Arbitration CAS 2006/A/1024 FC Metallurg Donetsk v. Leo Lerinc, award of 31 January 2007

Panel: Mr Hans Nater (Switzerland), President; Prof. Ulrich Haas (Germany); Mr Peter Leaver QC (United Kingdom)

Football
Termination of the employment contract without just cause by the club
Express or tacit choice of substantive law
Implicit choice of applicable law
Validity of the employment contract
Validity of a specific clause that constitutes an excessive commitment
Absence of just cause

1. **Express or tacit acceptance by the parties of the provisions of the Code of Sports-related Arbitration, specifically art. R58, implies a choice by the parties of the substantive law that is identified by application of the relevant provisions of the Code.**

2. **In the absence of any express agreement to the contrary, the parties' voluntary submission of an employment dispute to the FIFA dispute-resolution mechanism, despite the option provided by art. 22 of the FIFA Regulations for the Status and Transfer of Players to proceed before the national courts, constitutes an implicit choice by the parties for the dispute to be decided in accordance with the FIFA Statues and Regulations.**

3. **Pursuant to art. 319 CO, an employment contract need only contain the following four *essentialia negotii* to be valid: duration of the agreement, subordination of the employee to the employer, personal performance and wages. Therefore, unless expressly so reserved, the agreement is valid without registration by a sports authority.**

4. **A clause which states that the employment contract only runs if the player has taken part in 80% of the calendar games is one-sided and privileges the club as it requires the player to offer his working performance during the fixed term of the contract although he could not be sure whether he would receive any remuneration at the end. Such a clause confines the player's freedom of contract excessively and results in an excessive commitment by the player according to art. 27 para. 2 CC. Therefore the said clause is void according to art. 20 CO, although it does not affect the validity of the rest of the agreement.**

5. **A clinical diagnosis rendered only after the club failed to register the player with the national professional league although the season had started and not mentioning that the player was allegedly (permanently) unable to play, cannot be considered to be just cause for a unilateral breach of contract.**

Football Club Metallurg Donetsk (the "Appellant") is a football club registered in Donetsk, Ukraine.

Mr Leo Lerinc (the "Respondent"), born on 30 December 1975, is a professional football player.

The Respondent offered his services as a football player to the Appellant (confirmed in the Appellant's letter to UEFA dated 15 March 2005).

On 11 January 2005 the parties signed an Agreement about Disciplinary Sanctions and Bonuses (the "Agreement").

On 2 March 2005, at the Appellant's request, the Spanish Football Federation issued an International Transfer Certificate (ITC) for the transfer of the Respondent.

On 16 March 2005 the Respondent returned to Serbia.

The Respondent did not play with the Appellant team in any calendar game. In any case, he was not permitted to play on the Appellant team, as he was not registered with the Ukrainian Professional Football League.

On 23 November 2005 the FIFA Dispute Resolution Chamber rendered a decision (the "FIFA Decision"), ordering Football Club Metallurg Donetsk to pay the amount of USD 48,266.66 to Mr Leo Lerinc. The FIFA Decision was notified to the parties on 10 January 2006.

On 20 January 2006 the Appellant filed an appeal with the CAS against the FIFA Decision and also requested that the CAS stay the execution of the FIFA Decision. On 27 January 2006 the Appellant withdrew its request for a stay of execution of the FIFA Decision.

Between 3 February 2006 and 15 May 2006, the parties exchanged correspondence and filed submissions regarding the status of the appeal bundle filed by the Appellant on 20 January 2006. On 30 May 2006 the CAS Court Office informed the parties that the outstanding preliminary issue would be decided by the Panel upon its appointment, and advised the Respondent of its twenty-day time limit to file an answer.

On 19 June 2006 the Respondent filed its answer, which included a counterclaim against the Appellant.

On 27 July 2006 the Panel issued an Order determining that the submission filed by the Appellant on 20 January 2006 was to be considered as a combined statement of appeal and appeal brief.

On 31 August 2006, the Panel ordered the production of certain documents by the parties. The Panel also requested that FIFA provide the Panel with a copy of the case file complied by FIFA at the previous instance. On 1 September 2006 the Respondent submitted a copy of the 'Agreement about Disciplinary Sanctions and Bonuses' concluded between the parties on 11 January 2005. On 12 September 2006 the Appellant submitted a medical certificate issued by the 'Donetsk R&D Institute

for Occupational Injuries and Orthopaedics' dated 5 March 2005 (the "Medical Certificate"). On 18 September 2006 FIFA provided the Panel with a copy of the requested case file.

Following the request of both parties, the Panel decided not to hold a hearing and to decide the matter on the basis of the parties' written submissions.

The Appellant, in its written submissions, stated that the FIFA Decision was:

> *"A) passed at incomplete clarification of all the circumstances which are of great importance to the case;*
>
> *B) passed at incomplete investigation of all significant written evidence;*
>
> *C) based on insignificant {having no legal effect} documents as well as fictitious and groundless facts".*

The Appellant submitted that the Respondent's previous submissions before the FIFA Dispute Resolution Chamber (DRC) with respect to the time period the Respondent actually spent with the Appellant were irrelevant.

The Appellant submitted that the DRC was mistaken to have considered the Agreement as a valid employment contract.

The Appellant submitted that the DRC disregarded a clause which stated that the "agreement runs only if the Football player took part in 80% of calendar games" and submitted that the Agreement was not valid as it was undisputed that the Respondent did not play in any calendar game.

The Appellant submitted that the Agreement did not contain all the necessary conditions that were substantial for an employment contract.

The Appellant submitted that an employment contract would have been registered with the Ukrainian Professional Football League, in accordance with item 8 art. 44 of the Regulations of the Professional Football League of Ukraine, and the Agreement in question was not registered in this manner.

The Appellant submitted that it used a different form of employment contract with a professional footballer than the Agreement. Since this type of contract was not concluded with the Appellant, the Agreement can have no legal effect.

The Appellant submitted that the DRC had not considered the Medical Certificate of Donetsk R&D Institute for Occupational Injuries and Orthopaedics dated 5 March 2005.

The Appellant made the following request for relief from the Panel in its combined statement of appeal / appeal brief:

> *"1. To put in a present appeal application for consideration of sole arbitrator.*
>
> *2. The decision of FIFA's Dispute Resolution Chamber dated 23 of November 2005 should be cancelled.*
>
> *3. To make a new decision based on which in satisfaction of demands of the Respondent should be rejected in corpore.*

4. *To exact from the Respondent 10,000 $ as a moral damage which were caused to the Club in consequence of unwarranted charge in annulling non-existing labour contract.*

5. *To postpone the fulfilment of the decision of FIFA's Dispute Resolution Chamber dated November 23, 2005 up to the moment of adoption of the final decision of the given case. (Since the present statement of appeal includes demand of appealed decision cancellation.)".*

The Respondent submitted that the Dispute Resolution Chamber committed no errors of fact and that the factual background was of legal significance.

The Respondent submitted that the Agreement was a legally binding employment contract containing the *essentialia negotii*, and that the Agreement explicitly stated that: *"The present agreement is valid from 01.01.2005 till 01.07.2005".*

The Respondent took the view that the Dispute Resolution Chamber had duly considered the relevant facts. According to the Respondent's submission, the fact that he did not play in any calendar game was a consequence of the Appellant's failure to register him.

The Respondent submitted that the Medical Certificate was invalid and did not release the Appellant from its obligations arising out of the Agreement.

The Respondent also submitted a counterclaim, stating that he should be awarded not only the amount which the Dispute Resolution Chamber approved, i.e. the salary and signing-on *pro rata* fee for the period from 1 January 2005 until 16 March 2005, but also the salary and the signing-on fee for the period from 17 March 2005 until 1 July 2005. His arguments were the following:

- The Parties agreed to a fixed contract term of six months. As there was not a just cause for the breach of contract, the Respondent was entitled to the money that he would have earned up to the expiration of the fixed contract term. Furthermore, the Respondent was prevented from mitigating his loss as he was precluded from signing with another club.
- The signing-on fee which was payable until 1 February 2005, prior to unilateral termination of the Agreement by the Appellant and consequently the Respondent should have been awarded the full amount of the signing on fee.

The Respondent submitted the following request for relief to the Panel:

"I. Reject the Statement of Appeal in its entirety;

II. Accept the Respondent's counterclaim and award the Respondent sum of USD 51,534 in addition to the sum of USD 48,266.66 that has been already awarded by the Dispute Resolution Chamber;

III. Grant Respondent a contribution towards its legal fees and expenses incurred in connection with the appellate proceedings".

LAW

CAS Jurisdiction

A. Appeal

1. Article R47 of the Code of Sports-related Arbitration (the "Code") provides that:

   "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".

2. According to article 60, para. 1 of the FIFA Statutes, *"Appeals against final decisions passed by FIFA's legal bodies [...] shall be lodged with CAS ..."*. The CAS therefore has jurisdiction to hear the present appeal.

3. On 10 January 2006 the FIFA Decision was notified to the Parties. On 20 January 2006, within the prescribed deadline of ten days, the Appellant filed its appeal with the CAS. The appeal was therefore filed on time and is admissible.

B. Counterclaim

4. Article R55 of the Code of Sports-related Arbitration (the "Code") provides that:

   "Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS an answer containing:

   - *a statement of defence;*
   - *any defence of lack of jurisdiction;*
   - *any counterclaim;*

   […]".

5. The CAS therefore has jurisdiction to decide a counterclaim filed by the Respondent.

6. On 30 May 2006 the CAS Court Office advised the Respondent of its twenty-day time limit to file an answer. On 19 June 2006 the Respondent filed its answer, including its counterclaim against the Appellant. The counterclaim was therefore filed on time and is admissible.

Applicable Law

7. The question of what law is applicable in the present arbitration is decided by the Panel in accordance with article R58 of the Code of Sports-related Arbitration and the provisions of Chapter 12 of the Swiss Private International Law Act (PILA), the Court of Arbitration for

Sport being an international arbitral tribunal having its seat in Switzerland within the meaning of article 176 of the PILA.

8. According to article R58 of the Code, *"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"*.

9. According to article 187(1) of the PILA, *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected"*. Article 187(1) of the PILA constitutes in itself the entire private international law or conflict of laws system applicable to arbitral tribunals having their seat in Switzerland and its provisions confirm that the type of conflict of laws rules contained in the Swiss private international law are not applicable to the determination of the applicable substantive law in international arbitrations (KAUFMANN-KOHLER/STUCKI, *International Arbitration in Switzerland*, Zurich 2004, p. 116).

10. The Panel must therefore decide whether the parties in this case have made a choice regarding *"the applicable regulations and the rules of law"* described in article R58 of the Code and, if so, what regulations and rules of law the parties have chosen.

11. The parties' agreement regarding the choice of law is not required to take a particular form and can be concluded either expressly or tacitly. Such a tacit agreement can result from, for example, a common attitude adopted by the parties during the arbitration procedure, where both parties refer to the same law in their submissions to the Panel (LALIVE/POUDRET/ REYMOND, *Le droit de l'arbitrage interne et international en Suisse*, Lausanne 1989, p. 390). However, circumstances such as the place of arbitration, the place of residence or the nationality of the parties, or the choice of a procedural law, do not imply a choice of substantive law. Nor can a choice of law be derived from a so-called hypothetical intent of the parties, *i.e.* the intent that the parties would presumably have had – but in the event did not have – if they had thought about the question of applicable law (BUCHER/TSCHANZ, *International Arbitration in Switzerland*, Basle 1989, p. 99).

12. In order for a choice of law to exist in the sense envisaged by 187(1) para. 1 of the PILA, there must be an awareness and a willingness by the parties to adopt such a choice of law (LALIVE/POUDRET/REYMOND, *op. cit.*, p. 390). Once the arbitral tribunal has established the actual intent of the parties, it must enforce their agreement, without examining the merits of the parties' choice or second-guessing whether this choice is legitimate or appropriate. In particular, the arbitral tribunal may not refuse to apply the chosen law because it is incomplete, surprising or unfair in the circumstances of the contractual relationship (KAUFMANN-KOHLER/STUCKI, *op. cit.*, p. 119).

13. The parties may indirectly choose the applicable substantive law by reference, for example, to a set of arbitration rules. Therefore, if the parties have not specifically agreed upon the applicable substantive law but have made reference to arbitration rules setting forth a method for

determining such law, the arbitral tribunal will apply these rules as the law chosen by the parties. An express choice of law clause will, however, prevail over a reference to arbitration rules (KAUFMANN-KOHLER/STUCKI, *op. cit.*, p. 120-121).

14. In consideration of paragraph 13, above, it follows that express or tacit acceptance by the parties of the provisions of the Code of Sports-related Arbitration, specifically article R58 thereof, implies a choice by the parties of the substantive law that is identified by application of the relevant provisions of the Code (RIGOZZI, *L'arbitrage international en matière de sport*, Basle 2005, sect. 3, Chap. 2 (I)).

15. The wording of article 187(1) of the PILA, which states that the parties may choose the '*rules of law*' to be applied, does not limit the parties' choice to the designation of a particular national law. It is generally agreed by academics and commentators that the parties may chose to subject the contract to a system of rules which is not the municipal law of a State and that such choice is consistent with article 187 of the PILA (DUTOIT, *Droit international privé suisse*, Bâle 2005, p. 657; LALIVE/POUDRET/REYMOND, *op. cit.*, p. 392 ff.; KARRER, in: HONSELL/ VOGT/SCHNYDER (eds), *Kommentar zum schweizerischen Privatrecht, Internationales Privatrecht*, Basle 1996, Art. 187, N. 69 ff.). The relevant statutes, rules or regulations of a sporting governing body may therefore be designated by the parties as the applicable rules of law for the purposes of article 187(1) of the PILA (RIGOZZI, *op. cit.*, p. 599-600).

16. In the present case, no explicit agreement regarding the applicable law was contained in the Agreement about Disciplinary Sanctions and Bonuses concluded between the parties on 11 January 2005. Furthermore, no evidence of any explicit written agreement between the parties regarding the applicable law has been submitted to the Panel. The question therefore arises as to whether the parties tacitly agreed to the application of specific rules of law. The Panel has identified two instances where the parties can be said to have agreed to the application of specific rules of law for the resolution of the substantive issues in dispute. First, by the submission of the dispute for resolution before FIFA and second, by the submission of the present appeal to the CAS.

17. Article 22 of the FIFA Regulations for the Status and Transfer of Players (RSTP), which addresses FIFA Competence, states the following (emphasis added):

*"**Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes**, FIFA is competent for: [...]*

b) Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or a collective bargaining agreement".

18. It is clear from the terms of article 22 of the FIFA RSTP that the parties in this case were free to submit the present dispute for resolution before the national courts of the Ukraine. However, the Respondent in this case chose to refer the dispute to the FIFA Dispute Resolution Chamber (DRC) and the Appellant chose to accept the Respondent's referral of the dispute to FIFA, recognising the competence of the DRC to decide the dispute, and participated fully in the

proceedings before the DRC, without filing any objection to the dispute being decided before FIFA.

19. In the absence of any express agreement to the contrary, the parties' voluntary submission of an employment dispute to the FIFA dispute-resolution mechanism, despite the option to proceed before the Ukrainian courts, constitutes an implicit choice by the parties for the dispute to be decided in accordance with the FIFA Statues and Regulations.

20. On 20 January 2006 the Appellant filed an appeal against the FIFA decision with the CAS, in accordance with articles 59 and 60 of the FIFA Statutes and article 24 of the RSTP, which states the following:

"1. The DRC shall adjudicate on any dispute in accordance with Art. 22 a), b) and d), with the exception of the issuance of the ITC.

[...]

Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".

21. When an appeal is filed with the CAS from a decision of FIFA, article 59 para. 2 of the FIFA Statutes states that:

"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

22. On the basis of this provision of the FIFA Statutes, it is apparent that in the absence of an express choice by the parties of rules of law different to those provided for by the FIFA Statutes, the various regulations of FIFA and, complimentarily, Swiss law is applicable when a FIFA decision is appealed to the CAS.

23. At no stage during the proceedings before the CAS or before FIFA did either party argue that the national law of any country was applicable to the substantive issues, and neither were the provisions of any national law argued in relation to any procedural, or substantive, issues. This absence of an express alternative agreement between the parties regarding the choice of law confirms the parties' indirect choice of FIFA Regulations and Swiss law by their selection of the FIFA/CAS dispute resolution mechanism as the method of resolving the dispute.

24. It is clear that during the course of these dispute resolution proceedings, both the Appellant and the Respondent voluntarily submitted the dispute for resolution before FIFA and subsequently the CAS. Therefore, *in casu* the subject matter of this dispute is to be decided in accordance with FIFA's rules and regulations and, complimentarily, in accordance with Swiss law.

25. The Panel also considered the possibility that the parties may have chosen Ukrainian, or another national law as the applicable law, either expressly or implicitly. The agreement constituted between the parties was for the employment of the Appellant in the Ukraine, and as there exists a general principle relating to employment contracts that an employment contract will often be

subject to the municipal law of the place in which the performance of the contract is to take place, the possibility that Ukrainian Law could be said to apply was examined by the Panel.

26. According to article 187(1) of the PILA, which constitutes in itself the entire private international law or conflict of laws system applicable to arbitral tribunals having their seat in Switzerland, *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected"*. As has been set out above, in the present case the parties agreed implicitly to the application of FIFA Regulations and Swiss law. Therefore, the 'close connection' test referred to in article 187(1) of the PILA will not be applicable in the present case and the applicability of Ukrainian law on that basis cannot be contemplated, as there exists a choice of law by the parties. Therefore, the only question that remains is whether the parties can be said to have agreed to the applicability of Ukrainian Law.

27. As an express choice of law clause will prevail over an implied choice, had the parties chosen to include a clause in the contractual document, identifying Ukrainian Law as the applicable law, this express choice of law would have been enforced by the Panel, to the extent that Ukrainian law is compatible with the FIFA Statutes and Regulations. However, in the present case the contractual documents contain no reference to applicable law. Furthermore, at no stage in these arbitral proceedings has either party made any submission regarding the applicability of Ukrainian law and no evidence of Ukrainian law has been submitted to the Panel at any stage. In the absence of an explicit agreement by the parties regarding the applicability of Ukrainian law and in consideration the direct referral of the dispute to FIFA and subsequently the CAS, instead of and in preference to a referral to the Ukrainian courts, the parties cannot be adjudged to have agreed upon the application of Ukrainian law.

28. The Panel shall decide the dispute in accordance with the FIFA Statues and Regulations, in particular the FIFA Regulations for the Status and Transfer of Players, and Swiss Law shall apply complimentarily.

29. As the dispute is to be decided according to the applicable regulations of FIFA, the question arises as to what version of the FIFA regulations is applicable in this case. In its Decision at the previous instance, the FIFA DRC stated the following:

"The matter at stake was submitted to FIFA before 1 July 2005. Therefore, and in accordance with Article 26 Para. 1 of the revised Regulations for the Status and Transfer of Players (edition 2005), the Single Judge stated that not the revised Regulations but the previous Regulations for the Status and Transfer of Players (edition 2001) do apply to the matter at hand".

30. The parties accepted the finding of the FIFA DRC in this regard and raised no objections to the application of the RSTP (edition 2001). The Panel adopt the finding of the DRC and rule that the RSTP (the "Regulations") shall apply in the present case.

Merits

A. Validity of the Employment Agreement

31. The Regulations deal with the status and eligibility of players, as well as applicable rules on the transfer of players between clubs belonging to different national associations (preamble para. 1) and the consequences of a breach of contract (art. 21 et seq.). As the Regulations do not provide a set of rules governing the conclusion of an employment agreement, Swiss law is applicable.

32. Art. 319 Swiss Code of Obligations reads as follows:

"An Individual Employment Contract is a contract whereby the employee is obligated to perform work in the employer's service for either a fixed or an indefinite period of time, and the employer is obligated to pay wages based either on time periods (time wage), or on the work performed (piecework wage)".

33. Pursuant to this article, an employment agreement contains the *four essentialia negotii*:
    (i) The duration of the agreement:
    The term of the contract is defined in the last paragraph of the Agreement ("The present agreement is valid from 01.01.2005 till 01.07.2005.").
    (ii) The subordination of the employee to the employer:
    This element is contained in the Agreement by the use of the terms "football player" and "Football Club" and by the inherent hierarchy of the Parties.
    (iii) The personal performance:
    Implicitly contained in the Agreement as a "football player's" job is to play football or at least to offer to play football. Moreover, it is inconceivable that the Parties agreed to remuneration without agreeing to the player's (obvious) obligation to play.
    (iv) The *wages*:
    Defined under Art. II./2.1 of the Agreement.

34. The Agreement did not contain any reservation that it was valid only upon registration with the Ukrainian Professional Football League.

35. The Appellant requested an ITC from the Respondent's former club. This fact indicates that the Appellant proceeded on the assumption that the Parties had entered into a valid agreement.

36. The Panel therefore concludes that the Parties entered into a valid employment agreement by signing the Agreement.

37. The Agreement contains a clause which states that *"The present agreement runs only if the Football player took part in 80% of calendar games"* (the "Clause"). The Appellant submitted that this clause was a condition precedent for the validity of the contract. It is undisputed that the Respondent did not play in any calendar game.

38. The literal construction of the Clause seems to indicate that the Agreement takes effect only if the Respondent played in more than 80% of all calendar games. This Clause qualifies as a

resolutive condition with a retroactive effect. Moreover, it is a potestative condition as it depends on the Appellant as to whether the clause becomes effective. In other words, the Appellant could prevent the fulfilment of the condition with the effect the player was not paid.

39. The Panel must decide whether the Clause is valid or void and, if it is deemed to be void, whether the rest of the Agreement is valid.

40. The Clause is one-sided and privileges the club as it requires the player to offer his working performance during the fixed term of the contract although he could not be sure whether he would receive any remuneration at the end. He would only know this after he had fulfilled his own obligations, i.e. at the end of the term of the contract. His working performance, however, could obviously not be returned in the event that the Agreement turned out not to have existed. Furthermore, the Respondent, as employee, was obliged to act in good faith which means - *inter alia* - that he was not allowed to work for another club at the same time. If the contract turned out not to have existed retrospectively, he would not have been bound by any obligations and he could have entered into an employment agreement with another club. However, this would be impossible as the time period had already elapsed.

41. There is no doubt that the clause is to the disadvantage of the Respondent and confines his freedom of contract excessively.

42. Article 27 para. 2 Swiss Civil Code reads as follows:

"No one may relinquish his liberty or restrict the exercise of his liberty to an extent violating the law or morality".

43. The condition in dispute results in an excessive commitment by the Respondent according to article 27 para. 2 Swiss Civil Code.

44. Article 20 Swiss Code of Obligations specifies the consequences of such excessive commitment. It reads:

"A contract providing for an impossibility, having illegal contents, or violating bonos mores, is null and void.

If such defect only affects particular parts of the contract, however, then only those parts shall be null and void, unless it is to be presumed that the contract would not have been concluded without the defective parts".

On this basis, the Panel concludes that the Clause is void, although this does not affect the validity of the rest of the Agreement.

B. Unilateral Breach of Contract

45. Pursuant Art. 21.1.c of the Regulations a unilateral breach of contract without just cause is prohibited during the season:

"(a) In the case of all contracts signed up to the player's 28th birthday: if there is unilateral breach without just cause or sporting just cause during the first 3 years, sports sanctions shall be applied and compensation payable.

(b) In the case of contracts signed after the 28th birthday, the same principles shall apply but only during the first 2 years.

(c) In the cases cited in the preceding two paragraphs, unilateral breach of contract without just cause is prohibited during the season".

46. The Parties entered into an agreement with a fixed term of contract (cf. above) without providing for the possibility of a premature dismissal. On 14 March 2005, the Respondent was excluded from any further training with the team. This must be regarded as a unilateral breach of contract.

47. In essence, the Appellant submitted that the Parties did not enter into an agreement; it does not submit that the contract was breached for just cause. The Appellant's sole argument is that the Respondent was injured. A clinical diagnosis dated 5 March 2005 of Donetsk R&D Institute for Occupational Injuries and Orthopedics diagnosed a bilateral platypodia, i.e. a flatfoot. The diagnosis did not, however, mention that the Respondent was (permanently) unable to play football. Therefore, the diagnosis cannot considered to be just cause for a unilateral breach of contract. This finding is supported by the fact that the diagnosis was rendered after the Appellant failed to register the Respondent with the Ukrainian Professional Football League although the season had started. The Panel therefore concludes that there was a unilateral breach of contract without just cause.

48. Art. 22 of the Regulations reads:

"[…] The compensation for breach of contract, shall be calculated with due respect to the national law applicable, the specificity of sport, and all objective criteria which may be relevant to the case, such as:

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

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

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

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

49. Under Swiss law, the employee is entitled to the remuneration which he would have received until the end of the fixed term of contract (cf. Art. 337c, para. 1, Swiss Code of Obligations) and to compensation of up to six monthly wages (cf. Art. 337c, para. 3, Swiss Code of Obligations). The maximum of six monthly wages is seldom awarded.

50. The employment agreement provided for a fixed six-month term, from 1 January 2005 until 1 July 2005. The breach of contract occurred during this relatively short term and also during the

periods defined in Art. 21.1 of the Regulations. The Panel therefore concludes that compensation is owed for a period of six months, which corresponds to a total of USD 49,800 (forty-nine thousand, eight hundred US dollars).

51. The signing-on fee (USD 50,000) was part of the salary and was expressly due on 1 February 2005 (cf. II/2.1 of the Agreement). The Panel therefore concludes that the Respondent is entitled to the signing-on fee of USD 50,000 (fifty thousand US dollars).

Conclusion

52. The appeal filed by the Appellant is to be dismissed.

53. The counterclaim filed by the Respondent is to be granted. The Appellant shall pay the amount of USD 99,800 (ninety-nine thousand, eight hundred US dollars) to the Respondent.

The Court of Arbitration for Sport rules:

1. The appeal filed by Football Club Metallurg Donetsk on 20 January 2006, against a decision of the FIFA Dispute Resolution Chamber dated 23 November 2005, is dismissed.

2. The counterclaim filed by Mr Leo Lerinc on 19 June 2006 is granted.

3. The Appellant shall pay USD 99,800 (ninety-nine thousand, eight hundred US dollars) to the Respondent.

(…).