Arbitration CAS 2011/A/2375 FK Dac 1904 a.s. v. Zoltan Vasas, award of 31 October 2011.

Panel: Mr Stuart McInnes (United Kingdom), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Applicable law
Prohibition of venire contra factum proprium
Validity of an employment contract and essentialia negotii

1. **By submitting their dispute to the CAS, in accordance with the FIFA Statutes, the parties make the choice to apply the provisions of the CAS Code, in particular concerning the applicable law, which prevail on the objective connection set forth in certain provisions of the Swiss Federal Code on Private International Law concerning the applicable law with regard to employment contracts. The parties are bound by the FIFA Statutes when they make a tacit choice of law by submitting themselves to arbitration rules that contain provisions relating to the designation of the applicable law; and if they are - even indirectly - affiliated to FIFA. Due to the indispensable need for the uniform and coherent application worldwide of the rules regulating international football, a CAS panel applies Swiss law for all the questions that are not directly regulated by the FIFA Regulations.**

2. **The principle of prohibition of *venire contra factum proprium* recognized by CAS precedents and Swiss law provides that when the conduct of a party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party. The acceptance by a party to proceed before the FIFA Dispute Resolution Chamber without contesting its jurisdiction shall preclude this party from contesting such jurisdiction in the proceedings before CAS in application of the above-mentioned principle. Furthermore, such attitude is also prohibited by the Swiss Code of Procedure.**

3. **An employment contract is valid when it contains the *essentialia negotii*, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration. As a general rule, the homologation and/or registration of an employment contract at a federation does not constitute a condition for its validity.**

FK DAC 1904 a.s. ("the Club" or "the Appellant") is a Slovakian football club, affiliated to the Slovakian Football Association (SFA), which in turn is affiliated with the Fédération Internationale de Football Association (FIFA).

Zoltan Vasas ("the Respondent" or "the Player") is a professional Hungarian football player.

The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the written submissions of the parties, the exhibits filed, the decision rendered by the FIFA Dispute Resolution Chamber ("the FIFA DRC") on 22 July 2010 ("the Appealed Decision") in the case between the Player and the Club, as well as the oral pleadings and comments made during the hearing. Additional facts may be set out, where relevant, in the legal considerations of the present award.

On 15 July 2008, the Player and the Club signed an employment contract ("the Contract") valid from the date of its signature until 31 May 2009.

According to the contract, the Player was entitled to a total remuneration in the amount of EUR 33'600 net for the season 2008/2009 to be paid as follows:

- EUR 1,600 net payable on 31 July 2008;
- EUR 32,000 net, payable in bi-monthly installments of EUR 1,600 each, until 31 May 2009

The contract also mentions a bonus of EUR 100 without any further explanation as to the conditions to be fulfilled for such bonus to be paid.

The payments, according to the contract, were due on the 15th day of the subsequent month.

On 18 July 2008, the Hungarian Football Federation issued the International Transfer Certificate (ITC) of the Player to the SFA.

The Player participated in two Superliga matches with the first team of the Club in July and August 2008.

Thereafter the Player participated in five matches of the B team between July 2008 until the end of September 2008.

On 31 October 2008, the Player sent a letter to the Club in which he requested to be explained the situation and to be provided justification for his dispensation from attending training sessions. He also requested the payment of his salary for the month of September 2008 and the match bonuses.

On 25 November 2008, KMU Forum, lawyers instructed on behalf of the Player, sent a letter to the Club in which it was asserted that:

i) since 30 September 2008, the Club constantly advised the Player not to attend the training sessions and to leave the Club.

ii) the player had attended all training sessions until 31 October 2008 and had fulfilled his contractual obligations

iii) it was considered that the Club unilaterally terminated the Contract without just cause.

The Player's lawyers requested payment of his outstanding salary and bonuses for the months of September to November 2008 and the payment of the contractually agreed salary until the end of the Contract, in the total sum of EUR 29,800.

On 9 January 2009, the Player's lawyers sent a further letter to the Club requesting the abovementioned sum to be paid before 23 January 2009 and warning the Club that in the absence of payment the Player would submit the case to the FIFA DRC.

At the beginning of February 2009, a telephone conversation between the Player's lawyers and a representative of the Club took place in which the representative of the Club stated that the Club was not contractually bound to the player.

On 13 February 2009, the Player's lawyers sent a last reminder letter to the Club in which a final deadline was given to the Club until 28 February 2009 to pay the requested amount of EUR 29,800.

On 20 March 2009, the Player lodged a claim with FIFA against the Club for alleged breach of contract by the Club, requesting the following amounts to be paid:

a. *Remainder of the July to August 2008 salaries in the amount of EUR 100 (1,5 months: EUR 4,800 minus EUR 4,700 received);*

b. *Salaries of September, October, November 2008 totalling EUR 9,600;*

c. *Match bonuses in the amount of EUR 900 (7 line-up bonuses x EUR 100 plus 1 victory bonus x EUR 200);*

d. *5% interest over the outstanding amounts as of 15.10.2008;*

e. *Compensation for breach of contract amounting to EUR 29,800;*

f. *5% interest over the amount of compensation as of 01.04.2009;*

g. *Compensation for direct financial damages and moral damages in the amount of EUR 5,000.*

On 22 July 2010, the FIFA DRC rendered the Appealed Decision according to which:

1. *The claim of the Claimant, Zoltan Vasas, is partially accepted.*

2. *The Respondent, FK DAC Dunajska Streda, has to pay to the Claimant outstanding remuneration in the amount of EUR 9,700 within 30 days as from the date of notification of this decision.*

3. *Within the same time limit, the Respondent, FK DAC Dunaska Streda, has to pay default interest of 5% p.a. on the following partial amounts until the effective date of payment to the Claimant,, as follows:*

   - *on EUR 3,300 as of 16 October 2008;*
   - *on EUR 3'200 as of 16 November 2008;*
   - *on EUR 3'200 as of 16 December 2008;*

4. *The Respondent, FK DAC Dunajska Streda, has to pay to the Claimant the amount of EUR 19'200 as compensation for breach of contract within 30 days as from the date of the notification of this decision.*

In the event that this amount of compensation is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the above-mentioned time limit until the date of effective payment.

5. *In the event the above-mentioned amounts due to the Claimant are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and decision.*

6. *Any further request filed by the Claimant is rejected.*

7. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*

On 3 March 2011, the Club filed a Statement of Appeal with the CAS against the Appealed Decision, requesting to *"revise and amend"* such decision, to reject all claims from the Respondent and to compensate the Appellant for procedural costs and related general expenses, including reasonable honoraries for legal representatives.

On 14 March 2011, the Club filed its Appeal Brief. The Club's submission may be summarized as follows:

- The FIFA DRC had no jurisdiction to render a decision in the present matter as the SFA was the competent body.
- The parties did not conclude a professional contract and the Player was never registered with the SFA which is a prerequisite for the validity of any football contract in Slovakia.
- The Contract is unenforceable as it lacks the signature of the President of the Club.
- If the Contract is to be considered as valid, the Player failed to perform his duties as a professional player.
- The Contract, if considered as valid, was terminated by mutual consent on 31 October 2008 when the Player requested to be released from his duties and requested an ITC to be issued in order to be able to play for another football club in Hungary.
- The Player was transferred back to a Hungarian club as an amateur football player. Therefore, the Player could not have been considered as a professional player when with the Club. Furthermore, the Player, by agreeing to be an amateur following his departure in Hungary, did not mitigate his damages.

The Player did not file an Answer within the deadline prescribed by Article R55 of the Code of Sports-related Arbitration ("the Code").

By letter dated 15 April 2011, the Player's lawyers informed the CAS Court Office that it was representing the Player in the Appeal before CAS. The Player's lawyers indicated that since the notification of the Appealed Decision, it had had repeated contact with the Club's Lawyers concerning the payment of the amount due. Further, the Player had requested that the FIFA Disciplinary Committee open a case against the Club for non- compliance with its obligation arising from the Appealed Decision. This request was also forwarded to the Club's lawyers.

Notwithstanding, the Club's lawyers did not inform the Players lawyers of the pending appeal before the CAS. The letter also made clear that all correspondence from the CAS Court Office was sent to the Player's parents (whose address was the only one provided by the Club's counsel) who do not speak English.

In particular, the Player's lawyers made clear that notwithstanding such repeated contact with the Club's lawyers it did not receive copies of the Statement of Appeal and the Appeal Brief from the Club's lawyers and was accordingly not put on notice of the deadline for the Answer to be filed. The Player's lawyers accordingly requested that the Sole arbitrator:

1. *Fix a time limit for the filing of the answer after the payment by the Appellant of the advance of costs.*
2. *Establish that the Appellant has to pay the share of the advance of costs of the Respondent.*
3. *Send a copy of the file, particularly the appeal brief together with the exhibits.*

On 7 June 2011, the CAS Court Office informed the parties that Mr Stuart McInnes, Solicitor, in London, United Kingdom, had been appointed as Sole Arbitrator to decide on the matter.

By letter dated 23 June 2011, the CAS Court Office notified the parties that the Sole Arbitrator denied the Player's request to be allowed to file an Answer outside the deadline provided in Article R55 of the Code of Sports–related Arbitration. It was further stated that the Player would be able to attend the forthcoming hearing, to plead to the Club's claims.

By letter dated 29 June 2011, sent to the CAS Court Office the Player's lawyers acknowledged receipt of the decision of the Sole Arbitrator and made observations on the merits of the case.

The Order of Procedure dated 18 July 2011 was signed by both Counsel for the Appellant and the Respondent.

A hearing was held on 1 September 2001 at the CAS headquarters in Lausanne, Switzerland.

At the beginning of the hearing, the Sole Arbitrator confirmed that, in accordance with Article. R56 of the Code, the Player was not allowed to file any statement of defence during the hearing as he was out of time to file his Answer. The Sole Arbitrator informed the Player that he would only be allowed to comment on the Club's submissions, but not raise other arguments.

In this regard, the Sole Arbitrator took into consideration the submissions filed by the Player by the letter dated 29 June 2011 and decided that no ruling should be made about such submissions as they constituted comments only on the Appellant's arguments.

With regard to the fact that the Player's lawyers were not made aware of the Club's appeal to the CAS against the Appealed Decision, the Sole Arbitrator emphasized that in accordance with general ethical conduct between lawyers, the Club's counsel should have informed the Player's counsel of such appeal as he was fully aware that the Player's counsel was still representing his client at the time when the Appeal was lodged.

The Club sought permission to file new documentary evidence at the hearing, being a copy of the Player's ITC, delivered on 18 July 2008 which revealed different information to that filed by the Player before the FIFA DRC. The Club asserted that this document evidenced either fraud or other act of *male fides* on the part of Player. Counsel for the Club submitted that the document, was which apparently discovered the day before the hearing, revealed fundamental evidence in the determination of the Player's status, as an amateur or professional player. A copy of the document was provided to Counsel for the Player and after discussion between the parties and submissions to the Sole Arbitrator, it was established that the Club was in possession of the document from on or around 8 July 2011, but that it had failed to disclose the document to the Respondent or the Sole Arbitrator. Having considered the submissions by both parties, the Sole Arbitrator agreed to admit the new evidence, in accordance with Articles R44.3 and R56 of the Code of Sports-related Arbitration but emphasized that such document might only be relevant when concerning the submission of the Club on the status of the Player.

The Sole Arbitrator drew the attention of the Club to Articles R51 and R56 of the Code of Sports–related Arbitration concerning evidence and witnesses. In its Appeal Brief, the Club indicated that Mr Antal Barnabas and Mr Dusan Chytil be heard as witnesses. The Sole Arbitrator asked the Club's counsel whether he wanted to call the witnesses, in which case they should leave the courtroom before their testimony was given. The decision made by the Club's counsel was not to call any witness evidence.

At the end of the hearing, the parties were asked if they were satisfied with the way the hearing was conducted and if they were given the opportunity to raise all their factual and legal arguments available to them. Both parties confirmed themselves satisfied with the manner in which the hearing had been conducted.

LAW

CAS Jurisdiction and admissibility

1. Pursuant to Article R47 of the Code:

   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. The jurisdiction of the CAS derives from Articles 62 and 63 of the FIFA Statutes and was confirmed by the parties when signing the Order of Procedure.

3. The Appealed Decision was notified to the Club on 11 February 2011 and the Club's Statement of Appeal was lodged on 3 March 2011, therefore within the statutory time limit set forth by the FIFA Statutes, which is not disputed. It complied with all other requirements of Article R48 of the Code.

4. It follows that the CAS has jurisdiction to decide the present dispute and that the appeal is admissible.

5. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one.

Applicable law

6. The Club submitted that, Slovakian labor law should be applicable to the case in accordance with Article 121 of the Swiss Federal Code on Private International Law (PILA).

7. The Sole arbitrator declined to accept the submission. The applicable provisions of the PILA concerning International Arbitration are set forth under Articles 176 to 194 of such law. In particular, concerning the applicable law, Article 187 PILA provides that:

   1. The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected.

   2. The parties may authorize the arbitral tribunal to rule according to equity.

8. According to the literature (see RIGOZZI A., *L'arbitrage international en matière du sport*, Bâle 2005, para. 1195 *et seq.*), *"le Règlement d'arbitrage du TAS représente une manifestation de la volonté des parties de sorte que selon les termes clairs de l'art. 187 al. 1 LDIP il prend le pas sur la détermination du droit applicable selon le rattachement objectif"*.

9. From such contention, the Sole arbitrator can conclude that by submitting their dispute to the CAS, in accordance with the FIFA Statutes, the parties made the choice to apply the provisions of the Code, in particular concerning the applicable law, which prevail on the objective connection set forth in certain provisions of the PILA, in particular Article 121, concerning the applicable law with regard to employment contracts.

10. To reach such conclusion, the Sole Arbitrator accepts the extended reasoning made by a CAS Panel in a case related to a similar matter as the one in issue in the present proceedings (CAS 2008/A/1518, para. 7-17), which is the following:

    7. Furthermore, the parties in the present case are bound by the FIFA Statutes for two reasons: first, they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law; and second, all parties are – at least indirectly – affiliated to FIFA. Therefore, this dispute is subject, in particular, to article 60(2) of the FIFA Statutes, which provides that CAS "shall primarily apply the various regulations of FIFA and, additionally, Swiss law" (CAS 2006/A/1180, para. 7.9). Hence, due to the indispensable need for the uniform and coherent

application worldwide of the rules regulating international football (TAS 2005/A/983-984, para. 24), the Panel rules that Swiss law will be applied for all the questions that are not directly regulated by the FIFA Regulations (cf. CAS 2005/A/871, para. 4.15).

8. *The Panel arrives to the above-mentioned conclusions as a result of adopting the following approach.*

9. *First, in order to determine the applicable law, the Panel examines article R27 of the CAS Code, which states that the provisions of the CAS Code "apply whenever the parties have agreed to refer a sports-related dispute to the CAS. […]".*

10. *Subsequently, the Panel analyzes article R28 of the CAS Code which determines Lausanne, Switzerland as the seat of the CAS and each Arbitration Panel. Moreover, since neither party had, at the time of concluding the arbitration agreement, its domicile or habitual residency in Switzerland, the provisions contained in Chapter 12 of Switzerland's Federal Code on Private International Law (PILAct) are applicable to this case (see TAS 2005/A/983-984, para. 17; CAS 2006/A/1024, para. 6.1; and TAS 2006/A/1082-1104, para. 47).*

11. *Therefore, the Panel examines article 187 of the PILAct, which addresses the issue related to the law applicable to the merits of the case and provides that "the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. The parties may authorize the arbitral tribunal to rule according to equity". The Panel emphasizes at this point that article 187 of the PILAct establishes a regime concerning the applicable law that is specific and different from those instituted by the general conflict-of-law rules of the PILAct in the subject (see RIGOZZI A., L'arbitrage international en matière du sport, Bâle 2005, para. 1166 ff.; KAUFMANN-KOHLER /STUCKI, International Arbitration in Switzerland, Zurich 2004, pg. 116; TAS 2005/A/983-984, para. 19 and CAS 2006/A/1024, para. 6.3).*

12. *The Panel underscores that not only the legal doctrine but also the CAS jurisprudence have acknowledged that article 187 PILAct allows arbitrators to settle the disputes in application of provisions of law that do not originate in a particular national law, such as sport regulations or the rules of an international federation (see RIGOZZI A., op. cit., para. 1178; TAS 2005/A/983- 984, para. 20 ff.; CAS 2006/A/1024, para. 6.9; and TAS 2006/A/1082-1104, para. 48).*

13. *According to the CAS jurisprudence and the legal doctrine, the choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution. (see RIGOZZI A, op. cit., para. 1172; KAUFMANN-KOHLER/STUCKI, op. cit., pg. 118; CAS 2006/A/1024, para. 6.5; and TAS 2006/A/1082-1104, para. 49). Moreover, there will be a tacit choice made by the parties when they submit themselves to arbitration rules that contain provisions relating to the designation of the applicable law (see KAUFMANN-KOHLER/STUCKI, op.cit., pg. 120; TAS 2005/A/983-984, para. 34; CAS 2006/A/1024, para. 6.7; and TAS 2006/A/1082-1104, para. 49).*

14. *Thirdly, the Panel applies article R58 of the CAS Code, which provides that the CAS settles the disputes 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 that the CAS deems appropriate.*

15. *Consequently, the Panel analyzes article 13(1)d of the FIFA Statutes, which establishes the obligation for all members of FIFA "to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies". Additionally, article 12(d) of the Statutes of the Hellenic FF*

extends the previously-mentioned obligation to comply with the FIFA Statutes, regulations, directives and decisions to that all members of the Hellenic FF.

16. *As a result, since all the parties are – at least indirectly – affiliated to FIFA, and are thus bound by the FIFA Statutes (see RIEMER H.M., Berner Kommentar ad. Art. 60-79 ZGB, para. 511 and 515; CAS 2004/A/574; TAS 2005/A/983-984, para. 36; CAS 2006/A/1180, para. 7.10), the Panel examines 60(2) of the FIFA Statutes, which 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".*

17. *Lastly, the Panel adheres to CAS jurisprudence stating that "only if the same terms and conditions apply to everyone who participates in organized sport, are the integrity and equal opportunity of sporting competition guaranteed". (CAS 2006/A/1180, para. 7.9). As a result, CAS jurisprudence has consistently interpreted article 60(2) of the FIFA Statutes as to contain a choice of law clause in favor of Swiss law governing the merits of the disputes. For example, the Panel in the case CAS 2004/A/587 ruled that since the FIFA has its seat in Zurich, Swiss law is applicable subsidiarily to the merits of the case (CAS 2004/A/587, para. 8.2). This rule was subsequently supplemented by the Panel in case TAS 2005/A/902-903, which found that since the parties had subjected themselves to the FIFA Statutes and the CAS Code, and since the FIFA has its seat in Zurich, the matter would be settled by application of Swiss law (TAS 2005/A/902-903, para. 16 and 36). More recently, CAS jurisprudence cleared possible doubts and affirmed that "the reference in article 17(1) of the FIFA Status Regulations to 'the law of the country concerned' does not detract from the fact that according to the clear wording of article 60§2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss Law" (CAS 2007/A/1298-1300, para. 83).*

11. The Sole Arbitrator concludes that Article 121 PILA is not applicable as contended by the Appellant, as it is superseded by Article 187 PILA, which is specific to arbitration.

12. In view of the above-mentioned and as the parties have not agreed on the application of any particular law, the Sole Arbitrator confirms that the rules and regulations of FIFA shall primarily apply, and alternatively Swiss law.

Merits

13. The main issues to be decided upon are:

A. Was FIFA competent to decide on the case?

B. Was there a valid contract concluded between the Parties?

C. What was the status of the Player?

D. Which party terminated the Contract and was there a just cause to such termination?

E. What are the consequences of the Termination of the Contract?

A. Was FIFA competent to decide on the case?

14. Although the Sole Arbitrator observed that the Club did not contest, but confirmed the jurisdiction of CAS by signing the Order of Procedure, it is obvious to the Sole Arbitrator that he could not consider the merits of this case if FIFA did not have initial competence to determine this dispute. Therefore, the Sole Arbitrator needed to address this specific issue.

15. According to Article 22 of the Regulations on the Status and Transfer of Players (Edition 2009)[1] ("the Regulations"):

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

[…] b) employment-related disputes between a club and a player of 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;

[…]".

16. Together with its Appeal Brief, the Appellant provided the CAS with a translation of the Statutes of the Court of Arbitration of the SFA. Article 1 par. 3 of such regulations states in particular that such court is competent to decide on disputes between members of SFA and players, if the parties *"agree and recognize the jurisdiction of that court"*.

17. On the basis of these provisions, the Club contends that FIFA did not have jurisdiction in the case at hand as the Court of Arbitration of the SFA was the competent forum.

18. The Sole Arbitrator cannot accept the Club's argument in this respect for the following reason:

- The Appellant did not provide any evidence that the parties agreed to submit their dispute to the Court of Arbitration of the SFA. It was made clear by the Player at the hearing that he never gave any sort of agreement in this regard, which is confirmed by the fact that he submitted the case directly to FIFA.

Furthermore, the Club did not raise the argument of lack of jurisdiction and participated to the procedure before the FIFA DRC, as is confirmed by the Appealed Decision.

The Sole Arbitrator considers that such attitude of the Appellant is a case of *venire contra factum proprium*. Such principle recognized by CAS precedents and Swiss law provides that *"when the conduct of a party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party"* (CAS 2002/O/410). In the case at hand the acceptance by the Appellant to proceed before the FIFA DRC without contesting its jurisdiction shall preclude him from contesting such jurisdiction in the present proceedings before CAS in application of the above-mentioned principle.

[1] The Sole arbitrator notes that the Player's claim was submitted to FIFA on 20 March 2009 and that therefore, the 2009 edition of the FIFA Regulations are applicable to determine this issue.

Furthermore, the Sole Arbitrator emphasizes that as Swiss law is applicable alternatively to the FIFA rules and regulations in the case at hand, the provisions of Swiss law related to the matter shall be taken into consideration. The Swiss Code of Procedure (SCCP) prohibits such attitude as well. In particular, Article 18 of the SCCP states that unless otherwise provided by law, the court has jurisdiction when the defendant proceeds without reservation of jurisdiction. A similar principle applies in the Swiss legislation related to arbitration. In this regard, Article 359 SCCP and 186 para. 2 PILA state that the objection of lack of jurisdiction must be raised prior to any defence on the merits. The Sole Arbitrator concludes that the Appellant cannot contest the jurisdiction of FIFA DRC also in application of such relevant provisions of Swiss law, as it did not raise the issue of jurisdiction before the FIFA DRC.

19. Considering the evidence and submissions, the Sole Arbitrator considers that, in accordance with Articles 24 par. 1 and 22 lit. b) of the Regulations, the FIFA DRC was competent to adjudicate the case at hand.

B. Was there a valid contract concluded between the Parties?

20. The Club contends that there was no valid contract concluded by the parties as the Contract was only signed by the Vice-President of the Club, and not by the President of the Club whose name was also on the Contract, and further that the Player was actually rendering his services to the Club as an amateur player.

21. As mentioned by the FIFA DRC in the Appealed Decision, to be valid, an employment contract shall contain the *essentialla negotii*, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration. (DRC Decision 23 October 2009).

22. After a careful review of the Contract, the Sole Arbitrator deems that the FIFA DRC was right to consider that there was a valid employment contract as the essential elements were included in the document signed on 15 July 2008.

23. The Sole Arbitrator then considered the Club's argument relating to the fact that as the Contract was signed only by the Vice-President of the Club and it was invalid as Article 3 (c) of the *"Directive for Registration of Professional Contracts"* ("the Directive") issued by the SFA imposes a requirement of the signature of two officials of a club to validate a professional contract. In this regard, the Sole Arbitrator fully accepts the Appealed Decision in which it is stated that, as a general rule, the homologation and/or registration of an employment contract at a federation does not constitute a condition for its validity.

24. On account of the above, the Sole Arbitrator considers that a valid and binding employment contract was concluded between the parties.

C. What was the status of the Player?

25. The question of the status of the Player as an amateur or a professional player is an important issue as chapter IV of the Regulations (Maintenance of contractual stability between professionals and clubs) is not applicable to a contract concluded between an amateur and his club, as confirmed by the CAS jurisprudence on the matter (CAS 2004/A/691).

26. The Club's submissions that the Player was hired as an amateur player and not as a professional player and that the sum of EUR 4,700 paid to him during his stay with the Club was only related to an advance for his "social welfare" and a contribution for his moving to Slovakia is not supported in evidence. In particular, the Club did not file any evidence or documentation proving that the aforementioned amount of money paid to the Player was not directly related to his activity as a professional player.

27. In the Appealed Decision, the FIFA DRC stated that *"the Chamber was not convinced by the position of the Respondent* [the Appellant in the present proceedings]*, who pointed out that the Claimant* [the Respondent in the present proceedings] *had been involved in the club's sporting activities as an amateur player and that the monies it remitted to the Claimant were an advance for his "social welfare". In this respect, the Chamber, whilst underlining the absence of any evidence corroborating the Respondent's position (cf. art. 12 par. 3 of the Procedural Rules), wished to highlight that on the basis of art. 2 of the Regulations, which deals with the status of players, i.e. amateur and professional players, the aforementioned amount of EUR 4,700, which relates to the period of time as form mid-July 2008 to August 2008, is to be considered to largely exceed the expenses incurred for the player's footballing activity"*.

28. Moreover, Article 3 a) of the SAF Directive for Registration of professional Contracts provides that the monthly income of a professional cannot be lower than SKK 10,000 which corresponds to approximately EUR 332. According to the Contract, the Player was entitled to receive a monthly salary of EUR 3,200, which is almost ten times higher than the aforementioned minimum salary. This fact does demonstrate that the amount of money received by the Player was actually a salary, paid to a professional player in accordance with the terms of the Contract.

29. The Sole Arbitrator does not accept that the fact that an ITC mentions that a player is transferred as an amateur or a professional player is not sufficient itself to determine the status of a player.

30. The Sole Arbitrator therefore fully accepts the Appealed Decision when it states that the Player was to be considered as a professional player at the time when he was performing his services to the Club. Chapter IV of the Regulations, in particular Article 17 concerning the consequences of the termination of a contract without just cause, is therefore applicable to the present case.

D. Was there a just cause to terminate the contract?

31. From the evidence adduced at the hearing as well as the submissions and comments of the parties, it was established that the Club only paid the Player's salary in August 2008. Between 1

September and 25 November 2008, the Player did not receive any salary whilst he was still performing his contractual activities for the Club.

32. The Club contends that the Contract was terminated by mutual agreement following receipt of the Player's letter dated 31 October 2008 in which he requested to be released from his obligations towards the Club, to be provided with explanations about the situation, and to be paid his salary and the match bonuses for the month of September 2008. The Sole Arbitrator rejects such contention, giving weight to the fact that the Club did not answer the letter, evidencing that there was no agreement on the terms of the eventual termination of the Contract. The Club's behaviour led the Player to consider the termination of the contract with just cause. The Player lawyer's informed the Club about that belief in their letter dated 25 November 2008.

33. In this regard, the Appealed Decision states that *"the Respondent* [the Club] *had obviously no longer been interested in the Claimant* [the Player]*'s services by failing to remit his salaries without any valid reason during a considerable amount of time (3 months) and advising him to leave the club, which conduct constitutes, in line with the long-lasting jurisprudence of the Chamber, a clear breach of contract".*

34. Such position on the breach of contracts between a player and a club is confirmed by the CAS jurisprudence. Indeed, in a previous case, a CAS Panel ruled that the *"non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated as in the present case – constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 and 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893 […]; CAS 2006/A/1100 […] marg. no. 8.2.5 et seq.)"* (CAS 2006/A/1180).

35. After having summoned the Club on several occasions to comply with its financial obligations towards him, the Player considered, on 25 November 2008, the contract to be terminated with just cause due to the Club's failure to pay his salaries and submitted the case to FIFA.

36. In view of the above, the Sole Arbitrator considers that the Contract was breached by the club without just cause in view of the Club's failure to make payment of his salary for a considerable amount of time.

E. What are the consequences of the termination of the Contract?

37. As the Club is to be held liable for the breach of the Contract without just cause, the player is entitled to receive compensation for breach of contract in addition to any outstanding payments under the terms of the Contract.

38. In this regard, the Sole Arbitrator does not see any reason to depart from the analysis and conclusion of the FIFA DRC made in the Appealed Decision, based on Article 17 par. 1 of the Regulations, and therefore fully revert to the Appealed Decision in this respect.

Conclusion

39. Based on the above, the Sole Arbitrator finds that the Appealed Decision must be upheld in its entirety, without any modification. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by FK DAC 1904 on 3 March 2011 against the decision of the FIFA Dispute Resolution Chamber of 22 July 2010 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 22 July 2010 is upheld.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.