

CAS 2006/A/1192 Chelsea Football Club Limited v/ Adrian Mutu

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Luc **Argand**, Attorney-at-law, Geneva, Switzerland

Arbitrators: Mr Peter **Leaver**, QC, Barrister, London, England
Mr Efraïm **Barak**, Attorney-at-law, Tel-Aviv, Israel

Ad hoc Clerk: Mr Sylvain **Bogensberger**, Attorney-at-law, Geneva, Switzerland

between

Chelsea Football Club Limited, London, England,

Represented by Messrs Stephen Sampson and Peter Limbert, from Hammonds Solicitors, London, England, by Mr Adam Lewis, Barrister, London, England and by Mr Stephan Netzle, Attorney-at-law in Zurich, Switzerland

Appellant

and

Mr Adrian Mutu, Firenze, Italy,

Represented by Mr Paolo Rodella, Attorney-at-law in Rome, Italy, by Mr Gianpaolo Monteneri and Ms Lucie Lavanchy, from Monterneri Sport Law & Management, Zurich, Switzerland

Respondent

FACTUAL BACKGROUND

A. THE PARTIES:

1. Chelsea Football Club Limited ("the Club" or "Chelsea") is an English Football Club, member of the Football Association Limited ("FA") and of the Football Association Premier League Limited ("FAPL"), which affiliated with FIFA since 1905.
2. Mr Adrian Mutu ("the Player" or "Mr Mutu") is a Romanian professional football player born on 8 January 1979.

B. STATEMENT OF FACTS:

3. On 12 August 2003, the Player was transferred from the Italian club AC Parma to Chelsea. The Player and the Club entered into a five-year employment contract dated 11 August 2003 and expiring on 30 June 2008.
4. On 1 October 2004, a targeted drug test was held on the Player by the FA. It was declared positive on 11 October 2004.
5. On 28 October 2004, the Club terminated the contract with the Player with immediate effect.
6. On 4 November 2004, the FA's Disciplinary Commission imposed a seven-month ban on the Player commencing on 25 October 2004. The FIFA Disciplinary Committee extended the sanction in order to obtain a worldwide effect by a decision dated 12 November 2004.
7. On 10 November 2004, the Player appealed against the Club's decision to terminate the employment contract. That appeal was, in the first instance, to the Board of Directors of the FAPL. A panel was appointed by the FAPL to consider the appeal. That panel met on 19 January 2005, by which time Chelsea had stated that it was intending to make a claim for compensation against Mr Mutu. At the hearing on 19 January 2005 the panel was informed of an agreement between Chelsea and Mr Mutu as to the method of resolution of Mr Mutu's appeal and Chelsea's claim for compensation. The panel requested the parties to write a joint letter confirming the agreement. Where the context permits, references in this Award to "the dispute" are to be understood as references to both Mr Mutu's appeal and to Chelsea's claim for compensation.
8. By joint letter dated 26 January 2005, the Parties agreed to refer the "triggering element of the dispute", that is, the issue of whether Mr Mutu had acted in breach of the employment contract

with or without just cause or sporting just cause, to the Football Association Premier League Appeals Committee (“FAPLAC”).

9. By letter dated 4 February 2005, Chelsea informed FIFA as to the course it intended to take in relation to the dispute. In particular, the Club suggested that FIFA acknowledged the filing of the claim, opened proceedings and then adjourned them pending receipt of the FAPLAC decision. The letter made it clear that Chelsea was “formally” submitting “part of [its] contractual claim” to the FIFA Dispute Resolution Chamber (“the DRC”). In the context of that letter it is clear that Chelsea was submitting to the DRC only that part of its claim that was dependent on there being a finding of breach of contract by Mr Mutu, that is, what sporting sanctions or disciplinary measures should be imposed on Mr Mutu. The FIFA Regulations for the Status and Transfer of Players provided that it was only the DRC that could impose those sanctions.
10. On 20 April 2005, FAPLAC decided that Mr Mutu had committed a breach of contract without just cause within the protected period against Chelsea.
11. On 29 April 2005, Mr Mutu lodged an appeal before the Court of Arbitration for Sports (“CAS”) against FAPLAC’s decision. On 15 December 2005, CAS dismissed the Player’s appeal (Award in the matter CAS/A/786).
12. On 11 May 2006, Chelsea applied to FIFA for an award of compensation against Mr Mutu. That application followed the 20 April 2005 decision and was consistent with the claim dated 4 February 2005. In particular, Chelsea requested that the DRC should award an amount of compensation in favour of the Club following the established breach of contract committed by the Player without just cause.
13. On 26 October 2006, the DRC decided that it did not have jurisdiction to make a decision in the dispute between Chelsea and the Player and that the claim of Chelsea was therefore not admissible (hereinafter referred to as the “FIFA Decision”).

C. PROCEEDINGS BEFORE CAS:

14. On 22 December 2006 Chelsea filed its statement of appeal against the FIFA Decision with CAS . On 26 January 2007, it filed its appeal brief and enclosed various exhibits in 3 bundles, requesting:

“The annulment of the DRC Decision.

The issue of a new Decision, replacing the DRC Decision, to the effect that:

- (i) *The (...) [DRC] does have jurisdiction under Articles 21 to 22 and 42(1)(b) of the 2001 FIFA Regulations for the Status and Transfer of Players to decide the appropriate sporting sanction and/or for compensation arising out of a dispute between a Club and a Player including in circumstances where liability, or the “triggering element of the dispute” (namely whether the Player was in unilateral breach of his player’s contract without just cause or sporting just cause), has been decided by a domestic tribunal (such as the (...) [FAPLAC]) as opposed to by the (...) [DRC] itself.*
- (ii) *Consequently, the (...) [DRC] does have jurisdiction to so determine and impose the appropriate sporting sanction and/or order for compensation arising out of the dispute between Chelsea (...) and the Player (...), the subject of this Appeal.*
- (iii) *The (...) [DRC] is ordered to so determine and impose the appropriate sporting sanction and/or order for compensation under the 2001 FIFA Regulations for the Status and Transfer of Players, arising out of the dispute between Chelsea (...) and the Player (...), the subject of this Appeal.”*

Costs.”

- 15. On 11 January 2007, FIFA informed CAS that it renounced its rights to intervene in the arbitration proceedings.
- 16. On 7 March 2007, and upon request of the Panel, FIFA lodged a copy of its file relating to the dispute and the CAS Court Office provided the parties with copies of that file.
- 17. On 9 March 2007, Mr Mutu filed his answer to the appeal brief with one exhibit, requesting:

“Primarily

- (i) *Not to consider the Appeal on the ground that it is inadmissible;*
- (ii) *Condemn the Appellant as the only responsible of this trial, to the payment in the favour of the Respondent of the legal expenses incurred;*
- (iii) *Establish that the costs of the arbitration procedure shall be borne by the Appellant as the only responsible of this trial.*

Subsidiarily, only in the case that the above is rejected:

- (i) *Reject in full the Appeal;*
 - (ii) *Uphold the Decision of the DRC;*
 - (iii) *Condemn the Appellant as the only responsible of this trial, to the payment in the favour of the Respondent of the legal expenses incurred;*
 - (iv) *Establish that the costs of the arbitration procedure shall be borne by the Appellant as the only responsible of this trial.”*
- 18. On 21 March 2007, following Chelsea’s request, the Chairman of the Panel granted Chelsea a deadline of 27 March 2007 to lodge its observations regarding the issue of the admissibility of the appeal, raised by the Respondent in his answer.
 - 19. On 22 March 2007, an order of procedure was issued, which was subsequently accepted and countersigned by both parties.

20. On 27 March 2007, Chelsea filed its observations regarding the issue of the admissibility of the appeal with various exhibits in one bundle. It concluded that CAS does have jurisdiction and that the appeal is therefore admissible.
21. On 4 April 2007, following the Player's request, the Chairman of the Panel granted the Player a deadline of 12 April 2007 to lodge his observations regarding the issues raised by Chelsea in its 27 March 2007 submission.
22. On 12 April 2007, the Player filed its observations accordingly.
23. A hearing was held in Lausanne on 20 April 2007. The members of the Panel, the ad hoc Clerk as well as Mr Jorge Ibarrola, Counsel to the CAS, were present.

Mr Adam Lewis (Barrister), Dr Stephan Netzle (Attorney), Mr Stephen Sampson (Attorney) and Mr Peter Limbert (Solicitor), Counsels for the Appellant, and Mr Gianpaolo Monteneri, Mr Paolo Rodella, Ms Lucie Lavanchy and Mr Maurillo Prioreshi, Counsels for the Respondent, attended the hearing.

Mr Adam Lewis and Dr Stephan Netzle for the Appellant and Mr Gianpaolo Monteneri for the Defendant made full oral presentations. No witnesses were heard.

24. During and after the hearing the parties did not raise any objection and confirmed their satisfaction with regard to their right to be heard, that they had been treated equally in these arbitral proceedings and that they had had a fair chance to present their position.

D. POSITION OF THE PARTIES:

25. Chelsea submits that CAS does have jurisdiction because the parties are both contractually bound by a dispute resolution scheme established by FIFA, which includes an appeal between the parties to CAS. Decisions of the DRC in the course of proceedings under that scheme are not decisions caught by article 75 of the Swiss Civil Code (CC) because they are not decisions of an association in respect of membership rights, but decisions determining or relating to a contractual dispute between two parties, brought before a contractually agreed dispute resolution forum.

The only dispute in issue at this stage is the identity of the tribunal, i.e. DRC or FAPLAC, that is competent to determine the appropriate sporting sanction and/or order compensation pursuant to the 2001 FIFA Regulations for the Status and Transfer of Players ("2001 FIFA Regulations").

The DRC correctly concluded that the claim had been submitted to the DRC on 4 February 2005 and that the applicable regulations are therefore the 2001 FIFA Regulations.

Article 42 of the 2001 FIFA Regulations expressly distinguishes, for jurisdictional purposes, between the “triggering element” or “liability” stage of the claim and the “remedies” or “quantum” stage. The question of breach is a question of fact which may perfectly well be determined where the parties and the witnesses are located and before a national tribunal. The DRC in contrast is not best suited to hear a lengthy factual dispute and rarely holds oral hearings. The question of sporting sanction is however a matter best left to the DRC as only the DRC can effectively impose sporting sanctions that apply beyond the jurisdiction of the relevant national tribunal.

This distinction is also drawn out clearly in FIFA’s Circular no. 769 of 24 August 2001 which became applicable on 1 September 2001, i.e. at the same time as the 2001 FIFA Regulations. There could not be a clearer statement by FIFA of FIFA’s intention and interpretation of Article 42, which offers an option to the parties to submit the triggering contract-related elements of their dispute to the DRC or to a national sport arbitration tribunal.

Both the Player, by proceeding in accordance with the letter signed on 26 January 2005 up to his written submission to the DRC and the two arbitral bodies before which this issue has come, namely FAPLAC and CAS, have applied this interpretation.

FAPLAC is clearly an arbitral tribunal in the sense of the 1958 New York Convention. The decision rendered between the parties by FAPLAC was done so by independent judges after a 2-day hearing and cross-examination; considered all matters at stake and could be appealed against. It therefore completely complies with the rule of Article 42 of the 2001 FIFA Regulations.

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26. Mr Mutu submits that the Appeal is not admissible and should be dismissed in its entirety because the Player lacks standing to be sued in this arbitration procedure. Indeed, the contractual dispute between the Parties is not the issue of the current procedure and the appeal is only directed against a decision of the DRC declining jurisdiction over a dispute between a club and a player. In accordance with Article 75 CC, the appeal should therefore be directed against FIFA and not against the Player.

The letter of 4 February 2005 is only of informative nature and cannot be considered as a formal claim. Consequently, the procedure only started on 11 May 2006 with the “Application

for an award of compensation” of the Appellant, and is to be considered as the sole procedure pending before FIFA. Consequently, Article 26 para. 2 of the 2005 FIFA Regulations for the Status and Transfer of Players (“2005 FIFA Regulations”), which entered into force on 1 July 2005, is exclusively applicable to this claim.

The unusual two-stage procedural course that the Appellant tries to impose on the Respondent is not foreseen under any applicable regulations and is therefore not admissible.

Article 22 letter b of the 2005 FIFA Regulations establishes that the competence of the DRC is given unless an independent arbitration tribunal has been established at national level. Once the parties have agreed for one jurisdiction, the competent bodies shall decide the entire matter. The parties have agreed by the joint letter of 26 January 2005 to refer the dispute to FAPLAC only. As a result, the DRC has no jurisdiction to consider the dispute between the Appellant and the Respondent.

If the Panel decides to rule on the case in accordance with Article 42 para. 1 letter b (1) of the 2001 Regulations - which Mutu does not consider applicable - it must also consider that the jurisdiction chosen by the parties must decide on the whole case. Indeed, in accordance with Article 42 para. 1 letter b (1), which must be interpreted in accordance with Article 22 letter b of the 2005 FIFA Regulations, the DRC is to rule the whole case if it is competent. However, if a national sports arbitration tribunal is competent, it must also decide the entire dispute. Circular no. 769 can not be used to interpret the practice of the DRC under the 2001 FIFA Regulations since it was published before the latter entered into force and completely diverts from its wording and spirit.

FAPLAC is not an arbitral tribunal as requested by both the 2001 and 2005 FIFA Regulations but only an “administrative resolution body”. Any decision taken by this body is therefore not an arbitral award and FIFA is not bound by it.

II. IN LAW

A. JURISDICTION AND SCOPE OF THE PANEL’S REVIEW:

27. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the Code and Article 60 and following of the FIFA Statutes. Furthermore, the CAS jurisdiction is explicitly recognized by the parties in their respective briefs and is further confirmed in the Order of

Procedure which was duly signed by both parties. It follows that CAS has jurisdiction to decide on the present dispute.

28. With respect to its power of examination, the Panel observes that the present appeal proceeding is governed by the provisions of Articles R47 and following of the Code. In particular, Article R57 of the Code grants a wide power of examination as well as a full power to review the facts and the law. CAS may thus render a new decision in substitution for the challenged decision, either annulling the latter or sending the case back to the previous authority.

B. APPLICABLE LAW:

29. Article R58 of the Code provides the following:

“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.”

30. Pursuant to Article 60 para. 2 of the FIFA Statutes *“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and, additionally, Swiss law.”*
31. In the present matter, the Parties expressly agreed that their contractual relationship would be governed by English law.
32. However, the parties have not agreed on the application of any particular law as far as the procedural questions are at stake. Therefore, to that extent, the CAS Rules and the rules of FIFA, more specifically the Statutes and their regulations of enforcement, shall apply primarily. Additionally, in accordance with Article 60 of the FIFA Statutes, Swiss law will be applicable, if needed.
33. The parties disagree on the version of the FIFA Regulations applicable to the present dispute. The answer to this issue depends on when the claim was lodged for the first time with FIFA. Indeed, Article 26 of the 2005 FIFA Regulations, as amended by the FIFA Circular no. 995 dated 23 September 2005 but with a retroactive effect to 1 July 2005, reads as follows:

1. Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations.

2. *As a general rule, all other cases shall be assessed according to these Regulations, with the exception of the following:*

a. Disputes regarding training compensation

b. Disputes regarding the solidarity mechanism

c. Labour disputes relating to contracts signed before 1 September 2001.

Any case not subject to this general rule shall be assessed according to the regulations that were [sic] in force when the contract at the centre of the dispute was signed, or when the disputed fact arose.

3. Member Associations shall amend their regulations in accordance with Art. 1 to ensure that they comply with these Regulations and shall submit them to FIFA for approval by 30 June 2007. Notwithstanding this, each Member Association shall implement Art. 1 par. 3 (a) as from 1 July 2005.

34. Chelsea is of the opinion that the claim was first lodged before the DRC on 4 February 2005 and that the 2001 FIFA Regulations are therefore applicable. On his part, Mr Mutu believes that the claim was first lodged before the DRC on 12 May 2006 and that the dispute should therefore be ruled in accordance with the 2005 FIFA Regulations.

35. On 4 February 2005, Chelsea wrote to FIFA “*pursuant to Article 42 of the FIFA Status Regulations and Article 16 of the FIFA Regulations Governing the Application of the Regulations for the Status and Transfer of Players (...) in order to formally submit part of the Club’s Contractual Claim against the Player to the (...) [DRC].*”

In its letter Chelsea informed FIFA extensively about the course it intended to give the proceedings in the contractual dispute opposing it to the Player and suggested that FIFA (i) acknowledged the filing of the claim, (ii) opened proceedings and then (iii) adjourned them pending receipt of the decision of FAPLAC. Furthermore Chelsea enclosed with its letter the statement of claim which it had lodged with FAPLAC on 1 February 2005, along with all its exhibits in one bundle.

36. Although FIFA did not send a formal response to that letter, it gave the procedure a 2005 reference number (“Ref. No. 05-00176”) and expressly accepted in its 26 October 2006 Decision that the claim was first submitted to FIFA on 4 February 2005.

37. The Panel considers that in its 4 February 2005 letter Chelsea clearly detailed the course it intended to give to the procedure and also clearly explained to FIFA what was exactly at stake between the Parties. Furthermore, it must be pointed out that the 1 February 2005 claim before FAPLAC which was submitted to FIFA as an enclosure to the letter, goes into considerable detail and explains very clearly the subject matter of the dispute. Moreover, it must also be

taken into consideration that all facts occurred under the 2001 FIFA Regulations and that the parties had agreed on the course to give to the procedure while the 2001 FIFA Regulation were also still applicable.

38. The Panel is therefore satisfied that Chelsea clearly and unambiguously expressed its intention to lodge a claim before the DRC on 4 February 2005 and clearly presented the situation to the DRC at that precise moment in a formally acceptable way. This date must therefore be considered as the date when the matter was first brought to FIFA.
39. Therefore, the Panel holds that the 2001 FIFA Regulations are applicable to decide on this dispute.

C. ADMISSIBILITY OF THE APPEAL:

40. Chelsea's statement of appeal was filed within the deadline provided by Article 61 of the FIFA Statutes (as stated in the DRC Decision), that is, within 21 days after notification of said decision. It furthermore complies with all the other requirement of Article R48 Code.

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41. Notwithstanding the above, Mr Mutu believes that he has no standing to be sued in the present arbitration, that the appeal is therefore not admissible and that it should be dismissed entirely. Indeed, Mr Mutu believes that the claim should have been directed solely against FIFA in accordance with the rule of Article 75 CC, which he considers applicable and which reads as follows:

“Every member of an association shall be entitled by force of law to challenge in court, within one month of his having gained knowledge thereof, resolution that he has not consented to and that violate the law or the articles of association.” [translation by the Swiss-American Chamber of commerce]

42. The dispute between the parties originated when the employment contract, concluded on 11 August 2003, was breached on 28 October 2004.
43. Article 4 of the 2001 FIFA Regulations provides that *“1. Every player designated as non-amateur by his national association shall have a written contract with the club employing him. 2. (...). The contracts shall observe the laws applicable as well as the principle set out in FIFA regulations (...).”*
44. The employment contract was a contract between a club member of the FA, which in turn is a member of FIFA, and a professional player, and is, therefore, subject to the rules of FIFA,

which are applicable to any dispute arising out of the breach of that contract by one of the parties.

45. In any event, the employment contract provides at Clause 3.1.9 that the Player must observe the "Rules", which include the FIFA regulations according to the definition of the "Rules" contained in Clause 1.1 of the contract. It follows, therefore, that if FIFA provides for a 2-stage jurisdiction system in case of a dispute arising out of the termination of a contract the dispute will be decided by that system, including that part which provides for the exclusive competence to decide on the amount of compensation to rest with the DRC. Mr Mutu has to abide by that rule, as he and Chelsea had to abide by all of the provisions of the contract. Therefore, in raising a defence of lack of jurisdiction before FIFA, Mr Mutu may have breached – once again – his contractual duties.
46. Accordingly, Chelsea was entitled to direct its appeal at Mr Mutu in order to require him to accept the FIFA jurisdiction to rule on the issue of sanction and of compensation.
47. At any rate, the present matter is clearly not a membership related decision, which might be subject to Article 75 CC but a strict contractual dispute. Accordingly, the Panel holds that Mr Mutu does have standing to be sued.
48. It follows that the appeal is admissible.

D. ADMISSIBILITY OF THE TRANSLATIONS RECEIVED AFTER THE RESPONSE:

49. The translation provided by Chelsea as an enclosure to its 27 March 2007 submissions on Mr Mutu's standing to be sued were provided on 12 April 2007, i.e. after Mr Mutu had already sent his submission within the deadline stated by on CAS on the 27 March 2007 submissions. Mr Mutu, therefore, submitted that translations be not considered by the Panel.
50. Article R56 of the Code provides the following:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer.”

51. The translated documents are simply extracts of doctrine and jurisprudence which have no impact on the understanding of the case and which were also freely accessible to Mr Mutu and to the Panel. Therefore, it is not here a question of supplementing one's argument or producing further evidence. Such case law and legal literature could well have been provided at the

hearing for the first time. It follows that no question arises as to the application of Article R56 of the Code, and the Panel sees no reason to disregard the documents and their translations.

E. MERITS

52. Under Article 21 of the 2001 FIFA Regulations, where a party has been determined unilaterally to have breached his contract with the other party without just cause, compensation for the loss of the non-breaching party is payable, calculated as set out in Article 22.

53. The arbitration system by which any dispute as to either breach or sanction is to be decided is provided for in Article 42 of the 2001 FIFA Regulations, which is in the following terms:

“1. (...), a dispute resolution and arbitration system shall be established, which shall consist of the following elements:

(a) (...).

(b) (i) The triggering elements of the dispute (i.e. whether a contract was breached, with or without just cause, or sporting just cause), will be decided by the (...) [DRC] or, if the parties have expressed a preference in a written agreement, or it is provided for by collective bargain agreement, by a national sports arbitration tribunal composed of members chosen in equal numbers by players and clubs, as well as an independent chairman. (...).

(b) (ii) If the decision reached pursuant to (i) is that a contract has been breached without just cause or sporting just cause, the (...) [DRC] shall decide within 30 days whether the sports sanctions or disciplinary measures which it may impose pursuant to Art. 23 shall be imposed. This decision (...) can be appealed against pursuant to (c).

(b) (iii) Within the period specified in (ii), or in complex cases within 60 days, the (...) [DRC] shall decide any other issues related to a contractual breach (in particular, financial compensation). This decision (...) can be appealed against pursuant to (c).

(b) (iv) (...) (v) (...) (vi) (...) (vii) (...)

(c) Appeals contemplated in (b) shall be brought before a chamber of the Arbitration Tribunal for Football (TAF) (...) [CAS since 11 November 2002, see FIFA Circular no. 827 dated 10 December 2002], irrespective of the severity of any sanction or the amount of any financial award. (...). (...)”

54. On August 24, 2001, FIFA issued the Circular letter no. 769. In the preamble, it specified the following:

“(...) The new regulation [i.e. the 2001 FIFA Regulations], including a set of Application regulations, were adopted by FIFA’s Executive Committee on 5 July 2001 in Buenos Aires. (...) This circular will summarize and explain the main points of the new regulation.” (emphasis added).

55. Circular no. 769 entered into force on September 1, 2001, i.e. on the same day as the 2001 FIFA Regulations and provides the following on the matter of dispute settlement:

“(…)

a. Players and clubs have the choice to submit the triggering, contract-related elements of their disputes to national courts or to football arbitration (see art. 42.1 of the Basic Regulations). Whatever the choice they make, the sportive sanctions envisaged in the present regulations can only be imposed by FIFA bodies, notably the (...) [DRC]. Decisions of this Chamber are subject to appeal to (...) [CAS].

b. (...).

c. If a party chooses to have its dispute resolved through football arbitration, the triggering, contract-related elements of the dispute will be handled by FIFA's (...) [DRC] at the request of this party, unless both parties have agreed in writing or it is provided in a collective bargaining agreement not to submit this part of the dispute to FIFA's Chamber but rather to a national sportive arbitration tribunal. (...) (See Art. 42.1 (b) (i) of the Basic Regulations).

d. Whenever a dispute between a player and a club is put to football arbitration, and an unjustified contractual breach is found, FIFA's (...) [DRC] is exclusively competent to establish the consequences of this finding (notably, sportive sanctions, financial compensation), subject to appeal to (...) (TAF) [CAS]. (...). (See Art. 42.1 (b)(ii)-(v) of the Basic Regulations).

(...)”

56. Circular letter no. 769 summarizes and explains the main point of the basic regulations and is an admissible aid to construction as it reflects the understanding of FIFA and the general practice of the federations and associations belonging thereto (see CAS 2003/O/527, Hamburger Sport-Verein vs. Odense Bold).
57. Since the wording of Article 42 is very clear, and is supported by the text of Circular letter no. 769, the Panel considers that further interpretation of Article 42 is not necessary in order to have a clear understanding of the dispute settlement system provided for by FIFA under the 2001 FIFA Regulations.
58. The Panel, therefore, holds that Article 42 and Circular letter no. 769 expressly distinguish, for jurisdictional purposes, between the “triggering elements” or “liability stage” of a claim and the “remedies” or “quantum” stage:
- Under Article 42 para. 1 (b)(i), the “triggering elements” of the dispute – i.e. whether a contract was breached, with or without just cause or sporting just cause – may be decided either by the DRC or by a national football tribunal provided that (a) that national tribunal is composed of “members chosen in equal numbers by players and clubs, as an independent chairman”, and (b) both parties to the dispute agree to the national tribunal determining the triggering elements. Once the triggering elements are duly decided they cannot be re-opened, other than by way of appeal under article 42 para. 1 (c).

- Once the triggering elements of the dispute have been considered and it has been determined that the respondent party was in unilateral breach of his/its contract without just cause, then it is the DRC alone that is exclusively competent to determine what sporting sanctions should be imposed under article 42 para. 1 (b)(ii) and what financial compensation should be awarded pursuant to article 42 para. 1 (b)(iii).

59. In the Panel's opinion this distinction is entirely appropriate, logical and practical:

- Indeed, the question whether a contract was breached is a combined question of fact and law, which may perfectly well be determined where the parties and the witnesses are located, and by a tribunal that may well consider and apply the law which governs the contractual relationship between the parties, which is, in this case, English law. The DRC, in contrast is not best suited to hear a lengthy factual dispute at a location removed from those persons involved.
- In contrast, the question of sporting sanction is a matter best left to the DRC, as only the DRC can effectively impose sporting sanctions that apply beyond the jurisdiction of the relevant national tribunal. Furthermore, the question of sporting sanction is a matter where it is essential that there is consistency worldwide, and it would be inappropriate for sporting sanctions to differ from nation to nation. This is also true as far as financial compensation is concerned. The DRC is the body that is best placed to impose an order of compensation that is capable of enforcement.

60. It also must be added that until his submission (i) before the DRC and (ii) the arbitral body before which this issue has come, Mr Mutu appeared to embrace this understanding of the structure of Article 42 of the 2001 FIFA Regulations:

- (i) He specifically agreed to this structure in the 26 January 2005 letter signed between the parties and proceeded on this basis until his 20 July 2006 written submission to the DRC, when he suddenly carried out a *volte face*.

In his 21 March 2005 response before FAPLAC he stated: "*In the event that it is determined that Mr Mutu has unilaterally breached the Player Contract without just cause, it is common ground that any question of whether sports sanctions or disciplinary measures should be imposed upon Mr Mutu, or financial compensation awarded to CFC, is to be determined by (...) [the DRC], pursuant to article 42 of the FIFA Status Regulations.*". The Player's representative also approved this approach in an email dated 20 April 2005 sent to the representative of FAPL after FAPLAC had issued its award. The Player's representative noted that "*it was not within the remit of the Committee to deal*

with compensation nor was it a matter argued at the hearing. The hearing was limited to deciding whether there was a triggering event, in which case any question of sanctions and/or compensation must go to the DRC.”

The Panel has the clear impression that the sudden change of position adopted by the Player before the DRC was purely opportunistic.

- (ii) FAPLAC also approved this interpretation. Moreover, rule K30 of the Rules of the FAPL expressly limits its jurisdiction to “*The triggering elements of a dispute between a Club and Player of the description set out in Article 42 of the FIFA Regulations (...)*” and rule T1 provides that “[FAPLAC] (...) shall determine the following matters: (...) 1.5. the determination under the rule provisions of rule K30 of the triggering elements of a dispute between a Club and a Player of the description set out in article 42 of the (...) [2001 FIFA Regulations].”

61. For all these reasons, the Panel rules that the two-stage procedure is perfectly admissible under Article 42 of the 2001 FIFA Regulations. Indeed, it is a procedure specifically provided for by FIFA. The Panel, therefore, rejects Mr Mutu’s different construction.

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62. In the present case, the Parties agreed on 26 January 2005, that the “triggering element” of their contractual dispute should be determined by FAPLAC, an independent arbitral tribunal that duly respected their mutual rights, in particular their right to be heard. In that sense, the parties duly respected the text of Art 42 para. 1 (b)(i) of the 2001 FIFA Regulations.

FAPLAC found that the Player’s behaviour did amount to a unilateral breach of his contract with Chelsea without just cause or sporting just cause within the meaning of Art 21 of the 2001 FIFA Regulations and that Chelsea was accordingly entitled to proceed to the DRC for an assessment of compensation. This decision was later confirmed by CAS in its 15 December 2005 Award (CAS 2005/A/876).

63. In accordance with Art 42 para. 1 (b) and (c), the DRC is now solely competent to determine what sporting sanction and/or financial compensation should be imposed upon the Player.

64. Therefore, the Panel holds that, at the second stage of the Art. 42 procedure, the DRC does have jurisdiction to determine the appropriate sanction and/or order for compensation arising out of the dispute between Chelsea and Mr Mutu. Mr Mutu is not entitled to object to the FIFA jurisdiction.

65. In light of the foregoing and in accordance with Article R57 of the Code, the Panel decides to annul the 26 October 2006 FIFA DRC Decision and to refer the case back to FIFA.

66. (...)

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ON THESE GROUNDS

The Court of Arbitration for Sport pronounces:

1. The appeal filed by Chelsea Football Club against the decision rendered on 26 October 2006 by the FIFA Dispute Resolution Chamber is upheld;
2. The decision rendered on 26 October 2006 by the FIFA Dispute Resolution Chamber is set aside;
3. The matter is referred back to the FIFA Dispute Resolution Chamber which does have jurisdiction to determine and impose the appropriate sporting sanction and/or order for compensation, if any, arising out of the dispute between Chelsea Football Club and Mr Adrian Mutu;
4. (...)

Lausanne, 21 May 2007

THE COURT OF ARBITRATION FOR SPORT