Arbitration CAS 2011/A/2597 Anorthosis Famagusta FC v. Heinz Peter Vollmann, award of 29 February 2012

Panel: Mr Lars Hilliger (Denmark), President; Mr Pantelis Dedes (Greece); Mr Goetz Eilers (Germany)

Football
Termination of an employment contract between a club and an assistant coach
Applicability of the RSTP and competence of FIFA to deal with an employment-related dispute between a club and a coach of an international dimension
Absence of sporting results as just cause
Applicability of Art. 17 of the FIFA RSTP to coaches
Termination without just cause of an employment contract of set duration under Swiss law

1. **Notwithstanding that the FIFA Regulations on the Status and Transfer of Players (RSTP) is not directly applicable to coaches, the specific provisions of Articles 22 and 23 RSTP are directly applicable to coaches, thanks to the direct and explicit extension of the provisions to include matters relating to coaches. *Prima facie*, the FIFA Players Status Committee (PSC) is thus competent to deal with employment-related disputes between a club or an association and a coach of an international dimension, unless the exception clause mentioned in Article 22 RSTP is applicable. This exception clause will be applicable only on condition that reference has specifically been made in the contract to a national independent arbitration tribunal.**

2. **The absence of sporting results cannot, as a general rule, constitute *per se* a reason to terminate a contractual relationship with just cause.**

3. **Article 17 RSTP is not applicable in a dispute concerning a coach (as opposed to a player). Article 1 RSTP ("Scope") provides that the Regulations concern "players", not coaches. Moreover, the FIFA Statutes no longer contain the provision which appeared in Article 33.4 of their 2001 version, which equated coaches with players.**

4. **Article 337c of the Swiss Code of Obligations (CO) provides that in case of termination without just cause of an employment contract of set duration, the employer must, in principle, pay to the employee everything which the employee would have been entitled to receive until the agreed conclusion of the agreement. The burden of proof lies on the party requesting compensation. Any amount which the employee saved, earned or intentionally failed to earn further to termination can be deducted in mitigation of the amount of the compensation. This reflects the general principle of damage mitigation.**

1. THE PARTIES

1.1 Anorthosis Famagusta FC (the **Club** or the **Appellant**) is a Cypriot football club affiliated with the Cyprus Football Association (the **CFA**), which in turn is affiliated with FIFA.

1.2 Mr. Heinz Peter Vollmann (the **Respondent**) is a German football coach.

2. FACTUAL BACKGROUND

2.1 The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the decision rendered by the FIFA Players' Status Committee ("**FIFA PSC**") on 24 January 2011 ("the **Decision**") in the case between the Club and the Respondent, the written submissions of the Parties and the exhibits filed together with the FIFA file of the case. Additional facts may be set out, where relevant, in the legal considerations of the present award.

2.2 On 11 May 2009, the Appellant and the Respondent concluded an agreement (the **Agreement**), valid from 1 June 2009 until 30 May 2010 according to which the Respondent was employed as "Assistant Coach".

2.3 Also on 11 May 2009, the Parties signed an additional agreement (the **Supplementary Agreement**), also valid from 1 June 2009 until May 2010.

2.4 According to the Agreement, the Respondent was entitled to receive from the Appellant the total amount of EUR 30,000.00 in ten equal instalments of EUR 3,000.00 each, payable on the first day of each month, the first one on 1 August 2009.

2.5 The Supplementary Agreement stipulated that the Respondent was entitled to receive from the Appellant the total amount of EUR 50,000.00 in ten monthly instalments of EUR 5,000.00 each, payable at the first day of each month, the first one on 1 August 2009. Additionally, the Respondent was also entitled to receive *"Bonuses for wins as per the internal regulations of the club"*.

2.6 As stated in the General Conditions of both the agreements *"(1) The Employer has employed and by this contract employs the Coach for the purpose of rendering his services as a full time football Assistant Coach to the Employer subject to the terms and conditions detailed herein. (2) The Coach at all times during his employment shall be obliged to follow the Regulations concerning technical, sporting and disciplinary matters as the same are from time to time required and/or specified by the Employer"*.

2.7 Furthermore, the following was stated in the General Conditions of both the agreements: *"(11) The present contract may be terminated and/or suspended (as the case may be) for one of the following reasons. (…) b) In the case of a breach or default of very serious terms of this contract by the Coach. (…) (14) The present contract is terminated when: (…) d) unilaterally for a very serious reason. For the purpose of this contract a "very serious reason" means any serious breach and/or serious default of the terms and/or conditions of the contract, the disciplinary rules of the employer and/or the CFA and the constant wrongful behaviour and/or conduct by any one Parties"*.

2.8 On 23 July 2009, the Club apparently lost an international match against the club OFK Petrovac from Montenegro and was thus allegedly eliminated from the Euro League qualification round.

2.9 By correspondence dated 27 July 2009, the Club summoned the Respondent before *"the Board of Directors or the Disciplinary Committee appointed by the Board of Directors"* in order for the Respondent to *"plea or answer"* to the charges against him and *"particular (…) charge on", i.e. "violation of paragraph 2 of the agreement dated 11.5.2009 and also according to paragraph C of the Internal Regulations and particular of the Chapter concerning Team Performance that the performance of the team in the European Matches of our team has not been up to the acceptable standards which resulted to the disqualification of the Club's team from the European competition"*.

2.10 By correspondence dated 31 July 2009 (the **Termination Notice**), the Club terminated the contractual relationship with the Respondent *"for just cause and with immediate effect"* explaining that *"the Board of the Club decided that you have seriously and grossly violated the expressed and implied terms of your employment and well as the Internal Regulations of the Club"*. The Club specified that this decision of termination had been taken after the meeting held on 28 July 2009 *"after considering the report and the suggestions of the Disciplinary Committee and after hearing your plea"*.

2.11 On 4 August 2009, the Respondent lodged a claim with FIFA against the Appellant requesting inter alia the payment of EUR 80.000,00, plus 5% interest as follows:

- EUR 8,000,00 net, plus 5% interest as from 1 August 2009;
- EUR 8,000,00 net, plus 5% interest as from 1 September 2009;
- EUR 8,000,00 net, plus 5% interest as from 1 October 2009;
- EUR 8,000,00 net, plus 5% interest as from 1 November 2009;
- EUR 8,000,00 net, plus 5% interest as from 1 December 2009;
- EUR 8,000,00 net, plus 5% interest as from 1 January 2010;
- EUR 8,000,00 net, plus 5% interest as from 1 February 2010;
- EUR 8,000,00 net, plus 5% interest as from 1 March 2010;
- EUR 8,000,00 net, plus 5% interest as from 1 April 2010;
- EUR 8,000,00 net, plus 5% interest as from 1 May 2010.

2.12 Additionally, the Respondent also requested to be provided with the Appellant's internal bonus regulation in order to claim the payment of his bonus for the 2009/2010 season. Finally, the Respondent requested from the Appellant the reimbursement of all taxes that he would have to pay on the claimed amounts in Germany.

2.13 With regard to the dismissal, the Respondent argued the Club's loss against OFK Petrovac and its subsequent elimination from the European League should not constitute a reason for giving notice nor a serious breach of contract under the terms of art 14 lit.d) of the two agreements. Furthermore, the Respondent stressed that a coach could not guarantee the sporting success of a team. In addition, the Respondent mentioned that only he, the Head Coach, Mr. Ernst Middendorp and a German player had been dismissed but not the Cypriot

members of the Club's team and that therefore, he deemed to have been used by the Club as a scapegoat following the elimination of the team from the European League.

2.14 In conclusion the Respondent was of the opinion that the Appellant had no reason to terminate the agreements and that, consequently, his claim should be accepted.

2.15 By means of correspondence dated 7 April 2010, the Appellant rejected the Respondent's claim in its entirety and argued that the contractual relationship between the Parties was terminated with just cause.

2.16 In this regard, the Appellant alleged that the Respondent had violated article 2 of the agreement and para C of the Club's internal regulations In particular, the Appellant stressed that the Respondent *"has been accused that the discipline of the players of the team during the European match has not been up to the standards accepted by the club which resulted to the disqualification of the team from the European competitions, to the disciplinary measures against the Club imposed by UEFA due to the player undisciplined behaviour and to the imposition of serious fines. Further the Club due to the disqualification by the said competition has suffered serious losses and damages"*.

2.17 In this connection, the Appellant maintained that the termination had been justified, in particular, because the *"performance of the team has not been up to the standards of the club and the discipline of the team which was one of the most important duties of the coach and his assistant thus the Claimant (Respondent) in this case has not been also up to its standards …"*.

2.18 Finally, the Appellant referred to article 15 of the two agreements and argued that the Respondent had *"agreed to impose himself and his relations with the Cyprus Law and jurisdiction"* and that *"according to the Termination Law No. 577/1967 and particularly according to art. 9 of the said legislation the employer has the right to terminate without any notice the employee within the first 26 weeks of the employment and the period is considered to be as probation"*.

2.19 By correspondence dated 20 May 2010 the Respondent based on information received regarding the Club's internal bonuses amended his claim. Consequently, the Respondent requested from the Appellant an additional payment of EUR 32,000.00, plus 5% interest as from 20 May 2010. Furthermore and with regard to the Appellant's response, the Respondent reiterated the content of his first submission.

2.20 Additionally, the Respondent argued that he had no knowledge of the Appellant's Internal Regulations concerning technical, sporting and disciplinary matters and that the latter had never specified how he would have breached them.

2.21 Moreover, the Respondent stressed that the Appellant had failed to present any evidence in support of its allegations.

2.22 Finally, the Respondent argued that he had never agreed on a trial period. In this context, the Respondent referring to article 14 lit d) of the General Conditions of the two agreements, stressed that a termination was only justified in case of a *"very serious reason"*.

2.23 By correspondence dated 16 July 2010, the Appellant reiterated the content of its first response and submitted that, after his dismissal, the Respondent had been employed by the German football club FC Hansa Rostock and therefore should not be entitled to claim any compensation.

2.24 Asked by FIFA about his labour situation during the period from 1 August 2009 until 31 May 2010, the Respondent explained that he had not worked during this period and that he had only started working for FC Hansa Rostock as from 1 June 2010. In this respect and as proof of his statement, the Claimant provided FIFA with a copy of the relevant labour contract concluded with FC Hansa Rostock.

2.25 Based on the information provided above, the FIFA PSC decided as follows in its Decision:"

1. "The claim of the Claimant, Heinz Peter Vollmann, is partially accepted.

2. The Respondent, Anorthosis Famagusta FC, has to pay to the Claimant, Heinz Peter Vollmann, the amount of EUR 80,000.00 as well as 5% interest per year on the said amount from 24 January 2011 until the date of the effective payment, within 30 days as from the date of notification of this decision.

3. Any further claims lodged by the Claimant, Heinz Peter Vollmann, are rejected.

4. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted upon the party's request to FIFA's Disciplinary Committee for consideration and a formal decision.

5. The costs of the proceedings in the amount of CHF 8,000.00 are to be paid by the Respondent, Anorthosis Famagusta FC, within 30 days as from the notification of the present decision as follows:

5.1 The amount of CHF 5,000 has to be paid to FIFA to the following bank account with reference to case nr. Iza 10-00590: (…)

5.2 The amount of CHF 3,000 has to be paid to the Claimant, Hein Peter Vollmann.

6. The Claimant, Heinz Peter Vollmann, is directed to inform the Respondent, Anorthosis Famagusta FC, immediately and directly of the account number to which the remittances under point 2 and 5.2 above is to be made and to notify the Players' Status Committee of every payment received".

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE CAS

3.1 On 10 October 2011, the Appellant filed a statement of appeal with CAS, challenging the Decision, notified to the Appellant with its grounds on 30 September 2011.

3.2 On 18 October 2011, the Appellant filed its appeal brief.

3.3 On 27 October 2011, the Respondent filed his answer.

3.4 By letter of 14 November 2011, the Parties were informed by CAS that the Panel had been constituted as follows: Mr. Lars Hilliger, Attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr. Pantelis Dedes, Attorney-at-law, Athens, Greece (appointed by the Appellant) and Mr. Goetz Eilers, Attorney-at-law, Darmstadt, Germany (appointed by the Respondent).

3.5 On 23 November 2011 CAS invited FIFA to lodge a copy of its file related to this matter to the Panel.

3.6 On 6 December 2011 CAS received the file in question from FIFA and distributed it to the Panel and the Parties.

3.6 On 23 December 2011 CAS forwarded the Order of Procedure to the Parties, which the Parties signed and returned to CAS.

4. HEARING

4.1 On 1 November 2011, the Appellant advised CAS that the preference of the Appellant was for the Panel to issue an award based on the Parties' written submissions. On 4 November 2011, the Respondent informed CAS that it preferred an award based on the Parties' written submissions only. The Parties were then informed that the Panel had decided not to hold a hearing in the case pursuant to Art. R57 of the Code of Sports-related Arbitration (the **Code**). Furthermore, by signing the Order of Procedure, the Parties confirmed that their right to be heard has been respected.

4.2 All written material has been duly taken into consideration by the Panel in its decision-making process.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Art. R47 of the Code states 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".*

5.2 With respect to the Decision, the jurisdiction of CAS derives from art. 62 and art. 63 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of CAS in their written submissions and both Parties confirmed the jurisdiction when signing the Order of Procedure.

5.3 The Decision with its grounds was notified to the Parties on 30 September 2011, and the Appellant's statement of appeal was lodged on 10 October 2011, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the statement of appeal complied with all other requirements of Art. R48 of the Code.

5.4 It follows that CAS has jurisdiction to decide on the present appeal and that the appeal is admissible.

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

6. APPLICABLE LAW

6.1 Art. 62 para. 2 of the FIFA Statutes states as follows: *"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".*

6.2 Article R58 of the Code states 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".*

6.3 In the present matter, the Panel finds that the Parties have not agreed on the application of any particular law. The applicable law in this case shall consequently be the regulations of FIFA and, additionally, Swiss law.

6.4 For the sake of good order the Panel notes that the following provision of the two agreements General Conditions does not constitute that the Parties have agreed on any particular law to govern the agreements: (7) *"In the case of a financial dispute between the Employer and the Coach this shall be subject of arbitration before the competent authority of the Cyprus Football Association (CFA) pursuant to the provisions governing financial disputes as the same are applicable by the CFA".* (15)"*The Parties here agree and acknowledge that their respective relations and (are) governed exclusively by this contract and submit to the exclusive jurisdiction of the competent sporting organs and/or authorities of Cyprus setting aside and/or otherwise waiving the provisions of any labour law and/or labour related tribunal as well as the jurisdiction(of) any civil courts".*

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions filed by the Parties with CAS, even if there is no specific reference to those submissions in the following summary.

7.2 The Appellant

7.2.1 In its statement of appeal of 10 October 2011 and in its Appeal brief of 17 October 2011, the Appellant requested the following from CAS:

1. *"That the CAS states that the FIFA DRC (PSC) should have considered the decision false and should dismiss it.*
2. *That the CAS quashes any decision against the Club for any amount against the Club.*
3. *That the CAS then accepts and the club's appeal and quashes the FIFA DRC (PSC) decision.*
4. *That the CAS grants to the Appellant, ex aequo et bono, an amount in order to contribute to his legal costs and defense".*

7.2.2 In its statement of appeal of 10 October 2011 and in its Appeal brief of 17 October 2011, the Appellant furthermore submitted its position with regard to its requests for relief as follows:

a) It is undisputable that both Parties signed the Agreement and the Supplementary Agreement, which regulates the terms of the Respondent's employment as Assistant Coach of the Club for the 2009/2010 season.

b) By signing these agreements, the Respondent confirmed his obligation to observe and respect the regulations for the technical and disciplinary matters.

c) On 28 July 2009, the Respondent was duly convened to appear before the Board of Directors, and a proper hearing was held. On 31 July 2009, the Board of Directors imposed sanctions on the Respondent and, on the same day, proceeded by terminating the two agreements.

d) The Appellant initially alleges that FIFA, according to the terms of the agreements, had no jurisdiction to try this case.

e) Moreover, the Decision is obviously wrong and contrary to *"the Rules and Regulations of FIFA concerning the status and transfer of the professional players as well as to the provisions of the contract of employment, the agreements and the Internal Regulations".*

f) Hence, the Decision erroneously establishes that the Respondent had no knowledge or information regarding the Internal Regulations of the Club.

g) Furthermore, the Decision erroneously establishes that the termination of the agreements was carried into effect without just cause, which is not correct.

h) The Decision erroneously fails to take into account the fact that the Respondent *"grossly and seriously violated the terms of his agreements and the internal regulations of the club"*.

i) According to the convening notice for the meeting before the Board of Directors dated 28 July 2009 (see para 2.9) as well as the statements made when FIFA dealt with the matter, this violation primarily constituted a *"violation of paragraph 2 of the agreement dated 11.5.2009 and also according to paragraph C of the Internal Regulations and particularly of the Chapter concerning Team Performance that the performance of the team in the European Matches of our team has not been up to the standards required by the Cub and the discipline of the players in the team has not been up to the acceptable standards which resulted to the disqualification of the Club's team from the European competition"*.

j) In consequence, the Decision establishes - also erroneously - that the Respondent did not receive any payments from any other club or other employer for the remaining original contract period, and the Decision erroneously establishes that the Respondent is entitled to the full balance of the agreements.

k) In that connection, the Decision fails – also erroneously - to take into account the fact that the Respondent entered into a new contract of employment with the German football club FC Hansa Rostock within the original contract period.

l) The Respondent's remuneration from his new employment within the original contract period must in all circumstances provide a basis for mitigation of the amount of compensation payable to the Respondent, as the case may be.

7.3 **The Respondent**

7.3.1 In his answer of 27 October 2011 to the Appellant's appeal brief, the Respondent presented the following request for relief:

"1. to reject the Appellant's requests for relief
2. to order that the Appellant shall bear all costs of the procedure including the Respondent's legal fees
3. to reject the request for a hearing".

7.3.2 In support of his requests for relief, the Respondent submitted as follows:

a) First and foremost, neither the Appellant's statement of appeal nor the Appellant's appeal brief contains *"any substantial or detailed submissions that only theoretically might be appropriate to raise doubts about the correctness of FIFA's decision"*.

b) Accordingly, it is by no means adequate simply to state that the Appellant is of the opinion that the Decision is wrong without specifying or proving on what basis such an allegation is made.

c) In addition, the burden of proof showing that the Decision is wrong, as alleged by the Appellant, lies on the Appellant - a burden which the Appellant has in no circumstances been able to satisfy.

d) In regard to the question about the jurisdiction of FIFA, which is doubted by the Appellant, this was not doubted when the matter was pending before FIFA. Consequently, this allegation cannot be made at this point during the arbitration proceedings before CAS.

e) The jurisdiction of FIFA follows directly from Article 22 C of the FIFA Regulations on the Status and Transfer of Players, as this is an employment-related dispute between a club and a coach of an international dimension and as no independent tribunal as defined in Article 22 has been established in Cyprus.

f) In regard to the Appellant's allegation about the Decision being *"false and against the Rules and Regulations",* this allegation by the Appellant contains no specific facts to prove in what way the Respondent has committed gross breach of the agreements, nor does the Appellant specify the regulations or contractual clauses that have allegedly been violated. In that connection, the Panel itself is under no obligation to specify these allegations, which are incidentally denied.

g) The background to the termination of the agreements was the fact that the Club's team lost an international match against the football club OFK Petrovac from Montenegro, the result of which was that the Club left the competition in the second qualification round for the UEFA Europe League, after having won its matches in the first qualification round.

h) The Club had won the first match against OFK Petrovac by 2-1 and lost the return match by 1-3 after extra time.

i) It is submitted that such a defeat does not constitute just cause for the termination of the agreements and, furthermore, that the Appellant, throughout the proceedings, has not been able to reply to a range of questions, including without limitation:

"- What internal regulations has the Respondent violated?
- *What specific behaviour or conduct has caused such violation?*
- *How have these internal regulations been accepted by the Respondent or at least made known to him?*

- *Why are the unknown offenses by the Respondent of such a severe nature that the Respondent* (Appellant) *was not obliged to serve a warning notice on the Appellant* (Respondent) *prior to terminating the contract?".*

j) The Respondent had no knowledge of the Internal Regulations to which the Appellant refers. Moreover, there is under no circumstances any breach of the agreements that constitutes just cause for termination of the agreements. The Appellant has at no point satisfied the burden of proof that this would have been the case.

k) The agreements have thus been terminated without just cause, the effect of which is that the Respondent, as correctly mentioned in the Decision, is entitled to receive compensation for such termination.

l) Considering the fact that the Agreement runs concurrently with the Supplement Agreement, the Respondent agrees with the Decision that the balance of the agreements for the remaining contract period amounts to EUR 80,000.00.

m) In that connection, the mitigation of this amount is contested on the ground that the Respondent has not received any remuneration under other contracts of employment within the original contract period.

n) The Appellant has stated that the remuneration set out in the contract subsequently entered into between the Respondent and the German football club FC Hansa Rostock must be used for mitigating the Respondent's compensation, which is contested.

o) First and foremost, the burden of proof to show that the Respondent has received other income within the contract period lies on the Appellant, and the Appellant has not been able to satisfy this burden.

p) In all circumstances, the contract in question did not take effect until 1 June 2010, which was therefore after the expiry of the contract period agreed between the Appellant and the Respondent.

q) It is thus correctly stated in the Decision that this subsequent contract between the Respondent and the German club is of no relevance to the calculation of the Respondent's compensation since the two contract periods do not overlap.

r) Finally, the Respondent does not maintains his claim for payment of a bonus and reimbursement of taxes payable in Germany, if applicable, which was previously raised when the matter was pending before FIFA.

8. DISCUSSION ON THE MERITS

8.1 The Panel first of all notes that although the Appellant consistently refers to the fact that the appealed decision has been pronounced by the dispute Resolution Chamber of FIFA, the appealed decision has correctly been pronounced by the Players' Status Committee. In considering the case, the Panel has therefore disregarded this misunderstanding.

8.2 Thus, the main issues to be resolved by the Panel are:

a) Was the FIFA PSC competent to deal with the dispute under the Agreement and the Supplementary Agreement?
b) Were the Agreement and the Supplementary Agreement terminated with just cause by the Appellant due to the Respondent's breach of the term herein?
c) Is the Respondent entitled to receive compensation from the Appellant in the event that the Agreement and the Supplementary Agreement were terminated without just cause and, if so, what should the amount of such compensation be?

a) Was the FIFA PSC competent to deal with the dispute under the Agreement and the Supplementary Agreement?

1. The Appellant submits that the FIFA was not competent to deal with the original dispute and, in these circumstances, render its Decision. The Panel notes that article 15 of the General Conditions of the two agreements states:

"The Parties here agree and acknowledge that their respective relations and (are) governed exclusively by this contract and submit to the exclusive jurisdiction of the competent sporting organs and/or authorities of Cyprus setting aside and/or otherwise waiving the provisions of any labour law and/or labour related tribunal as well as the jurisdiction(of) any civil courts".

2. It appears from art. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (2008 edition) that the Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players.

3. Art. 22 of the Regulations on the Status and Transfer of Players (2008 edition) reads as follows: *"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:*
a)…
b)…
c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;
…".

4. According to art. 23 of the same regulations, the Players' Status Committee shall adjudicate on any of the cases described under art. 22 c and f as well as on all other disputes arising from the application of these regulations, subject to art. 24.

5. Notwithstanding that the Regulations on the Status and Transfer of Players is not directly applicable to coaches (see para 8.2.c.2), the specific provisions of art. 22 and 23 are directly applicable to coaches (see the direct and explicit extension of the provisions to include matters relating to coaches).

6. *Prima facie*, the FIFA PSC is thus competent to deal with the dispute at hand unless the exception clause mentioned in art. 22 is applicable. However, this exception clause will be applicable only on condition that reference has specifically been made to the relevant independent arbitration tribunal, which is not the case in either the Agreement or the Supplementary Agreement. The Panel therefore concludes that the FIFA PSC was competent to deal with the dispute.

7. Finally, the Panel notes that the Appellant never challenged the FIFA PSC competence during the course of the first instance proceedings. Therefore, the Appellant is considered as having accepted such competence and cannot contest it for the first time before CAS.

b) Were the Agreement and the Supplementary Agreement terminated with just cause by the Appellant due to the Respondent's breach of the term herein?

1. According to the General Conditions of both agreements: *"(11) The present contract may be terminated and/or suspended (as the case may be) for one of the following reasons. (…) b) In the case of a breach or default of very serious terms of this contract by the Coach. (14) The present contract is terminated when: (…) d) unilaterally for a very serious reason. For the purpose of this contract a "very serious reason" means any serious breach and/or serious default of the terms and/or conditions of the contract, the disciplinary rules of the employer and/or the CFA and the constant wrongful behaviour and/or conduct by any one (of the) Parties".*

2. As mentioned above, the Appellant terminated the two agreements in July 2009 on grounds of the Respondent's alleged breach of the terms of these agreements and the Internal Regulations, including, in particular *"of the Chapter concerning Team Performanæ that the performance of the team in the European Matches of our team has not been up to the standards required by the Club and the discipline of the players in the team has not been up to the acceptable standards which resulted to the disqualification of the Club's team from the European competition".*

3. The Respondent has denied having committed any breach of any of the agreements in a way that would entitle the Appellant to terminate the agreements with just cause, and the Respondent has further stated that the burden of proof showing that such breach has in all circumstances been committed lies on the Appellant and that the Appellant has in no circumstances been able to satisfy this burden of proof.

4. The Panel agrees with the statement made by FIFA regarding the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed.

5. The Panel notes that this is in line with art. 8 of the Swiss Civil Code (**Swiss CC**), which stipulates as follows:

"Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit".

In free translation

"Each party must, if the law does not provide for the contrary, prove the facts it alleges to derive its right".

As a result, the Panel reaffirms the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them …. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

6. Against the background of an examination of the FIFA Decision and based on the appeal proceedings, the Panel finds that the Appellant has failed to satisfy this burden of proof sufficiently.

7. This means, for instance, that the Appellant has failed to satisfy the burden of proof that the Respondent had accepted or, in the least, had knowledge of the Club's Internal Regulations.

8. Moreover, the Appellant has in no circumstances been able to satisfy the burden of proof to demonstrate that the Respondent has breached the agreed terms of employment in a way that would entitle the Appellant to terminate the Agreement and the Supplementary Agreement with just cause.

9. The Panel notes, in compliance with CAS practice, that the absence of sporting results cannot, as a general rule, constitute *per se* a reason to terminate a contractual relationship with just cause.

10. The Panel therefore agrees with the conclusion of the Decision, which provides that the Respondent cannot be deemed to have breached the Agreement and/or the

Supplementary Agreement in such a way that it entitles the Appellant to terminate these agreements with just cause.

11. As both agreements were indisputably terminated by the Appellant on 27 July 2009, the Panel concludes that the termination has been without just cause.

c) Is the Respondent entitled to receive compensation from the Appellant in the event that the Agreement and the Supplementary Agreement were terminated without just cause and, if so, what should the amount of such compensation be?

1. It appears from the Decision that the PSC awarded compensation to the Respondent with reference to and by application of the Regulations on the Status and Transfer of Players.

2. As mentioned under chapter 6 above, the applicable law in this case shall be the various regulations of FIFA and, additionally, Swiss law. However, the Panel notes that art. 17 of the Regulations on the Status and Transfer of Players is not applicable in the present dispute: the applicability of these regulations to a coach (as opposed to a player) cannot be established according to CAS case law. In this respect, the Panel refers to the finding by the CAS Panel in CAS 2008/A/1464 & 1467, para 68, according to which *"(…) Article 1 of the FIFA Regulations ("Scope") provides that the Regulations concern "players", not coaches. Moreover, the FIFA Statutes no longer contain the provision which appeared in artide 33.4 of their 2001 version, which equated coaches with players".*

3. During these proceedings, there has been no disagreement between the Parties concerning the amount of the Appellant's monthly salary under the Agreement and the Supplementary Agreement, and it can be taken into account that this salary corresponds to a net amount of EUR 8,000.00 per month.

4. The Panel notes that art. 337c of the Swiss Code of Obligations (CO) provides that in case of termination without just cause of an employment contract of set duration, the employer must, in principle, pay to the employee everything which the employee would have been entitled to receive until the agreed conclusion of the agreement. The Panel also notes that the burden of proof lies on the Respondent, as he requests compensation for the breach by the Club. The Panel thus concludes that the Respondent, *prima facie*, is entitled to receive financial compensation as a consequence of the Appellant's termination of the two agreements without just cause.

5. The Panel then notes that it is an undisputed fact in the proceedings that the Respondent, in the period concerned - from August 2009 to May 2010 - would have been entitled to receive a total net salary of EUR 80,000.00, equivalent to 10 months of net EUR 8,000.00 each. The Panel therefore uses this amount as a basis for the further calculations.

6. Art. 337c para. 2 CO sets forth the principle that any amount which the employee saved, earned or intentionally failed to earn further to termination can be deducted in mitigation of the amount of the compensation. This reflects the general principle of damage mitigation.

7. The Panel notes that it is the Appellant that must carry the burden of proof showing the existence of circumstances that can justify mitigation of the amount of compensation, (see CAS 2011/A/2321 para. 8.40).

8. The Appellant states in that connection that the Respondent has entered into a contract with the German football club FC Hansa Rostock within the contract period originally agreed between the Parties and that the remuneration received by the Respondent under this contract within the original contract period should provide a basis for mitigation of the amount of compensation payable to the Respondent, as the case may be.

9. In support of this allegation, the Appellant has produced printouts from the web-based encyclopaedia Wikipedia, dated 15 July 2010, from which it appears, among other information, that the Respondent is manager and Head Coach of this German club.

10. The Respondent denies having entered into a contract of employment with any other club within the original contract period, and the Respondent has received no other income in this period.

11. In support of his allegation, the Respondent has produced a copy of a contract of employment between the Respondent and FC Hansa Rostock, dated 31 May 2010, from which is appears, among other information, that the Respondent would take up his appointment as Head Coach as of 1 June 2010.

12. As mentioned above, the burden of proof showing that circumstances exist to justify any further mitigation lies on the Appellant.

13. The Panel finds that inadequate proof is available to show that the Respondent has received any additional income for the original contract period, and the Appellant is found not to have satisfied the burden of proof to demonstrate that.

14. In that connection, the Panel attaches particular attention to the contents of the contract of employment produced, from which it appears that this new contract of employment does not take effect until 1 June 2010.

15. Moreover, the Panel notes that the contents of the printouts produced by the Appellant were modified most recently on 14 July 2010, i.e. a date subsequent to the date of expiry of the original contract period. For this reason alone, the weight of evidence of these printouts is consequently extremely limited.

16. Based on the foregoing, the Panel can conclude that the Respondent, as a consequence of the Appellant's termination without just cause, is entitled to receive compensation corresponding to a monthly net salary of EUR 8,000.00 for 10 months, which no mitigation. As the claim for interest is undisputed by the Parties, the amount must, in compliance with Swiss CO art. 104, carry interest at the rate of 5% per year as from 24 January 2011, which is likewise in accordance with the Decision.

9. SUMMARY

9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the Agreement and the Supplementary Agreement between the Parties were terminated by the Appellant without just cause and that the Respondent is entitled to compensation in the amount of EUR 80,000.00 with interest of 5% per year as of 24 January 2011.

9.2 The Appeal is therefore dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 10 October 2010 by Anorthosis Famagusta FC against Mr. Heinz Peter Vollmannn regarding the decision pronounced by the FIFA Players' Status Committee on 24 January 2011 is dismissed.

2. The decision of the FIFA Players' Status Committee of 24 January 2011 is upheld.

3. (…).

4. (…).

5. All further and other requests for relief are dismissed.