties and the Player signed an English and a Spanish version of the Transfer Agreement as originally drafted by Mallorca (transcribed above). Furthermore, both parties' representatives stated during the hearing that no discussion on the solidarity mechanism had taken place in Spain and that this had been first raised by Respondent in Qatar when the parties met again after the Player had passed the medical examination.

On 7 December 2006, Respondent paid the first instalment of 2,400,000 USD by means of a bank transfer. Moreover, on that same date the Commercial Bank of Qatar issued a letter of credit in favour of Appellant for an amount of USD 2,250,000, payable on 31 July 2007 and expiring on 15 August 2007 ("Letter of Credit").

On 4 January 2007, Asociación Atlética Argentinos Juniors ("Argentinos Juniors" or the "Argentinean club"), an Argentine first division club where the Player was registered from 22 March 1995 until 9 January 2006, submitted a claim to FIFA against Respondent for the payment of the solidarity contribution related to the Player in the amount of EUR 202,500 payable with interests.

On 3 July 2007, the Qatar Football Association sent a fax to FIFA containing Respondent's position concerning the payment of the solidarity contribution requested by Argentinos Juniors. In this correspondence, Respondent recognized its obligation to pay the solidarity contribution to the Argentinean club and left its calculation to the competent authority, FIFA's Dispute Resolution Chamber (DRC). However, Respondent believed that it had to be reimbursed for its payment of the solidarity contribution to the Argentinean club by Appellant. Therefore, Respondent expressly requested FIFA Players' Status Committee (PSC) to involve Appellant in the dispute before the PSC and to immediately authorize Respondent to deduct the amount of 232,500 USD – corresponding to 5% of the player's transfer compensation (amounting to a total of USD 4,650,000) – from the payment that Respondent still had to make to Appellant. Finally, Respondent also asked FIFA to immediately warn Appellant not to give execution to the Letter of Credit in its possession.

On 4 July 2007, FIFA involved Mallorca in the proceedings before the PSC.

On 31 July 2007, Appellant executed the Letter of Credit in the full amount of 2,250,000 USD.

On 2 November 2007, the DRC of FIFA ordered the following:

*“The claim of Asociación Atlética Argentinos Juniors is partially accepted.*

*Al-Arabi has to pay the amount of USD 186,000 to Asociación Atlética Argentinos Juniors within 30 days as from the date of notification of this decision. Within the same time limit, Al-Arabi must pay 5% interest per annum on the amount of USD 96,000 from 7 January 2007 as well as 5% interest per annum on the amount of 90,000 from 31 August 2007 until the date of effective payment.*

*[...]*

*R.C.D. Mallorca S.A.D. has to reimburse the amount of USD 186,000 to Al-Arabi within 30 days of notification of the present decision.*

*If the aforementioned sum is not paid within the aforementioned deadline an interest rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted to FIFA’s Disciplinary Committee for its consideration and decision.*

*[...]”.*

To arrive at these conclusions, the DRC proceeded to an analysis of article 2 of the transfer agreement between Al-Arabi and Mallorca and considered that:

*“the clause in question is rather vague and, particularly, that the term ‘NET’ is not sufficient to conclude that the 5% solidarity contribution should not be deducted from the transfer compensation in the present case, in particular in view of the unambiguous wording of the Regulations which clearly provides for the deduction of the applicable amount of solidarity contribution from any transfer compensation”.*

The DRC then made reference to:

*“its well-established jurisprudence applied in similar cases, in accordance with which the player’s new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training in strict application of art. 1 and 2 of the Annex 5 to the [FIFA] Regulations. At the same time, the player’s former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player’s new club. Consequently, the members of the [DRC] determined that Al-Arabi is to pay the applicable amount of solidarity contribution to [Argentinos Juniors], and shall in return be reimbursed by R.C.D. Mallorca S.A.D”.*

[Clarifications made by the Panel]

On 8 April 2008, the DRC’s decision was notified to all the parties concerned by fax.

On 22 April 2008, Appellant filed its appeal against the DRC’s decision dated 2 November 2007 to the CAS.

In its submissions, Appellant proposed Spanish as the language for the present arbitration.

On 5 May 2008, the CAS Court Office notified the FIFA of the present appeal proceedings and requested a clean copy of the decision issued by the FIFA DRC on 2 November 2007.

On 7 May 2008, Appellant filed its Appeal Brief, requesting that the Panel revoked the DRC's decision dated 2 November 2007 and declared that Mallorca did not have to reimburse the amount of 186,000 USD to Al-Arabi for its payment to Argentinos Juniors for the solidarity contribution about the player L.

On 12 May 2008, Respondent informed CAS on its disagreement with the selection of Spanish as the language for the arbitration and suggested the English language instead.

On 13 May 2008, Appellant confirmed to the CAS Court Office that it had "*no problem if English is selected as language of the procedure*".

On 14 May 2008, the CAS Court Office notified the parties that English had been chosen as the language for the present arbitration. Moreover, it invited Respondent to file its appeal answer within the following twenty days from the relevant receipt.

On 21 May 2008, FIFA sent a letter to the CAS Court Office informing that it had renounced its right to intervene in the present arbitration proceedings and provided CAS with a clean copy of the challenged DRC decision dated 2 November 2007.

On 29 May 2008, the CAS received from the lawyer of Argentinos Juniors a letter informing that it was renouncing to be a party of the present arbitration proceedings.

On 5 June 2008, Respondent sent the answer to the appeal to the CAS and requested that the CAS dismissed in full the appeal filed by Mallorca and fully confirmed the decision of the DRC dated 2 November 2007.

On 18 December 2008, a hearing was held in this matter in Zurich.

Mallorca in summary agrees with the fact that Argentinos Juniors is entitled to receive the amount of 186,000 USD as solidarity contribution from Al-Arabi and accepts that the 2005 edition of the Regulations for the Status and Transfer of Players ("FIFA Regulations") is applicable to the present case, as ruled by the DRC.

However, it interprets the FIFA Regulations to place the responsibility of calculating the solidarity contribution and of distributing it among the former clubs on the new club, in this case, Al-Arabi. Furthermore, it believes that Al-Arabi and Mallorca had agreed that Al-Arabi should pay the solidarity contribution.

Al-Arabi in summary deems the 2005 edition of the FIFA Regulations applicable to the present case and quotes article 60(2) of the FIFA Statutes that states that CAS will apply the various FIFA Regulations and, additionally, Swiss law.

Respondent mentions that the FIFA Regulations do not expressly state whether the 5% solidarity contribution is calculated on the gross or the net amount of the transfer compensation. However, it

*“literally states that said 5% shall be calculated on the 'compensation paid' to the player's former club and not on the compensation agreed between the two clubs concerned. On the other hand, the ratio legis behind this FIFA provision is based on the fact that the criteria of calculation of the solidarity contribution must be unquestionably the same for all the football clubs of every association member of FIFA. Therefore, 5% can be calculated on the amount effectively paid by the player's new club to his former club only, without taking care of any other eventual amount due, for example, for taxation. With this in mind, when a player's new club omits to deduct 5% from the relevant player's transfer compensation and it therefore pays all the amount to the player's former club, said new club will be entitled to receive back its 5%”.*

In his oral pleadings, Al-Arabi subsidiarily submitted that the parties had not reached an agreement on the issue of the solidarity contribution and that this matter had been left open to be settled by the FIFA dispute resolution bodies according to its arbitration regulations, pursuant to the sixth clause contained in the Transfer Agreement.

Finally, Al-Arabi explains that it did not retain the 5% corresponding to the amount of solidarity when it paid the transfer compensation to Appellant because the issuance of the International Transfer Certificate (ITC) for the Player was strictly subordinated to the payment of the first instalment for an amount of 2,400,000 USD as well as to the issuance of the Letter of Credit in favour of Mallorca for the remaining amount of 2,250,000 USD.

## LAW

### Admissibility and jurisdiction

1. The decision of the DRC was notified to the parties on 8 April 2008; Appellant, therefore, had under article 61 of the FIFA Statutes until 29 April 2008 to file the appeal statement, which he did on 22 April 2008. Hence, the appeal is admissible as it was filed within the stipulated deadline.
2. The jurisdiction of CAS, which is not disputed, derives from articles 60 and 61 of the FIFA Statutes; article R47 of CAS Code gives also basis for the jurisdiction of this Court.
3. The scope of the Panel's jurisdiction is defined in article R57 of the CAS Code, which provides that: *“The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”*. The CAS, therefore, is not bound by the facts as established by the DRC if parties present new facts in the present proceedings.

## Applicable Law

4. Abiding by article R58 CAS Code, the CAS settles the disputes 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 that the CAS deems appropriate.
5. Moreover, article 60(2) FIFA Statute provides 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”*.
6. The parties have also included in their pleadings arguments in favour of Swiss law and have largely based their arguments on the FIFA Regulations in their 2005 edition.
7. Consequently, the Panel rules primarily applicable the 2005 edition of the FIFA Regulations, and additionally, Swiss law. The Panel deems applicable the 2005 edition of the FIFA Regulations rather than the 2008 edition for three reasons: first, that the relevant contract at the basis of the present dispute was signed in November 2006; second, that the claim was lodged at FIFA in January 2007 and third, that all the parties have recognized and the applicability of the 2005 FIFA Regulations.

## Merits of the Appeal

8. In order to determine whether Appellant is obliged to reimburse the solidarity contribution paid or to be paid by Respondent as ordered by the DRC, the Panel must answer the following questions:
  - A. Does the 2005 version of the FIFA Regulations impose an obligation on the transferring club to carry the final financial burden of the solidarity contribution?
  - B. Depending on the answer to question a), can the parties freely stipulate which club has to bear the financial responsibility for the payment of the solidarity contribution?
  - C. Depending on the answer to question b), does Appellant in this case have to eventually bear the solidarity contribution? In other words, what are the legal consequences of the stipulations made by the parties in the present case?
- A. Existence of an obligation for the transferring club, under the 2005 version of the FIFA Regulations, to bear the burden of the solidarity contribution*
9. To resolve whether the 2005 version of the FIFA Regulations imposes an obligation on the seller to carry the financial burden of the solidarity contribution, the Panel analyzes the following provisions of the FIFA Regulations which govern the solidarity mechanism.

10. Article 21 of the FIFA Regulations provides:

*“If a Professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his previous club (solidarity contribution). The provisions concerning solidarity contributions are set out in annex 5 of these Regulations”.*

11. Moreover, Article 1 of Annex 5 adds:

*“If a Professional moves during the course of a contract, **5% of any compensation**, with the exception of Training Compensation, **paid** to his Former Club **shall be deducted** from the total amount of this compensation and distributed by the New Club as a solidarity contribution to the club(s) involved in his training and education over the years”.*

[Emphasis added by the Panel]

12. Additionally, the Commentary on the Regulations regarding the Status and Transfer of FIFA Football Players (“Commentary”), when dealing with the interpretation of article 1 of Annex 5 of the FIFA Regulations, states that:

*“If a professional player transfers during the validity of his employment contract [i.e. the player and the club mutually agree to terminate the employment contract before its expiry date] and the new club pays the former club compensation for allowing the player to transfer to the new club, **the new club shall retain and distribute 5% of this transfer compensation** to all clubs where this player played between the ages of 12 and 23”* (Commentary on the Regulations for the Status and Transfer of Players, pg. 128).

[Clarifications made and emphasis added by the Panel]

13. The DRC has already dealt with the interpretation of these articles on similar cases where the payment of the transfer fee was agreed *inter partes* as “a net amount” and has repeatedly referred to its well-established jurisprudence *“in accordance with which the player’s new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player’s training in strict application of art. 1 and 2 of the Annexe 5 to the [FIFA] Regulations. At the same time, the player’s former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player’s new club”* (See FIFA’s DRC, Decision number 281320 in the matter between Club X, XX / Z, ZZ / Y, YY, 15 February 2008, para. 15; FIFA’s DRC, Decision number 117953a in the matter between Club A, xxxxx / B, xxxx / C, xxxxx, 2 November 2007, para. 14; FIFA’s DRC, Decision number 117953b in the matter between Club A, xxxxx / B, xxxx / C, xxxxx, 2 November 2007, para. 14). Lastly, the DRC also sustained this position even when it was clear that the parties had expressly stipulated that the seller would not carry the financial burden of the solidarity contribution (See FIFA’s DRC, Decision number 971212a in the matter between the club X / the club Y / and the club Z, 14 September 2007, para. 12; FIFA’s DRC, Decision number 971212b in the matter between the club X / the club Y / and the club Z, 14 September 2007, para. 12; FIFA’s DRC, Decision number 87505 in the matter between the A, Y / B, Y, 10 August 2007, para. 10).
14. The CAS jurisprudence available to the Panel at the moment of drafting the award contains no express interpretation of the 2005 edition of the FIFA Regulations. However, when analyzing the 2001 edition of the FIFA Regulations, the competent Panel in the case CAS 2006/A/1018

considered that “FIFA Regulations 2001 and the FIFA Application Regulations 2001 provide for a mechanism which clearly required from the Respondent to deduct from the transfer fee the amount due to the training club(s). The Panel has also given due consideration to the CAS jurisprudence, according to which, if the new club fails to retain the 5% solidarity contribution from the transfer amount, it is still entitled to claim it back” (CAS 2006/A/1018, para. 7.4.6).

15. To summarize, the 2005 FIFA Regulations, as already foreseen in previous rules and FIFA circulars, foresee the following principles:
  - It is the new club that has the obligation to pay the solidarity contribution to the club(s) entitled to it.
  - Towards third parties, i.e. the clubs entitled to the solidarity contribution, the obligation to pay the contribution remains with the new club, even if there are internal arrangements between the new club and the transferring club.
  - The transferring club and the new club are free to agree on a shift of the final, financial burden of the solidarity contribution and, in particular, to agree on a rule regarding any reimbursement due or not due.
  
16. Therefore, the 2005 version of the FIFA Regulations does not prohibit the parties’ stipulations providing that the new club, instead of the former club, will carry the financial burden of the solidarity contribution. Moreover, under Swiss law, such contractual stipulation would also be allowed. In this regard, article 19 of the Swiss Code of Obligations affirms the parties’ freedom to contract by providing:

*“Within the limits of the law the contents of a contract are at the discretion of the parties.*

*Contracts containing arrangements differing from the legal provisions are only valid in cases where the law lays down no invariable rule, or if the differences do not offend against public policy, good morals or individual rights”.*
  
17. Moreover, Article 20 of the Swiss CO adds:

*“Contracts containing provisions which are impossible, illegal or contra bonos mores are invalid.*

*But if the objection applies only to single parts of the contract, then the invalidity only extends to those parts, unless it appears that the contract would not have been entered into without the invalid parts”.*
  
18. Furthermore, neither the 2005 FIFA Regulations nor other FIFA rules do prohibit the parties to on such an internal arrangement: rather, FIFA is keen with its rules to make sure that no internal arrangement between transferring club and new club can anyhow complicate the legal position of such other clubs that are entitled to solidarity contribution.
  
19. Therefore, upon an analysis of the aforementioned provisions, the Panel concludes that neither the relevant provisions of the FIFA Regulations nor those of Swiss law forbid the parties to stipulate who will carry the final financial burden of the solidarity contribution.

B. *Parties' stipulations concerning the payment of the solidarity contribution*

20. Due to the fact that the 2005 version of the FIFA Regulations and applicable Swiss law provisions give parties the discretion to stipulate who will carry the financial burden of the solidarity contribution, the Panel now has to determine whether the parties have in fact, in the present case, made such stipulation.
21. In its written submissions, Appellant claims that the parties agreed that Al-Arabi would carry the financial burden of the solidarity contribution by agreeing in the second clause of the Transfer Agreement on a net price for the transfer of the Player. In contrast, Respondent submits that the parties agreed that Mallorca would carry the financial burden of the solidarity contribution due to the fact that, under the first clause of the Transfer Agreement Respondent acquired the Player *"free of any burden or tax"*. Subsidiarily, Respondent claims that no agreement was reached between the parties with regard to the solidarity contribution and that this matter was left open to be settled by the FIFA dispute resolution bodies, pursuant to the sixth clause of the Transfer Agreement.
22. Initially, it is important to mention that provisions like the ones found in the first and second clauses of the Transfer Agreement are widely used in transfer contracts of football players.
23. In the Panel's view, with regard to the wording of the first and second clause of the Transfer Agreement, neither the acquisition of the Player *"free of any burden or tax"* nor the stipulation of a net price for the transfer of the Player are clear enough to conclude that the 5% solidarity contribution should not be deducted from the transfer fee. Consequently, to interpret both the first and the second clause of the Transfer Agreement, it is necessary to make reference to article 18(1) of the Swiss CO, which provides:
24. According to CAS jurisprudence, *"(u)nder this provision, the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER, op. cit., n. 26 ad art. 18 CO; WIEGAND, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER, op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND, op. cit., n. 29 and 30 ad art. 18 CO)"* (CAS 2005/A/871, pg. 19, para. 4.29).

*"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND, op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451,*

*consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER, op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party” (CAS 2005/A/871, pg. 19, para. 4.30).*

25. According to the evidence submitted and the testimonies heard at the hearing, in Qatar, the parties expressly discussed the issue of the solidarity mechanism. As confirmed by the testimonies heard, after having the draft of the Transfer Agreement reviewed by Al-Arabi’s attorneys, the President of the Board of Directors of Al-Arabi requested the inclusion of an express clause in the Transfer Agreement saying that Mallorca would have to carry the financial burden of the solidarity contribution. This request was denied by Mallorca, which refused to bear the final financial burden of the solidarity contribution and insisted on receiving the net amount of 4,650,000 USD for the transfer of L. Therefore, in order not to lose the deal, the President of the Board of Directors of Al-Arabi signed the Transfer Agreement without any clause assessing the burden of the solidarity contribution to Mallorca. In this way, Al-Arabi accepted that in the Transfer Agreement no clarifying rule was inserted about the financial burden of the solidarity contribution and, therefore, agreed that in this one, particular case, the payment(s) to be performed by Al-Arabi were not to be reimbursed by Mallorca.
26. As a result, the Panel rules that, at the time of conclusion of the Transfer Agreement, the representatives of both parties, knowing about the existence of the solidarity mechanism, signed the Transfer Agreement bearing in mind that Mallorca would not pay the solidarity contribution and would receive the full amount of 4,650,000 USD for the transfer of L. without any discounts or deductions. In other words, the Panel concludes that when the parties signed the Transfer Agreement they agreed that Al-Arabi would be liable to bear the financial responsibility for the payment of the solidarity contribution. This, not based on the arguments of Mallorca regarding the meaning of the word “net” and the like, but based on the real content of the agreement entered into by the parties.

*C. Legal consequences of the stipulations made by the parties*

27. As a consequence of the proceedings that Argentinos Juniors initiated before FIFA against Respondent for the payment of the solidarity contribution related to L., Respondent paid or has to pay, respectively, a solidarity contribution in the amount of 186,000 USD to Argentinos Juniors.
28. According to the stipulations made by the parties, the Panel understands that Al-Arabi accepted to bear the final, financial burden of the solidarity contribution. Consequently, the Panel concludes that Appellant is not obliged to reimburse the solidarity contribution in the amount of 186,000 USD plus interests that Al-Arabi paid or will pay to Argentinos Juniors.
29. For all these reasons, the appeal must be accepted and all other prayers for relief are rejected.

**The Court of Arbitration for Sport rules:**

1. The appeal by RCD Mallorca against the decision issued on 2 November 2007 by the Dispute Resolution Chamber of FIFA is accepted.
2. The decision issued on 2 November 2007 by the Dispute Resolution Chamber of FIFA is set aside.
3. RCD Mallorca does not have to reimburse Al-Arabi the amount of USD 186,000 (one hundred and eighty-six thousand dollars) plus interest, as ordered by the DRC on 2 November 2007.

(...)