



**Arbitration CAS 2012/A/2854 Horacio Luis Rolla v. U.S. Città di Palermo Spa & Fédération Internationale de Football Association (FIFA), award of 26 March 2013**

Panel: Prof. Petros Mavroidis (Greece), President; Mr Rui Botica Santos (Portugal); Prof. Ulrich Haas (Germany)

*Football*

*Transfer*

*Ruling issued by a sports-related body refusing to deal with a request*

*Possibility to bring the case before FIFA and objective effect of a decision on its addressee*

*Decisions taken by the competent FIFA bodies*

*Panel's referral of the case back to the previous instance pursuant to Article R57 CAS Code*

1. According to the general principles extracted from the CAS jurisprudence, the existence of a decision does not depend on the form in which it has been issued. Furthermore, a communication intended to be considered a decision shall contain a ruling which aims to affect the legal situation of its addressee or other parties. What is more, a ruling issued by a sports-related body refusing to deal with a request can be considered a decision under certain circumstances.
3. A letter sent by FIFA stating that *“the given information is based on the documents currently in our possession only and that it is without prejudice whatsoever”* is without importance if the Appellant, following this letter, did not have any other way to make his case before FIFA. What is relevant for an *animus decidendi* is the objective effect of a decision on its addressee, and not the subjective intent of the authority which renders the decision.
4. A decision having important consequences for the parties involved in the proceedings must be taken by the authorized and competent judicial body rather than by the secretariat. A fair procedure requires that a party that is subject to jurisdiction of FIFA has the right to be given the opportunity to bring his full arguments and pleadings to the appropriate judicial body before a final decision is rendered.
5. Article R57 of the Code allows CAS panels to render a new decision only if there was actually a decision taken in the first instance. In case there was never a decision on the merits issued by FIFA, the CAS panel should not have the power to render a decision on the merits of the case and substitute a FIFA decision on this score. The fact that the FIFA administration, in its letter, referred to provisions of the Players' Agent Regulations does not mean that a decision was taken on the merits.

## **I. INTRODUCTION**

1. This appeal by Mr Horacio Luis Rolla (“the Appellant” or “Mr Rolla”), football agent against an alleged decision of the FIFA Director of Legal Affairs and the Head of Players’ Status Committee concerns the breach of a representation agreement concluded between the Appellant and U.S. Città di Palermo SpA (“the First Respondent”, or “Palermo”), with regard to the transfer of E., a professional football player, from Palermo to S.S.C. Napoli S.p.A. (“Napoli”). The appeal is directed against FIFA as well (“the Second Respondent”).

## **II. THE PARTIES**

2. Mr Rolla is an Argentinean football agent exercising his activity with a license delivered by the Argentinean Football Association.
3. Palermo is an Italian football club, affiliated with the Italian Football Association which in turn is affiliated with FIFA.
4. FIFA is the global governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players around the world. FIFA is an association established under Swiss law with headquarters in Zurich, Switzerland.

## **III. FACTUAL BACKGROUND**

5. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the Parties, the exhibits filed, as well as the oral pleadings and comments made during the hearing. Additional facts may be set out, where relevant, in the legal considerations of the present award.
6. E. is a Uruguayan football player, born in 1987 (the “Player”).
7. On 1 April 2010, Mr Rolla and Palermo signed a representation agreement regarding Mr Rolla’s assistance in the conclusion of the transfer of the Player “*to any club worldwide*” (the “Representation Agreement”).
8. On 17 July 2010, the Player was transferred from Palermo to Napoli on a provisional basis, with an option to conclude a permanent transfer at a later stage. The agreed compensation for the temporary transfer of the Player between the two clubs was EUR [...].
9. On 8 August 2010, the Appellant addressed an invoice of EUR [...] to the First Respondent regarding his involvement in the temporary transfer of the Player from Palermo to Napoli.
10. The First Respondent refused to pay, arguing that “*no compensation [was] to be recognized as a result of the temporary transfer of the player*”.

11. The Player was subsequently transferred on a permanent basis, as Napoli exercised the option set forth in the agreement of provisional transfer, for an additional sum of EUR [...].
12. Despite a request from the Appellant to pay him the agreed percentage fee, the First Respondent refused to pay any amount following the permanent transfer of the Player, arguing that the Appellant had not participated at all in the negotiation and/or conclusion of the permanent transfer of the Player to Napoli.
13. On 30 November 2010, the Appellant filed a claim against the First Respondent before FIFA requesting, *inter alia*, that the Players' Status Committee finds that the First Respondent had breached the Representation Agreement concluded on 1 April 2010. The Appellant claimed that the breach had occurred because of the alleged non-payment of the contractually agreed fee that he was entitled to receive, because of his involvement in the transfer of the Player to Napoli.
14. On 17 June 2011, in a letter signed by FIFA's Director of Legal Affairs and Deputy Head of Players' Status, FIFA reverted to the Appellant in writing in order to inform him that, based on the provision of Article 29 par. 1 and par. 2 of the Players' Agents Regulations, FIFA did not appear to be in a position to intervene in that matter. Additionally, the letter explicitly specified that the aforementioned information was given on the basis of the documents and information in FIFA's possession only and was expressed without prejudice whatsoever.
15. On 22 February 2012, the Appellant requested FIFA to continue the proceedings and decide the issue before it, maintaining his claim directed against the First Respondent for payment of allegedly outstanding fees.
16. On 21 June 2012, in a letter signed by FIFA's Director of Legal Affairs and Head of Players' Status, FIFA reiterated the content of their previous letter dated 17 June 2011, and informed the Appellant that FIFA did not appear to be in position to deal with this matter. In this letter, FIFA also confirmed that its position was based on the documents and information in FIFA's possession only and that such information was communicated without prejudice whatsoever.
17. This last letter, dated 21 June 2012, which forms the basis of the current proceedings, will be referred to in what follows as the "FIFA Letter".

#### **IV. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

18. Following receipt of the FIFA Letter, the Appellant filed a Statement of Appeal before the CAS pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") on 11 July 2012.
19. On 17 July 2012, the Appellant requested an extension of the deadline to file his appeal brief, in particular in view of his difficulty to gather some evidence and considering that all material had to be translated into English.
20. On 20 July 2012, the Second Respondent objected to the Appellant's request.

21. On 24 July 2012, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided to partially grant the Appellant's request for an extension of the deadline to file his appeal brief until 2 August 2012.
22. On 2 August 2012, the Appellant filed his Appeal Brief.
23. On 7 September 2012, the Parties were informed that the following persons had been appointed as Arbitrators: Prof. Petros C. Mavroidis, Professor, Commugny (Switzerland) as President of the Panel, sitting with Mr Rui Botica Santos, Attorney-at-law, Lisbon (Portugal), and Prof. Ulrich Haas, Professor, Zurich (Switzerland) as Members of the Panel.
24. On 27 September 2012, the Respondents filed their respective Answers.
25. On 11 October 2012, the Parties were informed that the Panel had decided to hold a hearing.
26. On 30 October 2012, the CAS Court Office requested from the Appellant to provide CAS with a translation into English of two of the exhibits filed with his Appeal Brief, in accordance with Article R29 of the Code. Translations were provided to the CAS Court Office on 6 November 2012.
27. On 19 November 2012, FIFA reminded in writing the content of its Answer according to which its challenged letter was not a decision and hence, could not be legally challenged. FIFA further reminded that, in case the Panel held the opposite view, the correct legal pathway would be to remand the case back to FIFA in order for its *ratione materie* competent body (the FIFA Players' Status Committee) to decide the dispute. Finally, FIFA stated that it considered not having real material interest in the outcome of the dispute, and would therefore not participate in the hearing.
28. On 23, 26 and 29 November 2012, the Parties signed the Order of Procedure.

## V. HEARING

29. A hearing was held on 7 February 2013 at the Lausanne Palace Hotel in Lausanne, Switzerland. The following persons attended the hearing:
  - For the Appellant: Mr Horacio Luis Rolla, assisted by counsels Messrs Lucas Ferrer, Daniel Mario Crespo and Cristian Ferrero, Attorneys-at-law, and Mr Jesus Corrales, interpreter.
  - For the First Respondent: Mr Paolo Lombardi, Attorney-at-law.
  - The Second Respondent was not represented at the hearing.
30. The Panel heard evidence from the following persons, by teleconference:
  - Mr Jesus Angel Blanco, business adviser of the Player.
  - Mr Pierpaolo Triulzi, agent of the Player.

31. Each one of these persons was invited by the Panel's President to tell the truth subject to the consequences of perjury provided in Swiss law, and was examined and cross-examined by the Parties present, and answered questions by the Panel as well.
32. The Parties were then afforded the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel.
33. The Parties present explicitly agreed at the end of the hearing that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed.

## **VI. POSITION OF THE PARTIES**

34. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows.
35. In view of the Panel's conclusion in the present case, as explained below, the Parties' position as to the merits of the case will not be addressed in detail.

### **A. Mr Horacio Luis Rolla (Appellant)**

36. The Appellant's position is that the FIFA Letter, which followed (a) his original claim, (b) FIFA's administration's letter dated 17 June 2011 in which it was stated that FIFA was not in a position to intervene in the case and (c) his letter dated 22 February 2011 in which he requested FIFA to continue the proceedings, shall be considered as a decision declining jurisdiction.
37. The Appellant further states that the nature of a decision shall not be determined using the subjective intent of the person who rendered the decision as a relevant legal criterion, but by reference to the objective effect on the addressee's legal situation.
38. The Appellant thus considers that his Appeal shall be considered admissible.
39. As to the merits of the case, the Appellant considers having been instrumental in the transfer of the Player from the First Respondent to Napoli, and therefore that he should receive compensation in accordance with the Representation Agreement.

### **B. U.S. Città di Palermo SpA (First Respondent)**

40. With regard to the nature of the FIFA letter, the First Respondent agrees with the Appellant that it shall be considered as a formal decision and that therefore the Appeal shall be considered as admissible.
41. As to the merits of the case, the First Respondent alleges that the transfer of the Player was decided in a short meeting between the presidents of the two clubs (Palermo and Napoli), and

as the Appellant had not participated in that meeting, he was not entitled to receive any compensation.

### C. FIFA (Second Respondent)

42. FIFA considers that its letter dated 21 June 2012 was only informative and that it had “*no intention whatsoever to decide in any way on the matter at this stage or to affect the legal situation of any of the parties, as it would be required by CAS in order for a written communication to qualify as a decision*”. FIFA therefore considers that the Appeal should be declared inadmissible.
43. Furthermore, FIFA states that if the Panel considers that the FIFA Letter produced legal effects, and was consequently appealable, and if the Panel does not issue a decision on the merits of the case, it would be ready to investigate the case and, if need be, submit the case to the relevant FIFA deciding body.
44. FIFA also considers that if the Appellant and the First Respondent agrees so, the present matter could be dealt with by FIFA as an ordinary arbitration procedure.
45. In view of its position regarding the inadmissibility of the Appeal, FIFA did not comment on the merits of the case.

### VII. THE PARTIES' REQUESTS FOR RELIEF

46. The Appellant's requests for relief are the following:

- I. *To accept the present appeal against the decision adopted by FIFA on 21 June 2012.*
- II. *To render the decision issued by FIFA on June 21, 2012 void and issue a new decision establishing that:*
  - a. *US Città di Palermo Spa shall pay to Mr. Horacio Luis Rolla an amount equal to 5% of all the amounts received by Palermo for the transfer (temporal and definitive), of E. to Napoli, plus the accrued interest.*
  - b. *US Città di Palermo Spa/ or FIFA shall pay the costs of the present arbitration.*
  - c. *US Città di Palermo Spa and/ or FIFA shall pay the legal fees and other expenses incurred in by Mr. Horacio Luis Rolla in connection with the present arbitration procedure.*
- I. *Subsidiary, only in the event that the abovementioned points are rejected, the Appellant requests the CAS to: Accept the appeal against the decision adopted by FIFA on June 21, 2012.*
- II. *Render the decision issued by FIFA on June 21, 2012 void and refer the matter back to the body of FIFA having jurisdiction to decide on the merits of the claim filed by Mr. Horacio Luis Rolla.*
- III. *Establish that the costs derived from the present arbitration proceeding shall be borne by US Città di Palermo Spa and/ or FIFA.*

*IV. Sentence US Città di Palermo Spa and/or FIFA to pay the legal fees and other expenses incurred in by Mr. Horacio Luis Rolla in connection with the present arbitration procedure.*

47. The First Respondent's requests for relief are the following:

- 1. The First Respondent requests the all Appellant's claims be dismissed*
- 2. In any case, the First Respondent requests this Honourable Panel to order the Appellant to bear all costs incurred with these proceedings.*
- 3. In any case, the First Respondent requests this Honourable Panel to order the Appellant to cover all legal expenses of the First Respondent related to these proceedings.*
- 4. Finally, the First Respondent requests that a hearing be held in these proceedings.*

48. The Second Respondent's requests for relief are the following:

*In the light of all the above considerations, we respectfully request CAS, primarily, to declare the present appeal inadmissible or, subsidiarily, should this honourable Panel not render an award as to the substance of the matter at hand, to refer the claim back to FIFA for further investigation and possible further actions. Finally, we request in any case for all costs related to the present procedure as well as the legal expenses of the Second Respondent to be borne by the Appellant.*

#### **VIII. THE ADMISSIBILITY OF THE APPEAL AND CAS JURISDICTION**

49. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the Code, which reads as follows:

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

50. The same general principle is gathered in Article 63.1 of the FIFA Statutes, which states that:

*"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

51. In the present case, the admissibility of the appeal filed by Mr Rolla is being challenged by FIFA on the basis that the FIFA Letter is not a decision but a mere informative letter.

52. In view of the challenge, the Panel shall first determine if the FIFA Letter shall be considered an appealable decision or not.

53. For this purpose, the Panel deems convenient to firstly recall the jurisprudence of CAS regarding the concept of "decision", since this is an issue that has been debated on numerous occasions, and the CAS has had ample opportunity to develop its case law in linear manner.

54. The general principles, which were summarized in the case CAS 2008/A/1633 and which can be extracted from CAS jurisprudence in this respect are the following:
  - a. The existence of a decision does not depend on the form in which it has been issued (2005/A/899 & 2007/A/1251)
  - b. A communication intended to be considered a decision shall contain a ruling which aims to affect the legal situation of its addressee or other parties (CAS 2005/A/899 & 2007/A/1251, CAS 2004/A/659)
  - c. A ruling issued by a sports-related body refusing to deal with a request can be considered a decision under certain circumstances (CAS 2007/A/1251, CAS 2005/A/994, CAS 2005/A/899, CAS 2008/A/1633)
55. The Second Respondent mentions in its Answer quotes the following:

*“an appealable decision of sport association or federation is normally a communication of the association directed to a party and based on an animus decidendi, i.e. intention of a body of the association to decide on a matter. A simple information, which does not contain any ruling, cannot be considered a decision”* (CAS 2008/A/1633).
56. The Second Respondent’s conclusion with regard to the nature of the FIFA Letter is that *“such letter is merely of an informational nature, and that FIFA has no intention whatsoever to decide in any way on the matter at this stage or to affect the legal situation of any of the parties, as it would be required by CAS in order for a written communication to qualify as a decision. In particular, the letter in question does not create any binding effects. In other words, it completely lacks any animus decidendi”*.
57. The Appellant and the First Respondent stated in their written submissions that the FIFA Letter shall actually be considered as an appealable decision in accordance with the applicable rules and CAS jurisprudence.
58. In the course of the hearing, the Parties present were asked by the Panel to comment on the fact that the definition of a decision in accordance with CAS jurisprudence corresponds to the definition of an administrative decision under Swiss law, and that according to it, a decision exists only if it was intended by the body which rendered it to affect the legal situation it addresses.
59. The Appellant stated that *“things are what they are and not what the parties want it to be”* and the important element is the objective effect that the supposed decision has on the parties’ legal situation, and not the subjective intent of the body which renders it. The Appellant concluded that it was clear from the wording of the FIFA Letter that the legal situation of the Appellant had indeed been affected as a result of the issuance of the FIFA Letter.
60. The First Respondent stated that the FIFA Letter would not be considered to be a decision if the possible absence of the subjective intent by FIFA when issuing it to decide the matter were privileged as the decisive legal criterion. Nevertheless, the fact that FIFA addressed the merits



of the case in order to declare that it was not in a position to intervene, and the fact that it returned the Appellant's advance of costs tended to demonstrate the existence of a decision which affected the Appellant's legal situation.

61. The Panel shall at this point apply the above-mentioned criterion in order to determine whether the FIFA Letter is actually a decision or a mere informative letter; it will address the issue whether the FIFA Letter has indeed affected the addressee's legal situation.
62. The Panel deems it important to check the content of the following exhibits produced to the CAS file:

- 1) The letter of FIFA dated 17 June 2011, which reads in relevant part:

*"In this respect, from the correspondence received, we took note that you are claiming from the Italian club U.S. Città di Palermo a commission fee of 5% of the value of the transfer of the player Roberto E. to the Italian club Società Sportiva Calcio Napoli S.p.A, in accordance with an agreement apparently concluded between you and U.S. Città di Palermo on 1 April 2010.*

*In this respect, we would like to draw your attention to art. 29 par. 1 of the Players' Agent Regulations (hereinafter: the Regulations), which provides that a club is strictly forbidden from paying any amount of compensation for the transfer (or the loan) of a player, either partially or wholly, to the players' agent, not even as remuneration. Furthermore, we refer to art. 29 par. 2 of the Regulations which stipulates that "Within the scope of a player's transfer, players' agents are forbidden from receiving any remuneration other than in the cases provided under Chapter IV of the present regulations [i.e. art. 19 and 20]" In this connection, we would like to remind you of the content of art. 20 par. 5 of the Regulations which states that "A players' agent who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance" (emphasis added)*

*On account of the above and, in particular, in view of the fact that the agreement at the basis of the present matter appears to indicate that the club US Città di Palermo had to pay you a percentage of the loan/transfer fee for the services apparently rendered in connection with the loan of the player in question as commission, we regret having to inform you that we do not appear to be in a position to intervene in this affair. For the sake of good order, please note that the given information is based on the documents currently in our possession only and that it is without prejudice whatsoever.*

*Finally, we would like to inform you that you will receive a refund of the procedural advance of costs paid in accordance with art. 17 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber in the amount of CHF 5,000. In this respect, we kindly ask you to send us, at your best convenience, your full bank account details in order for our services to reimburse you the said amount [the Beneficiary's Name, City, Country and the Bank (full) Name, City, Country (plus either SWIFT coder or BRANCH code)]".*

- 2) In its letter dated 21 June 2012, the FIFA Letter, FIFA reiterated the contents of its previous letter dated 17 June 2011, informing the Appellant once again that it did not appear to be in a position to deal with the matter. In particular, it referred once again the Appellant to the content of Article 29 par.1 and par. 2 of the Players' Agents Regulations. Furthermore,

the FIFA administration also referred the Appellant to the content of Article 20 par. 1 of the Players' Agents Regulations. Finally, the FIFA administration reiterated that the information was communicated without intent to affect the rights and obligations of the addressee.

63. The Panel first considers that the fact that FIFA's position was transmitted to the Appellant under the form of a letter does not, in and of itself, prevent the FIFA Letter from being considered a decision.
64. The Panel is also of the opinion that the legal situation of the Appellant was affected by the FIFA Letter as this letter was in substance denying FIFA's jurisdiction to deal with the Appellant's claim, as explained below.
65. The present situation is different from the one in CAS 2008/A/1633, quoted by the Second Respondent, in which the Panel stated that *"what FIFA is actually stating in these letters is that it is not in a position to intervene in the matter submitted by the Club in the way it has been submitted, but leaves the door open to deal with the case if appropriately filed before its bodies. And this, in the Panel's view, makes the difference with a situation of strict denial of justice eventually challengeable before CAS"*.
66. In the case at hand, FIFA's position, expressed in the letters dated 17 June 2011 and 21 June 2012 as well as in its Answer, is that it appears that *"it is not in a position of intervene"* and that *"the given information is based on the documents currently in [its] possession and it is without prejudice whatsoever"*. As FIFA was not represented at the hearing, the Panel was not in position to ask clarification about the exact meaning of this wording, in particular the terms *"without prejudice whatsoever"*, which are not clear. It should be noted though, that in CAS 2011/A/2586, FIFA had explained that these very terms meant that a decision could still be taken at a later stage.
67. The Panel finds that the Appellant properly filed a claim before FIFA, providing it with the necessary documentation. The answers from the FIFA administration, in particular the FIFA Letter, did not leave any open door to the Appellant for remedying the situation before one of FIFA's bodies.
68. Even though it is stated in the FIFA Letter that *"the given information is based on the documents currently in our possession only and that it is without prejudice whatsoever"*, the Panel considers that the Appellant, following this letter, did not have any other way to make his case before FIFA. This is particularly true as the Appellant twice received the same answer from FIFA, although it had requested that FIFA continues the proceedings after the first letter dated 17 June 2011 had been issued.
69. As to the issue whether there is an *animus decidendi* in the FIFA Letter, the Panel agrees with the Appellant who considers that what is relevant is the objective effect of a decision on its addressee, and not the subjective intent of the authority which renders the decision. Contrary thus to the Second Respondent's position, the Panel considers that the FIFA Letter had affected the legal situation of the Appellant, and therefore should be considered a decision, irrespective whether FIFA had *animus decidendi* when issuing the FIFA Letter.

70. In view of the above, the Panel finds that, through the FIFA Letter, FIFA clearly manifested that it would not entertain the request, thereby making a ruling on FIFA's jurisdiction and directly affecting the Appellant's legal situation.
71. As there were no other internal remedies available, and as the Appellant filed his Statement of Appeal within the deadline prescribed by the FIFA Statutes and the Code, the appeal is admissible and CAS has jurisdiction to deal with it. The latter aspect has not been contested by the Parties and was expressly confirmed by their signature of the Order of Procedure.

#### **IX. APPLICABLE LAW**

72. Article R58 of the Code provides that 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.
73. The Representation Agreement does not contain any provision as to the applicable law and the Parties have not entered into any agreement in this regard.
74. The Panel therefore decided that the various Regulations of FIFA shall primarily apply to the case at hand and, additionally, Swiss law, in accordance with Article 60 par. 2 of the FIFA Statutes, in the 2010 edition.

#### **X. MERITS**

75. The following refer to the substance of the Parties' allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments and evidence on record, whether or not expressly referred to in what immediately follows.

##### **A. Procedure before FIFA**

76. The Panel is of the opinion that the procedure before FIFA was not conducted properly. It was handled by the FIFA administration instead of the competent judicial body and consequently, in the Panel's view, the relevant procedural rules were not followed.
77. The Panel refers in this respect to CAS 2007/A/1251, in which the Panel concluded that "*FIFA has a clear system whereby its general secretariat has no authority to decide on issues of competence but must dispatch the claims to the DRC and the PSC according to their respective scope of jurisdiction under the rules and regulations*". Moreover, as mentioned in CAS 2011/A/2586 and in CAS 2007/A/1298, 1299 & 1300, "*the Panel already found that the FIFA rules provide that decisions of the FIFA Dispute Resolution Chamber must contain reasons, and that FIFA must correctly apply its own regulations by meeting the formal*

*requirements contained therein*". This position is of course also applicable to the other FIFA judicial bodies, such the Players' Status Committee.

78. In line with the findings in CAS 2011/A/2586, the Panel concludes that *"a decision with such important consequences for the parties involved in the proceedings must be taken by the authorized and competent judicial body rather than by the secretariat. To ensure a fair procedure, a party that is subject to jurisdiction of FIFA has the right to be given the opportunity to bring his full arguments and pleadings to the appropriate judicial body before a final decision is taken"*.
79. The Panel thus finds, in line with CAS 2011/A/2586, that an administrative body of FIFA such as the Director of Legal Affairs and/or the Head of Players' Status Committee, is not competent to decide on the question of jurisdiction of the Players' Status Committee or the FIFA Dispute Resolution Chamber.

## **B. Jurisdiction of FIFA**

80. The Appellant and the First Respondent stated at the hearing that the Panel should take a decision on the merits of the matter, and that it should not refer the case back to FIFA.
81. In its Answer, the Second Respondent stated that *"should this honourable Panel not render an award as to the substance of the matter at hand, to refer the claim back to FIFA for further investigation and possible further actions"*.
82. In its letter dated 19 November 2012, the Second Respondent also stated that *"should the Appellant and the First Respondent agree on having the substance of the matter directly heard by the Court of Arbitration for sport (CAS), we would not object to such course of action. From the various submissions, i.e. requests of the Appellant and answer from the First Respondent, we understand that the two aforementioned parties indeed agree that CAS decides directly as to the substance of the dispute opposing them (which was never judged by any of FIFA's competent bodies)"*. The Panel understands from this position that FIFA is of the opinion that the Panel could issue a decision on the merits as an ordinary arbitration procedure as the Appellant and the First Respondent seemed to agree thereto
83. The Panel is of the opinion that the present matter is an appeals procedure against a decision by FIFA denying its jurisdiction, and shall therefore be dealt as such and not as an ordinary arbitration procedure.
84. Article R57 of the Code reads in particular that *"[t]he Panel has 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"*.
85. The Panel finds that Article R57 of the Code allows CAS panels to render a new decision only if there was actually a decision taken in the first instance (*"it may issue a new decision which replaces the decision challenged"* (emphasis added)).
86. In the case at hand there was never a decision on the merits issued by FIFA, as the FIFA Letter should be properly understood as a decision declining jurisdiction. The Panel therefore finds

that it has not the power to render a decision on the merits of the case and substitute a FIFA decision on this score, as there was never a decision to this effect issued by FIFA. The fact that the FIFA administration, in the FIFA Letter, referred to provisions of the Players' Agent Regulations does not mean, in the Panel's view, that a decision was taken on the merits.

87. The Panel appreciates that the Appellant and the First Respondent have the right to have their case decided promptly. This consideration should not, nevertheless, take precedence over all the pertinent legal considerations mentioned above that argue in favour of remanding the present dispute back to the competent FIFA body.
88. Besides, the Panel reminds that the Second Respondent has not consented to the Panel deciding this case in all circumstances. The Second Respondent agreed that CAS has competence to decide this dispute if it were an ordinary procedure, quod non, as explained above. In the absence of explicit agreement of all Parties to this effect, the Panel is of the view that the administration of sports justice is better served if the case were remanded back to the FIFA competent body. This Panel sees itself comforted by CAS jurisprudence in comparable circumstances. In CAS 2003/O/483 (at no. 7) the Panel held as follows:

*"It must however be stressed that, assuming that the motions of any Party should be upheld with respect to the appeals' admissibility issues addressed in the challenged Decision, the Panel finds that it would not be appropriate for CAS to rule a case de novo in such circumstances. Indeed, the matter has not been examined on the merits by the previous instance, which has restricted itself to rule on the admissibility requirements for lodging an appeal against the Bureau's decision. Should the CAS decide that the decision of the Executive Committee be quashed, it would thus be preferable to remit the case to FIFA in order for latter to render a new decision with full grounds".*

89. In view of the above, the Panel concludes that the present matter shall be referred back to FIFA.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Horacio Luis Rolla on 2 August 2012 is partially upheld.
2. The decision of FIFA dated 21 June 2012 is set aside.
3. The case shall be referred back to FIFA for a new decision in light of the grounds of the present award.
- (...)
7. All other requests are dismissed.