Arbitration CAS 2011/A/2361 Club Sivasspor v. Nordin Sidibach Wooter & AEK Larnaca, award of 20 March 2013

Panel: Mr Ercus Stewart S.C. (Ireland), President; Mr Efraim Barak (Israel); Mr Manfred Nan (The Netherlands)

Football
Termination of a contract of employment with just cause by the club
Player leaving the club without entitlement for late payments of salaries
Admissibility of the levying of fines by a club without clear contractual basis

1. **A player physically leaving his club, without being entitled to do so, does not terminate his contract if evidence demonstrates that he is willing at any time to return to the club if he receives what he believes he is entitled to. If the player has, under the terms of the agreement, legal avenues to claim the salary that he believes he is entitled to, it would be more proper to use those contractual avenues instead of leaving the club based on a mistake in relation to the number of salaries that he actually received.**

2. **Evidence that fines are necessary for discipline in a club does not obviate the need to have a clear contractual basis for their levying in the context of a written and extensive contract between the club and a player.**

1. THE PARTIES

1.1 Club Sivasspor ("the Appellant" or "the Club") is a football club affiliated to the Turkish Football Association.

1.2 Mr. Nordin Sidibach Wooter ("the First Respondent" or "the Player") is a professional football player.

1.3 AEK Larnaca ("the Second Respondent" or "Larnaca") is a football club affiliated to the Cyprus Football Association. Larnaca has not participated in the procedure.

2. FACTUAL BACKGROUND

2.1 Below is a summary of the main relevant facts, as established on the basis of the facts pleaded by the parties, the evidence adduced by them, the parties' written submissions and the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. Although the Panel has considered all the evidence, factual allegations, legal

arguments and submissions of the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

2.2 The Appellant and the Player concluded an employment contract ("the Contract") on 31 August 2006 which was to run until 29 May 2009. The Contract provided for a sign-on fee, monthly salary, a yearly "manager fee" and other benefits. The annual salary of EUR 200,000 was payable as to EUR 20,000 for each of ten months, and to be paid on the 7th of each month. Both parties agree that in the early months the Club was late in paying the salary.

2.3 In the Contract between the parties, Clause 5 is headed "End of Contract and Registration". It states as follows:

1) "At the end of this contract, the 29th May 2009, the Player is entitled to leave SIVASSPOR freely. SIVASSPOR has the obligation to provide copies of this contract to the Turkish Football Federation in regards to this registration.

2) SIVASSPOR has the right to terminate this contract at any time and at the end of the first season (2006/2007) upon 1 (one) month notice given to the Player in writing and only upon reasonable grounds.

3) IN an event of a transfer to another Football Club during the period of the present contract, SIVASSPOR will pay the equivalent of 10% (ten percent) of the transfer amount to GRANDSTAD FOOTBALL B.V. and 10% (ten percent) of the transfer amount to the Player.

4) If the Player brings 350,000 EURO to SIVASSPOR at the end of the season he can leave the club to another club outside Turkey. In case of a transfer of the Player to a Turkish Club, the Player has to bring 700.000,00 EURO to SIVASSPOR.

5) In case of a late payment of signing fee and/or salary and/or management fee, later than 30 days of the agreed date, by SIVASSPOR, the Player has to his choice, the right of a free transfer to another club, SIVASSPOR is still obliged to fulfil all agreed financial conditions between the Player and SIVASSPOR, until 29.05.2009.

6) Sivasspor and Nordin Sibadich Wooter have right to decide through the 15th April of 2007 about the 2nd and 3rd year contract. If the contract cancelled by Sivasspor the Player cannot request the 2nd and 3rd year money from the Club".

2.4 On 5 March 2007, the Appellant filed a claim with FIFA against the Player for non-participation in training sessions from 23 to 31 January 2007 and for leaving the club without authorisation as of 13 February 2007.

2.5 On 12 July 2007, the Player signed a new contract with Larnaca that was to run until 30 May 2009.

2.6 The Appellant sought payment of the amount of EUR 370,000 being the sum provided in clause 5.4 of the Contract together with EUR 20,000 that it stated the Player owed in fines for

absences or being late from training and for swearing at a technical director. These fines were imposed, said the club, on 5, 12 and 19 February 2007.

2.7 The Player counter-claimed that on 9 February 2007 when he had asked for his salary for the months of January and February 2007, which would have amounted to EUR 40,000, he was told for the first time that a penalty of EUR 20,000 had been imposed on him for late arrival to training on 23 or 24 January 2007, that the Appellant had applied his salary for the month of January to the fine, and that his salary for February 2007 would never be paid.

2.8 While the Player admitted to arriving late to training on the 23 January 2007, he stated that such a fine would be disproportionate, that Turkish law did not allow for the application of salary to such fines, and that the Appellant's penalty code had not been submitted to the Turkish Football Federation as was required. The Player also stated that he had not participated in training sessions on 31 January due to illness of which he said he had notified the Appellant. He denied other absences and denied swearing at staff. The Player stated that he had left the Club on 9 February 2007 and stated that he would only return when he received his salary. He never received his salary and he never returned to the Club.

2.9 The Club submitted that it had sent a termination letter on 26 February 2007 for breach of contract by the Player.

2.10 The Player considered himself free to sign to another club 30 days after the failure of the Appellant to pay his salary, pursuant to clause 5.5 of the Contract. On 14 March 2007 he asked the Appellant for written confirmation that he could join a new club without the payment of compensation. This letter remained unanswered.

2.11 The Player therefore claimed, in his counter claim before FIFA, that there was no compensation payable to the Appellant, and that the Player was due the sums in respect of all outstanding salary and benefits under the Contract being EUR 1,030,000, together with 5% interest per annum. In the alternative, the Player sought EUR 200,000 in respect of his signing-on fees under the Contract.

2.12 The Appellant stated that the Player had indeed missed training sessions as outlined, and that it had paid all salaries due, and provided (untranslated) documents to verify their claim of such payment. Therefore, the Appellant stated that there were no grounds for the Player to terminate the Contract.

2.13 The Dispute Resolution Chamber of FIFA ("the DRC") rendered its decision on 16 July 2009 (the "Decision"). The Decision was notified on 4 February 2011.

2.14 The DRC noted that the documents substantiating the claim that the Player's salary had been paid were submitted only in the Turkish language, and therefore the Appellant had failed to satisfy the requirements of art. 9 para. 1 lit. e) of the Procedural Rules which provides that documents of relevance to the dispute shall be submitted in the original version and, if applicable, translated into one of the official FIFA languages. Therefore the DRC did not take

the documents into consideration. In any event, the DRC outlined that it had several reservations about the documents submitted.

2.15 The DRC went on to hold that therefore the Appellant had not discharged its burden of proof in relation to payment of the salary of the Player. The DRC found that it had not warned the Player that fines had been imposed on him, and that the Appellant had not in any event shown any facts that could justify the withholding of the Player's salary for January 2007. The DRC accepted that the Player had not been notified of the withholding of salary until 9 February 2007, and as his monthly salary was due on the 7th day of each month, the Player already had the right as of 7 February 2007 to terminate his Contract under clause 5.5.

2.16 The DRC awarded the Player a total amount of EUR 440,000 being EUR 400,000 in respect of the salary and benefits lost under the Contract between the parties having taken into consideration mitigation of the loss by way of the new contract that the Player had concluded with Larnaca, and EUR 40,000 in terms of salary for January and February 2007, with 5% interest to run on that EUR 40,000 from the dates on which it was due, namely the 7 January 2007 and 7 February 2007.

2.17 The Appellant appeals that Decision. There was no appeal by the Player.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 By Statement of Appeal dated 23 February 2011, the Appellant appealed the Decision of the DRC. By letter dated 8 March 2011, FIFA waived its right to intervene in the proceedings, but informed the CAS that it remained at its disposal to answer any specific questions that arose. The Appellant submitted its Appeal Brief on 7 March 2011 and the First Respondent submitted its Answer on 14 April 2011, having been given an extension of time in which to file the Answer. By letter dated 20 April 2011, the Appellant requested a hearing in the matter. By letter of 22 April 2011, the Player requested that a handwriting expert be appointed to examine the signature of the Player dated 8 November 2006, and that no hearing would take place.

3.2 Pursuant to Articles R54 of the CAS Code of Sports-related Arbitration (the "Code"), the parties were informed on 3 May 2011 that the Panel established to decide the case between them was composed of:

President: Mr. Ercus Stewart S.C., Senior Counsel in Dublin, Ireland

Arbitrators: Mr. Efraim Barak, attorney-at-law in Tel Aviv, Israel

Mr. Manfred Peter Nan, attorney-at-law in Arnhem, The Netherlands.

3.3 On 26 May 2011 the parties were informed that the Panel intended to submit the relevant documents to a handwriting expert, and consulted with the parties in relation to the appointment and terms of reference of the expert. The Panel appointed Dr. Raymond Marquis

as handwriting expert on 18 July 2011 and submitted initial documents to him for analysis. In correspondence, the Appellant and the Player submitted the documents that they sought analysis of through September 2011, and Dr. Marquis issued his report on 6 February 2012. The Player made submissions on the report by correspondence dated 20 February 2012.

3.4 Due to the unavailability of the representative of the Player at the time, a hearing could not be scheduled until 6 September 2012.

3.5 On 29 August 2012 and 26 November 2012, respectively, the Appellant and the First Respondent signed an Order of Procedure by which they confirmed that the Code and the provisions of Chapter 12 of Swiss Private International Law Statute (PILS) shall apply to this dispute. The parties further acknowledged that the jurisdiction of the CAS in the present case is based on Articles 62 and 63 of the FIFA Statutes, as well as Article R47 of the Code.

3.6 On 6 September the hearing was adjourned at the request of the Player, as he had misunderstood communications from the CAS and had not travelled from the Netherlands for the Hearing. On 26 November 2012, the hearing was held in Lausanne, Switzerland. The hearing was attended by Mr. Kemal Kapulluoglu for the Appellant, by the player himself and by Dr Marquis, the handwriting expert appointed by the Panel.

4. THE PARTIES' POSITIONS

A. Appellant's Submissions

4.1 The Appellant states that it was never warned that its untranslated documents were in breach of the FIFA Procedural Rules, and that it should have been. The Appellant submits that it paid all of the money due, being 34,500 Turkish Lira (TL) by way of bonus payments, signing-on fee in the amount of EUR 218,000 and EUR 18,000 in salary in September 2006 and EUR 20,000 for each month from October 2006 to February 2007 inclusive.

4.2 The payments in Turkish Lira had been made, the Appellant states, on:

27 September 2006 (two on this date),
19 October 2006,
26 October 2006,
16 November 2006,
23 November 2006 and
7 December 2006.

4.3 The payments in Euro were as follows:

13 September 2006	signing-on fee of EUR 100,000;
12 October 2006	salary of EUR 18,000;
8 November 2006	salary of EUR 20,000;
7 December 2006	salary of EUR 20,000;

20 December 2006	salary of EUR 20,000;
11 January 2007	salary of EUR 20,000;
24 January 2007	salary of EUR 20,000.

4.4 A fine of EUR 2,000 had been imposed on the Player due to his late arrival and this had been deducted from his first salary payment. The Player had not attended for training on 23, 30 and 31 January 2007. His subsequent failure to attend at any training sessions after 13 February 2007 made the Appellant realize that the Player had left the country.

4.5 The Appellant had subsequently imposed a fine of EUR 8,000 on the Player for not attending training on 23, 30 and 31 January 2007 and 5 February 2007. It further imposed a fine of EUR 7,000 on the Player because he had left the training camp without authorization on 12 February 2007 and a further fine of EUR 5,000 because of his failure to attend training sessions between 12 and 17 February 2007. The Appellant unilaterally terminated the Contract of the Player on 28 February 2007 *"due to the unexcused and long term absence of the Player"* as per p. 4 of the Appellant's Appeal Brief of 7 March 2011.

4.6 The Appellant had only submitted some of the documents showing payments to the DRC, as it did not think that it was necessary to submit all. It did not object to the issuance of an international transfer certificate because it was clear that the relationship had broken down between the Appellant and the Player. The Appellant submits that all salaries were paid in a timely fashion, and all fines were properly imposed. It submits documents evidencing the Board decisions of the Appellant to show that the decisions were not taken *ex post facto*, as alleged by the Player, to justify the withholding of salary. He had previously been fined during the season, had had the fine deducted from salary, and had made no complaint.

4.7 The Appellant requests the CAS:

- to set aside the challenged Dispute Resolution Chamber decision;
- to establish that the first respondent breached the employment contract with the Appellant without just cause during the protected period;
- to accept our claims and to establish that the Respondents shall jointly and severally pay to the Appellant compensation in the amount of EUR. 370.000 and 5% interest for the breach of the contract;
- to condemn the Respondent as the only responsible of this trial, to the payment in the favour of the legal expenses incurred;
- to establish that the costs of the arbitration procedure shall be borne by the Respondent as the only responsible of this trial.

B. First Respondent's Submissions

4.8 The Player states that the Appellant was late in paying his salary from the beginning of the Contract. The Player was not paid the amount due on 7 September 2006 until 7 December 2006. He only received payments on 7 December 2006, 20 December 2006, 16 January 2007 and 24 January 2007. The Player states that he did not sign the document "Expense Receipt"

dated 8 November 2006 which is stated by the Appellant to contain his signature. He admitted that he received his signing-on fee of EUR 100,000 in cash on 13 September 2006. On 8 November 2006, he did not sign anything, and did not receive a payment of EUR 20,000 on that date.

4.9 The Player submits that he was paid his first salary payment on 7 December 2006, being the salary for the month of September 2006. He received the salary for the month of October, on 20 December 2006. He received his salary for the month of November on 16 January 2007 and for December on 24 January 2007.

4.10 There was no dispute as regards the receipt of the bonus payments in Lira as outlined by the Club. The Player submitted that he received the other payments as follows:

13 September 2006	signing-on fee of EUR 100,000;
7 December 2006	salary of EUR 20,000;
20 December 2006	salary of EUR 20,000;
11 January 2007	salary of EUR 20,000;
24 January 2007	salary of EUR 20,000.

4.11 The Player submits that the salary for the months of January and February 2007 was never paid by the Appellant, that no fines were properly imposed on the Player, and that the Player was validly entitled, pursuant to clause 5.5, to terminate the Contract between the parties. The Player echoes the reasoning of the DRC in his submissions.

4.12 The Player requests the Panel:

1. To deny the claims of Sivasspor, to dismiss the appeal of Sivasspor and to confirm the decision of the DRC d.d. the 16th of July 2009;

2. Principally:

   a. To state that Sivsasspor is obliged to fulfil all agreed financial conditions of the contract of employment between Sivsasspor and Wooter until the 29th of May 2009 (as stated in article 5 paragraph 5 of the contract of employment);

   b. To order Sivsasspor to pay an amount of € 440.000,- plus interest, which the DRC already assigned to Wooter by decision d.d. the 16th of July 2009;

   c. To state that Sivsasspor is obliged to submit the original documents of all the alleged payments. In case this request seems to appear unreasonable to the CAS, Wooter would certainly be entitled to inspect the original of any of these documents.

3. Costs of the proceedings:

   a. To order Sivasspor to pay the costs of this proceeding;

b. To condemn Sivasspor to the payment in the favour of Wooter of the costs of his legal expenses incurred.

5. EVIDENCE – HANDWRITING EXPERT

5.1 By letter dated 22 April 2011, the Player requested that a handwriting expert be consulted to examine the receipt dated 8 November 2006 which he denied signing. He suggested that this signature could be compared to his signature on his contracts of employment, the power of attorney and to the receipt dated 13 September 2006.

5.2 The Appellant submitted that as the Player was denying signing the second page of the receipt of 13 September 2006, that this should be examined by the handwriting expert also.

5.3 By letter dated 18 July 2011, Dr. Raymond Marquis was appointed a handwriting expert by the Panel and asked to analyse the signatures of the Player related to the payments allegedly made by the Appellant to him, to determine their veracity.

5.4 Dr. Marquis stated in his report, under the Section entitled "8. Conclusions", that the documents of 12 October 2006, 16 November 2006 and 23 November 2006 bore no signature and therefore were not examined.

5.5 The documents dated 27 September 2006, 19 October 2006, 26 October 2006, 7 December 2006, 20 December 2006, 11 January 2007 and 24 January 2007:

"bear simple signatures that actually do not correspond to the reference signatures in the name of Mr. Nordin Wooter. They are so simple that it is not possible to determine whether they were written by Mr. Nordin Wooter or another writer".

5.6 Dr. Marquis states that:

"the findings of the examination do not support the proposition that [the Player] wrote the questioned signature on page 1 of the receipt dated 13 September 2006..., nor the alternative proposition that another person wrote it".

5.7 However, he goes on to state that*:*

"The findings of the handwriting examination strongly support the proposition that the questioned name appearing on page 1 of the receipt dated 13 September 2006 was not written by [the Player]".

5.8 Dr. Marquis also states that:

"the findings of the examination of signatures strongly support the hypothesis that the signatures in the name of [the Player] on page 2 of the receipt of 13 September 2006 … and on the receipt dated 8 November 2006 … were written by [the Player].

5.9 By submission on receipt of the report, the Player objected to the inclusion of the Appellant of the second page of the document of 13 September 2006, stating that it violated the CAS Code in that it was a supplementary document filed after the appeal brief in contravention of Article R56. The Player disputed the validity of the findings of the report of Dr. Marquis and repeated that he had never signed the document dated 8 November 2006 nor the second page of the document dated 13 September 2006. The second page of the document of 13 September 2006, referred to above, did not affect the reasoning of the Panel as the payment of EUR 100,000 therein was not disputed.

6. HEARING

6.1 A hearing was initially scheduled for 6 September 2012 at the CAS headquarters. Only the Appellant attended. After approx 90 minutes the Panel succeeded in contacting the player by teleconference in the presence of the Appellant's lawyer Mr. Kapulluoglu. The Player was initially represented by Mr. J. G. Kabalt, attorney-at-law in Breukelen, the Netherlands, but by the time of the hearing, was no longer represented by a lawyer. The Player had misunderstood that the hearing was postponed. The Panel accepted his explanation. The hearing was re-scheduled and took place on 26 November 2012 at the CAS headquarters. The Appellant was represented by Mr. Kapulluoglu and the Player represented himself. The Second Respondent informed the Panel that it could not attend.

6.2 After the commencement of the hearing, the Panel facilitated a short adjournment to enable the parties to reach a resolution and after a short interval the Panel offered the parties, pursuant to Article R56 of the Code, to consider conciliation in order to resolve the dispute between them. As no resolution was possible the hearing continued.

6.3 The Panel heard evidence from Dr. Marquis, the handwriting expert appointed by the Panel. Dr. Marquis explained that it was his professional opinion that the hypothesis that the Player had signed the receipt dated 8 November 2006 was strongly supported by the evidence of handwriting that he had examined. The expert explained that as is the case in any handwriting examination, and since the expert obviously was not present at the moment the document was signed or written, handwriting opinions can never be considered as a categorical opinion. However, his professional view, based on the thorough examination that was also detailed in the opinion he provided to the Panel, was that the receipt dated 8 November bore the genuine signature of the Player. In response to questioning from the Player, Dr. Marquis explained his technical method of examination. This was an opinion that followed a careful examination of agreed samples and original documents.

6.4 The Appellant submitted that it was clear from the evidence before the Panel, including the findings of the handwriting expert, that the salaries of the Player had been paid before he left the Club. There was paperwork to support the fact that the Player received the payment as alleged on 12 October 2006 and the report of Dr. Marquis, the handwriting expert appointed by the Panel, strongly supported a finding that the receipt evidencing payment on 8 November

2006 had been signed by the Player. Therefore, he had been paid in full, and indeed even paid in advance the salary for February, a full 10 days before he left Turkey.

6.5 It was submitted that the fines imposed on the Player had been properly imposed on 5, 12 and 19 February 2007 respectively in respect of missing training, being late to training and abusing staff. The Appellant was seeking payment by the Player under the Contract as he had signed to another Club, Larnaca, within the three years of the initial contractual period, and the Appellant was further seeking payment of the fines levied.

6.6 The Appellant submitted that the DRC Decision of FIFA that was under appeal was solely based on the failure of the Appellant to provide English translations of documents that it had never been asked to supply. The Appellant had had a good ongoing relationship with FIFA and would have thought that if translations were needed they would be asked for those rather than making a decision on the basis that it had.

6.7 It was submitted that Larnaca should be jointly and severally liable for the money due to the Appellant. The Appellant submitted that it had requested the hearing as there were a number of documents and it did not wish there to be any misunderstanding as regards their import.

6.8 The Appellant submitted that it had paid the salary for February early, on 24 January 2007, in order to keep the Player happy. The Appellant submitted that documents with the name of the Player on them, indicating that money had been paid out of bank accounts, proved that the Player had received those amounts. They had requested documents showing a remittance to the Players' accounts, but had been denied the request by the Bank for reasons of confidentiality. A court order would be required to receive such documents in Turkey.

6.9 The Appellant admitted that, in respect of payments where there were two signed documents reflecting the payment of the amount, it might have been that the date was put on a document after the document was signed, to indicate the date of the transfer of the money rather than the date that the document was signed.

6.10 The Appellant submitted that there had been no way to give the Player a warning. He had insulted the staff and left the training ground. The Appellant understood that he had stayed for one week in Istanbul and then left the country, as there had been some telephone calls with him. The fact that the Appellant had paid the Player more than EUR 80,000 in less than 45 days showed the good intentions of the Appellant, it was submitted.

6.11 The Appellant stated that while there were no explicit legal grounds to permit the deduction of fines from the salary of the Player, the only amount that was so deducted was EUR 2,000 from the amount paid to the Player on 18 November 2006. However, without the ability to deduct such amounts, the Appellant could not impose discipline on its players. This was a practice throughout the club and at the meeting in which the Player was fined in November, fines had been levied against three players.

6.12 The Appellant submitted that the Player's excuse of being ill in hospital in Istanbul was illogical, as there was a hospital in Sivas that was associated with the Appellant and the Player could have had any necessary treatment there. The Player would have had to put money into his bank account when he opened it, and those records were missing from what was submitted by the Player.

6.13 In relation to the alleged non-payment of the fees due to the manager under the Contract, the Appellant submitted that it was an issue for the agent to raise and not the Player. The Appellant had never been asked in relation to the money, it had not been discussed nor decided by FIFA, and therefore should not be part of the consideration of the Panel. As the Player had left the Appellant completely on 9 February 2007, the Appellant only told the Turkish Football Federation and did not inform the Player himself in relation to his fines.

6.14 The Player himself was heard by the Panel. He stated that he was late for training on 23 or 24 January and had missed training on 30 or 31 January 2007. He was not sure if he had been ill on 24 or 31 January. As a result, according to the Appellant, he had been later fined on 5 February EUR 8,000 for being late or not attending on those dates, EUR 7,000 on 12 February in relation to insulting the staff and leaving training on 9 February 2007, and fined a further EUR 5,000 on 19 February 2007 for not participating in training between the 13 and 17 February 2007. He was not aware or informed of this at the time.

6.15 The Player said by way of submission that he had been in the Club until 5 February and that he had never been told that here was a problem. He noticed that the money had not been transferred so he kept asking the person who translated for him in the club what had happened. He had not insulted the coach and had no reason to do so – he dealt only with the translator. He was told on 9 February that he was no going to get his salary. He left immediately and went to the airport and left the country. Any information that the Appellant wanted to transmit to him could have been sent to Uskan, his Turkish-Dutch agent, who was living in Holland. The Appellant knew that he represented the Player and was in contact with him.

6.16 The Player stated that he believed he was in hospital in Istanbul on 23 and 24 January for dehydration which was why he had missed training at that time.

6.17 He stated that he had been due to receive at least his monthly salary of EUR 20,000 on the 7th of each month. He had outgoings in relation to his mortgage and his family.

6.18 The Player stated that he had at least not received one month's salary, at a minimum, the salary for January. He had never received his salary early, as claimed by the Appellant.

6.19 On 9 February, the translator had telephoned the technical director of the Appellant and was told that the Player would not be receiving his salary as he was late for training. The Player had asked the translator to call again and confirm, and when this was done, the Player left training and went straight to the airport. He had no contact with the Appellant after 9 February 2012. If he had been paid his salary for that month, he would have come back to the Appellant

club. He had been living at an apartment obtained for him by the club, as required under his Contract.

6.20 The Player said that he and his lawyer had assisted in the drafting of the Contract as the Appellant did not have a basic contract. He had given all of the relevant information to his lawyer, who no longer represented him due to financial pressures. His bank account records as submitted to the Panel started on 7 December 2006 because he only received his first payment then. In advance of that date, he had only received EUR 100,000 in cash in September which he had lodged to his bank account.

6.21 The Player also stated that he had never received his EUR 30,000 for his Manager as contracted for. He stated that he had not left earlier than February because he wanted the Contract to work. It was due to the build-up of non-payments that he left the Appellant. The people working in the Appellant were not bad people.

7. JURISDICTION OF THE CAS

7.1 Article R47 of the Code provides as follows:

"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".

7.2 Article 15 (2) of the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (2010 edition) ("the 2010 Procedural Rules") state:

"If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision".

7.3 Article 63 (1) of the FIFA Statutes (August 2010 edition) state as follows:

"63 Jurisdiction of CAS
1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

7.4 On 4 February 2011, FIFA notified the full decision to the parties, including the reasons for the decision, which had not previously been notified.

7.5 The Statement of Appeal was filed on 23 February 2011, within the 21-days deadline set forth by the FIFA Statutes, and is therefore admissible.

7.6 Moreover, the Respondents do not contest the jurisdiction of the CAS.

8. APPLICABLE LAW

8.1 Article R58 of the Code provides as follows:

"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".

8.2 As this case was submitted to FIFA on 5 March 2007, the Panel concludes, in agreement with the Decision of the DRC under appeal, that the correct rules applicable to this dispute are the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber of 2005. Art. 3(1) of these Rules provides as follows::

"1. The Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of Articles 22 to 24 of the Regulations for the Status and Transfer of Players adopted in December 2004. In the event of any uncertainty as to the jurisdiction of the Players' Status Committee or the DRC, the chairman of the Players' Status Committee shall decide which body has jurisdiction".

8.3 The Contract between the parties stated that the Contract shall be governed by Turkish law. Therefore, as Turkish law had been chosen by the parties this should have been the primarily applicable law. However, neither of the parties attending brought any evidence or tried to prove this foreign law as would have been expected. That being the case, and as established in the CAS jurisprudence, as the proceedings are an appeal of a FIFA decision, the Panel will decide the appeal based on the choice of law stipulated in the FIFA Statutes.

Pursuant to Article 62 of the FIFA Statutes, *"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".*

8.4 Accordingly, the Panel shall apply the FIFA regulations and where necessary, Swiss law.

9. THE PANEL'S FINDINGS ON THE MERITS

9.1 In the Contract between the parties, Clause 5 is headed "End of Contract and Registration". It states as follows:

1) *"At the end of this contract, the 29th May 2009, the Player is entitled to leave SIVASSPOR freely. SIVASSPOR has the obligation to provide copies of this contract to the Turkish Football Federation in regards to this registration.*

2) *SIVASSPOR has the right to terminate this contract at any time and at the end of the first season (2006/2007) upon 1 (one) month notice given to the Player in writing and only upon reasonable grounds.*

3) *IN an event of a transfer to another Football Club during the period of the present contract, SIVASSPOR will pay the equivalent of 10% (ten percent) of the transfer amount to GRANDSTAD FOOTBALL B.V. and 10% (ten percent) of the transfer amount to the Player.*

4) *If the Player brings 350,000 EURO to SIVASSPOR at the end of the season he can leave the club to another club outside Turkey. In case of a transfer of the Player to a Turkish Club, the Player has to bring 700.000,00 EURO to SIVASSPOR.*

5) *In case of a late payment of signing fee and/or salary and/or management fee, later than 30 days of the agreed date, by SIVASSPOR, the Player has to his choice, the right of a free transfer to another club, SIVASSPOR is still obliged to fulfil all agreed financial conditions between the Player and SIVASSPOR, until 29.05.2009.*

6) *Sivasspor and Nordin Sibadich Wooter have right to decide through the 15th April of 2007 about the 2nd and 3rd year contract. If the contract cancelled by Sivasspor the Player cannot request the 2nd and 3rd year money from the Club".*

9.2 No witnesses were called by the Appellant, despite the request for a hearing by that party. The staff member allegedly abused, the club officials who allegedly decided to levy various fines, the persons who processed and or paid the disputed payments, the club employee who translated for the Player – none of these individuals were presented to the Panel nor were statements furnished by them.

9.3 The Panel accepts the expert opinion of Dr. Marquis that the player signed the receipt of 8 November 2006 and is therefore satisfied that the Player was paid on 8 November 2006. That being the case, the Appellant Club had paid the Player at least 5 months' salary up to February 2007. Even if the Player had not been paid on 12 October 2006, contrary to what has been alleged by the Appellant, he would only be in arrears by two days in relation to his salary when he left the club, on his own evidence, on 9 February 2007, and this fact by itself did not give the Player the right to be transferred freely to another club, and most definitely did not entitle the Player to leave the club and not to comply with his duties under the employment Contract.

9.4 However, the Panel is satisfied that though the Player physically left the club on 9 February, without being entitled to do so, in fact the Player did not terminate his Contract. Although the Player had, under the terms of the agreement, legal avenues to claim the salary that he believed he was entitled to and it would have been more proper to use those contractual avenues instead of leaving the club based on a mistake in relation to the number of salaries that he actually received, the Panel accepts his evidence that he was willing at any time to return to the club if he received what he believed he was entitled to.

9.5 However, the Appellant made no effort to contact the Player at this time to resolve any misunderstandings in relation to payment or his contractual duties or entitlements. The Player did not attend training after 9 February 2007, but it is common case between the parties that there was no communication between them between that date and the 26 February 2007 when the Appellant terminated the Contract without notice. Indeed, the Appellant on its own

evidence continued to levy fines on the Player after this date, for three separate dates up to 19 February 2007, indicating that it did not consider the Contract terminated. The Panel therefore finds that both parties understood that the contractual relations continued even after the Player left the Club and this was the formal situation until the Contract was terminated by the Appellant by their notice dated 26 February 2007, in which the Appellant stated as follows:

> *"Mr. Nordin Sibadich Wooter,*
> *Since you did not take part in team trainings during the period between Feb 13 and 17 without submitted any valid reason and receiving required permission and left the Club without informing anyone, the contract executed between you and our Club is hereby terminated. 26/02/2007".*

9.6 In this respect, the Panel is by majority of the opinion that in light of the conduct of the Player, i.e. leaving the Club on 9 February 2007, the termination of the Contract by the Club was based on reasonable grounds and is therefore in line with the right of the Club to terminate under Art. 5.2 of the Employment Contract. This is particularly so given that the Panel has accepted that the Player received his January 2007 salary.

9.7 In relation to the Claim by the Appellant for EUR 350,000, as the Panel finds that as the Appellant terminated the Contract, there can be no money due and owing in respect of any transfer. The Panel finds that the clear language of the Contract draws a distinction between the termination of a Contract and transfer of a player, and the Panel finds that the Contract does not support the claim of the Appellant for a transfer fee after termination of the Contract. The Appellant made no argument to substantiate its claim in this regard.

9.8 However, the Panel notes that the termination under the Contract to be permitted "through the 15th April of 2007" must be with one month's notice. The Panel finds that the Appellant should have paid the Player his one month's notice when it terminated his Contract.

9.9 In relation to the fines levied on the Player, there is no provision for such fines to be imposed under the contractual agreement and the evidence of the Appellant that such fines were necessary for discipline in their club does not obviate the need to have a clear contractual basis for their levying in the context of a written and extensive Contract between the parties. Therefore the Panel dismisses the claim for an additional EUR 20,000.00 by the Appellant.

9.10 The Panel cannot agree with the Player that he is entitled to be paid the balance of all monies that would have been paid under the Contract if it had been fully performed until May 2009. It is clear on the plain reading of the words of the Contract submitted by the parties and concluded between them, that the Appellant retained an unfettered right under Clause 5(2) until 15 April to terminate the Contract between the parties on the giving of one month's notice *"upon reasonable grounds"*.

9.11 In relation to the alleged payment by the Appellant of the monthly salary on 12 October 2006, the Panel prefers the evidence of the Player that he did not receive that payment, and therefore finds that he was paid his salary under the Contract until the end of January 2007. He was not paid his February salary.

10. CONCLUSION

10.1 The Panel concludes by majority that the Contract between the parties was terminated by the Appellant on 26 February 2007 upon reasonable grounds. The Player was not paid for his services after the end of January 2007. The Appellant therefore should be paid his salary for February 2007, together with one further month's salary representing the notice period agreed between the parties.

10.2 This amounts to EUR 20,000 in respect of the salary for February together with EUR 20,000 in respect of the notice that the Player should have received, being a total amount of EUR 40,000 to be paid by the Appellant to the Player.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Club Sivasspor on 23 February 2011 is partially upheld.

2. The Decision of the Dispute Resolution Chamber dated 16 July 2009 is set aside and replaced with the following: Club Sivasspor shall pay to Nordin Sidibach Wooter EUR 40,000, together with interest at 5% on EUR 20,000 from 7 February 2007, and on the balance of EUR 20,000 from 26 February 2007.

3. (…).

4. No order is made in respect of the Second Respondent, AEK Larnaca.

5. (…).

6. All other claims and requests for relief are rejected.