Arbitration CAS 2012/A/2792 Igor Sergeevich Strelkov v. CJSC FC Krylia Sovetov, award of 1 February 2013

Panel: Mr Mark Hovell (United Kingdom), President; Mr Mika Palmgren (Finland); Prof. Lucio Colantuoni (Italy)

Football
Termination of a contract of employment without just cause by the club
Compensation for damages
Unpaid wages arising prior to the end of the contract

1. **Where the termination of the contract by the club is unlawful or without just cause, the club breached the contract and a compensation must be paid as set out in the contract.**

2. **According to custom and practice in the world of football, clubs do not look to penalise their players, nor should they, each time they catch a cold or have a short term illness; the custom and practice is to pay them their salary regardless. It follows that a player should be paid his salary for those days corresponding to arrears of contract existing at the date of the breach namely the days corresponding to a short term illness and the days during which a player refused to attend the club to train on his own while he was willing to train with the rest of the squad at the pre-season training camp.**

1. THE PARTIES

1.1 Mr. Igor Sergeevich Strelkov (hereinafter referred to as the "Player" or the "Appellant") is a professional football player.

1.2 CJSC FC Krylia Sovetov (hereinafter referred to as the "Club" or as the "Respondent") is a football club with its registered office in Samara, Russia. It is a member of the Russian Football Union (hereinafter referred to as the "RFU") and plays in the Russian Premier League.

2. FACTUAL BACKGROUND

2.1 Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by 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 is a professional football player of Russian nationality. On 1 March 2010, he signed a labour contract with the Club for the duration from 1 March 2010 until 15 December 2012 (hereinafter referred to as the "Contract"). Further, on the same date, the Player signed an appendix to the Contract (hereinafter referred to as the "Appendix") which contained additional obligations on both parties.

2.3 On 22 January 2011, the Club and the Player agreed that the Player could leave the Club's pre-season training camp and the parties agreed that the Player could start to look for a move to another club.

2.4 On 31 January 2011, the Player met with the Club's sporting director, Mr. Marushko, stating he had been unable to find another club and that he now wished to stay at the Club.

2.5 On 2 February 2011, the Club wrote to the Player to notify him that he would be training in compliance with an individual training programme, rather than joining the squad at the second pre-season training camp. The Club stated that the Player should have arrived for training at the Club on 1 February 2011.

2.6 On 3 February 2011, the Player wrote to the general director of the Club, in reply to the Club's letter of 2 February 2011, stating that he did not agree with training alone and that he believed he should join the team at the second training camp.

2.7 The Player remained absent from the Club for the period 1 February 2011 to 17 February 2011.

2.8 On 18 February 2011, the Player wrote to the Club explaining his absence and requesting permission to train with other football clubs during the period 18 February 2011 to 3 March 2011. The Club, by way of letter of the same date, authorised the Player's request.

2.9 On 18 February 2011, an amendment to the Contract (hereinafter referred to as the "Amendment") was signed by the Club and the Player. The Amendment provided that in the event of termination of the Contract by the Player, should he find a new club to move to or a termination by the Club, on the basis of disciplinary sanctions, then the Player must pay the Club compensation in the agreed sum of USD 60,000. The Club and the Player agreed upon a period of unpaid leave between 18 February and 3 March 2011, to enable the Player to train with and find another club.

2.10 On 3 March 2011, the Player visited a doctor and received a medical certificate stating that he was on sick leave for the period of 3 March 2011 to 10 March 2011.

2.11 On 9 March 2011, the Club issued an order to apply disciplinary sanctions against the Player in the form of dismissal and termination of the Contract (hereinafter referred to as the "First Dismissal Order").

2.12 On 10 March 2011, the Club wrote to the Player stating that they had considered the Player's explanatory note and that it had been concluded that the Player in the period after 31 January 2011 and for the period 8 to 17 February 2011 was absent from the Club without a valid

reason and enclosed the First Dismissal Order. Further, the Player submitted a claim to the RFU's Dispute Resolution Chamber (hereinafter referred to as the "Russian DRC".

2.13 On 10 March 2011, the transfer window closed in the Russian Premier League.

2.14 On 11 March 2011, the Russian DRC held a hearing in relation to this matter with the parties present. The parties were aware that the Russian DRC dismissed the First Dismissal Order, as it had been served on the Player during a period of sick leave.

2.15 Later on 11 March 2011, the Player sent a statement of dismissal to the Club asking the Club to dismiss him from 11 March 2011 due to the breach of the Contract by the Club, ie that the Club had failed to register the Player as a member of its squad for the 2011/12 Season (hereinafter referred to as the "Player's Dismissal Request").

2.16 Also on 11 March 2011, the Club again sought to terminate the Contract with the Player, for the Player being absent from the Club without a valid reason during the period 8 to 17 February 2011 by drawing up another dismissal order on the same grounds as the First Dismissal Order (hereinafter referred to as "the Second Dismissal Order").

2.17 On 15 March 2011, the Club wrote to the Player providing him with the Second Dismissal Order.

2.18 On 26 April 2011, the written decision of the Russian DRC (hereinafter referred to as the "First DRC Decision") was notified to the parties. The First DRC Decision stated, as follows:

"1. To dismiss a claim of Strelkov I.S.;

2. To defeat the order no. 25-K dated 9 March 2011 dismissing Strelkov I.S.;

3. To find Strelkov I.S.'s absence from the workplace for the period from 4 February 2011 to 17 February 2011 as without valid reasons;

4. To dismiss the compensation demands from PFC Krylia Sovetov to Strelkov I.S.;

5. To dismiss an imposition of 4 months disqualification against Strelkov I.S.;

6. The current decisions come into force from the moment of issue".

2.19. On 29 April 2011, the Appellant submitted a claim to the Court of Arbitration for Sport (hereinafter referred to as the "CAS") and the procedure was opened as CAS 2011/A/2428 challenging the First DRC Decision.

2.20. On 10 May 2011, the Player again applied to the Russian DRC this time with the demand to change the wording of the Second Dismissal Order from the Club to reflect the Player's Dismissal Request and requesting financial compensation.

2.21. On 3 June 2011, the Russian DRC dismissed the Player's claim against the Second Dismissal Order as it was aware of the appeal to the CAS and stated that the *"…2006 edition of the Regulations on the Status and Transfer of Players provides that the DRC stops the hearing proceedings in cases where the claimant turned to a court in a dispute involving the same parties, on the same subject and on the same grounds"* (hereinafter referred to as the "Second DRC Decision").

2.22. On 28 September 2011, the Appellant appealed the Second DRC Decision to the Committee of the RFU for the Status of Players (hereinafter referred to as the "RFU PSC").

2.23. On 21 October 2011, the RFU PSC suspended that appeal whilst the dispute was before the CAS in procedure 2011/A/2428.

2.24. On 6 February 2012, the CAS issued the award to the parties. The CAS 2011/A/2428 award ruled:

"1. The appeal filed by Mr Igor Sergeevich Strelkov on 29 April 2011 is admissible in part and the Panel shall only consider Mr Igor Sergeevich Strelkov's prayers for relief against the decision of Russian Football Union's Dispute Resolution Chamber dated 11 March 2011.

2. The Appeal is partially upheld and item 3 of the decision is replaced as follows:-

Mr Igor Sergeevich Strelkov's absence from CJFC FC Krylia Sovetov from 1 to 18 February 2011 was with valid reasons and not in breach of his contract with CJSC FC Krylia Sovetov.

3. PFC Krylia Sovetov shall bear the costs of the proceedings, to be determined and served on the parties by the CAS Court Office.

4. Each party shall bear its own legal and other costs incurred in connection with these arbitration proceedings".

2.25 On 14 February 2012, the Player applied to the RFU PSC to reopen the case.

2.26 On 21 March 2012, the RFU PSC ruled (hereinafter referred to as the "Appealed Decision"):

"1. To partly accept professional athlete I.S. Strelkov's claim.

2. To oblige CJSC "PFC Krylia Sovetov" to pay Strelkov I.S. compensation amounting to three average monthly salaries as the compensation for the termination of labour agreement by Club's initiative, without guilty actions of the employee, which amounts to 2,642,143 (two million six hundred and forty-two thousand one hundred and forty-three) Rubles (adjusted for personal income tax).

3. To reject a claim of Strelkov I.S. to change the ground of dismissal.

4. To reject a claim of Strelkov I.S. to paying compensation for the termination of Labour Agreement amounting to full salary until the end of the agreement.

5. To reject a claim of Strelkov I.S. to paying salary for the period from 1 February 2011 until 11 March 2011".

2.27 On 20 April and on 24 May 2012, the Player wrote to the Respondent and the RFU PSC respectively seeking to enforce paragraph 2. of the Appealed Decision.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 On 4 May 2012, the Appellant filed a statement of appeal with the CAS. He challenged the above mentioned Appealed Decision, submitting the following request for relief:

"Mr. Igor Sergeevich Strelkov is therefore asking the Court of Arbitration for Sport to overturn and amend the ruling of the Players Status Committee of RFU in following parts:

1. to oblige CJSC "SC Krylia Sovetov" to pay to Strelkov I.S. compensation amounting to 3 average monthly salaries as the compensation for the termination of labour contract by clubs initiative, without guilty actions of the employee, which amounts to 2 642 143 (two million six hundred and forty-two thousand one hundred and forty-three) Rubles adjusted for personal income tax.

2. The claim of Strelkov I.S. to change the ground of the dismissal is rejected.

3. The claim of Strelkov I.S. to pay him compensation for the termination of labour contract in the amount equivalent to the full salary until the expiry date if the contract is rejected.

4. The claim with Strelkov I.S. to pay him salary for the period 1 February 2011 until 11 March 2011 is rejected".

3.2 On 18 May 2012, the Appellant filed his Appeal Brief with the CAS, seeking to challenge the Appealed Decision, as set out in the Statement of Appeal and to challenge the Second DRC Decision too. In his Appeal Brief, the Appellant particularised his request for relief.

3.3 On 17 July 2012, the Respondent filed its Answer, with the following request for relief:

"The Respondent asks to rule the Appeal as inadmissible for the reason that the Appellant's action show that he had actually admitted the Appealed decision.

In case if the Panel deems possible to fulfil the trial on the merits, the Respondent respectfully asks the Panel:

1. to reject the appeal lodged by the Appellant;

2. *to uphold the decision of the RFU Players' Status Committee dated 21 March 2012;*

3. *to establish that the arbitration costs shall be borne by the Appellant as the only responsible of this trial;*

4. *to condemn the Appellant as the only responsible of this trial to the payment in favour of the Respondent of the legal and other expenses incurred by the Respondent related to the current proceedings (including the postal expenses for sending the answer and other materials on the matter, travel expenses of the Respondent's representative; air and train tickets; hotel accommodation, daily subsistence allowance)".*

4. THE CONSTITUTION OF THE PANEL AND THE HEARING

4.1. By letters dated 7 and 8 June 2012, the parties agreed that the current procedure be referred to the same Panel as heard the case 2011/A/2428. By letter dated 17 July 2012 the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: Mr. Mark Hovell, President of the Panel, Mr. Mika Palmgren and Prof. Lucio Colantuoni, arbitrators; the same Panel that had heard the case 2011/A/2428. The parties did not raise any objection as to the constitution and composition of the Panel.

4.2. A hearing was convened on 3 September 2012 at the CAS premises in Lausanne, Switzerland. All the members of the Panel were present. The Panel was assisted by Ms. Louise Reilly, CAS Counsel.

4.3. The Appellant was not personally present nor were there any witnesses or experts providing evidence or opinions at the hearing.

4.4. The representatives for the parties attended the hearing.

4.5. The parties were given the opportunity to present their cases, submit their arguments and to answer the questions posed by the Panel. A summary of the submissions is detailed below. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to its written award. The parties were given the opportunity to make final written submissions on the issue of Russian Statutes relating to sick pay and on their respective costs and expenses incurred in this matter.

4.6. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions (before and after the hearing) and at the hearing, even if they have not been summarised in the present award.

5. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

5.1 In summary, the Appellant submitted the following in support of his appeal and made the following requests for relief in his appeal brief:

5.2 At the hearing of the Russian DRC on 11 March 2011 the Club knew that the First Dismissal Order was illegal. In accordance with Article 8.3 of the Contract, the Club should pay a 3 months' salary compensation in the case of a groundless dismissal by the Club. The Player was dismissed on 9 March 2011 and on 11 March 2011. In the First Dismissal Order, the Player was groundlessly dismissed which was provided for in the First Decision and then approved by the CAS Award in 2011/A/2428. Due to the First Dismissal Order the Club should pay a 3 months' salary compensation.

5.3 Item 2 of the Appealed Decision should be amended to state *"compensation in an amount of 2.642.143 Rubles is charged for an illegal dismissal under Order 25-K of 09.03.2011"*. The Appellant notes that the Respondent attempted to dismiss him, for no valid reason, on 9 March 2011 and that should trigger this payment.

5.4 Due to the fact that the Player had not been selected for the Club's team and he could not play in the Russian Premier League, on 11 March 2011, the Player sought to be dismissed by the Club due to that breach of contract. As such, he served the Player's Dismissal Request. If the Club had acted upon this then the wording of the Second Dismissal Order should have stated: *"the breach of the Labour Contract by the employer"*. The Appellant noted that pursuant to Article 11 of the RFU Regulations and Statutes and Transfer of Players (2011 Edition) (hereinafter referred to as the "RFU Regulations") if a club does not select a player for the team, then it is a *"substantial violation"* of his contract. The Appellant acknowledged at the hearing that this edition of the RFU Regulations came into force in May 2011, and the 2006 Edition were correct at the time of this dispute and did not contain such an article, but submitted it was analogous.

5.5 However, the Club issued the Second Dismissal Order on him also apparently dated 11 March 2011. The Player only knew about the Second Dismissal on 15 March 2011 and believes the Second Dismissal Order was probably made *"ante-date"* ie after the Club had received the Player's Dismissal Request. At the hearing the Appellant claimed (and the fax transmission sheet confirmed) that the Player's Dismissal Request was sent to the Club at 17.31 pm on 11 March 2011. Whilst the Appellant could not prove the Respondent may have prepared the Second Dismissal Order after 11 March 2011, he implied that was indeed the case, as the Club would realise that termination of the Contract in accordance with the Player's Dismissal Request would not trigger Article 8.3 of the Contract and result in more damages.

5.6 The RFU PSC did not evaluate the fact that the Player applied to the Club on 11 March 2011 with the Player's Dismissal Request, such dismissal to be on different grounds than the one by which the Club sought to dismiss him. Therefore, the Player's Second Dismissal Order should have been for the ground of a severe breach of the Contract by the Club, consisting of non-registration of the Player with the official team list for the Season 2011/2012. However, this request was not considered or simply ignored by the Club. The RFU PSC should have established whether the Second Dismissal Order was lawful and the Appealed Decision should have stated that the ground for the dismissal really was a severe violation of the Contract by the Club.

5.7 The Player requests that item 3 of the Appealed Decision be amended to the following:

"to establish the fact that the Player submitted a discharge notice because of a severe breach of labour contract by the employer – non-registration of professional football player Strelkov I.S. to the official team list for participation in 2011/2012 Championship, while there was effectively agreement;.

to recognise a player's dismissal under Order #25-K of 11 March 2011 as without grounds; and to establish the fact as severe breach of labour contract by the employer – non-registration of professional football player Strelkov I.S. to the official team list for participation in 2011/2012 Championship, while there was a valid labour contract".

5.8 As for item 4 of the Appealed Decision: item 4 is illegal and groundless, and the RFU PSC misunderstood the established legal relations between the parties. Such conclusions violate the existing practice of case consideration and are against the principle of justice.

5.9 In accordance with established FIFA practice, in cases when the club illegally dismisses a player, the player should be awarded payment of compensation amounting to the entire salary which he would have received up to the expiry of the contract.

5.10 As a result of the Club's breach, the Player had to sign a contract with a lower division club on worse financial conditions due to the fact that the Club had deprived the Player of an opportunity to train with the team and as the dismissal was during the period when the transfer window within the Russian Premier League was closed. The Player was forced to miss half of the football season and thus did not have the opportunity to train and maintain his sports skills.

5.11 Article 8.3 of the Contract is not applicable to this part of the matter. The Second Dismissal Order should have recited the fact that the dismissal was not made by the Club, but by the Player's own initiative following the Player's Dismissal Request. Item 4 of the Appealed Decision should be amended to read as follows *"to charge in favour of the player 18.569.452 Rubles to the expiry date of the Labour Contract, i.e. til 15.12.2012 as a compensation for a severe breach of labour contract by the employer – non-inclusion of the professional football player to the official team list for participation in 2011/2012 Championship, while there was effective labor contract".*

5.12 The final conclusion of the RFU PSC has no grounds; is against the principles of justice and the fullness of compensation; does not coincide with the existing practice if a case is a consideration by FIFA and contradicts Article 394 of the Labour Code of the Russian Federation (hereinafter referred to as "the Labour Code"). The CAS in 2011/A/2428 had already determined that the Player was justified in refusing to train alone during this period. The Club should still have to pay the Player during this period.

5.13 Item 5 of the Appealed Decision should be amended to read as follows *"to charge the club 1.163.685 Rubles as its salary indebtedness from 01.02.2011 til 11.03.2011".* Whilst the Appellant acknowledged he was absent from the Club between 18 February to 2 March 2011 by agreement and without pay, he should be entitled to his full salary whilst ill (3 March to 10 March) and whilst he was airing his grievance concerning his refusal to train alone (1 February to 17 February 2011). He submitted he was only paid for 1 day (11 March 2011) during that period.

B. Respondent's Submissions

5.14 In summary, the Respondent submitted the following in response:

5.15 The Respondent noted that the Appellant challenged not only the Appealed Decision but also the Second Decision. However, due to a change of the RFU Regulations, only decisions of the RFU PSC can be appealed to the CAS. Further, the Appellant did not appeal the Second Decision to the CAS in a timely manner.

5.16 On 20 April 2012, the Appellant sent a letter to the Club requesting payment in accordance with the Appealed Decision. Further, the Appellant after appealing to the CAS, wrote to the RFU PSC requesting the enforcement of the Appealed Decision. Therefore the Appeal must be considered inadmissible as the Appellant has impliedly accepted the Appealed Decision as he has attempted to enforce it.

5.17 The First Dismissal Order was overruled by the Russian DRC on a technicality (the Player was on sick leave, even though he had not informed the Club at that time) and therefore this made it possible for the Respondent to dismiss the Player on 11 March 2011 for exactly the same reasons that existed at that time. The Player did not attend at the Club after the period of unpaid leave and did not notify the Club of his illness. The Player did not act in good faith.

5.18 The Player admits that the Contract remained "live" due to the fact that in his Appeal Brief the Appellant asked to establish as a fact *"non-registration of professional football player Strelkov I.S. to the official team list for participation in 2011/2012 Championship, while there was a valid labour contract"*.

5.19 The Respondent believed it had valid grounds for terminating the Contract on 11 March 2011. Those were the unacceptable absences by the Player from 4 February to 17 February 2011. This is in compliance with Article 81 of the Labour Code.

5.20 On 10 March 2011 the registration period had ended only in the Premier League (top Russian Division), however in other leagues including the Football National League (the next division of Russia) remained open until 3 April 2011.

5.21 The Respondent never deprived the Player of maintaining his physical condition; the Player was provided with a personal coach and was able to use the Respondent's facilities.

5.22 The Respondent provided the Player with unpaid leave at the Player's request and gave him authorisation to look for a new club. Further, the Respondent agreed to decrease the amount of compensation for the unilateral termination of the Contract by the Player.

5.23 The termination order of 9 March 2011 was provided to the Player for his benefit so he could register for a new Premier League club, before the window shut.

5.24 Due to the circumstances (the Player searching for another club, failing to stay in touch with the Club, failing to attend at the Club after the period of leave and the decision to dismiss the

Player for his absence from work) the Club had no reasonable grounds to register the Player for participation in the Championship of Russia for the Season 2011/2012.

5.25 Not registering the Player for the season is not a severe breach of the Contract which would lead to termination. The 2006 Edition of the RFU Regulations are silent on this point and the 2011 Edition that contains Article 11, are not applicable to this dispute.

5.26 Further, the Club cannot be held liable for non-registration of the Player as the Player had been dismissed.

5.27 The Player's Dismissal Request dated 11 March 2011 was disregarded by the Club as the relevant Club official (the Sports Director) received the request on 14 March 2011 which was after the Second Dismissal Order had been drawn up by the Club's legal department. The fax was sent outside of business hours on that Friday. At the hearing the Respondent stated the preparation of the Second Dismissal Order was a simple task, as all that had changed was the date from the First Dismissal Order. It was denied that it was produced after the Club received the Player's Dismissal Request. Further, Article 80 of the Labour Code stipulates that an athlete has the right to terminate his contract unilaterally if he notifies the employer in writing at least two weeks in advance. As such, the Player's Dismissal Request would not be effective for 2 further weeks.

5.28 The Second Dismissal Order terminated the Contract. Only after the CAS had delivered its award in CAS 2011/A/2428, was it ultimately determined that the Club did not have valid grounds to dismiss, but none the less it had dismissed the Player by virtue of the Second Dismissal Notice. Article 8.3 of the Contract provides what compensation should be payable to the Player in circumstances where the Club dismisses without valid grounds. The Appellant is mistaken about the established FIFA practice as the FIFA and CAS jurisprudence is based upon paragraphs 1 and 2 of Article 17 of the FIFA Regulations on the status and transfer of players (hereinafter referred to as the "FIFA Regulations") – here the breach of Contract is governed by Article 8.3. Further, Article 17 provides for the parties to insert a contractual remedy for any breach in the Contract itself. This 3 months wages remedy is in line with Article 9 of the RFU Regulations. Further, at the hearing, the Respondent noted that the Appellant has never sought to challenge Article 8.3 of the Contract.

5.29 The events of 11 March 2011 evidence that the Club and the Player wished to terminate the Contract as relations between the parties had broken down. In reality both parties wanted to terminate the Contract, but under the Labour Code only the Club could on that day.

5.30 The Appellant refers to the Player's Dismissal Request because of a breach of the Contract by the Club however this request was not present in the application of the Player before the RFU PSC. Further, the Appellant's request to establish the fact *"of severe breach of labour contract by the employer – non-registration of professional football player Strelkov I.S. to the official team list for the participation in 2011/2012 Championship, whilst there was a valid labour contract"* is a new demand which was never made by the Player before.

5.31 The Player's request for compensation in the amount of 18,569,452 Rubles as compensation for the breach of Contract is a new prayer which was not raised before the RFU PSC as the Player asked for compensation due to the unlawful dismissal and not for the non-inclusion of the Player within the registration list.

5.32 Not including the Player in the registration form of the Club was due to the termination of the Contract and does not give rise to a separate cause of action for compensation.

5.33 If the Contract had not contained provisions concerning the amount of compensation then such compensation would be calculated in accordance with the FIFA Regulations and the Player would have to mitigate his losses and the salaries under his new contract would be taken into account. Further, the Player's behaviour would be taken into account if the Player was not acting in good faith.

5.34 The Player should not be rewarded with the salary for the period of 1 February 2011 until 11 March 2011. Firstly, the Player shall not be awarded any salary for the period of agreed unpaid leave (18 February to 3 March 2011). The parties can, and did, agree to this period of unpaid leave pursuant to Article 128 of the Labour Code.

5.35 The Player shall not receive his salary for the period that he was ill (4 March to 10 March 2011). Article 384.10 of the Labour Code stipulates that in the case of an employee's illness, the employee shall be paid not a salary but a temporary incapacity allowance under federal laws. In the post-hearing written submissions, the Respondent acknowledged the Appellant's agreement that, pursuant to clause 1 of Article 7 of the Federal Law No. 255.Ø3, should the Player have more than 8 years pensionable year of service, he should get 100% of his "average income". However, to calculate "average income" one has to look at all income earned over the previous 2 year period with the Club. As the Player was not at the Club in 2009, that results in 0 rubles as part of the calculation of the average, to go with his 2010 income. This eventual sum was paid to him; a total of 4,547.92 rubles (or USD 159.94).

5.36 The Player should not receive his salary for the period from 1 February 2011 until 17 February 2011, the period in which the CAS 2011/A/2428 Award ruled that the Player had valid reasons to be absent from work, as an employee's justified absence from work does not constitute a basis for paying him his salary. Article 129 of the Labour Code stipulates that the wage is remuneration for labour depending on the employee's qualification, complexity, amount, quality of the work performed and on working conditions. Article 132 of the Labour Code stipulates that the wages of each employee depend on his qualification, the complexity of work performed, the amount and quality of the work. Thus the employer's obligation to pay the employee is determined by the fact that the employee performs the work and depends on the amount and quality of the work.

5.37 For the period 1 February 2011 to 17 February 2011 the Appellant was not fulfilling any work at the Club though the Club had provided him with the possibility to fulfil his Contract and did not refuse to pay him his salary had the obligations of the Player been performed. The Club did not deprive the Player of his ability to work or train and consequently shall not be forced to pay salary to the Player for the period when the Player was not working.

6. JURISDICTION OF THE CAS

6.1 Article R47 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code") provides as follows:

"An appeal against a 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 had exhausted the legal remedies available to him prior to the Appeal, in accordance with the statutes of regulations of the said sports related body".

6.2 Article 50(6) of the RFU Regulations states:

"The Chamber's resolution may be appealed in the Court of Arbitration for Sport in accordance with article 59 of the FIFA's Charter".

6.3 Article 59 of the FIFA Statutes states:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members, confederations, Leagues, Clubs, Players, Official and licensed match agents and players agents".

6.4 Further, Article 47 of the Charter of the RFU provides that all RFU judicial bodies' decisions may be appealed to the CAS.

6.5 Also, Article 53 paragraph 2 of the RFU's Dispute Settlement Regulations provides that:

"The decision of the Committee can be appealed against only in the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days from the moment of receiving of the decision)".

6.6 The Panel noted that the Appellant relied upon all of the above regulations. The Respondent did not dispute the jurisdiction of the CAS.

6.7 Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. Therefore, the Panel is satisfied that the requirements set forth in Article R47 of the CAS Code are met, and that the Panel has jurisdiction to decide the present dispute.

7. APPLICABLE LAW

7.1 Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

7.2 In light of the fact that both parties to the Contract have their registered offices and residence, respectively, in Russia and according to the basic principles of private international law, it must be assumed that the Contract is subject to the laws of Russia, even if not expressly stated in the Contract. Further, the "federation" in the sense of Article R58 of the CAS Code is domiciled in Russia, a fact that also requires that Russian Law be applicable. Therefore, the Panel decided that Russian Law shall apply to the merits of the case.

7.3 The Panel noted that the Contract refers to the regulated documents of FIFA, UEFA, RFU and RPL, as well as regulations of acting legislations of the Russian Federation. It follows that the RFU Regulations, Russian Law as well as the FIFA Regulations, are also applicable to the present dispute.

7.4 Regarding the issue at hand, the Panel is of the opinion that whilst the parties have not agreed on the application of any specific national law although both refer to the Russian Labour Code, it is comforted in its position by the fact that, in the Contract reference is made to Russian legislation and to *"the norms of FIFA"*. As a result, subject to the primary application of the Russian Law, the various regulations of FIFA shall also apply subsidiarily.

8. ADMISSIBILITY

8.1 The Appeal was filed within the deadline provided by Article R49 of the CAS Code; the RFU Regulations appearing to be silent on any such deadline. The Appellant complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court office fee.

8.2 The Respondent challenged the admissibility of a number of the Appellant's prayers for relief:

8.2.1 The Respondent submitted that prayers that challenged the Appealed Decision itself should be admissible, but those challenging the Second Decision should not. At the hearing, the Appellant confirmed that he was only seeking to challenge the Appealed Decision;

8.2.2 The Respondent also submitted that the Appellant had accepted the Appealed Decision – his lawyers wrote firstly (and before the Appeal was issued) to seek to enforce that Decision; and then wrote after the Appeal was made to the RFU asking it to enforce the Appealed Decision. The Appellant claimed at the hearing that it was not challenging the whole of the Appealed Decision. Part of his claim is that he is entitled to 3 month's wages under Article 8.3 of the Contract as a result of the First Dismissal Order, which was found to be invalid, yet had triggered the payment provision. The Panel notes that the Appealed Decision also awards 3 months wages under Article 8.3 of the Contract, but for the Second Dismissal Order; that the Appellant has claimed 3 month's wages for the First Dismissal Order and greater compensation for the Second Dismissal Order; that the letters from the Appellant are silent as to whether the 3 months wages they were seeking to enforce were relating to either Order in particular; and that the letter to the RFU expressly stated that the

enforcement request was not to be treated as an acceptance of the Appealed Decision. The Appellant has claimed that he believed he was entitled to at least payment of 3 months wages as a minimum, so should not be stopped from claiming that minimum amount immediately, whilst appealing for the greater sum. Finally, as the Respondent had not appealed against the Appealed Decision, it must accept that this sum is payable, no matter how the matter at hand is determined. The Panel determined to deal with Appellant's prayers for relief in its Appeal, despite these attempts to enforce part of the Appealed Decision, as such enforcement was on a "without prejudice" basis.

8.2.3 The Respondent finally challenged a number of the Appellant's submissions to the CAS, alleging that these were not made to the RFU PSC, so were new arguments that the Panel could not deal with, as its scope is limited to reviewing those matters considered by the RFU PSC when it arrived at the Appealed Decision. The Respondent submitted that the Appellant had advanced new arguments regarding the Player's Dismissal and his arguments that it was the failure to select the Player for the Club's team that resulted in the second dismissal were before the Panel for the first time. Putting the Panel's *de novo* powers under Article R57 of the CAS Code to one side, the Panel notes there was a clear reference to these arguments being before the RFU PSC as that body considered (and had been asked to consider) changing the wording of the Second Dismissal Order. The Panel determines to deal with the Appellant's submissions on that point. Further, the Panel is not limited in scope to a review of the appeal to the RFU PSC, Article R57 of the CAS Code does allow the Panel to consider the prayers for relief against the Appealed Decision on a *de novo* basis. However, the Panel agrees that the Appellant's prayer for relief that it should be entitled to 3 months wages for a breach of Article 8.3 of the Contract on 9 March 2011 should not be entertained. This matter was for Russian DRC to consider when delivering the First DRC Decision and that had already been appealed to the CAS, under procedure CAS 2011/A/2428. For clarity, the Panel shares the view with the Respondent that the Russian DRC cancelled the First Dismissal Order and the effect was that the Contract continued as if that Order had never been made and as such Article 8.3 of the Contract was not triggered.

8.3 It follows that the Appeal is admissible in part and the Panel shall only consider the Appellant's prayers for relief against the Appealed Decision.

9. MERITS OF THE APPEAL

9.1 In these present proceedings, the Panel had to determine the following:

9.1.1 How did the Contract end?

9.1.2 What compensation should that result in, if any?

9.1.3 Should the RFU PSC have awarded any sums for unpaid wages that arose prior to the end of the Contract?

A. How did the Contract end?

9.2 The Panel has already set out above its view that the effect of the First DRC Decision was that the First Dismissal Order was cancelled. That was communicated to the parties on 11 March 2011 and the Contract continued to bind the parties on that day. The Panel notes that the Respondent shares this view and the Appellant must too, if he is seeking damages for breach of contract in this procedure.

9.3 The question remains as to whether the Contract was then terminated by the Respondent refusing to select the Player for its squad, which opened the door for the Player to serve the Player's Dismissal Request and, according to the Appellant, should then have triggered the Respondent issuing a second dismissal order acknowledging its own breach and confirming the termination of the Contract; or whether the Club, in the belief that the Player had breached the Contract by unlawfully refusing to come in and train between 1 and 18 February 2011 (the same reason for the Club issuing the First Dismissal Order) was now no longer sick and could be served with the Second Dismissal Order that legally terminated the Contract for that breach.

9.4 The Panel sees that at first glance there appears to be a race as to who can terminate the Contract first; and notes the Appellant's view that if he did, then Article 8.3 of the Contract is not triggered, so the Panel should look at compensation for the Club's breach equivalent to the balance of wages and benefits under the Contract. The Respondent submits that it had the right to terminate the Contract at that moment in time; and only when the CAS 2011/A/2428 decision was handed down, did the Club lose the legitimacy of that dismissal, but no matter, they had dismissed and Article 8.3 of the Contract came into play. The Appellant demonstrated that he faxed his Player's Dismissal Notice to the Club at 17.31 on 11 March 2011. The Respondent states that its legal department had already drawn up the Second Dismissal Order (as all they had to do was to change the date from the First Dismissal Order) on 11 March 2011; the Sports Director had both before him on 14 March 2011, when he was back in the office and signed the Second Dismissal Order and disregarded the Player's Dismissal Request. The Appellant acknowledged he was unable to disprove this and the Panel notes there was no direct evidence from the Sports Director, merely submissions on this from the Respondent's lawyers.

9.5 The Panel believes that this difference of opinion as to the events on 11 and 14 March 2011 are not crucial in determining how the Contract ended. The Panel notes the position under Article 80 of the Labour Code. The process for the employee is to request the employer issue the formal documentation to terminate the contract of employment, but must do so on giving 2 week's notice. This was not disputed by the Appellant. The Panel notes that the Respondent believed the Appellant was in breach of the Contract by refusing to come in and train. That refusal existed between 1 and 17 February, long before the date of the Player's Dismissal request and before the Club had taken the decision not to include the Player in its squad. The First Dismissal Order was technically defective; so the Second was issued immediately after.

The Panel believes that whether the Sports Director or the Club had or had not received the Player's Dismissal Request, it would have issued the Second Dismissal Notice – the same grounds existed and it had already looked to dismiss on these grounds once. The Panel also notes that the regulations that might allow a player to request his contract be ended if he is not selected for the squad was not in existence at that time; so his request was not bound to result in a dismissal order in his favour.

9.6 Ultimately, the Panel is satisfied that the Second Dismissal Order terminated the Contract when it was duly served on the Player and that the ground that was needed at that time, in accordance with Article 81 of the Labour Code, was the unlawful absence of the Player. The Panel, of course notes its own decision in CAS 2011/A/2428, which later stripped the Respondent of having lawfully terminated (or terminated with just cause) the Contract; but the Panel holds that the Contract had been terminated none the less on receipt of the Second Dismissal Order by the Appellant; ultimately that termination was unlawful (or without just cause).

B. What compensation should that result in, if any?

9.7 The Panel need not look any further than Article 8.3 of the Contract, which states:

"In case of termination of the present Contract by the decision of the Club without guilty activity (inactivity) on the part of the Player, the Club shall pay compensation to the Player for the early termination of the Contract. This compensation shall be made up of the total of three average monthly salaries of the Player".

9.8 The Club terminated this Contract. As stated above, this termination was unlawful or without just cause. The Panel in CAS 2011/A/2428 determined that they did so without any "guilt" on behalf of the Player – he was entitled to stay away and air his grievances about training alone. The Club therefore breached the Contract and the compensation they must pay is exactly as set out in Article 8.3 – 3 months of average salaries.

9.9 The Panel notes that the RFU PSC awarded this sum in the Appealed Decision and calculated the same to be 2,642,143 rubles. The Panel noted that the Appellant had claimed in his Appeal the exact same amount as compensation for the 9 March 2011 breach, which the Panel has rejected above; that the Respondent did not appeal against the Appealed Decision; so is satisfied that this is *"the total of three average monthly salaries of the Player"* and awards this sum to the Player for the Club's breach.

C. Should the RFU PSC have awarded any sums for unpaid wages that arose prior to the end of the Contract?

9.10 The Panel notes that the RFU PSC determined that no sums need be paid to the Appellant with regard to the period 1 February to 11 March 2011. The Panel analyses that period of time as follows:

9.11 The first period was for the dates 1 to 17 February 2011, during which time the Player refused to attend the Club to train on his own. The Panel recalls from CAS 2011/A/2428 that he was

willing to train with the rest of the squad at the pre-season training camp. The Panel determined in that case that his stance was not in breach of Contract and the Panel does not share the Respondent's view that the Player was unwilling to provide his part of the Contract i.e. his labour and fails to see how Articles 129 or 132 of the Labour Code could be used to justify not paying the Player during this period. As such, the Panel determines the Player should be paid his salary for those days.

9.12 It is common ground that the Respondent allowed the Appellant a period of unpaid leave to pursue options and to train with other clubs. The Panel notes this is allowed under Article 128 of the Labour Code and that the period ran from 18 February to 2 March 2011. As such, the Panel determines the Player should not be paid his salary for those days.

9.13 It is accepted that the Player was ill between 3 and 10 March 2011. The Respondent referred to its right to only have to pay the Appellant sick pay in accordance with the Russian Statutes. The Appellant disputed this and claimed he should be entitled to 100% of his salaries, as he had achieved over 8 pensionable years employment in Russia. Whilst the 8 years was not disputed by the Respondent, it did take into its calculation a year when the Player was not employed by the Club, which seems a nonsense to the Panel. The Panel heard the arguments on this point, but ultimately considers what is custom and practice in the world of football – clubs do not look to penalise their players, nor should they, each time they catch a cold or have a short term illness; the custom and practice is to pay them their salary regardless. The Panel determines that the Respondent was showing bad faith in an attempt to punish the Player, when it chose to end the contractual relationship on what ultimately turned out to be on an unlawful basis. As such, the Panel determines the Player should be paid his salary for those days, less the sum already paid as sick leave.

9.14 Finally, the Panel notes that the Player was paid for 11 March 2011.

9.15 The Panel notes the differing calculations provided by the parties; these are somewhat difficult to follow and not helped by the salary in the Contract being in rubles and in the Addendum in USD. The Panel notes that, as stated above, the parties do not dispute that 3 months average salaries equates to 2,642,143 rubles. The Panel calculate that the daily rate for the player should be 1/91th of that sum (there being 91 days in an average quarter of a year) which is 29,034.54 rubles. The Panel calculate that the Player should have been paid for 25 of the days claimed, so 725,863.45 rubles are due, less the 4,547.92 paid as sick pay; resulting in a payment of 721,316 rubles.

D. Conclusion

9.16 The Respondent shall pay the Appellant the sum of 2,642,143 rubles for breach of contract, in addition to the sum of 721,316 rubles as arrears of contract existing at the date of the breach.

9.17 All further prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Igor Sergeevich Strelkov on 4 May 2012 is accepted in part and the decision of Russian Football Union's Players' Status Committee dated 21 March 2012 shall be set aside and replaced by this award.

2. CJSC FC Krylia Strelkov shall pay Mr. Igor Sergeevich Strelkov the sum of 2,642,143 (two million, six hundred and forty two thousand, one hundred and forty three) rubles for breach of contract, in addition to the sum of 721,316 (seven hundred and twenty one thousand, three hundred and sixteen) rubles as arrears of contract existing at the date of the breach.

3. (…).

4. (…).

5. All further prayers for relief are hereby dismissed.