



**Arbitration CAS 2006/A/1184 FC Zarya Lugansk v. Dmitriy Anatolievich Semchuk & Andrey Valentinovich Golovko, award of 8 May 2007**

Panel: Mrs Alexandra Brillantova (Russia), Sole Arbitrator

*Football*

*Contract of employment*

*Additional stimulations (bonuses, premium)*

*Right or obligation of the club*

*Difficult financial situation of the club*

- 1. The payment of the sums of the additional stimulation is obligatory for the club if the employment contract simultaneously contains: (a) specified sums of additional stimulation and (b) terms and conditions (individual and/or team achievements) of such additional stimulation.**
- 2. However, if the employment contract and its annex contain only general or descriptive criteria for additional stimulation, without any part devoted to the specification of the terms and conditions of such additional stimulation, it doesn't create any obligation for the club to pay such amounts.**
- 3. If, pursuant to the contract, the payment of the additional stimulations is an obligation for the club, such obligation as well as any other contractual obligation is subject to execution by the club regardless of its financial situation or any other internal issue.**

The Appellant is Football Club “Zarya Lugansk” (“Zarya Lugansk”), a Ukrainian professional football club, participating in competitions carried out by Football Federation of Ukraine (“FFU”) and Professional Football League of Ukraine (“PFL”).

Each of the Respondents, who will be referred to respectively as Mr Semchuk and Mr Golovko (or collectively as “the Players”), is a Ukrainian national, and each of them is a professional football player, who was at one time employed by Zarya Lugansk under an employment contract, the term of which was from 14 July 2005 to 14 July 2006. The individual contracts will be referred to respectively as “the Semchuk contract” and “the Golovko contract”.

On 14 July 2005 the Players signed one-year contracts with Zarya Lugansk until 14 July 2006. These contracts are the employment contracts of professional football players and were concluded according to the Ukrainian law.

The relevant provisions of the Semchuk contract and its annexes are:

**Contract:**

- “1.1 The citizen Semchuk Dmitry Anatolievich employed as a football player of the professional football team of the Club for the term of action of this Contract.
- 1.2. This Contract is temporary labour contract, that is composed in accordance to demands of arts. 21, 23, 24, 36, 40, 97, 103, 187, 198-199 of the Code of Labour Laws of Ukraine; arts. 23, 23.1, 23.2, 23.3 of the Law of Ukraine “About Physical Culture and Sports”, of the Decree of the Cabinet of Ministers of Ukraine “About the Regulation of Use a Contract Form of Labour Agreement”, the Order of the Ukrainian football competitions among professional teams.
- 2.1 The labour relations and mutual obligations of the Sides are regulated by the Statutes, other regulating documents of the Club, this Contract and the Order of the Ukrainian football competitions among professional teams and current legislation of Ukraine.
- 2.3 While fulfilling his professional duties the Football player submits the directions and coach of the Club, fulfils their instructions and decisions of the Council of the Club, admits the Statutes, other regulating documents of the Club, Statutes and Regulations of the Football Federation of Ukraine, Professional Football League of Ukraine, and the decisions of the jurisdiction bodies of Football Federation of Ukraine, UEFA and FIFA.
- 3.1 During the period of the action of the Contract, the Football player is obliged to: (...)
- know the rules of playing football, regulations of ordering documents of FIFA, UEFA, Football Federation of Ukraine, Professional Football League of Ukraine, that concern the status, rights and obligations of a Football player.
- 3.3 Within the term of the Contract the Club is obliged to: (...)
- Adhere the legislation of Ukraine about work and rules of labour safety, to satisfy the conditions of payment according to the Contract and the Contract “About conditions and the order of awarding and social security of the football player” which makes the appendix #1 to the contract and is its integral part.
- 4.1 For performance of the duties stipulated by this contract, the wages are paid:
- a) waged depending on the playing time in official matches:
    - not less than 70% of playing time – 1500\$;
    - not less than 50% of playing time – 1400\$;
    - less than 50% of playing time – 1300\$;(in case of injury the percentage of playing time remains)
  - b) reward according to the Contract “About conditions and the order of awarding and social security of the football player” (Appendix #1 to the Contract) that is composed on the bases of the Regulations “About conditions and the order of awarding and social security of the football player”, that is affirmed by Council of the Club for every played season.
- 4.2 The Club pays to the Football player by results of its professional work various surcharges, extra charges, additional payments and other compensations according to the Regulations “About conditions and the order of awarding and social security of the football player”.

- 4.3 *The Club can apply to the Football player financial sanctions by deprivation of its additional payments for infringement of the rules of playing, conditions of this Contract and for other sports faults according to the Statutes or collective agreement of the Club, Contract “About conditions and the order of awarding and social security of the football player” (Appendix #1 to the Contract), that was composed on the base of the Regulations “About conditions and the order of awarding and social security of the football player” and Regulations of Ukrainian Football completions among professional teams.*
- 4.4 *The size of the wages can change according to the decision of the Council of the Club and depending on fulfillment of the Football player conditions of the Contract.*  
*Under the consent of the Sides the size of wages can be revised at any time. The decision on change of the size of the wages aside increases can be accepted by the Club without the coordination with him.*
- 4.5 *The Club can make a decision on additional stimulation of the Football player depending on his individual results of activity, and a place which the team takes in the tournament table of the championship:*
- *the sum that is paid on signing the contract – 7500\$ till August 15, 2005;*
  - *supplementary payments in the sum of 7500\$, in case the team sets 1-2 place in the tournament table at the end of the championship, and the percentage of football player’s playing time in official matches is not less than\_\_%;*
  - *supplementary payments in the sum of \_\_\_\_\_\$, in case the team sets \_\_\_\_ place in the tournament table at the end of the championship, and the percentages of football player’s playing time in official matches is not less than\_\_%;*
  - *supplementary payments in the sum of \_\_\_\_\_\$, in case the team sets \_\_\_\_ place in the tournament table at the end of the championship, and the percentages of football player’s playing time in official matches is not less than\_\_%.*

### **APPENDIX #3:**

- “1. *For fulfillment of his duties, foreseen by this Contract, additionally wages are paid according to the playing time in official matches:*
- *not less than 70% of playing time – 1340\$;*
  - *not less than 50% of playing time – 1240\$;*
  - *less than 50% of playing time – 1140\$.*
- (in case of injury the percentage of playing time remains).*
2. *Reward according to the Contract “About conditions and the order of awarding and social security of the football player” (Appendix #1 to the Contract) that is composed on the bases of the Regulations “About conditions and the order of awarding and social security of the football player”, that is affirmed by Council of the Club for every competitive season.*
3. *The Club can make a decision on additional stimulation of the Football player Semchuk D.A. depending on his individual activity results and the place the team sets in the tournament table of the championship:*
- *the sum that is paid on signing the contract is – **7500\$ till August 15, 2005;***

- *supplementary payments in sum of 7500\$, in case the team sets **1-2** place in the tournament table at the end of the championship, and the percentage of football player's playing time in official matches is not less than\_\_%;*
- *supplementary payments in sum of \_\_\_\_\_\$, in case the team sets \_\_\_\_ place in the tournament table at the end of the championship, and the percentages of football player's playing time in official matches is not less than\_\_%;*
- *supplementary payments in sum of \_\_\_\_\_\$, in case the team sets \_\_\_\_ place in the tournament table at the end of the championship, and the percentages of football player's playing time in official matches is not less than\_\_%”.*

The relevant provisions of the Golovko contract are identical to abovementioned ones of Semchuk contract except Article 4.5. of the Contract which contains following wording:

*“The Club can make a decision on additional stimulation of the Football player depending on his individual results of activity, and a place which the team takes in the tournament table of the championship”.*

This provision of the Golovko Contract does not have further specification in regard to concrete sums of additional stimulation and concrete terms and conditions of such stimulation.

As for Appendix 3 of the Golovko Contract there is precise sum of additional stimulation (USD 6,000) but there are not concrete terms and conditions of such stimulation, e.g. the spaces for such terms remained unfilled.

The Sole Arbitrator stresses that she is very grateful to both sides for providing translations of all documents in the Russian/Ukrainian language into English, which is the language of the arbitration. It must, however, be recorded that the translations are not always perfect, so that, on occasions, the Panel has been left with the task of attempting to understand documents which are, as translated, in some respects, difficult to understand.

In the season 2005/2006 Zarya Lugansk won the first place in the Ukrainian first league and got a promotion to the higher league.

On 4 July 2006 Zarya Lugansk issued the Order #20 named “On cancellation of additional stimulation”. By this Order the President of Zarya Lugansk Mr Shpychka decided not to make additional stimulation of the team staff including players which was envisaged by their contracts and its annexes. The ground for such decision was the bad financial situation of the club.

On 15 July 2006 and 31 August 2006 Mr Golovko and Ukrainian professional organization “Football of Ukraine” respectively filed appeals to the Bureau of the PFL regarding the violation of relevant provisions of players contracts and its annexes by Zarya Lugansk in the part concerning payment of the additional stimulation. On 12 September 2006 the Bureau of the PFL delivered its decision in which it found reasonable the claims made by the Players and ruled that Zarya Lugansk was obliged to pay Mr Semchuk the sum of USD 7,500 and Mr Golovko the sum of USD 6,000.

On 14 September 2006 Zarya Lugansk lodged an appeal to the QDC. In its appeal Zarya Lugansk asked to set aside the decision of the Bureau of the PFL dated 12 September 2006 which obliged the club to pay the sums of additional stimulation in favour of Mr Semchuk and Mr Golovko. On 22 September 2006 QDC decided to dismiss the appeal on the following merits. QDC pointed out that there were certain provisions regarding additional stimulation in the Player's Contracts and its annexes. In the view of the QDC, two conditions were established for payment the sums of additional stimulation: a) individual activity results, and b) team promotion to the higher league. Both of these conditions were properly achieved, so Zarya Lugansk did not have any reason for non-payment of the sums of additional stimulation.

On 13 October 2006 Zarya Lugansk filed an appeal to the Appeal Committee of Football Federation of Ukraine against the decision of QDC dated 22 September 2006 requesting for cancellation the decision rendered by QDC due to its groundlessness. On 2 November 2006 the Appeal Committee reached a decision to dismiss the appeal ("the AC Decision"). In its decision the Appeal Committee ruled that the Zarya Lugansk erroneously came to conclusion that the issue of payment or non-payment of the sums of additional stimulation was left to the sole discretion of the President of Zarya Lugansk. The Appeal Committee pointed out that such conclusion is "insignificant". Moreover, the Appeal Committee stressed that "such a clear fixation of payment – even up to definition of the date of payment – proofs a certain determination of Direction of FC Zarya concerning obligations to do corresponding payments". Finally, the Appeal Committee pointed out that hard financial situation in the club cannot serve a legitimate ground for non-payment of the sums of additional stimulation envisaged in Players' contracts and its annexes.

On 29 November 2006 Zarya Lugansk filed an appeal to the Court of Arbitration for Sport against the decision of the Appeal Committee dated 2 November 2006. In its appeal Zarya Lugansk requests to "cancel the Decision of Appeal Committee of FFU dated November 2, 2006 in the part concerning the obligations of Football Club "Zarya" to pay to football players Semchuk D.A. and Golovko A.V. a supplementary reward for entering a team into the higher league".

## LAW

### Jurisdiction

1. Zarya Lugansk's appeal is made pursuant to Articles 54 of the Statutes of Football Federation of Ukraine which reads as follows:

*"Article 54. Appeal Court of Ordinary Jurisdiction (CAS).*

1. *CAS is entitled for exclusive competence to hear civil law disputes (of financial character) referring to cases of FIFA, FFU and Associations-Participants, clubs, players or officials as well between them (...)"*

2. The jurisdiction of the CAS is also based upon the signature of each of the parties to the Order of Procedure, which confirmed the jurisdiction of the CAS in this case.
3. Besides, neither Zarya Lugansk nor the Players have ever raised any question concerning CAS jurisdiction in this case.
4. There is, therefore, no dispute as to the jurisdiction of the CAS.

### **Substitution of the Respondent**

5. In its initial Appeal dated 29 November 2006 Zarya Lugansk designated the Appeal Committee of Football Federation of Ukraine as a Respondent in this case.
6. On 18 January 2007 Zarya Lugansk sent a letter to CAS informing that the club had decided to substitute the Respondent in this case and asked CAS *“to consider the football players as the respondents, and not the Football Federation of Ukraine”*.
7. On 23 January 2007 CAS confirmed the withdrawal of the appeal against the FFU and brought to the notice of FFU their right apply to participate in this case as a party pursuant to articles R54 and R41.3 of the Code of Sports-related Arbitration (“the Code”).
8. On 2 February 2007 the Players agreed to participate as Respondents in the arbitration.
9. However, FFU did not express its will for further participation in the present case. Thus, the Parties of this case are following:
  - Appellant            F.C. Zarya Lugansk;
  - Respondents        Mr Dmitry Semchuk and Mr Andrey Golovko.

### **The Merits**

#### *A. Additional stimulation – a right or an obligation of the club?*

10. In fact the essence and the key issue of the present dispute is to determine whether the provisions of the Players Contracts and its annexes (art. 4.5. of the Player Contract and art. 3 of the Appendix 3) concerning the sums and terms of additional stimulation is an obligation of the club or its right which Zarya Lugansk may use in its sole discretion.
11. The references to the relevant provisions of the Ukrainian legislation made by both Parties contain definition of the term “obligation” which is actually typical for almost all legal system in any country of the world. The difference between the legal positions of Zarya Lugansk and the Players rather appeared due to ambiguous wording of the relevant provisions of the Players Contracts and its annexes.
12. Therefore, such circumstances force the Sole Arbitrator to explore briefly the legal nature of the additional stimulation in the whole in the sports related contracts.
13. It is unchallengeable that any professional sportsman should get a reward for performing its best skills. In team sports like football, basketball etc. such reward is paid by the professional team which enters into agreement with the professional player.

14. In general, the reward is divided into two main parts which have its own grounds and ways of payment.
15. The first part of the reward of any professional player is the “salary” or “wage” which is subject of payment by the club on the permanent (monthly or weekly instalments) basis for performing by the professional players its sporting skills for this professional club.
16. The second part of the reward is different types of additional stimulation (bonuses, premium). Additional stimulation is usually provided for certain individual or team achievements and encourages a professional player to perform his best skills for the benefit of the whole team.
17. In the modern professional team sports there is a huge variety of additional stimulation, but generally additional stimulation is set for local or global achievements, individual or team achievements and for a lot of combination of the abovementioned achievements.
18. In the light of true destination of the additional stimulation – the encouragement of best sporting skills of the professional player – the Sole Arbitrator finds that it is quite amazing to use the understanding of the additional stimulation proposed by Zarya Lugansk as an exclusive right of the club to determine whether to pay or not to pay the sums of additional stimulation which envisaged in Player contracts.
19. The Sole Arbitrator specifies that Club has undisputable right to determine whether the provisions concerning the additional stimulations should be included in the contract with the professional player or not, but since the such provisions becomes an integral part of the contract and the detailed terms and amounts are established, there is not any ground to leave the issue regarding the payment of which envisaged in Player contracts to the sole discretion of the club.
20. It would be totally unfair to make the professional player dependent on the sole discretion of the club although the player achieved certain individual results or the team achieved certain place in the tournament table and these achievements constitute the ground for additional stimulation according to the contract.
21. Moreover, such understanding of the legal nature of additional stimulation proposed by Zarya Lugansk does not have any legal sense. If the issue of payment or non-payment the sums of additional stimulation should be totally left to the sole discretion of the club, there is not any need to specify the detailed list of individual or team achievements because the club is entitled to take any decision convenient for the club. In such case the club is capable to make additional stimulation even in the bigger amount that it is envisaged by the contract or not to pay it at all.
22. Therefore, the Sole Arbitrator finds that payment of the sums of the additional stimulation is obligatory for the club if the contract simultaneously contains: (a) specified sums of additional stimulation and (b) terms and conditions (individual and/or team achievements) of such additional stimulation.



- B. *The Sole Arbitrator's findings regarding the content of the provisions concerning additional stimulation in the Player contracts*
23. After exploring the legal nature of additional stimulation in the whole, the Sole Arbitrator moves to the relevant provisions of Players' contracts and its annexes in order to determine whether an additional stimulation obligation exists or not.
24. As it was pointed out above, the obligation of payment the sums of additional stimulation appears when there are specified sums of additional stimulation and terms and conditions (individual and/or team achievements) of such additional stimulation.
25. Par. 1 and 3 of art. 4.5. of the Mr Semchuk contract provide as follows:
- Par. 1  
*"The Club can make a decision on additional stimulation of the Football player Semchuk D.A. depending on his individual activity results and the place the team sets in the tournament table of the championship"*
- Par. 3  
*"supplementary payments in the sum of 7500\$, in case the team sets 1-2 place in the tournament table at the end of the championship, and the percentages of football player's playing time in official matches is not less than \_\_\_%"*
26. Par. 1 and 3 of the Appendix 3 to the Mr Semchuk contract have identical wording regarding the additional stimulation.
27. As for the amount of the additional stimulation it was clearly fixed – USD 7,500, but there is some misunderstanding concerning the terms and conditions of such additional stimulation.
28. Par. 1 of art. 4.5. of Mr Semchuk contract and Appendix 3 to the Mr Semchuk contract mention *"individual activity results"* and *"the team place in the tournament table"* as two possible criteria for additional stimulation.
29. But the Sole Arbitrator considers that two general or descriptive criteria established in Par. 1 of the contract and its annex have obvious necessity for further specification.
30. Such specification exists in Par. 3 Mr Semchuk contract and Appendix 3, but only in regard to *"the team place in the tournament table"* – *"1 - 2 place in the tournament table at the end of the season"* (the figures "1" and "2" were written by hand). However, the spaces for concrete percentage of football player's playing time in official matches remained unfilled.
31. It is clear that the general criteria of additional stimulation named *"individual activity results"* imply *"concrete percentage of football player's playing time in official matches"*, as no other specification of the term *"individual activity results"* can be found in the text of the Player contract and its annexes. Bearing in mind that the spaces for concrete percentage of football player's playing time in official matches remained unfilled, the Sole Arbitrator concludes that the Parties while entering into agreement concerning the additional stimulation decided to use only one criteria for

additional stimulation – “*the team place in the tournament table*” and rejected the use of the second criteria - “*individual activity results*”. So, the Sole Arbitrator considers all arguments from both sides regarding individual statistics of the Players, their personal contribution of the team success as irrelevant.

32. Thus, the Sole Arbitrator concludes that Zarya Lugansk and Mr Dmitry Semchuk agreed: (a) the concrete sum of additional stimulation – USD 7,500 and (b) concrete condition for additional stimulation – the first or the second place of Zarya Lugansk in the tournament table at the end of the season 2005/2006.
33. In the light of the Sole Arbitrator’s conclusions stated in para. 22, it is obvious that appropriate provisions regarding Mr Semchuk’s additional stimulation is an obligation of Zarya Lugansk.

C. *Consequences of a different wording in the Player contracts*

34. More complicated situation appears from the Mr Golovko contract. Par. 1 of art. 4.5. of the Mr Golovko contract provides as follows:

Par. 1

*“The Club can make a decision on additional stimulation of the Football player depending on his individual results of activity, and a place which the team takes in the tournament table of the championship”.*

35. Par. 1 and 4 of the Art.3 of the Appendix 3 to Mr Golovko contract provide as follows:

Par. 1

*“The Club can make a decision about supplementary stimulation of the Football player Golovko A.V. depending on his individual activity results and the place the team sets in the tournament table of the championship”.*

Par. 4

*“supplementary payments in the sum of 6000\$, in case the team sets \_\_\_\_\_ place in the tournament table at the end of the championship, and the percentages of football player’s playing time in official matches is not less than\_\_%”.*

36. As one can see, Mr Golovko contract and its annex do contain only general or descriptive criteria for additional stimulation without any further specification either “*individual activity result*” or “*the place the team sets in the tournament table of the championship*”.
37. So, it is impossible to determine when and why such additional stimulation should have been paid. The Sole Arbitrator has to state that in Mr Golovko contract and its annex one of two mandatory features of additional stimulation (see also para. 22) is missing.
38. In art. 4.5. of Mr Golovko contract the whole second part devoted to the specification of the terms and conditions of additional stimulation was excluded. This circumstance ultimately

confirms that Zarya Lugansk and Mr Golovko could not reach an agreement about additional stimulation even in spite of the fact that the concrete sum of such stimulation was established.

39. In this context the Sole Arbitrator has to ascertain that the wording of par. 1 of art. 4.5. of the Mr Golovko contract and par. 1 and 3 of the Appendix 3 to Mr Golovko contract do not constitute an obligation for Zarya Lugansk in regard of additional stimulation of Mr Golovko.

*D. Hard financial situation as a ground for non-payment the sums of additional stimulation*

40. As it is pointed out in the Order #20 dated 4 July 2006 signed by the President of Zarya Lugansk V.P. Shpychka, the club cannot take a decision regarding the payment of the sums of additional stimulation in “*connection with bad financial situation of the club*”.
41. During the oral presentation at the hearing the representatives of Zarya Lugansk confirmed that financial troubles of the club at that moment were the key reason of non-payment of the sums of additional stimulation. But the representatives of Zarya Lugansk stressed that in their opinion the issue of payment of the sums of additional stimulation was a right of the club and Zarya Lugansk just did not use its right explaining it by bad financial situation.
42. In the light of the abovementioned Sole Arbitrator’s findings, it is obvious that if the additional stimulation is an obligation for the club pursuant to the contract, such obligation as well as any other contractual obligation is subject of execution by the club regardless of their financial situation or any other internal issues of the club.
43. Moreover, if the hard financial situation was a key reason for non-payment of additional stimulation, the Sole Arbitrator suggests that after its improvement Zarya Lugansk would not have or does not have (if financial situation has already normalized) any barrier to retain the sums of additional stimulation.

*E. Conclusions*

44. Taking into consideration all abovementioned, an appeal of Zarya Lugansk should be partially upheld in the part concerning payment of USD 6,000 as additional stimulation of Mr Golovko. The Sole Arbitrator considers that there is no legal ground for obliging Zarya Lugansk to make appropriate payments in favour of Mr. Golovko.
45. As for the decision of Appeal Committee regarding Mr Semchuk, the Sole Arbitrator suggests that in this part the decision of Appeal Committee dated 2 November 2006 is to be confirmed.



**The Court of Arbitration for Sport rules that:**

1. The appeal by F.C. Zarya Lugansk against the decision issued on 2 November 2006 by the Appeal Committee of FFU relating to Mr Dmitriy Anatolievich Semchuk and Mr Andrey Valentinovich Golovko is partially upheld.
2. The decision issued on 2 November 2006 by the Appeal Committee of FFU in the part obliging F.C. Zarya Lugansk to pay Mr Semchuk 7 500 USD as additional stimulation is confirmed. F.C. Zarya Lugansk is ordered to pay USD 7,500 (seven thousand five hundred US Dollars) to Mr Dmitry Semchuk.
3. The decision issued on 2 November 2006 by the Appeal Committee of FFU in the part obliging F.C. Zarya Lugansk to pay Mr Golovko USD 6,000 as additional stimulation is set aside. F.C. Zarya Lugansk does not have any obligation in regard to payment of the sums of additional stimulation of Mr Golovko.

(...).