Arbitration CAS 2006/A/1062 Da Nghe Football Club v. Ambroise Alain François Ndzana Etoga, award of 27 July 2006

Panel: Prof. Ulrich Haas (Germany), Sole arbitrator

Football
Contract of employment between a club and a player
Applicable law
Breach of contract without just cause
Compensation

1. **FIFA's rules and regulations and – subsidiarily – Swiss law are applicable since the parties agreed, at least tacitly, the competence of the DRC. In doing so they impliedly agreed the application of the rules and regulations of FIFA.**

2. **The proof of the breach of the employment contract without just cause by a club can be proven by several elements and notably by the fact that the club had a motive for "getting rid of" the Respondent. The fact that the club did not register the player due to the fact that six foreign players were already under contract whereas according to the rules of the VFF the Appellant could only register five foreign players is relevant. The severance payment discussions between the parties can also show that the employment contract had been previously terminated.**

3. **According to Art. 337c CO the dismissal of the employee by the employer without just cause causes the employment relationship to be terminated. In lieu of the original contractual obligations there is a claim for compensation on the part of the employee. The CAS has in its decisions consistently assumed that a party to a fixed-term employment contract which is unduly and prematurely terminated by the other party is entitled by way of compensation for his damages to payment of the salary that he would have earned until the scheduled end of the contract, with the provision that he has a duty to mitigate the damages incurred by him.**

The Appellant, Thien Van Saigon Co Ltd Da My Nghe Football Club, ("the Club" or "the Appellant") is a football club affiliated to the Vietnam Football Federation (VFF), which in turn is a member of the Féderation Internationale de Football Association (FIFA). FIFA is the international sports federation governing the sport of football worldwide. FIFA is an association established in accordance with Art. 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

The Respondent, Ambroise Alain François Ndzana Etoga, ("the Player" or "the Respondent") is a professional football Player of Cameroonian nationality.

In September 2004 the parties signed a contract dated 1 October 2004 (the "Player Contract"), starting on 1 October 2004 and expiring at the end of the 2005 season of the First Division league, i.e. August 2005. According to the Player Contract the Player receives a monthly salary of USD 1,200. In addition, according to the Player Contract, the Player is entitled to one air ticket from Cameroon to Vietnam and *vice versa*. Furthermore, according to a translation provided by the Appellant, the Player Contract provides:

> *"…*
>
> *Article 3: Obligation, Rights and Benefits of Labourer*
>
> *…*
>
> *2. Obligation;*
>
> *…*
>
> *d. Shall be present in time all meetings, training, match session and other advertisement meeting. If the Athlete quits any session must have the application to the Board of Training.*
>
> *…*
>
> *g. Shall obey the medical directions of the Club. The Athlete shall be checked for health and physical strength as required by the Club. Within 24 hours after being injured, sick or other problems which will cause harmful to professional skill, the Athlete shall inform to the Board of the Club or the Board of Training.*
>
> *…*
>
> *Article 5: Executing Term:*
>
> *…*
>
> *All obstruction that happened by executing this contract, both parties will mutual discuss to settle. In case of both parties fail to settle the obstruction, the problem will be written down as a complaint and will be settled by Vietnam Football Federation using the Professional Football Regulation …".*

On 21 September 2004 the Respondent obtained permission from the Appellant to travel to the US. The Respondent returned to Vietnam on 20 October 2004. He was picked up at the airport by personnel of the Appellant and transferred to his hotel.

On 21 October 2004 the Player informed the Club of a slight injury he incurred in the US (the "First Injury"). The Player did not participate in the training session that day and did not play in a friendly match scheduled for the next day. The Player was also not examined by a team doctor.

On 8 or 9 November 2004 the Respondent participated in his first friendly match with the Club.

On 17 December 2004 the Respondent's toe was injured during a friendly match (the "Second Injury"). After the match an x-ray was taken of the Respondent's foot at a special clinic to which the Respondent and his fiancée were taken by a Club staff member. The Respondent and his fiancée were

then driven to a hospital to consult a doctor. The latter wrote a prescription for medication and informed the Respondent not to play for a lengthy period of time. The Respondent submits that the hospital doctor instructed him verbally not to play for two months. However, in the hospital's discharge report subsequently requested by the Respondent on 1 March 2005 the Respondent is instructed by the doctor who treated him *"not to play for about a month"*.

On 18 December 2004 the Player was examined by a club doctor. The latter wrote a prescription for the Player and recommended the Respondent orally, inter alia, *"to stay off his foot and to keep the foot elevated"*. The team doctor also released the Respondent from training for two weeks because of the injury.

On 21 December 2004 the Player attempted to practise with the team but found the injury too painful.

On 28 or 31 December 2004 – the date is disputed between the parties – a discussion took place between the Club representatives and the Respondent (the "First Meeting"). It is not disputed that the Respondent attended the meeting together with his fiancée. Furthermore, it is not disputed that the Appellant informed the Respondent that it would not register him to play in the first phase of the First Division League 2005. However, the rest of the discussion between the parties is disputed. The Respondent submits that the Club representatives informed him that his contract was to be stopped. Furthermore, the Respondent submits that the Club offered him severance pay in the amount of one month's salary. However, according to the Respondent, he rejected this offer.

It is disputed between the parties whether there was further contact between 31 December 2004 and 5 January 2005. As regards this, the Respondent submits that he did not meet with any Club personnel and that he did not visit the Club premises. By contrast the Appellant submits that on 2 January a team doctor examined the Player's injury and confirmed that the injury was in a stable condition and that the Respondent could start light training with the team.

On 6 January 2005 another meeting was held between the Appellant and the Player at the Club premises to settle the contract issue (the "Second Meeting"). This meeting likewise came to nothing and was broken off.

On 10 January 2005 the Appellant's chief coach wrote a letter to the Club's "Board of Leaders" in which he suggested that disciplinary measures be imposed on the Respondent. *Verbatim* the letter states:

> *"… The Athlete Alain has signed a contract to play for Da My Nghe Club since 1 October 2004. After signing, with the permission of the Board of Leaders, the Training Board allowed Alain to go to the US to solve his family matters. Upon his return to Vietnam, Alain informed he had been injured and could not train with the team until 27 October 2004 (self training).*
>
> *Later in a training match with Thua Thien Hue team (on 17.12.2005), Alain was slightly injured in his toe and did not live and practice with the team.*
>
> *Because of the facts that the athlete Alain*
>
> - *was injured with unknown reason and refused to train with the team in a long term*
> - *Had so little time training with the team (due to injury) thus failed to satisfy professional requirements*

- *Did not obey the regulations to live and practice with the team*

The Training Board suggests the Board of Leaders to impose disciplinary measures on this athlete".

On 12 January 2005 a third meeting (the "Third Meeting") was held between the parties for the same purpose as the Second Meeting. This meeting, which the Respondent's fiancée also attended, also did not result in any amicable resolution between the parties. In the course of the meeting the Respondent handed his training kit back to the Club's representatives.

On 13 January 2005 a representative of the Appellant invited the Respondent to train with the team and to come to live at the Club grounds. The Respondent refused to do so because – according to him – there was no longer a valid contract between the parties due to the Appellant's breach of the Player Contract. That same day, two letters were delivered to the Respondent by the Appellant requesting him to appear at 8:00am on 15 January 2005 at the Club stadium.

In response to this request by the Appellant, the Player wrote a letter to the Appellant dated 13 January 2005. This letter states, *inter alia*:

> *"… On Thursday afternoon, January 13, 2005, … Mr. Chien* [Club personnel] *delivered a letter to …* [the Player] *which requested that he appear at Van Chinh Stadium* [Club Grounds] *at 8:00 am, on Saturday, January 15, 2005, to report to the Board of Directors* [of the Club] *and for the training, as stated in the original contract. As this contract has been unilaterally breached by Da My Nghe Football Club, and as Mr Ndzana has not seen a new contract nor has he been officially informed that Da My Nghe Football Club wants him to return, he remains as he was on December 31, 2004, a foreign football Player in Vietnam whose contract has been unilaterally breached (stopped) and is now without a club. If Mr Ndzana Etoga chooses to appear at 8:00 am, Saturday, January 15, 2005, it will be in good will only and will not signify the acceptance of the "re-instatement" of the original contract as referenced above, nor will it signify a desire to return to Da My Nghe Football Club. At this time, Mr Ndzana Etoga simply requests the compensation due him for the labour user unilaterally breaching the contract, as the contract itself has already been nullified through the actions of Da My Nhge Football Club. …".*

On 15 January 2005 a fourth meeting took place between the Respondent and his fiancée and the Club representatives (the "Fourth Meeting"). During this meeting the Club representatives again requested the Respondent to return to the Appellant and to resume training there. The Respondent rejected this saying that the contract had been terminated by the Appellant and he could therefore only return on the basis of a new contract. Following the meeting, the Appellant requested the Respondent several times in writing to fulfil his obligations under his employment contract.

By letter of 17 January 2005 the Respondent brought the above facts to the attention of FIFA and requested help in settling the dispute. By letter of the same date the Respondent also turned to the VFF and requested help.

By letter dated 18 January 2004 FIFA acknowledged receipt of the correspondence by the Respondent. Furthermore, FIFA's letter contained the following advice:

"… Please note that you can choose to continue playing with this club if you so wish, and that in doing so the club will have the obligation to continue to respect all of its contractual obligations towards you, i.e., to pay you your remuneration in accordance with your employment contract.

However, if you insist on departing from the club, you will in principle not be in a position to enter a new contract with another club until after the expiration of your current contract, that is, the end of the First Division League 2005. The only exception to this is if you obtain a written statement from your current club, in which it declares, that the contractual relationship between the parties has formally been cancelled, or if the FIFA Dispute Resolution Chamber takes a decision in this regard, confirming the alleged breach of the contract you affirm took place on the part of the club.

Please note, however, that the Dispute Resolution Chamber cannot decide on the breach of contract before all necessary investigations have taken place regarding the circumstances surrounding this case, including the position of the Vietnamese club in response to your allegations, and that this is a lengthy procedure. …".

On 31 January 2005 the Appellant's Director took the following "decision":

"The Director of Da My Nghe Football Club … decides

Article 01: Due to the fact that the Player named Ambroise Alain François Adzana Etoga did not follow the order of collection by the Club, and gave up his duty, of his own volition, from December 25, 2004 to January 31, 2005, thus having seriously violated the signed labour contract, to dismiss Mr Ambroise Alain Etoga since February 1, 2005.

Article 02: The Director of Thien Van Saigon Tranding-Production Service Company Ltd, the Leader of Da My Nghe Football Club and Mr Ambroise Alain François Adzana Etoga are responsible for the execution of this decision. …".

The Respondent received this letter on 20 February 2005 in Vietnamese. The Respondent was not sent an English translation until 25 February 2006 through the VFF.

On 3 June 2005 the Respondent submitted his itemised claim to the Dispute Resolution Chamber (DRC), requesting 8 months' salary of USD 1,200 per month, hotel costs of USD 155 per month, VND 1,500,000 for food and the balance of his return flight amounting to USD 2,500.

After the Respondent left the Appellant he played in Vietnam for other teams. It is disputed between the parties when and on what occasions the Respondent played for other teams. The Appellant claims that the Respondent took part in two tournaments (Europe Cup and Friendship Cup) in April and June 2005. However, the Respondent claims he merely played in two friendly local tournaments for an amateur team in August 2005.

Following an investigation of the matter by the DRC and following extensive statements by the parties regarding the matter in dispute the DRC decided on 12 January 2006 that the Appellant had breached the Player Contract and that the Respondent be awarded an amount corresponding to 8 months' salary and a return air ticket to Cameroon totalling 12,100 USD. This decision was communicated to the Appellant via the VFF on 14 March 2006.

By letter dated 28 March 2006 the Appellant filed his statement of appeal against the decision of the DRC with CAS.

By letter dated 8 April 2006 the Appellant filed his appeal brief. In its *"appeal brief"* the Appellant challenges the decision of the DRC dated 12 January 2006 and requests, inter alia, that

> *a)* the CAS declares that *"the decision is not in conformity with the real happening of the case and the applicable law (Laws of Vietnam) as agreed by the parties",*
>
> *b) "the CAS declares the dismissal of the Player by the Club to be legal in accordance with the specified applicable law, ie the laws of Vietnam"* and that
>
> *c) "the Player is liable to compensate all losses incurred by the Club and cover all expenses of the Club arising from or in connection with this dispute, particularly with this appeal procedure".*

In his answer dated 10 May 2006 the Respondent requests that

> *a) "the decision of the DRC be upheld";*
>
> *b) "that remuneration laid out in this decision must be remitted to the Player's nominated bank account within 10 days of the CAS decision including 5% per annun interest (as stipulated in the DRC decision)";*
>
> *c) "the Club bears the full burden of the cost of the appeal";*
>
> *d) "the Club reimburses the Player the amount equal to that requested by the Club to cover all expenses arising from or in connection with this case and this appeals procedure. The Player will cap this expense at USD 2,000".*

By letter dated 6 June 2006 both the Appellant and the Respondent agreed that the Sole Arbitrator will render an award on the sole basis of the written submissions without holding a hearing.

LAW

Jurisdiction and Mission of the Sole Arbitrator

1. Art. R27 of the Code provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement. *In casu* the jurisdiction of CAS is based on Art. 59 *et seq.* of FIFA's Statutes and is confirmed by the signature of the order of procedure dated 17 July 2006 whereby the parties have expressly declared the CAS to be competent to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS's general jurisdiction.

2. The mission of the Sole Arbitrator follows from Art. R57 of the Code, according to which the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the

article provides that the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Applicable law

3. Art. R58 of the Code provides that the Sole Arbitrator 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 Sole Arbitrator deems appropriate.

4. In the present case the parties initially agreed in Article 5 of the Player Contract:

   - *"All about labour, about the specification of football in the relationship of the Club and the Athlete as in this Labour Contract, will apply the regulation of labour agreement (if any)* ***and Professional Football Regulation****. In case of there's no labour agreement of the Professional Football Regulation does not modify, will apply the regulation of the Labour Law.*
   - *All obstruction that happened by executing this contract, both parties will mutual discuss to settle. In case both parties fail to settle the obstruction, the problem will be written down as a complaint and will be settled by Vietnam Football Federation using the* ***Professional Football Regulation****".*

   Even if the content of this clause is – at least in the translation submitted here – not quite clear, it appears that the contract recognises both the application of the Vietnamese labour Law and of the professional Football Regulation that is the FIFA regulations. In addition, after the dispute arose the Appellant and the Respondent agreed, at least tacitly, the competence of the DRC. In doing so they impliedly agreed the application of the rules and regulations of FIFA. Art. 59(2) of the FIFA Statutes provides that the *"CAS Code of Sports-Relate Arbitration governs the arbitration proceedings. With regards to substance, CAS applies the various regulations of FIFA […] and, additionally, Swiss Law"*. Therefore, *in casu* the subject matter of this dispute is to be decided in accordance with FIFA's rules and regulations and – subsidiarily – in accordance with Swiss law.

5. As regards the applicable FIFA rules and regulations the question is whether in the case at hand the Regulations for the Status and Transfer of Player ("the FIFA Regulations") of 2001 or of 2005 apply. The answer to this follows from Art. 26(1) of the Regulations for the Status and Transfer of Player 2005. According to this the Regulations for the Status and Transfer of Player 2001 apply if the case has been brought to FIFA before the Regulations for the Status and Transfer of Player 2005 have come into force. The latter entered into force in July 2005. Since the Respondent instituted the proceedings before the DRC by letter of 17 January 2005, only the Regulations for the Status and Transfer of Player 2001 ("the FIFA Regulations") apply in the present case.

Admissibility of Appeal

6. The appeal against the decision of the DRC dated 12 January 2006 was filed on 28 March 2006. According to Art. 60(1) of the FIFA Statutes the decision by the DRC may be appealed against to the CAS within 21 days following receipt of the decision. In its statement of appeal dated 28 March 2006 the Appellant states that it received the DRC's decision on 14 March 2006 from the VFF. However, from FIFA's covering letter enclosing the DRC's decision it follows that the Appellant was sent the decision by fax on 9 March 2006 already. Regardless of which date one uses as the basis for the start of the period (14 March or 9 March 2006) the appeal was filed within the 21 day deadline; for according to Art. R32(1) of the Code the only deciding factor for whether the period for appeal was complied with is whether the Appellant's written pleadings were sent before midnight on the last day on which the time limit expires. In the case at hand the appeal was filed by letter of 28 March 2006. Therefore, the conditions for a timely appeal have been met in the present case.

As to the Merits

7. With its requests a) and b) the Appellant is seeking a declaration that the DRC's decision of 12 January 2006 is unlawful and therefore void. The unlawfulness of the DRC's decision can result from both formal as well as substantive reasons.

8. In the present case the DRC was competent to decide the dispute. Art. 44(b)(i) of the FIFA Regulations provides that the dispute will be decided by a national sports arbitration tribunal and not by the DRC if the parties have expressed a corresponding preference in a written agreement. In this regard the Player Contract dated 1 October 2004 states: *"All obstructions that happen by executing this contract, both parties will mutual discuss to settle. In case of both parties fail to settle the obstruction, the problem will be written down as a complaint and will be settled by Vietnam Football Federation using the Professional Football Regulation"*. However, both parties later mutually derogated from this agreement; for in the present case the Respondent applied to the DRC to resolve the dispute and at no point did the Appellant protest against this. However, the parties thereby tacitly amended the Player Contract with the consequence that the DRC has competence in the present case.

9. It is indisputable that the parties concluded a fixed-term employment contract for the period from 1 October 2004 until 31 August 2005. What is questionable is whether the Appellant terminated said contract prematurely and unilaterally – as claimed by the Respondent and as assumed by the DRC in its decision. The Appellant disputes this. However, on the basis of the overall factual circumstances the Sole Arbitrator is satisfied that the Appellant did dismiss the Respondent in the First Meeting in December.

10. This opinion of the Sole Arbitrator is supported firstly by the fact that the Appellant had a motive for "getting rid of" the Respondent. After all, the Appellant had no use for the Respondent at least in the immediately forthcoming first phase of the First Division League 2005. This is demonstrated not least by the fact that the Appellant did not register the

Respondent to play. The Appellant justifies this with the Respondent's lack of training due to injury. However, the Respondent's submissions that the Appellant was not able to register the Respondent for legal reasons have remained uncontested. According to the Rules of the VFF the Appellant could only register five foreign players. However, according to the undisputed submissions of the Respondent, the Appellant at that time already had six foreign players under contract.

11. Another argument to support the Sole Arbitrator's opinion is that it is not disputed that the parties discussed severance payment for the Respondent in the various meetings in December and January. However, there was no reason to do this if the Appellant had not previously terminated the contract. To counter this the Appellant contends that it did not terminate the contract, rather it merely discussed with the Respondent an offer to mutually terminate the contract. In particular the Appellant points out that the suggestion to cancel the contract in return for payment of a severance payment came from the Respondent, for the latter had wanted to move to a different club after he had not been registered to play by the Appellant because the Respondent thereby stood to lose starting fees and prize money and was therefore threatened with a considerable financial loss. This presentation of the facts does not appear to the Sole Arbitrator to be very likely. Arguments against it are that it is indisputable that the initiative for the various meetings came from the Appellant. It was the Appellant, not the Respondent, who repeatedly requested a meeting in order to clarify the alleged "contract issues". Another argument against the Appellant's presentation is that, for reasons of timing, there was hardly any possibility of the Respondent changing clubs after 31 December 2004. After all, the Appellant's details about the alleged loss of starting fees and prize money are vague. It is unclear on what a claim to the payment of starting fees and prize money – which was allegedly so important to the Respondent – was supposed to be based and how much it was supposed to be for. At least the Appellant does not give any more detailed particulars on this and nothing can be inferred in this regard from the Player Contract either.

12. A final argument to support the Sole Arbitrator's opinion is that the Appellant's statements about the cause of the First Meeting at the end of December are not free from contradictions. In this regard the Appellant's written pleadings of 8 April 2006 state: *"On 28 December 2004, the Club invited the Player to the Club Office so that he could explain his absence and reason why he did not train together with the team (Note: the unclear reason for the injury after his visit to the US and the absence for training after that). The Club then informed the Player that the Club could not register his name to play in the first phase of the First Division League 2005 …"*. Why the Appellant summoned the Player to discuss his absence from training is surprising. According to the parties' consistent submissions the Respondent was injured in a friendly match on 17 December 2004. After the game an employee of the Appellant took the injured Respondent to both an x-ray clinic and to hospital. Furthermore, the employee was present at all of the discussions in the clinic and the hospital. Furthermore, a team doctor examined the Respondent on behalf of the Appellant on the day following the injury, i.e. on 18 December 2004. According to the parties' consistent submissions, the team doctor released the Respondent from training for two weeks. In view of this order by the team doctor, it is not very understandable what reason the Appellant had to challenge the Respondent on 28 December 2004 about his failure to participate in training; for at that time the Respondent was still indisputably written off sick.

13. If one follows the opinion used as the basis here, whereby the Appellant dismissed the Respondent in December 2004, then the question arises whether this constituted a breach of the Player Contract within the meaning of Art. 22 of the FIFA Regulations. This will have to be rejected if the Appellant can invoke "just cause" within the meaning of Art. 22 of the FIFA Regulations. The FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is "good cause" (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations (CO) states – in loose translation: *"Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause"*. The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72). Such a grave breach is particularly given if the employee fails to fulfil his obligation to render his services (ATF 121 III 467).

14. Insofar as the Appellant invokes the argument that the Respondent returned late from a trip to the US, this does not constitute "good cause" within the meaning of Article 337(2) CO. The Respondent returned from his trip on 20 October 2004 and reported back to the Club on the following day. The Appellant had given its consent to this trip to the US. In this regard the declaration signed by the Appellant's trainer expressly states that the Respondent is released from training for 20 days, namely from 1 October until 20 October.

15. Insofar as the Appellant is claiming that following his stay in the USA the Respondent stayed away from training without leave, this does not constitute "good cause" either because the Respondent notified the Appellant about the injury (First Injury) immediately after his return and thereby fulfilled his obligations under the Player Contract. In its written pleadings of 8 April 2006 the Appellant says that *"the reason for the injury is unclear"*. It is not quite clear what the Appellant means by this. If it thereby wishes to express that the Respondent only feigned the injury and was in reality not injured at all, then the Appellant could have easily clarified this; for according to its own statements, it has a team doctor available. It could have instructed said team doctor to examine the Respondent. However, it is not disputed that this did not happen. Furthermore, the Appellant did not admonish the Respondent because of any breach of contract in the period from 21 October 2004 until 8 or 9 November 2004, the Respondent's first game for the Appellant.

16. Furthermore, the Appellant accuses the Respondent of not having informed the team doctor on 18 December 2004 about the alleged medical instructions given by the hospital doctor the day before. The Respondent disputes this. The Appellant's presentation that the team doctor had no knowledge of the diagnosis and the treatment instructions by the hospital doctor does not appear to be very likely. An employee of the Appellant was present at all of the examinations in the x-ray clinic as well as at the hospital. Furthermore, it was the employee who fixed the appointment with the team doctor the next day. Moreover, the employee also paid for the costs of the treatment and consequently also received the hospital documents. Finally, it is also incomprehensible what motive the Respondent is supposed to have had to keep what happened in hospital secret from the team doctor.

17. Finally, the Appellant accuses the Respondent of not having appeared at training with the team. This does not constitute "good cause" within the meaning of Art. 337(2) CO either. Although the Respondent stayed away from training since 18 December, he had justification for this; for – notwithstanding the orders of the doctor in hospital – the team doctor released the Respondent from training for periods, which lay in the time before the termination was expressed. If, however, the Respondent is prevented for no fault of his own – as in the present case – from rendering his services, Art. 337(3) CO stipulates that there is no "good cause" for cancellation of the employment relationship without notice.

18. If the employer has – like in the present case – cancelled the contract without good cause, then the question arises as to what effects this has on the existence of the Player Contract. The fate of the contract is not expressly governed in Art. 21 *et. seq.* of the FIFA Regulations with the consequence that one has to fall back on the subsidiarily applicable Swiss law. In this regard Art. 337c(1) and (2) CO stipulate the following:

"If the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period.

The employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn (Art. 324(2))".

19. From the content of the provision in Art. 337c CO it follows that dismissal of the employee by the employer without just cause causes the employment relationship to be terminated and that in lieu of the original contractual obligations there is now a claim for compensation on the part of the employee. In the present case this means that since the end of December 2004 (First Meeting) the Respondent was no longer obliged to fulfil his obligations owed towards the Appellant under the employment contract. Insofar as the Appellant further argues that the Respondent did not comply with his requests in January to attend training and to live on the club grounds this is of no significance for the present case, for at that point in time the employment contract had already ended by operation of law.

20. Therefore the only question left to resolve is whether the DRC calculated the amount of the compensation correctly. In this regard Art. 337c CO and Art. 22 of the FIFA Regulations are the test criteria. This provision has the following wording:

"Unless specifically provided for in the contract, and without prejudice to the provisions on training compensation laid down in Art. 13 ff, compensation for the breach of contract (Whether by the Player or the club), shall be calculated with due respect to the national law applicable, the specificity of sport, and all objective criteria which may be relevant to the case, such as:

a) Remuneration and other benefits under the existing contract and/or the new contract,

b) Length of time remaining on the existing contract (up to a maximum of 5 years),

c) Amount of any fee or expense paid or incurred by the former club, amortised over the length of the contract,

d) Whether the breach occurs during the periods defined in Art. 21.1".

21. In the present case the parties did not agree any express regulation that was to apply in the event of any breach of contract. Therefore the general principles apply. In accordance therewith the CAS has in its decisions consistently assumed that a party to a fixed-term employment contract which is unduly and prematurely terminated by the other party is entitled by way of compensation for his damages to payment of the salary that he would have earned until the scheduled end of the contract, with the provision that he has a duty to mitigate the damages incurred by him (CAS 2005/A/909-910-911-912 [6 March 2006]; CAS 2005/A/801 [30 March 2006]; CAS 2004/A/587 [30 September 2004]; CAS 2004/A/655).

22. In the light of the foregoing, the Sole Arbitrator notes that in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled. As a result the Respondent should therefore be entitled to claim payment of the entire amount he could have expected if the contract had been performed up to its natural expiration. Consequently, the Respondent in principle has a right to the agreed salary, namely USD 1,200 per month for the period between cancellation of the contract (December) and the end of the term of the contract. In the present case this is 8 months. The DRC therefore was correct to order the Appellant to pay USD 9,600 (8 x 1,200). In addition, according to the contract, the Appellant is obliged to reimburse the Respondent a flight ticket from Saigon to Cameroon. The DRC estimated an amount of USD 2,500 for this - after deduction of an advance that had already been paid. The Appellant has not contested this calculation in its written pleadings.

23. Questionable in the present case is whether the compensation pursuant to Art. 337c(2) CO is to be reduced. In this regard the Appellant has submitted that the Respondent played for other clubs until the end of the 2005 season. These submissions are, however, not substantiated sufficiently in order to justify a reduction in the compensation, for a reduction in the compensation is only a consideration if the Respondent earned income elsewhere or deliberately failed to earn any such income. The Appellant has neither submitted that the Respondent received remuneration from a third party or that he reproachfully failed to earn income. Therefore, on the basis of the facts in the present case, the compensation is not to be reduced.

24. To sum up, the decision of the DRC is lawful. Requests a) and b) by the Appellant are therefore to be dismissed. However, if the DRC's decision is lawful, then the Appellant's third request, whereby it requests that the Respondent be ordered to pay compensation, is also unfounded.

The Court of Arbitration for Sport rules:

1. The appeal filed by Thien Van Saigon Co Ltd Da My Nghe Football Club is dismissed.
2. The decision issued by the DRC dated 12 January 2006 is upheld.

(…)