



Arbitration CAS 2009/A/1905 Valery Sorokin v. FC Dynamo Moscow, award of 8 December 2009

Panel: Mr Mark Hovell (United Kingdom), President; Mr Mika Palmgren (Finland); Mr Andrés Gurovits (Switzerland)

Football

Contract of employment between a player and a club

CAS jurisdiction

Inadmissibility of the appeal due to the absence of a final decision

- 1. According to the applicable provision of the national federation's Regulations, an option to bring an appeal straight to the CAS or through the federation's appeal body is allowed. Accordingly, if the appellant has chosen to bring his appeal straight to the CAS, the CAS has jurisdiction to hear the case.**
- 2. A decision must be "final" to be appealable, otherwise the appeal is inadmissible. An appealed decision is not final if whilst it concludes the issues relating to an international transfer clearance for a player, it also directs the parties to provide and to exchange additional evidence regarding the player's monetary claim against the club and if the evidence establish that the federation's competent body had not exhausted its own procedures and intended to hold a further/final hearing and from there to issue a further/final decision. Therefore, the case must be referred back to the body which rendered the challenged decision. Thereafter, any dissatisfied party will still have the right to appeal before the CAS.**

Mr. Valery Sorokin (the "Player" or as the "Appellant") is a professional football player.

Football Club Dynamo-Moscow (the "Club" or as the "Respondent") is a football club with its registered office in Leningradsky, Moscow. It is a member of the Russian Football Union.

The Appellant is a professional football player of Russian nationality. On 1 December 2006, he signed a fixed-term labour contract with the Club (the "Contract").

The Contract was effective from 1 December 2006 until 31 December 2007. This Contract provided, inter alia, for the payment to the Player of a monthly wage of 8,300 Rubles.

Further, the Player and Club signed two subsequent agreements to the Contract, namely the supplementary agreement also dated 1 December 2006 (the "First Supplementary Agreement") and a

second supplementary agreement dated 21 March 2006 (the “Second Supplementary Agreement”), which appears to replace the First Supplementary Agreement. Both of the agreements provided, *inter alia*, for individual monthly bonuses, rising to the level of 7,000 US Dollars from 20 January 2007 and for up to 800 US Dollars a month contribution to the Player’s apartment expenses.

On 10 October 2007, and due to the alleged absence of payment of bonuses and accommodation expenses as provided in the Contract and Second Supplementary Agreement since May 2007, the Player filed a claim to the Dispute Resolution Chamber of the Russian Football Union (the “Russian DRC”).

On 31 January 2008, the Russian DRC delivered a decision, as follows:

- “1. To permit the transfer of the player Valery Sorokin to the different club according to the regulatory documents of FIFA and FUR.*
- 2. To request the parties to present additional documents on the accomplished payments regarding V. E. Sorokin’s dismissal.*
- 3. To hold a meeting of the Dispute Resolution Chamber with the personal commitment of Valery Sorokin and CJSC FC ‘Dynamo-Moscow’s representative.*
- 4. The decision is relevant from the moment of admission”.*

On 18 June 2009, nearly 17 months later, the decision of the Russian DRC (the “Appealed Decision”) was notified to the Player.

On 7 July 2009, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS). The Appellant challenged the above mentioned Appealed Decision, submitting the following request for relief:

- (i) “to revise the decision of the Russian DRC and oblige FC Dynamo to pay the owed amount”.*
- (ii) “The amount of claim: 57,940 (Fifty seven thousand nine hundred forty) US dollars”.*

The Appellant notified the CAS of the fact that the statement of appeal was to be considered as the appeal brief too.

The Appellant’s submissions, in essence, may be summarised as follows:

- a) On the 1 December 2006, the Player signed the Contract and the First Supplementary Agreement to the Contract with the Club.
- b) In accordance with paragraph 6 of the Contract the Player’s monthly wage was 8,300 Rubles.
- c) In accordance to article 1 of the Second Supplementary Agreement the player was entitled to an additional monthly payment of 7,000 US Dollars, from 20 January 2007.
- d) Further, in accordance with paragraph 3 of the Second Supplementary Agreement, the Club undertook to pay the Player’s monthly accommodation expenses in the sum of 800 US Dollars.

- e) In approximately May 2007 the Club stopped paying the Player his bonuses and accommodation expenses.
- f) That he did not receive a fair hearing, in particular that *“the Russian DRC is composed in violation of the FIFA Rules, especially FIFA Circular 1010 that stipulates international procedural standards, conditions and principles of independent and duly constituted arbitration [including] the representatives of the clubs cannot be considered independent in accordance with rules of FIFA since they are employees of the Clubs, the Head of the Russian DRC, Mr Tolstib, is the former President of Dinamo (Moscow) and is now the President of the Professional Football League (uniting 105 clubs). There are no representatives of the Union recognised by FIFPro”*.

On 31 July 2009, the Club filed an answer, requesting the CAS to reject the arguments of the Appellant, specifically stating that it *“considers the claims set by the professional football player V. Sorokin in his Statement of Appeal dated 7 July 2009 illegitimate, ungrounded and not subject to satisfaction”*.

The submissions of the Club may be summarised as follows:

- a) That the Club and the Player do not have any labour relations since the Contract expired on 31 December 2007.
- b) That, under article 6.2 of the Contract, the Club is eligible to establish different systems of bonuses and their amount. Further, any payment to the Player from the Club beside the wage in the Contract shall represent bonuses and be paid in accordance with article 191 of the Russian Federation Labour Code.
- c) *“Item 8 of the [Second Supplementary] agreement stipulates the parties shall follow the Regulations for Paying Individual Bonuses to Professional Football Players of Dynamo (Moscow) Football Team... namely Dynamo (Moscow) football team football players should perform a successful and bona-fide fulfilment of their obligations; lack of disciplinary penalties; professional sports skills...”*
- d) That the bonus payment is not obligatory but paid only if a Player observes the Club’s criteria.
- e) That item 10.6 of the Contract signed by the Player and the Club states that the Player, by signing the agreement, is bound by the Contract’s provisions, as well as *“with all corresponding local statutory acts, including those regulating an individual and other extra and stimulating bonus paying and depriving matters”*.
- f) That the bonus payment to an employee is a right and not an obligation of an employer.
- g) That the Player was deprived of the bonus in May and the following months of 2007 since he failed to fulfil the agreed criteria.
- h) That the Player ceased to fulfil legitimate requirements of the Club concerning training and non-participation in the first team football.
- i) That the Club issued a number of Orders to the Player.
- j) That the Player was convicted of a drink driving offence, which he concealed from the Club.
- k) That the Player failed to report for training.

- l) That the Russian DRC does provide a fair hearing for players and specifically it allows clubs representatives to be members of the Russian DRC.
- m) That Mr Tolstykh had not worked nor filled any vacancies at the Club since 2001.
- n) That the Russian DRC has in fact two representatives of the Russian Professional Union of Football Players and Coaches.
- o) That the RFU executive committee annually approves the composition of the Russian DRC, including the President.
- p) That in accordance with the Russian DRC rules, Mr Ivanov of the Respondent left the meeting when the Russian DRC examined the Player's claim.
- q) That neither the Player nor his representative challenged Mr Ivanov prior presence; and
- r) That the Russian DRC passed a decision allowing the Player to make a transfer to another club and also requesting additional documentation from the parties with the purpose of holding another hearing.

A hearing was held on 21 October 2009 at the Hotel De La Paix in Lausanne.

At the hearing, the Club and the Panel accepted the production by the Player's representative of the following documents

- a) a letter from the Russian Premier League, confirming that the Club had not registered the Player for the 2007 season; and
- b) a letter from FIFPro, dated 16 October 2009, stating their opinion that the Russian DRC failed to meet "*minimal (international) procedural standards*".

LAW

CAS Jurisdiction

1. The jurisdiction of CAS derives from article 50 of the Football Union of Russia (FUR) Regulations for the Status and Transfer of Players as well as Article 47 of the Code of Sports-related Arbitration (the "Code").
2. During the hearing, there was initially some disagreement as to whether the said article 50 allowed a direct appeal to the CAS, or whether further internal appeals (namely, to the Committee of Status of Players of RFU) had to be exhausted first. The parties agreed during the hearing that article 50.6 (which is translated as "*the decision of the Dispute Resolution Chamber can be appealed to CAS – Court of Arbitration for Sport according to art 59 of the FIFA Charter*") did allow for the option to bring an appeal straight to the CAS or through the other Committee. The Panel noted that the Appellant had chosen to bring his appeal straight to the CAS.

3. Further, the order of procedure duly signed by the parties is additional confirmation that the CAS has jurisdiction to hear the matter at hand.
4. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

5. Article R58 of the Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
6. In light of the fact that both parties to the Contract had their registered offices and residence, respectively, in Moscow and according to basic principles of private international law it must be assumed that the Contract is subject to the laws of Russia even if not expressly stated in the Contract. Further, the Appellant being the “*federation*” in the sense of Article R58 of the Code is domiciled in Russia, a fact that also requires that Russian law be applicable. Finally, given that both parties are domiciled in Russia the Panel would have to, in the absence of any other indication, decide that Russian law shall apply to the merits of the case. Against this background the Panel concludes that the laws of Russia apply.

Admissibility

7. The appeal was filed within the deadline provided by article R49 of the Code, the RFU regulations appearing to be silent on any such deadline. The appeal complied with all other requirements of article R48 of the Code, including the payment of the CAS Court office fees.
8. The CAS Court office then assigned the Player’s case to the Appeals Arbitration Division of CAS to be dealt with according to the provision of Articles R47 and ff. of the Code.
9. The Panel noted the provisions of Article R47 of the Code, which states:
“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”.
10. Pertaining to the claim of the Appellant, the Panel is of the opinion that all internal procedures and remedies have not been exhausted, as the Russian DRC had not made a final decision in relation to this matter. The Appealed Decision is not a final decision. Whilst it concludes the issues relating to the international transfer clearance for the Player, it also directs the parties “*to present additional documents on the accomplished payments regarding V. E. Sorokin’s dismissal*”. The Russian DRC appears to be giving the parties the direction to provide and to exchange

additional evidence regarding the Appellant's monetary claim against the Respondent. There was no evidence that this had been done, nor that the Russian DRC had met again to consider the same.

11. The Russian DRC, in the appealed decision, goes on to direct that it "*bold[s] a meeting of the Dispute Resolution Chamber with the personal commitment of Valery Sorokin and CJSC FC 'Dynamo-Moscow's representative*". This is further evidence that the Russian DRC had not exhausted its own procedures and intended to hold a further/final hearing and from there to issue a further/final decision.
12. A CAS panel may adjudicate an appeal only if the statutes or regulations of the concerned association "*do not provide any internal stage of appeal and do not set forth any legal remedy other than an appeal to the CAS*" (CAS 2004/A/748). In other words, a decision must be "*final*" to be appealable, otherwise the appeal is inadmissible.
13. Despite the Russian DRC having taken an incredible amount of time to deliver the Appealed Decision to the Appellant, the Panel believes the parties need to comply with the Appealed Decision and provide the evidence that has been put before the CAS in relation to the Appellant's monetary claim against the Respondent and the Panel urges the Russian DRC to hear the claim expeditiously and to take note of the complaints levied against its formation and procedures.

Consequences of the inadmissibility of the appeal

14. The Panel, having taken the view that the proceedings of the Russian DRC are not finalised, believes that the proceedings are currently running in the Russian DRC and therefore the Panel must refer the case back to the Russian DRC.
15. The Panel believes that the proceedings currently pending before the Russian DRC may now run its full course. Thereafter, any dissatisfied party will still have the right to appeal before the CAS. The Panel has taken note of the Appellant's acknowledgment that Appellant shall satisfy the Player's rights for a monthly contribution to the Player's apartment expenses in accordance with the pertaining provisions of the Contract and the Second Supplementary Agreement.

The Court of Arbitration for Sport rules:

1. The appeal filed by Valery Sorokin against the decision of the Russian DRC dated 31 January 2008 is declared inadmissible and the matter is referred back to the Russian DRC for conclusion.

(...)
4. All other motions or prayers for relief are dismissed.