4A_548/2009[1]

Judgment of January 20, 2010

First Civil Law Court

Federal Judge KLETT (Mrs), Presiding,

Federal Judge CORBOZ,

Federal Judge KOLLY,

Clerk of the Court: CARRUZZO.

X._____

Appellant,

Represented by Mr Léonard A. BENDER

v.

1. Y._____

Respondent,

2. Fédération Internationale de Football Association (FIFA)

Respondent,

Represented by Mr Christian JENNY

Facts:

A.

A.a X._____ is a professional football player and a citizen of [name of country omitted]. In his professional carrier he played essentially for the team Y._____ and was about a hundred times player of the national team of [name of country omitted].

[1] Translator's note: Quote as X._____ *v.* Y. _____ and FIFA, 4A_548/2009. The original of the decision is in French. The text is available on the website of the Federal Tribunal www.bger.ch.

Y._____ is a professional football club belonging to federation F1._____, itself a member of the Fédération Internationale de Football Association (FIFA).

A.b On January 1st, 2007, X._____ and Y._____ signed an employment contract expiring at the end of the season 2009-2010.

On February 15, 2008 the Player entered into an employment contract expiring at the end of the season 2010-2011 with A._____, a professional football club belonging to federation F2._____.

On February 27, 2008, A._____ sent an urgent letter by fax to FIFA in order to obtain an International Transfer Certificate (ITC) which F1._____ refused to make available to F2._____. Based on the pertinent provisions of the Regulations on the Status and Transfer of Players (RSTP) A._____ claimed in particular that club Y._____ and the player had terminated their employment relationship by mutual agreement according to Art. 13 of that Regulation. X._____ signed at the bottom of the aforesaid letter to confirm its accuracy.

On April 4, 2008 X._____, acting through counsel, wrote to FIFA to demand the ITC without delay. Otherwise the Player would initiate legal proceedings in the ordinary courts. The paragraph before last of the letter contained a reservation formulated as follows: "*Finally, the various arbitral clauses do not bind my client as they do not fulfill the necessary legal requirements. Accordingly they are hereby formally rejected*".

In a decision of April 11, 2008 the single judge of the Players' Status Committee authorized F2._____ to register X._____ provisionally as a player of A._____ with immediate effect. That decision reserved the dispute between club Y._____ and its player as to the circumstances in which their employment relationship had come to an end, a dispute which should be decided by the Dispute Resolution Chamber (DRC) of the FIFA.

A.c On June 12, 2008, Y._____ brought X._____ and A._____ in front of the DRC with a view to have them ordered severally to pay EUR 2'000'000.- for breach of contract or for inciting to such a breach, as well as sporting sanctions.

In a decision of April 16, 2009, notified to X._____ on May 29, 2009, the DRC ordered the Respondents severally to pay an amount of EUR 900'000.- to the Claimant. Moreover, it suspended the Player for four months from the beginning of the next season and enjoined A._____ from recruiting any new players during the two registration periods after the notification of its decision.

B.
On June 18, 2009, X._____ sent a statement of appeal of the aforesaid decision to the Court of Arbitration for Sport (CAS). He stated that he was doing so only to safeguard his rights, whilst challenging the jurisdiction of the CAS for the reason already invoked in his letter of April 4, 2008, namely that the various arbitration clauses in favor of FIFA and/or the CAS did not bind him.

The same day A._____ too appealed to the CAS against the aforesaid decision, yet without challenging the jurisdiction of that arbitral body.

A stay was granted in both appeals.

On June 29, 2009, X._____ seized a court in the canton of Zurich of a civil law suit seeking the annulment of the decision of the DRC pursuant to Art. 75 CC[2]. The case is pending.

In its appeal brief of July 10, 2009, X._____ principally sought a stay of the arbitral proceedings pending a decision in the case open in front of the Zurich court. In the alternative he asked the CAS to issue an interlocutory decision denying jurisdiction as to the appeal.

[2] Translator's note : CC is the French abbreviation for the Swiss Civil Code.

Subsequently the CAS advised the Parties that the two aforementioned arbitral proceedings would be dealt with together, but that the issues of jurisdiction and *lis pendens* would be dealt with separately. It then gave them the possibility to present their arguments on both issues.

On October 7, 2009, the CAS issued its partial award on *lis pendens* and jurisdiction, rejecting both defenses and declaring that it had jurisdiction to examine X._____'s appeal.

C.
On November 6, 2009, X._____ filed a Civil law appeal in which he submits that the Federal Tribunal should hold that the CAS has no jurisdiction in the dispute.

In its answer on November 27, 2009, the CAS, without making any formal submissions on the merits, nonetheless challenged the Appellant's argument. It also pointed out that admitting the latter's thesis would cause serious practical difficulties to the extent that it would make it possible for the same FIFA decision to be reviewed by two different bodies, conceivably leading to contradictory decisions.

FIFA submitted that the appeal should be rejected in its answer of November 25, 2009.

Y._____ did not file an answer within the time limit given for that purpose.

On November 30 and December 7, 2009, the presiding judge of the First Civil Law Court rejected the request for a stay and the request for provisional measures submitted by the Appellant.

Reasons:

1.

According to Art. 54 (1) LTF[3] the Federal Tribunal issues its decision in an official language[4], as a rule in the language of the decision under appeal. When the decision is in another language (here English), the Federal Tribunal resorts to the official language chosen by the parties. In front of the arbitral tribunal, they used French as well as English. In the appeals they made to the Federal Tribunal, they used French (the Appellant) and German (the Respondent). According to its practice, the Federal Tribunal will adopt the language of the appeal and issue its decision in French.

2.

2.1 In the field of international arbitration, a Civil law appeal is admissible against the decisions of arbitral tribunals pursuant to the requirements of Art. 190 to 192 PILA[5] (Art. 77 (1) LTF).

The seat of the CAS is in Lausanne. At least one of the Parties did not have its domicile in Switzerland at the determining time. The provisions of chapter 12 PILA are accordingly applicable (Art. 176 (1) PILA).

When an arbitral tribunal admits jurisdiction in a separate award as is the case here, it issues an interlocutory decision (Art. 186 (3) PILA) which may be appealed to the Federal Tribunal only on the basis of the grievances set forth at Art. 190 (3) PILA. In this case, the Appellant raises one of these grievances, namely the alleged lack of jurisdiction of the CAS to decide the appeal (Art. 190 (2) (b) PILA).

The Appellant is directly affected by the award under review, which rejected his challenge to jurisdiction. He thus has a personal, present and legally protected interest

[3] Translator's note: LTF is the French abbreviation for the Federal Statute of June 17, 2005 organizing the Federal Tribunal, RS 173.110.

[4] Translator's note: The official languages of Switzerland are German, French and Italian.

[5] Translator's note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

to ensure that the award was not issued in violation of the guarantee arising from Art. 190 (2) (b) PILA, which gives him standing to appeal (Art. 76 (1) LTF).

Timely filed (Art. 100 (1) LTF), in the legally prescribed format (Art. 42 (1) LTF), the appeal is admissible.

2.2 The Federal Tribunal reviews only the grievances raised and reasoned by the Appellant (Art. 77 (3) LTF). In his appeal the Appellant had raised *lis pendens*. The CAS rejected the argument. Staying the proceedings for *lis pendens* is a jurisdiction rule the breach of which falls within Art. 190 (2) (b) PILA (ATF 127 III 279 at 2a p. 283 and the case quoted). Therefore the Appellant could have raised a grievance in this respect. Yet he does not challenge the reasons for which the CAS refused to stay the proceedings without regard to the parallel civil litigation pending in front of the Zurich courts. Accordingly that issue is beyond the reach of this Court.

2.3 The appeal may only seek the annulment of the decision (see Art. 77 (2) LTF ruling out the application of Art. 107 (2) LTF). However, when the dispute involves the jurisdiction of an arbitral tribunal, it has been exceptionally admitted that the Federal Tribunal may itself determine the jurisdiction or lack of jurisdiction (ATF 127 III 279 at 1b; 117 II 94 at 4). The Appellant's submission that the Federal Tribunal should find that the CAS has no jurisdiction towards him is thus admissible.

2.4 The Federal Tribunal issues its decision on the basis of the facts established by the CAS (see Art. 105 (1) LTF). It may not rectify or supplement *ex officio* the arbitrators' factual findings, even if the facts were established in a manifestly inaccurate manner or in violation of the law (see Art. 77 (2) LTF ruling out the applicability of Art. 105 (2) LTF). However, as was already the case under the aegis of the previous law organizing the federal courts (ATF 129 III 727 at 5.2.2; 128 III 50 at 2a and cases quoted) the Federal Tribunal retains the power to review the factual findings of the award under appeal if one of the grievances set forth at Art. 190 (2) PILA is raised against the factual findings or if some new facts or evidence are exceptionally taken into consideration in

the framework of the Civil law appeal (judgment 4A_128 /2008 of August 19, 2008, at 2.4, not published at ATF 134 III 565).

3.
In his only grievance, based on Art. 190 (2) (b) PILA, the Appellant claims that the CAS would have been wrong to assume jurisdiction to decide the appeal against the decision issued by the DRC on April 16, 2009, to the extent that that decision concerns him.

3.1 Seized for lack of jurisdiction, the Federal Tribunal freely reviews the legal issues, including preliminary issues which determine the jurisdiction of the arbitral tribunal or its absence. This does not turn this Court into a Court of appeal. Thus it does not behoove this Court to research in the award under appeal the legal arguments which could justify upholding the grievance based on Art. 190 (2) (b) PILA. It is instead for the Appellant to draw the Court's attention on them in order to comply with the requirements of Art. 42 (2) LTF (ATF 134 III 565 at 3.1 and cases quoted).

3.2 To assume jurisdiction, the CAS reasoned as follows.

3.2.1 The dispute submitted to the DRC, then to the CAS, arises from the conclusion of an employment contract between A._____ and the Appellant on February 15, 2008, followed by the joint request of the contracting Parties to FIFA on the 27th of the same month, with a view to obtaining the ITC that F1._____ refused to make available to F2._____. The request was granted by the single judge of the Players' Status Committee on April 11, 2008, the decision to be issued by the DRC on the merits being reserved.

This is accordingly a situation in which the Player left a club belonging to a federation (F1._____) in order to continue his career in a club belonging to another federation (F2._____). This is the situation foreseen by the RSTP (the version in force as from January 1st, 2008) which at Art. 22 (a) submits to the jurisdiction of FIFA the disputes between clubs and players in connection with the maintenance of contractual stability

when an ITC was requested and a party has a claim with that respect, particularly with regard to sport sanctions and compensation for breach of contract. This regulation must be considered as an offer made by FIFA to the players and to the clubs to provide them with a body capable of handling the disputes related to international transfers. In this case, the Player, who had a good knowledge of the FIFA rules, accepted that offer by submitting to that body, jointly with his new club, the February 27, 2008 request seeking an ITC and did so without any reservation.

Allowing the Appellant to rely on the RSTP to ask for an ITC whilst letting him escape the procedure instituted by this very regulation to decide the disputes in connection with such a request would be tantamount to tolerating *venire contra factum proprium* and it would disregard the principle expressed in the maxim *cuius commoda, eius et incommoda*[6]. Thus the reservation made by the Appellant in his counsel's letter of April 4, 2008 as to the validity of any arbitral clause in favor of FIFA is inoperative.

Moreover, as this dispute involves an international transfer to which A._____ is also interested as well as F1._____ and F2._____ and not a labor dispute which would involve only two contracting parties of [name of country omitted], the Appellant is wrong to avail himself of the fact that the employment contract binding him to the Respondent team contained no reference to FIFA rules.

Hence the DRC had jurisdiction to issue the decision under appeal.

3.2.2 This necessarily means that the CAS had exclusive jurisdiction as to the appeal against that decision, in accordance with Art. 47 of the Code of Arbitration for Sport (hereafter: the Code) at Art. 62, 63 and 64 (2) of the FIFA Statutes and at Art. 24 RSTP.

Under the circumstances, the Appellant's allegation that he would have ignored the existence of the aforesaid rules is not credible. To the contrary, it must be admitted with reference to case 4P.230/2000 V._____ v. B._____ which led to the judgment of February 7, 2001 that the Appellant, as he availed himself of the pertinent

[6] Translator's note : Latin maxim meaning that he who derives an advantage from a situation must also bear the inconvenience.

provisions of the RSTP without making any reservation as to the arbitral clause in favor of the CAS contained in the FIFA rules, accepted to have that clause applied to him.

3.2.3 Finally, one cannot but emphasize that in the contract concluded on February 15, 2008 between A._____ and the Appellant, both parties clearly accepted to submit to the jurisdiction of FIFA in case of breach of the regulatory and statutory provisions. Moreover, the Appellant, before signing the aforesaid contract, confirmed that he had had an opportunity to acquaint himself with the documents mentioned at Annex 1, among which are the FIFA Statutes and the RSTP.

Hence, as the conclusion of the contract at hand is the principal factor of the violation of the FIFA rules held by the DRC, the specific acceptance of the aforesaid rules, which the Appellant expressed by signing the contract, would suffice in itself to establish FIFA jurisdiction and accordingly the exclusive jurisdiction of the CAS to decide the appeal against the DRC decision.

3.3 To challenge that reasoning the Appellant essentially argues the following.

3.3.1 By signing the statements at the bottom of the letter sent by A._____ to FIFA on February 27, 2008, the Appellant did not express the will to be bound by an arbitration clause in his contractual relationship with his former club Y._____: not only did the procedure to obtain the ITC concern the Player's relationship with the new club, which had no reservations to express as to an arbitration clause which was obviously binding it in its relationship with FIFA, but also and above all the Player could avail himself of the provisions of the RSTP without thereby renouncing the jurisdiction of the ordinary court, expressly reserved at Art. 22 of that regulation for the claims relating to employment law disputes.

This case is not comparable to the aforesaid V._____ case. In the latter the player had initiated the internal appeal proceedings according to applicable regulations, without making any reservation as to the fact that the regulation made it possible to

appeal to the CAS against the decision of the Internal Appeal Committee, thus accepting the arbitration clause. In the former, however, there is no appeal to the CAS against an internal decision relating to the delivery of the ITC – a procedure which incidentally indirectly involves only the national federations concerned by the transfer of the player (i.e. F1._____ and F2._____) – but an appeal of the decision issued by the competent body of FIFA as to a request made by the previous club against the player for an alleged unjustified breach of the employment contract. Moreover to apply the V._____ case, the CAS held against all evidence that the request for delivery of an ITC had been submitted by the Player himself.

When he turned to FIFA through counsel for the first time on April 4, 2008, before the ITC was delivered, the Appellant, moreover, clearly stated that he did not intend to submit to any arbitration. Yet FIFA, far from objecting anything to that statement, continued the procedure for delivering the ICT and issued the certificate without any reservation in this respect. In any event it could not have conditioned its decision to issue the ITC to submission to arbitration, as it had to deliver the certificate to the Player to comply with the latter's constitutional and legal right to exercise his profession.

3.3.2 The jurisdiction of the CAS presupposes the existence of an arbitration agreement binding the parties. According to the Appellant that requirement is not met in this case. Firstly, the employment contract concluded by the Appellant with the Respondent does not contain any arbitration clause. Secondly, if the contract between A._____ and the Appellant establishes the jurisdiction of the CAS by reference to the RSTP, Y._____ club cannot avail itself from it as that contract is a *res inter alios acta* as far as it is concerned. Thirdly, with regard to the arbitration clause by reference, this case is distinct from the decision issued in case 4A_460/2008 W._____ v. Fédération Internationale de Football Association (FIFA) and T._____ on January 9, 2009. In that case the Statutes of F3._____, to which the player had submitted in his employment contract, contained a global reference to FIFA Regulations, which was held sufficient by the Federal Tribunal in order to establish the jurisdiction of the CAS. Yet in this case, the contents of the Statutes of F1._____ or of the Professional

League [name of country omitted] was not established and not even alleged. Moreover, by signing the January 1st, 2007 employment contract with the Respondent club, the Appellant did not acknowledge the applicability of the Statutes of F1._____. He had in any event joined Y._____ in 1996, hence much before the CAS became the appeal body for FIFA.

Finally, contrary to other case law of the Federal Tribunal, the case at hand does not concern a matter of doping but a dispute in the field of employment law. If it is possible to admit liberally a renunciation to the ordinary courts as to the former, since the organizer of the competition and the cheating athlete are directly involved, the same does not apply to the latter. Indeed the renunciation then involves the athlete and his employer, so that it is not valid if the employment contract contains no reference whatsoever to the rules containing the arbitration clause. Such an indirect renunciation is even less to be admitted lightly because the present practice of FIFA and the CAS is not favorable to the players as it orders them to pay compensations to the clubs disproportionate to their income.

4.

4.1 The arbitration agreement must have the form prescribed by Art. 178 (1) PILA. Whilst not completely disregarding that requirement, as shown by a recent case (decision 4A_358/2009 of November 6, 2009 at 3.2), the Federal Tribunal reviews with "benevolence" the consensual nature of the recourse to arbitration in the field of sport, with a view to facilitating the quick disposition of disputes by specialized courts presenting sufficient guarantees of independence and impartiality, such as the CAS (ATF 133 III 235 at 4.3.2.3). Case law is liberal in this field (case quoted at: on that issue, see among others ANTONIO RIGOZZI, "L'arbitrage international en matière de sport", 2005, n°832 ff) as shown in particular by the flexibility with which case law treats the issue of the arbitral agreement by reference (aforesaid judgment 4A_460/2008, at 6.2 and the cases quoted); this appears also between the lines in the principle established by case law that, depending on the circumstances, a given behavior may substitute for compliance with a formal requirement pursuant to the rules of good faith (ATF 129 III 727 at 5.3.1 p. 735; also see the aforesaid judgment 4P.230/2000 at 2b).

Hence the problem will often move from form to consent, a material issue within the meaning of Art. 178 (2) PILA (judgment 4C.44/1996 of October 31st, 1996 at 3c). In this respect, one may assume that a sportsman acknowledges the regulations of a federation of which he is aware when he turns to that federation with a view to obtaining a general authorization making it possible for him to participate in a competition (aforesaid judgment 4P.230/2000 at 2a i.f.; Rigozzi, op.cit., n°831 p.431).

4.2 Considered in the light of these principles of case law, the reasons in the award under appeal and the Appellant's arguments as summarized hereabove (at 3.2 and 3.3) call for the followings remarks.

4.2.1

4.2.1.1 The RSTP establishes some universal and binding rules concerning, in particular, the transfer of players between clubs belonging to different federations (Art. 1 (1)). A player registered with a federation may be registered with a new federation only when the latter is in possession of the ITC established by the former federation (Art. 9 (1) RSTP). The request for registration of a professional player must be submitted by the new club to the new federation. The latter will immediately ask the former federation to issue an ITC for the player. The former federation establishes no ITC if there is a contractual dispute between the former club and the professional player; in that case, the professional player, the former club and/or the new club are entitled to file a complaint with FIFA according to Art. 22 RSTP (Art. 2 (1), (2) and (6) of annex 3 to the RSTP). To the extent that it concerns the case at hand, Art. 22 RSTP states the following:

"*Without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes, FIFA is competent to hear:*
a) Disputes between clubs and players in relation to the maintenance of contractual stability (Art. 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;"

In other words, FIFA has jurisdiction when, due to an employment conflict, the player signs with a club belonging to another federation, which asks that the ITC be established (Commentary of the RSTP published by FIFA at 65). As to the reservation at the outset of the regulation quoted, it prevents the application of the general rule forbidding the recourse to an ordinary court (Art. 64 (2) of the FIFA Statutes), in order to take into account the fact that according to the laws of several countries, employment disputes must imperatively be brought in front of the ordinary courts (aforesaid commentary at 63).

Art. 24 (1) RSTP entrusts the DRC with deciding, in particular, any dispute mentioned at Art. 22 (a) RSTP, with the exception of the delivery of the IPC.

4.2.1.2 That the requirements of Art. 22 (a) RSTP were met in this case is not doubtful, no matter what the Appellant says.

Firstly, it is not demonstrated and not even claimed that the law of [name of country omitted], which applies in principle to the employment contract between the Appellant and the Respondent club (see Art. 121 (1) PILA), or the law of [name of country omitted] governing international jurisdiction of the judicial body to be called upon to decide a claim based on an employment agreement against a respondent domiciled in [name of country omitted] at the time the claim is made (see Art. 112 (1) PILA), would make it impossible to submit employment law disputes to arbitration. Furthermore there is no denying that the dispute submitted to the DRC was not merely an internal dispute between an employer and an [citizenship omitted] employee but had the international character required by Art. 22 (a) RSTP. Indeed, the litigation initiated by club Y._____ was based on a breach of contractual stability within the meaning of chap. IV of the RSTP; it involved both the player's liability as a party to the employment contract concluded with the claimant and that of club A._____, not a party to that contract, and sought sporting sanctions as provided by the RSTP to be inflicted upon the two Respondents in addition to their being jointly ordered to pay compensation for breach of contract.

Finally, the dispute was surely connected to the request for an ITC made jointly by the new club and the Appellant.

4.2.2 To the extent that the Appellant appears to wish to rely on his lack of knowledge of the RSTP, he departs from the contrary finding at § 92 of the award under appeal, which he has no right to do (see at 2.4 here above). In any event, such an opinion is not tenable for the time after February 15, 2008, when the Appellant, by entering into the employment contract with A._____ acknowledged having had the opportunity to acquaint himself with the RSTP, among other documents, before signing the contract.

Thus the Appellant was deemed to know the RSTP on February 27, 2008 when he turned to FIFA, jointly with his new club, with a view to obtaining the ITC. Accordingly he had to know that the request was going to trigger the procedure at Art. 22 (a) of that regulation. The Appellant denies having himself filed the *ad hoc* request. Yet by submitting such an argument he again ignores the factual finding to the contrary made by the CAS, which is not admissible. Should this involve interpretation of the February 27, 2008 letter as opposed to a factual finding, as the Appellant argues, there would be nothing to say as to its result on the basis of the contents of the aforesaid letter. Be this as it may, what is essential in the perspective considered here is not so much the modalities of the involvement of FIFA as the Appellant's effective and actual participation to that procedural step irrespective of who the real author may have been. In that conclusive act the Appellant admitted the application of the specific regulation adopted by the Respondent federation and he submitted to the procedure foreseen by the regulations to decide the disputes in connection with the filing of a request for an ITC.

It must be acknowledged with the CAS that the Appellant could not without violating the rules of good faith submit a request for an ITC to FIFA (or at least participate in such a request in his favour) and invoke the specific provision of the RSTP whilst refusing to participate in the procedure instituted by the same provision to resolve the disputes in connection with such a request, in other words by compelling the other party, allegedly victim of a breach of contract he committed, to sue him in front of an

ordinary court to dispose of a dispute which was not within the exclusive jurisdiction of the ordinary courts. Hence the reservation he made in counsel's letter of April 4, 2008 was inoperative. It was moreover made in an insufficiently precise manner in the particular context of the procedure for obtaining an ITC pending in front of the Players' Status Committee, namely at a time when Y._____ club had not yet sued the Appellant and A._____ in front of the DRC, so that it is not self-evident that it could apply to the proceedings for compensation initiated by the Respondent club. The latter remark appears to be confirmed by the following wording in the letter that counsel for the Appellant sent to the aforesaid Committee on April 14, 2008: "*it goes without saying that I will abandon the civil means of action and withdraw any claim filed if the single judge of the Players' Status Committee should issue forthwith a decision to grant a provisional ITC*".

Be this as it may, whatever the meaning to be attributed to the filing of the request for the delivery of an ITC and the scope of the reservation made in the aforesaid letter, the Appellant subsequently let himself be drawn in front of the DRC without the least objection. Evidence for that are in particular the contents of the answer he submitted to the DRC on July 15, 2008. Far from challenging the jurisdiction of that body, he raised a defense on the merits in the dispute with club Y._____, sought the production of evidence, pointing out that the DRC "has full power of review" and invited the latter to find that his contract with the former club had been terminated by mutual agreement, with a request to refer to the "procedure for the delivery of a provisional ITC, the production of which is requested, and which involves the same factual context and the same parties".

Accordingly, even if the employment contract he had with the Respondent club did not contain an arbitration clause referring to the jurisdictional procedure established by FIFA and if the employment contract concluded with A._____, which had one, was not applicable to the relationship between the two [citizenship omitted] Parties, the Appellant conclusively showed by his behavior that he submitted to the regulations adopted by the latter body to decide disputes such as the one at hand. It is in this

respect and only in respect, that a parallel may be drawn between this case and the case of V._____.

Moreover, to the extent that this is a case involving direct, if not specific submission by a party to the procedure established by a sport federation, the Appellant's arguments with regard to the arbitral clause by reference in the light of the judgment issued in the case of W._____ are irrelevant.

Finally, the rationale of the distinction which the Appellant would like to make between disputes in doping cases and those in the field of employment law with regard to the renunciation to the ordinary courts is not clear. Indeed one does not see that the need for protection of a professional sportsman would be less in the former case, as the sanctions inflicted upon an athlete who took illicit substances may have financial consequences as serious for him as the amount someone may be ordered to pay for an unjustified breach of an employment agreement.

4.2.3 An appeal against the decision of a sporting body may be filed with the CAS if the Statutes or the Regulations of the aforesaid sporting body so provide (Art. R47 of the Code). The FIFA Statutes acknowledging the CAS as appeal body (Art. 62 (1)) state that any appeal against a decision taken by a FIFA jurisdictional body as a last instance must be submitted to that arbitral tribunal (Art. 63 (1)). By virtue of Art. 24 (2) last sentence of the RSTP, the DRC decisions may be appealed to the CAS.

These rules combined show that as he submitted to the FIFA internal jurisdiction (see 4.2.1 and 4.2.2 above) the Appellant cannot challenge the CAS jurisdiction, established by the same regulations, to entertain the appeal against the decision the CRL issued in his case on April 16, 2009. This being so, the CAS rejected the Appellant's challenge of jurisdiction without violating Art. 190 (2) (b) PILA.

5.
The appeal is to be rejected and the Appellant shall bear the costs (Art. 66 (1) LTF) and expenses (Art. 68 (1) and (2) LTF) of the federal proceedings. However he will not have to compensate the Respondent club as the latter did not file an answer.

Therefore, the Federal Tribunal pronounces:

1. The appeal is rejected.

2. The judicial costs, set at CHF 8'000.- shall be borne by the Appellant.

3. The Appellant shall pay to Fédération Internationale de Football Association (FIFA) an amount of CHF 9'000.- for the federal judicial proceedings.

4. This judgment shall be notified to the representatives of the Parties and to the Court of Arbitration for Sport (CAS).

Lausanne, January 20, 2010

In the name of the First Civil Law Court of the Swiss Federal Tribunal

The Presiding Judge:	The Clerk:
KLETT (Mrs)	CARRUZZO