Arbitration CAS 2005/A/893 Bruno Metsu v. Al-Ain Sports Club, award of 16 February 2006

Panel: Mr Chris Georghiades (Cyprus), President; Mr Michele Bernasconi (Switzerland); Mr José J. Pintó (Spain)

Football
Breach of contract of employment between a coach and a club
Competence of the FIFA Single Judge to issue a decision on behalf of the Players' Status Committee
Calculation of damages due to the termination of the contract by the employee
Calculation of the effective damages
Determination of compensation according to Swiss law
Revision of an unmotivated decision issued by the FIFA Single Judge

1. **According to the CAS case law and the FIFA Statutes, the FIFA's Single Judge has jurisdiction to issue a decision on behalf of the FIFA Players' Status Committee.**

2. **Article 337d of the Swiss Code of Obligations (CO) grants the right to the employer to get a compensation for damages due to the termination of the contract by the employee in case of unjustified non-appearance at or leaving of the working place. The amount of the compensation shall be at least equal to one quarter of one month salary but the employer shall be entitled to compensation for additional damages.**

3. **Whoever claims damages must prove the damage; according to the Swiss Federal Tribunal and the CAS case law this amount corresponds to the maximum amount which the creditor can claim for. If the existence or the amount of the damage cannot be proved, article 42 paragraph 2 CO authorises the court to make its decision in equity and on the basis of the ordinary course of events.**

4. **Regarding the determination of the compensation, the debtor does not necessarily have to pay the creditor a compensation corresponding to the whole value of the damage. According to article 43 paragraph 1 CO, it belongs to the court to determine the compensation due according to the circumstances as well as the degree of fault".**

5. **The fact that the FIFA Single Judge did not give any indication on the figures upon which he based its decision on compensation obliges the Panel to a review of the decision on the basis of lack of motivation.**

Mr Bruno Metsu ("the Appellant") is a football coach resident in Qatar with French citizenship.

Al-Ain Sports and Cultural Club ("the Respondent") is a football club with its registered office in Al-Ain, Abu Dhabi, United Arab Emirates. It is a member of the United Arab Emirates Football Association (UAEFA)**,** which is affiliated with FIFA since 1972.

The Appellant and the Respondent signed in May 2003 a one-year employment contract starting on 1 June 2003 and ending on 31 May 2004 ("the first contract"). According to its article 3, the first contract could be renewed for another one-year period subject to a written agreement between the Appellant and the Respondent.

Under the terms of the first contract, drafted in French and Arabic, the Appellant and the Respondent agreed on a global value of the contract (*"valeur globale du contrat"*) of USD 800,000 to be paid as follows:

> *USD 400,000 to be paid upon signature.*
>
> *The rest to be paid through monthly salaries amounting to USD 33,333 for a total amount of USD 400,000.*

A., a member of the Respondent's executive committee, was called to testify before the Court of Arbitration for Sport (CAS). The witness explained that in December 2003, the Appellant asked him to arrange a meeting with the Appellant, the Vice-President of the Respondent and the Respondent's owner. The purpose of this meeting was to negotiate a two years agreement which would bring stability in the relationships between the Appellant and the Respondent. The Appellant explained to A. that he was receiving several interesting offers from Turkey and Korea and that he believed that a new contract with a salary increase could lead him to stay in Abu Dhabi where the Appellant planned to acquire a house.

The witness explained that the meeting was very positive and that at the end he had been authorised by the Respondent to negotiate and finalise the new contract with the Appellant. Such negotiation was very quick due to the fact that the Appellant had already a house in mind and needed to sign in the coming weeks the real estate sale agreement. According to the witness, the strong wish to acquire the real estate was the reason why the Respondent accepted to sign a new contract with the Appellant starting before the end of the term of the first contract.

The witness explained that the Respondent was ready to make substantial efforts in favour of the Appellant because the latter had been very successful with the team. The Respondent had indeed won the Asian cup in 2003. According to A. the new contract should also ensure stability in the team, which was the common objective of both the Respondent and the Appellant. The witness confirmed that at that time the Respondent was very satisfied with the Appellant.

On 1 January 2004, the Appellant and the Respondent thus signed a second employment contract starting on 1 January 2004 and ending on 31 May 2006 ("the second contract"). According to its article 3, the second contract could be renewed for another period of 29 months subject to a written agreement between the Appellant and the Respondent.

Under the terms of the second contract, drafted in French and Arabic, the Appellant and the Respondent agreed on a global value of the contract (*"valeur globale du contrat"*) of EUR 2,075,000 to be paid as follows:

> EUR 300,000 to be paid as a first retainer (*"avance sur contrat"*) upon signature for the period from 1 January 2004 to 30 June 2004. EUR 400,000 to be paid as a second retainer (*"avance sur contrat"*) for the period from 1 July 2004 to 30 June 2005 and EUR 300,000 EUR to be paid as a third retainer (*"avance sur contrat"*) for the period from 1 July 2005 to 31 May 2006.
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> The rest to be paid through monthly salaries amounting to EUR 35,000 from 1 January 2004 to 31 May 2005 and EUR 40,000 from 1 June 2005 to 31 May 2006.

As for the second and third retainers to be paid by the Respondent to the Appellant, the French version of the second contract provides for a payment upon signature whereas the Arabic version does not mention any date of payment. The Respondent paid the first retainer only and the Appellant did not claim for the payment of the second and third retainers before the procedure before the CAS.

The second contract provided for certain fringe benefits (furnished villa of three rooms and living room, flight tickets in business class, company cars, health insurance for the Appellant and his family) as well as premiums in case of success in the UAE national championship, President cup, Supercup and Asian cup.

According to article 7 paragraph 2 of the second contract, the Appellant was not allowed to negotiate with any other club or national team either in the United Arab Emirates or elsewhere without the Respondent's prior written consent.

Article 9 of the second contract provided in particular that the Respondent could terminate the contract with two months notice if the results of the team were not satisfactory.

The second contract was subject to the laws of the United Arab Emirates and provided that FIFA was the competent jurisdiction in case of disputes.

On 31 May 2004, the football club Al Ittihad Club, a football club from Qatar, sent a letter to the Respondent, referring to a telephone conversation between this club and the Respondent and requesting for the Respondent's agreement on releasing the Appellant from his position as coach of the Respondent's first team. The Respondent replied to this letter on 2 June 2004 and reminded Al Ittihad Club that the Appellant was under contract with the Respondent until the end of the season 2005-2006. The Respondent informed the club that Y. would be in charge of the negotiations regarding the Appellant's transfer.

On 19 June 2004, the Respondent sent a registered letter to the Appellant in which it reminded the Appellant of the terms and conditions of its second contract, in particular article 7 paragraph 2. Such reminder was based on different press releases which referred to contacts which had presumably taken place between the Appellant and different football clubs. In such letter, reference was made by the Respondent to potential negotiations regarding the Appellant's salary. Eventually, the Respondent required from the Appellant to choose between the unilateral termination of his

contract subject to the payment of damages fixed by the Respondent at EUR 1,500,000 or a confirmation by the Appellant of his willingness to meet and discuss the situation. In such case the Appellant was asked to meet the Respondent's representatives by 29 June 2004. The Appellant was asked to make his choice within five days from receipt of the letter.

According to A., the purpose of the letter was to show to the Appellant that the Respondent was still interested in keeping him as a coach. However, should the Appellant eventually decide to leave the Respondent, the Respondent intended to warn him in this letter that its estimation of the damages related to an early termination of the contract was of EUR 1,500,000.

On 1 July 2004, the Appellant replied in writing to the Respondent asking for the termination of the second contract (*"je sollicite la résiliation de mon contrat"*) with immediate effect. The Appellant based his request on the fact that it was impossible for him to keep on working for the Respondent due to the lack of collaboration from the Respondent and certain players, as well as the lack of mutual trust between the Respondent and the Appellant. The Appellant explained in his letter that he submitted his decision for the common interest of the parties (*"je vous soumets ma décision dans un intérêt commun"*).

On 9 July 2004, the Appellant sent a second letter to the Respondent and required that it agreed on the termination of the second contract. The Appellant granted an eight-day deadline to the Respondent in order to confirm its position otherwise the Appellant would consider himself as released from any obligation with regard to the Respondent.

No reference was made in those letters to outstanding salary payments. During the hearings before the CAS, it appeared that only the salary of June 2004 had not been paid by the Respondent.

On 13 July 2004, the Respondent replied to the Appellant and referred to the choice which had been offered to him in the letter dated 19 June 2004, mistakenly mentioned as dating from 29 June 2004. Based on the foregoing, the Respondent assumed that the Appellant had chosen the first option and had thus agreed on the payment of the EUR 1,500,000 penalty for damages, as set forth in the letter dated 19 July 2004.

The Appellant did not reply to this letter and did not show up at the Respondent's premises.

On 15 July 2004, the Respondent signed a one year employment contract with the coach P. starting the same day and ending on 15 July 2005.

According to article 9 of the contract of employment with P., the Respondent could terminate the contract with two months notice. In November 2004, the Respondent agreed on an early termination of the contract with P. after four months and paid in addition two months of salary to P.

On 1 August 2004, the Appellant signed a new employment contract with Al Ittihad Club.

As the Appellant did not make any payment for damages to the Respondent, the Respondent filed a claim with the FIFA Players' Status Committee on 23 August 2004.

On 12 May 2005, the Single Judge of the FIFA Players' Status Committee issued a decision, drafted in French, stating the following, in relevant parts:

> *"(…) Le Juge unique s'est porté en premier lieu vers la question, si l'entraîneur Bruno Metsu a commis une rupture abusive du contrat de travail le liant au Al Ain Sports Club. Le Juge unique a pris note que le contrat de travail à l'origine a été renouvelé le 1er janvier 2004, soit avant son expiration fin mai 2004. Déjà trois mois plus tard, l'entraîneur a fait part par oral de son intention de quitter le club. Le club a montré sa volonté de garder l'entraîneur. Le Juge unique a constaté que le club Al Ittihad du Qatar a voulu acquérir les services de l'entraîneur depuis le 31 mai 2004. De surcroît, dans sa prise de position, l'entraîneur a declaré qu'aussi la Korea Football Association a montré son intérêt pour l'engager comme sélectionneur national. Cependant, le club a toujours insisté sur le contrat et a donné à Bruno Metsu le choix soit de se présenter pour discuter avec le club, soit de quitter le club et de verser un montant de EUR 1 500 000. Le Juge unique a constaté que l'entraîneur n'a pas donné suite à cette invitation. Finalement, l'entraîneur a confirmé sa volonté de quitter le club et a décidé, après un court délai imparti au Al Ain Sports Club, qu'il se considérait libre de tout engagement.*
>
> *(…)*
>
> *Au vu de ce qui précède, le Juge unique a atteint l'ultime conviction que l'entraîneur a commis une rupture abusive du contrat de travail. En particulier, le Juge unique a souligné que tant que le club respecte ses obligations, il ne revient pas à l'entraîneur d'impartir un délai au club et de s'estimer par la suite libre de toute obligation contractuelle.*
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> *Après avoir constaté que l'entraîneur Bruno Metsu a rompu le contrat de travail, le Juge unique de la Commission du Statut du Joueur s'est porté vers la question de la hauteur de l'indemnité qui est due au club pour cette rupture injustifiée.*
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> *(…) Le Juge unique a considéré que l'entraîneur a rempli son contrat jusqu'à la rupture abusive et qu'ainsi, il ne peut pas être condamné à rembourser les salaires reçus. Par contre, l'entraîneur a confirmé d'avoir reçu (sic) la première tranche de la prime de signature. Le Juge unique a indiqué que cette prime de signature a été conclue pour que l'entraîneur a (sic) un attrait de conclure et remplir le contrat. Aussi la prime de signature constitue une façon d'apprécier d'avance que l'entraîneur a mis à disposition ses services pour un certain temps en faveur du club. Ainsi le Juge unique a conclu que si l'entraîneur commet une rupture injustifiée du contrat après avoir reçu la prime de signature, celle-ci doit être remboursée. En conséquence le Juge unique a décidé que l'entraîneur doit rembourser le montant de EUR 300 000 mais qu'il peut garder les salaires touchés.*
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> *(…) A ce sujet, le Juge unique a souligné que l'entraîneur a décidé en janvier 2004 d'accepter un renouvellement anticipé du contrat de travail pour une période considérable (29 mois). Ainsi, il a éveillé la confiance du club en une longue collaboration. Cependant, l'entraîneur a informé les représentants du club déjà en avril 2004 qu'il désirait quitter le club. En considération (sic) ces faits, le Juge unique a considéré que la décision de l'entraîneur de quitter le club seulement trois mois après la prolongation respectivement le renouvellement du contrat et le fait qu'il a quitté le club effectivement peu après doit (sic) être vu comme circonstances aggravantes. A ce propos, le Juge unique a mis en évidence que le club a non seulement insisté au contrat mais a même proposé à l'entraîneur Metsu une renégociation du contrat.*
>
> *De surcroît, le Juge unique a considéré la durée résiduaire (sic) du contrat de travail et a pris connaissance que l'entraîneur a rompu le contrat après même pas un quart de la durée conclue et, d'autant plus, brièvement après le renouvellement du contrat.*
>
> *(…)*

Toute réflexion faite, le Juge unique a décidé d'accorder au Al Ain Sports Club une somme forfaitaire comme indemnité additionnelle globale et que l'entraîneur doit donc lui payer la somme de EUR 650 0000 en tenant compte de tous les éléments élaboré (sic) ci-dessus et en particulier, des circonstances de la rupture abusive, de la valeur et de la durée résiduaire (sic) du contrat et de la demande à titre de dépenses additionnelles présentée par le club.

Considérant ce qui précède, le Juge unique a décidé que l'entraîneur Bruno Metsu doit payer le montant de EUR 950 000 au Al Ain Sports Club".

For the above-mentioned reasons, the Single Judge of the FIFA Players' Status Committee decided the following:

"1. La demande du Al Ain Sports Club est partiellement acceptée.

2. L'entraîneur Bruno Metsu, est astreint à verser le montant de EUR 950 000 au Al Ain Sports Club.

3. Toute autre ou plus ample conclusion est rejetée.

*4. Le montant dû au Al Ain Sports Club doit être payé par l'entraîneur Bruno Metsu dans les **30 jours** à partir du jour de la notification de la présente decision.*

(…)

7. Selon l'article 60 al. 1 des Statuts de la FIFA, cette decision peut faire l'objet d'un appel devant le Tribunal Arbitral du Sport (TAS). La déclaration d'appel doit être soumise directement au TAS dans les dix jours dès la notification de cette décision et doit contenir tous les éléments conformément au point 2 des directives émises par le TAS, (…)".

The Appellant was notified of the decision issued by the Single Judge of the FIFA Players' Status Committee (the "Decision") on 24 May 2005.

On 31 May 2005, the Appellant filed a statement of appeal with the CAS. It challenged the Decision, submitting the following request for relief:

"PRIMARILY

I. to grant in full the present Appeal and consequently to cancel in full the Decision of the Single Judge of the FIFA Players Status Committee dated 12 May 2005 – concerning the dispute between AL-AIN SPORTS CLUB (…) and Mr. BRUNO METSU (…) - stating that the Al Ain Sports and cultural club shall pay in favour of the Appellant all the outstanding amounts (EUR 1.600.000) agreed in the article 4 of the "Contrat d'entraineur de football" dated 01.01.2004 as well as the financial compensation that will be considered fair for the breach of the contract without just cause by the Respondent.

II. For the effect of the above, to state that the Respondent be condemned to pay any and all costs of the present Appeal Arbitration Proceedings including, without limitation, attorney's fee as well as any eventual costs and expenses for witnesses and experts.(…)

ONLY IN THE CASE THAT THE ABOVE IS REJECTED

III. to grant partially the present Appeal and consequently to cancel in full the Decision of the Single Judge of the FIFA Players Status Committee dated 12 May 2005 concerning the dispute between AL-AIN SPORTS CLUB (…) and Mr. BRUNO METSU (…)- stating that the Appellant shall not pay any financial compensation in favour of the Al Ain Sports & Cultural Club.

IV. For the effect of the above, to state that the Respondent be condemned to pay any and all costs of the present Appeal Arbitration Proceedings including, without limitation, attorney's fee as well as any eventual costs and expenses for witnesses and experts.(…)

ONLY IN THE CASE THAT THE ABOVE IS REJECTED

V. to grant partially the present Appeal and consequently to declare that the Decision of the Single Judge of the FIFA Players Status Committee dated 12 May 2005 concerning the dispute between AL-AIN SPORTS CLUB (…) and Mr. BRUNO METSU (…)-be amended reducing the entity of the financial compensation inflicted to the Appellant for his breach of the contract without just cause.

VI. . For the effect of the above, to state that the Respondent be condemned to pay any and all costs of the present Appeal Arbitration Proceedings including, without limitation, attorney's fee as well as any eventual costs and expenses for witnesses and experts.

On 4th July 2005, the Respondent submitted the following answer to CAS:

"1.- To reject entirely the Statement of Appeal of the Appellant, Mr Bruno Metsu.

2.- To confirm in all its contents the decision of the Dispute Resolution Chamber of FIFA, issued on 12 May 2005.

3.- To order the Appellant to pay all the legal costs, including those of the CAS (arbitrators and administrative costs), the costs and legal expenses of the Respondent".

The Parties provided the Panel with various press releases. The Appellant filed also under Exhibit 5 an undated letter to the Respondent with the following content:

"Suite aux informations qui me sont parvenues faisant état de votre désir de rompre le contrat me liant à votre club, et suite aux agissements de votre administration qui violent les clauses du contrat en plus des interventions non justifiées dans les décisions techniques, je souhaite vous informer de mon accord total avec votre décision de mettre fin au contrat. D'un autre côté je vous fait (sic) savoir mon refus total de la lettre qui m'est parvenue dans sa forme et dans son contenu".

A hearing was held on 1 December 2005 in Lausanne.

During the hearing, the Parties made full oral submissions, confirming their written submissions. Both parties confirmed that they accepted that the case be subject to FIFA regulations and Swiss law and thus renounced to the application of the Law of the United Arab Emirates, as originally provided in article 12 of the second contract. Both parties admitted that they did not know whether the new applicable rules would be favourable or not to any of them.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from article 59 ff. of the FIFA Statutes 2004 and article R47 of the Code of Sport-related arbitration (the "Code"). It is further confirmed by the order of procedure duly signed by the Parties.

2. Consequently, CAS has jurisdiction to decide the present dispute.

3. Under article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the Parties before the Single Judge of the FIFA Players' Status Committee, and all legal issues involved in the dispute.

Applicable law

4. Article R58 of the Code provides the following:

5. 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.

6. Article 59 par. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.

7. In the present matter, the Parties have agreed during the hearing on the application of the rules and regulations of FIFA, primarily, and Swiss law, subsidiarily. Therefore, the Panel confirms that the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily.

Admissibility

8. The appeal was filed within the deadline provided by article 60 of the FIFA Statutes and indicated in the Decision, i.e. within 10 days after notification of such decision.

9. It follows that the appeal is admissible, which is also undisputed.

Main Issues

A. Applicable Regulations

10. The events in question occurred between December 2003 and August 2004. The contract at stake has been signed on 1st January 2004 and the case has been brought to FIFA on 23 August 2004. According to article 46 of the 2001 Version of the Regulations for the Status and Transfer of Players and article 26 of the 2005 Version of the Regulations for the Status and Transfer of Players, the 2001 Version of the Regulations for the Status and Transfer of Players (the "Regulations") and the Regulations governing the Application of the Regulations for the Status and Transfer of Players (the "Application Regulations") are applicable.

11. Also, the FIFA Statutes 2004 which came into force on 1 January 2004 are applicable.

12. Article 34.4 of the FIFA Statutes 2001 states that "coaches shall be classified as players as far as status is concerned". Such material rule is applicable to the case at hand as the FIFA Statutes 2004 do not include a similar rule and as the 2001 version of the Regulations for the Status and Transfer of Players, applicable to this case, has been adopted under the auspices of the 2001 FIFA Statutes.

B. The main issues to be resolved by the Panel are:

a. Was the Single Judge competent?

b. If yes, did any party breach the second contract dated 1 January 2004?

c. If a breach of the second contract occurred, what damages are to be paid by the party responsible for such breach?

a) Was the Single Judge competent?

13. The Appellant mentioned at the beginning of the hearing that the Single Judge was not competent. The Appellant did not raise the question of the Single Judge's competence neither before the Single Judge nor in its Appeal Brief or in its final statement before the CAS.

14. In addition, the CAS jurisprudence has already confirmed that the Single Judge has jurisdiction to issue a decision on behalf of the FIFA Players' Status Committee, in accordance with article 34§6 of the FIFA Statutes 2004 (cf. TAS 2004/A/589, in particular N 66 and ff).

15. Therefore, the Panel confirms the Single Judge jurisdiction.

b) Did any party breach the second contract dated 1 January 2004?

16. The Panel duly considered all the evidence submitted by both the parties.

17. Based on the evidence shown in particular on the letters dated 19 June 2004, 1 July 2004 and 9 July 2004, the Panel came to the conclusion that at a certain stage both Parties were unhappy with each other. However it appears that the Respondent never excluded the continuation of the contractual relationship and rather proposed the Appellant to find a solution to the problems which the Parties were facing. The Respondent indeed envisaged an early termination of the second contract but only as an option offered to the Appellant which included the payment of EUR 1,500,000 of damages. The reference to damages by the Respondent showed that it still considered the second contract as valid and that the decision of the Appellant not to return to the Respondent's premises on 29 June 2004 would be considered as a breach of the contract.

18. By sending his letter on 1 July 2004 rejecting the Respondent's offer to meet and not showing up at the Respondent's premises, the Appellant thus breached the second contract without just cause according to article 21 of the FIFA Regulations.

19. In that context the Panel does not follow the Appellant's opinion according to which the Respondent had breached the financial terms of the employment contract in not settling the second and third retainers provided in article 4 of the second contract. The evidence produced, the differences between the French and the Arabic versions of the second contract as well as the attitude of the Appellant between the signature of the contract and the procedure before the CAS not claiming at all the payment of the above mentioned retainers show that the Parties had in mind that the retainers should be paid at the beginning of each relevant period. As for the period starting on 1 July 2004, it was already clear that the Appellant did not want to remain under contract with the Respondent. There was thus no reason for the Respondent to pay the second retainer.

20. As far as the salary of June 2004 is concerned the Appellant never reminded the Respondent of it. Based on the provisions of the second contract and under the particular circumstances existing at that point of time between the Parties, the Appellant did thus not have the right to terminate the second contract without notice. In that case, the Panel came to the same conclusion above.

21. Based on the foregoing the Respondent did not breach any term of the second contract granting to the Appellant the right to immediately terminate the contract without notice and therefore the Appellant is the only party at breach.

c) What damages are to be paid by the Appellant?

22. The Panel considers that the Appellant breached and terminated the second contract with effect on 1 July 2004. The Appellant has thus the right to receive his salary payable until 1 July 2004 and this will be taken into consideration in the calculation of the final compensation to be paid by the Appellant, who claimed for the payment of the outstanding salaries and retainers as provided by the contract.

23. The Panel considers at first that although it has full power to review the facts and the law, it should only review the Single Judge's decision for specific reasons.

24. According to article 22 of the Regulations:

"Unless specifically provided for in the contract, and without prejudice to the provisions on training compensation laid down in article 13 ff, compensation for 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:

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

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

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

(4) Whether the breach occurs during the periods defined in Article 21.1".

25. According to the Agreement of the Parties during the hearing as well as to the FIFA Statutes and the Code of Arbitration for Sport, FIFA Regulations are applicable in order to determine the compensation due for the breach of the second contract by the Appellant and Swiss law is applicable subsidiarily in order to determine the extent of the liability and the amount of the compensation.

26. Article 337d of the Swiss Code of Obligations ("CO") grants the right to the employer to get a compensation for damages due to the termination of the contract by the employee in case of unjustified non-appearance at or leaving of the working place. The amount of the compensation shall be at least equal to one quarter of one month salary but the employer shall be entitled to compensation for additional damages.

27. For the calculation of the damages linked to a breach of contract, article 99 paragraph 3 CO refers to articles 42 to 44 CO concerning the extent of liability in case of tort which provide:

- Regarding the calculation of the effective damages:

  Whoever claims damages must prove the damage (article 42 paragraph 1 CO). According to the literature *"this amount corresponds to the maximum amount which the creditor can claim for. If the existence or the amount of the damage cannot be proved, article 42 paragraph 2 authorises the court to make its decision in equity and on the basis of the ordinary course of events* (Decision of the Swiss Federal Tribunal [ATF] 118 II 312; TAS 2005/A/902)*"*.

- Regarding the determination of the compensation:

  "The debtor does not necessarily have to pay the creditor a compensation corresponding to the whole value of the damage. According to article 43 paragraph 1 CO, it belongs to the court to determine the compensation due according to the circumstances as well as the degree of fault (TAS 2005/A/902)*".*

28. In the challenged decision the Single judge mentioned that the Appellant had informed the Respondent of its intention to quit his job as a coach of the Respondent's first team a few months after signing the contract. This is considered as an aggravating circumstance by the Single judge. The Single judge considered also the fact that the Appellant knew of the circumstances of his stay in the United Arab Emirates having lived there for several months before signing the new contract. The Single judge took also into consideration the whole duration of the new contract, 29 months, and the remaining theoretical duration of such contract after termination, 23 months.

29. Based on these criteria, the Single judge fixed the compensation for damages at EUR 650,000.

30. The Single judge did not give any indication on the figures upon which he based its decision. This lack of motivation obliges the Panel to a review of the decision.

31. In the challenged decision, the Single judge also decided the repayment by the Appellant of the retainer of EUR 300,000 to the Respondent. This issue is analysed by the Panel below.

32. The Panel considers that the impact of the residual value of the contract – 23 months – on the calculation of the compensation has not been proven by the Respondent. Therefore, this criteria cannot be taken into consideration by the Panel.

33. Based on the particular circumstances of the present case, the Panel concludes secondly that the basis for the calculation of the damage is limited to the addition of:

    1) the retainer of EUR 300,000 paid by the Respondent for the period starting on 1 January 2004 and ending on 30 June 2004 and

    2) the difference from 1 January 2004 until 30 June 2004 between the previous monthly salary of USD 33,333 and the new monthly salary of EUR 35,000, which the Panel fixed at EUR 7,644 per month on the basis of an exchange rate of 1.2185 USD for 1 EUR at the date of termination of the contract, that is EUR 45,864 extra received by the Appellant.

34. The reasons for such conclusion are drawn on the fact that the Parties were bound by a first employment contract, which should have terminated on 30 June 2004. The early termination of such contract has been agreed between the Parties at the Appellant's request. The reason for such early termination was the Appellant's wish to be bound with the Respondent for a longer period of time and thus secure stability in his personal life. The Respondent saw advantages in signing a long term contract with the Appellant and the Panel believes the Respondent when it claims that this was the only reason for it to agree on the early termination of the first contract and the signing of the second contract.

35. Based on the terms of the second contract, the Appellant was granted a second retainer of EUR 300,000 upon signature. The second contract was terminated by the Appellant's fault as of 30.06.04. The date of that termination corresponds to the date on which the first contract was to expire. The Respondent was able to prove that this amount was, from the economical point of view, an investment made by the Respondent in order to retain the services of the Appellant for a longer period of time than provided in the first contract. The Respondent was thus deprived of the contemplated benefit of its initial investment of EUR 300,000 namely that the Appellant would continue coaching the Respondent's football team until 2006. It follows that in accordance with Art. 22(3) of the FIFA Regulations, the Appellant caused a damage to the Respondent corresponding to the retainer of EUR 300,000.

36. Eventually and according to article 22 of the Regulations the specificities of the Sport must be taken into consideration.

37. In this regard the Panel is of the opinion that the particular function of the Appellant as a coach must be taken into consideration. According to the information included or available from the file and at the hearing no offer has been made to the Respondent with regard to the Appellant. His new employer, the Al Ittihad Club, wrote to the Respondent indicating its interest in the coach and asking for his release but, according to the information provided at the hearing, no formal offer has ever been made by Al Ittihad Club to the Respondent.

38. As for the aggravating circumstances mentioned by the Single Judge, the Panel considers that such circumstances cannot justify as such the amount of EUR 650,000 for damages.

39. In particular, with regard to the last criteria mentioned under article 22 (4) of the Regulations, the Panel notes that the Appellant did not breach his contract during but at the end of the season. In that context the Panel notes also that the Respondent signed a new coach, P., only 15 days after the Appellant confirmed his decision to terminate his contract.

40. The Panel thus considers that no substantial damage can be claimed by the Respondent and that the mitigating circumstances described below do in any case compensate it.

41. The Panel notes also that the Appellant had outstanding results as coach for the Respondent's first team. The team won the national championship as well as the Asian championship which is the equivalent of the UEFA Champions' League. The Respondent's witness confirmed that the Respondent was very satisfied by the Appellant until the breach of the contract. The Appellant required several times from the Respondent the authorisation to leave the Respondent. The Appellant did not leave the club from one day to the other. All these circumstances are to be considered in relation with article 43 paragraph 1 CO.

42. Based on all the circumstances described above, on article 22 of the Regulations and article 42 paragraph 2 CO, and based on its full power to review the facts and the law, the Panel considers the following:

- The Respondent suffered an unjustified surplus of costs following the execution of the contract dated 1st January 2004 amounting to EUR 345,864. This amount corresponds

to the damage suffered by the Respondent in relation to the breach and undue termination of the contract by the Appellant.

- The Appellant's salary for June 2004 amounting to EUR 35,000 is due to the Appellant by the Respondent.

43. Based on the foregoing, the Panel decides that the net amount due to the Respondent by the Appellant is of 310,864 Euros.

44. All other motions and prayers for relief of the Parties are dismissed.

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr Bruno Metsu is partially upheld.

2. The decision issued on 12th May 2005 by the Single Judge of the FIFA Players' Status Committee is set aside.

3. Mr Bruno Metsu shall pay a compensation for breach of contract to Al-Ain Sports and Cultural Club of EUR 310,864.

4. All other motions or prayers for relief are dismissed.

(…).