Arbitration CAS 2012/A/2818 Rudolf Urban v. FC Györi ETO kft., award of 14 September 2012

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football
Termination of the employment contract without just cause by the player
Responsibility for agreeing to contractual terms in writing without understanding them
Burden of proof according to Swiss law
Interpretation of a contractual clause according to Swiss law
Principle of the "positive interest"
Sporting sanction according to Article 17 RSTP

1. **In the context of contractual relationships, it is fundamental to be able to rely on the principle that a signature on a written contract binds the signatory to the terms of the contract. If this principle was not to be applied, any business enterprise would become hazardous. As a general rule, a party to a contract is, in principle, bound by its signature. The fact that a player accepted to sign a document written in a language which he does not understand, does not preclude enforcement of the contract. Hence, the player must take responsibility for agreeing to terms in writing without understanding or investigating them The above general rule will naturally not apply if the signature was obtained by mistake or misrepresentation, fraud, duress, undue influence or if the contract is vitiated by illegality.**

2. **According to Swiss law (and since the FIFA Regulations on the Status and Transfer of Players (RSTP) are silent on this score), the rules in connection with burden of proof are set forth in article 8 of the Swiss Civil Code. As a general and natural rule, the party which asserts facts to support its rights has the burden of establishing them. In other words, it is the party's duty to objectively demonstrate the existence of its subjective rights and that it possesses a legal interest for their protection. It is not sufficient for it to simply assert the mere existence of a violation of its interests.**

3. **When the interpretation of a contractual clause is in dispute, one must seek the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract. When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The judging body has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood its declaration.**

4. If the issue to be resolved is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called "positive interest", i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have been, had the contract been performed properly. What is tried to be established is a counterfactual, that is, the financial position of the injured party 'but for' the commission of the illegality.

5. The deterrent effect of article 17 RSTP shall be achieved not only through the risk to have to pay a compensation for the damage caused by the breach or the unjustified termination but also through the impending risk for a party to incur disciplinary sanctions, if some conditions are met. If the appealed decision has not addressed the question of sporting sanctions against the player and the appeal before the CAS only requests the confirmation of the appealed decision, the CAS panel has no reason to intervene and make a determination on a issue which was of no relevance for the FIFA or the injured party.

I. PARTIES

1. Mr Rudolf Urban (hereinafter the "Player") is a professional football player. He was born on 1 March 1980 and is of Slovak nationality. He currently plays for the Polish club Piast Gliwice.

2. FC Györi ETO kft. is a football club with its registered office in Györ, Hungary (hereinafter the "Respondent"). It is a member of the Hungarian Football Federation, itself affiliated to the Fédération Internationale de Football Association ("FIFA") since 1907.

II. BACKGROUND FACTS

3. On 24 August 2007, the Player signed with the Respondent, represented by its managing director, Mr Tibor Klement, a first employment contract (hereinafter "First Contract"). This document contains the description of each party's respective obligations. It is a fix-term agreement for three years, effective from 24 August 2007 until 30 June 2010 and its main characteristics can be summarised as follows (all the quotations are taken from the English version of the contract, filed on behalf of the Player and not disputed by the other party):

- The Respondent agreed to pay to the Player a monthly salary of 200,000 Hungarian Forint (HUF) (corresponding approximately to EUR 700 at the current exchange rate), *"due until the 15th day following the current month"*.

- According to article VIII (entitled *"Responsibility matters"*), paragraph 2 of the First Contract, the Player *"is obliged to pay compensation in an amount equal to his one-and-half month wage in case of causing damage in a careless way"*.

- Article IX (entitled *"Discontinuation and termination of the legal relations"*), paragraph 3 of the First Contract, states that *"Delayed payment on the part of the employer regarding the acknowledged and due remuneration to the employee is considered to be a major breach of duty if the delay in payment is over 60 days"*.

- Article X (entitled *"Miscellaneous"*) reads as follows:

  "1. The parties will mutually endeavour to settle their disputed matters amicably, by way of negotiations.

  2. In all matters not regulated in the present contract, Act I. of 2004 on Sport, as well as the provisions of Act on Labour Code and the regulations of the professional associations are to be applied.

  (…)

  5. In case the parties are not able to settle their disputed issues with each other, they are obliged to turn first of all to the organisations written in the rules of MLSZ for deciding the legal issue. In case the dispute still will come to court, then the parties accept the sole competence of the Permanent Court of Arbitration for Sport.

  6. The parties agree to re-negotiate the financial issues of the contract before 30st June of each year with the stipulation that the offer of the employer cannot be worse than the conditions of the previous championship year.

  7. The present contract was made by the contribution of the player's agent Judr. Josef Tokos.

  8. The present contract was translated in words into Slovakian languages through an interpreter.

  (…)

  The parties have been approved the present contract with their signatures – after reading, interpreting and understanding – as a document reflecting their will in every respect".

4. On 24 August 2007, the Player signed an *"Agreement on the transfer of image"* with the company ETO Kft., also represented by Mr Tibor Klement (hereinafter the "Image Contract"). This document gave ETO Kft. the right to use the Player's image and name for a monthly remuneration of EUR 2,000. The Image Contract was *"concluded for a definite period of time, from 24 August 2007 to 30 June 2010"* and stipulates that *"The Sportsman, based on this Agreement, transfers all authorisations in relation with the determination of the remuneration under this provision to* [ETO Kft.] *and also accepts the fact, that* [ETO Kft.] *will pay nothing to him after the football match, if he evaluates that the activity of the Sportsman – as an advertising medium – as worthless"*. The Image Contract was governed by *"provision 35, section 3-6 of the Act on Sport No. 1/2004. The other matters are governed by the relevant provisions of the Civil Code"*.

5. In his appeal brief filed with the Court of Arbitration for Sport, the Player confirmed that the First Contract and the Image Contract *"fulfil previously orally stipulated and agreed conditions (…), were in Hungarian language, and formally contain formulation, that were translated in words into Slovakian*

language through interpreter, so the player in good faith signed both contracts with no notice that he is concluding contract with two different entities".

6. In relation with the Player's employment, the Respondent contends that it incurred agent fees of EUR 25,000 paid to Mr Jozef Tokos.

7. On 27 February 2008, the Player received a letter from ETO Kft. putting an end to the Image Contract with effect from 31 December 2007. Mr Tibor Klement explained that the contract was terminated as the implementation of *"this contract became unfeasible on 31.12.2007, because from that time Mr. Rudolf Urban already was not a member of first class team's squad. In the mentioned image-transfer contract* (…) *contracting parties recorded that the meaning of this contract that ETO Kft. as a user has exploitation entitlement to develop the advertising surface of the first class football team of Györi ETO FC Kft. From the time when* [the Player] *already was not member of first class football team, he was not able to implement the image-transfer contract, so the contract became unfeasible".*

8. In the present proceedings and in support of his submissions, the Player produced the written statement of Mr Németh Jenö, according to which a) at the Player's request, Mr Jenö arranged a meeting on 31 March 2008 with Mr Tibor Klement, b) he accompanied the Player as an interpreter, c) *"During the meeting Urban Rudolf said that he would like to play in his hometown Kosice (Kassa), but the transfer was possible only if his current contract was terminated and went home as an amateur player",* d) Mr Tibor Klement accepted the Player's request and prepared a *"termination of the professional contract"* as well as a new employment contract, e) both agreements were in Hungarian but were translated to the Player, who signed them before receiving a copy of each. Mr Jenö also stated that *"the Parties agreed one more thing: Urban Rudolf asked when he would receive his two months' salary. Mr. Klement suggested – it was at about 9 p.m. – that the Player should spend the night there and he could collect his dues next day at the counter. The Player answered that he should go home that night, but he would come back later and personally collect his dues".*

9. In line with Mr Jenö's statement, it is thus clear that the Parties signed:

   - an agreement, dated 31 March 2008, whereby they terminated with immediate effect the First Contract. In particular they confirmed that *"they have no further obligation of 30 June 2010 timing, and they have finished all settlements with each other now".*

   - a second employment contract, dated 1 April 2008 (hereinafter "Second Contract"), containing the exact same terms as those included in the First Contract except for the fact that a) it was effective from 1 July 2008 until 30 June 2010, and b) there is no mention regarding the possible involvement of the agent, Mr Jozef Tokos. No new image contract was signed by the Parties.

10. It is further undisputed that:

    - the Player joined the Slovakian club MFK Košice as an amateur;

    - on 1 July 2008, the Player received the instruction to immediately return to the Respondent;

- by means of a letter dated 6 June 2008, the Player terminated the employment contract based on the fact that he had not been paid two monthly salaries corresponding to February and March 2008;

- the Player never went back to Győr, Hungary.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

11. On 16 December 2008, the Respondent initiated proceedings with the FIFA Dispute Resolution Chamber (hereinafter "DRC") to order the Player to pay compensation as a result of his breach of his contractual obligations contained in the Second Contract. The Respondent claimed that the Player should be sanctioned by a ban from playing and requested to pay in its favour an amount of EUR 25,000 corresponding to the Player's agent commission.

12. In a decision dated 15 June 2011, the DRC held that a) the Second Contract was valid and binding upon the Parties; b) by failing to return to the Respondent on 1 July 2008, the Player breached the Second Contract without just cause; c) the claim for compensation was solely based on the costs incurred by the Respondent to recruit the Player; d) the Respondent satisfactorily established that it disbursed EUR 25,000 to acquire the Player's services for the time frame between August 2007 until June 2010; and e) *"in line with art. 17 par. 1 of the* [Regulations on the Status and Transfer of Players, edition 2008] *said amount* (…) *shall be amortised over the term of the employment contract"*.

13. Accordingly and considering the fact that *"one sporting season had already elapsed at the time when the breach of contract occurred, the* [DRC] *concluded that two sporting seasons out of three sporting seasons initially foreseen were still to be executed at the time when the breach occurred"*. Consequently, it found that the Player must pay to the Respondent the amount of EUR 16,666 (= EUR 25,000 ./. 3 x 2), which it considered as reasonable and appropriate.

14. The DRC was silent on the possible imposition of a ban upon the Player.

15. As a result and on 15 June 2011, the DRC decided the following:

"1. The Claim of (…) FC Győri ETO, is partially accepted.

2. (…) Rudolf Urban, has to pay to [FC Győri ETO] the amount of EUR 16,666 as compensation for breach of contract within 30 days as from the date of notification of this decision.

3. In the event that the aforementioned amount is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

4. Any further requests filed by [FC Győri ETO] are rejected. (…)"

16. On 10 May 2012, the Parties were notified of the decision issued by the DRC (hereinafter the "Appealed Decision").

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

IV.1 The Appeal

17. On 25 May 2012, the Player filed a statement of appeal with the Court of Arbitration for Sport (hereinafter "CAS"). On 10 June 2012, he submitted an appeal brief, containing a statement of the facts and legal arguments accompanied by supporting documents. He challenged the above mentioned Appealed Decision with the following request for relief:

"Therefore we suggest to CAS to reconsider the DRCH FIFA Decision and to issue the decision that:

Court of Arbitration for Sport repeals the Decision of the FIFA's Dispute Resolution Chamber and Rudolf Urban is not obliged to pay any financial compensation to the Hungarian Club FC Györi ETO kft*".*

18. The Player's submissions, in essence, may be summarized as follows:

- The First Contract as well as the Image Contract were written in Hungarian, a language which the Player does not comprehend. In spite of the fact that those documents were orally translated to him in Serbian, the Player did not realise that he was actually signing two different contracts involving two different legal entities, i.e. the Respondent and ETO Kft. This situation infringes article 18 bis of the applicable FIFA Regulations on the Status and Transfer of Players.

- The Image Contract was terminated in breach of the general principles of law.

- The remuneration due for the months of February and March 2008 has never been paid to the Player. Under such circumstances and in compliance with article IX of the First Contract, he was entitled to terminate his professional relationship with the Respondent.

- The Player never had the intention to renew his employment with the Respondent. He had been deceived by the Respondent as well as by the interpreter into signing the Second Contract. This is corroborated by the fact that, at the moment of the signature, he was not assisted by his agent and did not receive a copy of the said document.

- The Player was not contractually bound by the Second Contract, which does not include all *"essentialia negotii"* of a valid employment contract, *"because it is missing economic causa, which cannot be seen in two months playing for MFK. Also is doubtful under abovementioned reasons to assert, that by signing the new employment contract, both parties agreed voluntarily on key points"*. Under such circumstances and when summoned to come back to the Respondent on 1 July 2008, the Player *"under his best will,* […] *didn't understand the reason to return to club, because he didn't have knowledge about existence of valid contract with club"*.

- The expenses incurred by the Respondent to recruit the Player were exclusively linked to the First Contract, which was terminated by mutual agreement. Furthermore, the payment of EUR 25,000 by the Respondent to Mr Jozef Tokos has never been established.

- Should a compensation be paid by the Player because of the unilateral and premature termination of the contract without just cause or sporting just cause, it must be calculated exclusively based on article VIII, paragraph 2 of the Second Contract according to which he *"is obliged to pay compensation in an amount equal to his one-and-half month wage in case of causing damage in a careless way"*. In principle, nevertheless, no compensation at all was due.

IV.2 The Answer

19. On 29 June 2012, the Respondent submitted its answer, with the following request for relief:

"The Respondent requests the Sole Arbitrator:

1. To reject Appellant's appeal.

2. To approve The Decision taken by Dispute Resolution Chamber of Federation Internationale de Football Association issued 15 June 2011.

3. To condemn the Appellant to the payment of the whole incurring CAS administration and procedural costs and the fee of the Sole Arbitrator".

20. The submissions of the Respondent, in essence, may be summarized as follows:

- The Player is validly bound by the various contracts which had been translated to him and which he signed.

- The Player's submissions related to an alleged violation of article 18 bis of the applicable FIFA Regulations on the Status and Transfer of Players are completely unfounded in law and irrelevant to the present dispute.

- The Respondent has always been willing to pay to the Player his salaries for the months of February and March 2008. As it results form Mr Németh Jenö's statement (produced by the Player), the Respondent was waiting for the Player to come get his wage arrears in person. *"When Appellant sent to the club his bank account number through his representative attorney-at-law, then the club immediately transferred the two month salary relevance"*. In any manner, *"this payment obligation connects to the first employment contract which was terminated by the parties by mutual accord on 31 March 2008 and this is not in connection to the second employment contract which was breached by* [the Player] *without just cause"*.

- The Respondent accepted to terminate the First Contract only to allow the Player to join the Slovakian club MFK Košice as an amateur until 30 June 2008. This explains why a Second Contract was signed on 1 April 2008 with effect as of July 2008.

- The Respondent has never had the intention to concoct a scheme to make the Player sign a document misleadingly represented to him as a release when it was in fact a renewal of his contract with the Respondent. The Player cannot blame the Respondent for signing the Second Contract in the absence of his agent as it was his choice to arrange and to

attend the meeting of 31 March 2008 just accompanied by the interpreter, Mr Németh Jenö.

- The Respondent did pay EUR 25,000 to Mr Jozef Tokos in order to acquire the Player's services for three sporting seasons.

IV.3 Hearing

21. Pursuant to article R57 par. 2 of the Code of Arbitration for Sport (hereinafter the "Code"), the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held. They expressly agreed to waive a hearing, and, consequently, the Sole Arbitrator decided not to hold one.

V. DISCUSSION

V.1 Admissibility of the Appeal

22. The appeal is admissible as the Player submitted it within the deadline provided by article R49 of the Code. It complies with all the other requirements set forth by article R48 of the Code.

V.2 Jurisdiction

23. The jurisdiction of the CAS, which is not disputed, derives from articles 63 para. 1 of the FIFA Statutes and article R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.

24. It follows that the CAS has jurisdiction to decide on the present dispute.

25. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law. The Sole Arbitrator did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

V.3 Applicable law

26. Article R58 of the Code provides the following:

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

27. Article 66 par. 2 of the FIFA Statutes states that *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

28. Article X.1 of both the First and the Second Contracts states that *"The parties will mutually endeavour to settle their disputed matters amicably, by way of negotiations"*.

29. Pursuant to article X.2. of the same documents *"In all matters not regulated in the present contract, Act I. of 2004 on Sport, as well as the provisions of Act on Labour Code and the regulations of the professional associations are to be applied"*.

30. In the present case it is not clear whether the Parties have agreed on the application of any particular law to settle a possible dispute arising between them.

31. The reference to Hungarian law is only made in article X.2 of the Contracts, the wording of which is quite ambiguous and does not allow considering that it establishes an election of law. As a matter of fact, it places *"Act I. of 2004 on Sport, as well as the provisions of Act on Labour Code"* on the same footing as *"the regulations of the professional associations"*. Furthermore, article X.2 is applicable only in the presence of *"matters not regulated in the present contract"*. With this regard, it appears to the Sole Arbitrator that article X.1 of the Contracts governs expressly and in an exclusive manner the situations where a dispute arises between the Parties. Thus, there is no place for the application of article X.2 with respect to the applicable law in the present dispute.

32. Accordingly, the Sole Arbitrator is of the opinion that the Parties have not agreed on the application of any particular law. The Sole Arbitrator is comforted in his position by the fact that, in their respective submissions, the Parties refer exclusively to FIFA's regulations. Therefore, subject to the primacy of applicable FIFA's regulations, Swiss law shall apply complementarily.

33. The relevant Contracts, which must be considered in the present appeal, were signed after 1 July 2005, which is the date when the FIFA Regulations for the Status and Transfer of Players, edition 2005, came into force. According to article 29 par. 2 of those Regulations,

"Article 1 paragraph 3 a); article 5 paragraphs 3 and 4; article 17 paragraph 3; article 18bis; article 22 e) and f); Annexe 1 article 1 paragraph 4 d) and e); Annexe 1 article 3 paragraph 2; Annexe 3 article 1 paragraphs 2, 3 and 4 and Annexe 3 article 2 paragraph 2 were supplemented or amended by the FIFA Executive Committee on 29 October 2007. These amendments come into force on 1 January 2008".

34. The case at hand was submitted to the DRC after 1 January 2008. Pursuant to article 26 par. 1 and 2 of the FIFA Regulations for the Status and Transfer of Players, edition 2008 (hereinafter the "FIFA Regulations"), the case has to be assessed according to these amended provisions.

V.4 Merits

35. On the one hand, the Player claims that he was entitled to terminate his employment contract due to the late payment of some of his wages, whereas, on the other hand, the Respondent alleges that the Player did not fulfil any of his obligations arising from the Second Contract, which was valid.

36. In addition, the Player claims that he has never had the intention to extend his employment relationship with the Respondent and had been deceived by Mr Tibor Klement into signing the Second Contract, which, therefore, cannot be binding.

37. Hence, the main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:

A. Who failed to perform the contractual obligations with what consequences?

B. Is any compensation due and if so, what is its correct calculation?

C. Is a sporting sanction to be imposed?

V.4.1 Who failed to perform the contractual obligations?

A) Regarding the First Contract

38. It is the Player's submission that, in compliance with article IX of the First Contract and as a result of the late payment of his salaries of February and March 2008, he validly put an end to all contractual relations with the Respondent.

39. Given the months to which the unpaid salaries are related, the Respondent failed to meet his obligations articulated in the First Contract, which was indisputably terminated by mutual agreement. As a matter of fact, on 31 March 2008, the Parties signed a *"Working agreement cancellation by mutual accord"*, whereby they ended with immediate effect the First Contract. In particular they confirmed that *"they have no further obligation of 30 June 2010 timing, and they have finished all settlements with each other now"*.

40. Consequently, when the Player allegedly served the notice of termination on 6 June 2008, the First Contract as well as any claim which may stem from it, had already expired.

41. In other words, the Player cannot derive any right from the delays in the payments of the wages for the months of February and March 2008 and the Sole Arbitrator can dismiss without further consideration the issues raised by the Parties in this regard, in particular whether the Respondent eventually paid the late salaries, when, under what circumstances, whether the Image Contract was validly terminated, whether it is compatible with article 18 bis of the FIFA Regulations, etc.

B) Regarding the Second Contract

42. The possible non-compliance of the Respondent with its obligations under the First Contract does not affect the validity of subsequent agreements entered into by the Parties.

43. Henceforth the question to be resolved is whether the Second Contract was validly established.

44. The Player does not dispute the fact that he signed the Second Contract. As a matter of fact, in his appeal brief, the Player explains that *"On 1 April 2008, both parties signed a new employment contract, again in Hungarian language, valid from 1 July 2008 until 30 June 2010, with the same termination period and same financial conditions as previous employment contract. Only difference was the possibility to loan the player to another club. Player signed this contract again in good faith, and thought that these documents only allows him to play as amateur without noticing that, he is signing the another employment contract, for the same period, as amicably cancelled previous one"*. He further contends that he had been deceived by Mr Tibor Klement and by the interpreter into signing the Second Contract, which is therefore not legally binding. Furthermore and according to the Player, the Second Contract lacks the minimum contents of a contract for it to be held effective.

45. On a preliminary basis, the Sole Arbitrator observes that the Player admittedly signed the Second Contract. He cannot hold against the Respondent the fact that he accepted to sign contractually binding documents in the absence of his agent. Indeed, it is on the Player's own proposal that the meeting with Mr Tibor Klement took place on 31 March 2008. The Player could not ignore the purpose of the meeting, which he requested in order to renegotiate the terms of the First Contract so that he could be transferred as an amateur to his home club MFK Košice. Under the circumstances, the meeting did not come as a surprise to the Player, who, therefore, had the time to make the required arrangements to be accompanied by his agent, should he feel that the latter's presence was necessary. In spite of this, the Player chose to go to the meeting alone and further accepted to immediately sign various documents, including the Second Contract, without taking the time to consult beforehand with his agent and/or a counsel.

46. This said, it is noteworthy to recall that in the context of contractual relationships, it is fundamental to be able to rely on the principle that a signature on a written contract binds the signatory to the terms of the contract. If this principle was not to be applied, any business enterprise would become hazardous. As a general rule, a party to a contract is, in principle, bound by its signature. The fact that the Player accepted to sign a document written in a language which he does not understand, does not preclude enforcement of the contract. All the more so in the present case, since the contractual obligations in the First and Second contract were quasi identical. Hence, the Player must take responsibility for agreeing to terms in writing without understanding or investigating them (SCHMIDLIN B., in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, Genève, Bâle, Munich, 2012, ad art. 23/24 CO, N. 15 - 17, p. 225).

47. The above general rule will naturally not apply if the signature was obtained by mistake or misrepresentation, fraud, duress, undue influence or if the contract is vitiated by illegality (see articles 23 et seq. of the Swiss Code of Obligations). This was manifestly not the case here, since no arguments to this effect were presented to the Sole Arbitrator.

48. The Player claimed that he was not aware of the real implications of the Second Contract, which he had been induced to sign by dint of the wilful deception of Mr Tibor Klement, assisted by the interpreter.

49. The rules in connection with burden of proof are set forth in article 8 of the Swiss Civil Code (since the relevant FIFA Regulations are silent on this score, and as stated above, Swiss Law applies to the extent necessary). As a general and natural rule, the party which asserts facts to support its rights has the burden of establishing them. In other words, it is the Player's duty to objectively demonstrate the existence of his subjective rights and that he possesses a legal interest for their protection (ATF 123 III 60 consid. 3a). It is not sufficient for him to simply assert the mere existence of a violation of his interests.

50. In this case, it appears to the Sole Arbitrator that the Player's arguments regarding the validity of the Second Contract are either not supported by any evidence or are inconsistent in several aspects:

- The Player adduced no evidence to ascertain a plausible plot hatched against him, which is disputed by the Respondent and contradicted by the written statement of Mr Németh Jenö, produced by the Player himself. He also did not establish in any manner that it was the Respondent's intention to prematurely end the agreement, which was initially entered into for three years.

- The Player's account of the facts is less credible than the Respondent's: the latter affirmed that it had accepted to terminate the First Contract only to allow the Player to join the Slovakian club MFK Košice as an amateur until 30 June 2008. The Respondent's story is consistent with the relevant circumstances of the case, with the simultaneousness of the signatures of the various agreements during the meeting of March 2008, with the fact that the Player's wish to play as an amateur inevitably required the termination of the First Contract. The signature of the Second Contract, which entered into force after the end of the Player's stay with MFK Košice and ran until 30 June 2010 does not suggest that the Respondent had acted out of malice. On the contrary, the Second Contract is the coherent continuation of the First Contract, as its terms and duration were identical to the ones mutually agreed on by the Parties at the beginning of their working relationship.

- The Player suggests that the interpreter deliberately translated the Second Contract in inaccurate manner, and thus led him to unwillingly extend his employment contract with the Respondent. He contradicts himself in this respect, when he seeks to rely on the fact that he actually signed the Second Contract on 1 April 2008 in the absence of the interpreter.

- The Player accepts that he signed the Second Contract, which was valid from 1 July 2008 until 30 June 2010. These dates stand out very well on the first page of the Second Contract, even for a non Hungarian-speaking person. Under the circumstances, the Player cannot reasonably expect the Second Contract to expire at the end of his stay with the Slovakian club MFK Košice, for which (according to the Player's own submissions) he was to play as an amateur for two months only. The Player does not offer any explanation as to why the Second Contract is a fix-term agreement for two years although he would be asked to play only for two months with the club MFK Košice.

- Likewise, and contrary to the Player's submissions, the Second Contract is not different from the First Contract with respect to the possibility for the Respondent to loan the Player to a club. Article III.6 of the employment agreement governs the eventual loan of the Player and is identical in both the First and the Second Contracts.

- In this regard, the content, the presentation and the wording of the First and of the Second Contracts are identical, save for the dates and the intervention of the agent, Mr Jozef Tokos. It is clear from even the most cursory glance at the two documents that they were identical. The Player does not give any plausible explanations as to how he could reasonably believe that he was bound by a radically different agreement than the First Contract, when he signed the Second Contract.

- The Player did not clarify in any manner how, in good faith, he believed that he had to sign a new contract with the Respondent in order to play as an amateur for the Slovakian club MFK Košice. In particular, he did not give a reasonable explanation as to the purpose of the new contract, bearing in mind the fact that the Parties had just signed an agreement, dated 31 March 2008, whereby they terminated with immediate effect the First Contract, i.e. all their contractual relations. Under the circumstances, the Sole Arbitrator finds also quite unpersuasive the Player's argument, according to which he candidly believed that, at the end of his stay with MFK Košice, he was free to sign an employment agreement with the employer of his choice and had no obligation to return to the Respondent.

- The mere fact that the Player accepts that the Respondent was in the position to loan his services to another club is at odds with the Player's theory according to which there was no valid employment contract between the Parties.

51. Finally, the Player contests the validity of the Second Contract, which does not include all "essentialia negotii" (key points) of a valid employment contract. Here again, the Player gives no indication about which *"key points"* are missing in the Second Contract, which is identical to the First Contract, the validity of which has never been contested by the Player. Consequently, this argument can be dismissed without further consideration.

52. Based on the foregoing, the Sole Arbitrator finds that the Player cannot dodge contractual liability by failing to properly evaluate the content of the Second Contract, which he fully accepted without any reservation. The fact that he negligently assumed that he was signing another document is of no relevance. Consequently, the Sole Arbitrator holds that, by his signature, the Player had accepted the terms of the Second Contract and, hence, was bound by its conditions.

C) Conclusion

53. As a consequence of the above findings, it appears that there was a valid employer-employee relationship between the Respondent and the Player as of 1 July 2008 and that the Player refused to come back to his employer, despite the latter's legitimate and unambiguous request.

54. In other words, the Player breached his contractual obligations on 1 July 2008, i.e. when he refused to return to Hungary. The Sole Arbitrator observes that the Player and his representative have not been able to establish the existence of any cause justifying this conduct. Consequently, the Sole Arbitrator comes to the conclusion that the Player de facto terminated his contract with the Respondent unilaterally, prematurely and without just cause.

V.4.2 Is any compensation due and if so, what is its correct calculation?

A) In General

55. As already exposed, the present dispute is primarily governed by the FIFA Regulations.

56. In this matter, because of the unilateral and premature termination of the Second Contract and because of the lack of any justifiable cause as per article 14 of the FIFA Regulations, the Sole Arbitrator is satisfied that the Player's termination of the contract with the Respondent does fall under the application of article 17 of the FIFA Regulations. This provision provides for financial compensation as well as sporting sanctions. It reads as follows:

"Article 17 Consequences of Terminating a Contract Without Just Cause

The following provisions apply if a contract is terminated without just cause:

1. *In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

2. *Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*

3. *In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season at the new club. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods.

5. Any person subject to the FIFA Statutes and regulations (club officials, players' agents, players, etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned".

57. Regarding the financial compensation, the DRC exclusively took into consideration the EUR 25,000 paid by the Respondent to Mr Jozef Tokos to acquire the Player's services for the time frame between August 2007 until June 2010. It held that *"in line with art. 17 par. 1 of the* [FIFA Regulations] *said amount* (…) *shall be amortised over the term of the employment contract"*. Considering that *"one sporting season had already elapsed at the time when the breach of contract occurred, the* [DRC] *concluded that two sporting seasons out of three sporting seasons initially foreseen were still to be executed at the time when the breach occurred"*. Consequently, it found that the Player must pay to the Respondent the amount of EUR 16,666, which it considered as reasonable and appropriate.

58. The DRC did not rule on the imposition of a sporting sanction upon the Player.

B) Did the Parties agree on how compensation for breach or unjustified termination shall be calculated?

59. Article 17 par. 1 of the FIFA Regulations sets the principles and the method of calculation of the compensation due by a party because of a breach or a unilateral and premature termination of a contract.

60. This provision states the principle of the primacy of the contractual obligations concluded by a player and a club (*"…unless otherwise provided for in the contract…"*). The same principle is reiterated in article 17 par. 2 of the FIFA Regulations (CAS 2008/A/1519 – 1520, par. 66, p. 21; CAS 2009/A/1838, par. 61, p. 15). Consequently, contractual arrangements to this effect take precedence over the FIFA Regulations.

61. In the present matter it is disputed between the Parties whether, in the contract between the Player and the Respondent, compensation had been agreed upon or not. The Player is of the opinion that the compensation must be calculated exclusively based on article VIII of the Second Contract. This provision reads as follows:

"VIII

Responsability matters

1./ The employee assumes sports disciplinary obligation in accordance with the provisions of the Act on Sport.

2./ The employee is obliged to pay compensation in an amount equal to his one-and-half month wage in case of causing damage in a careless way".

62. When the interpretation of a contractual clause is in dispute, one must seek the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Art. 18 par. 1 of the Swiss Code of Obligations).When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The judging body has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood its declaration (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422).

63. After careful analysis of article VIII, the Sole Arbitrator comes to the conclusion that this provision cannot be interpreted as a penalty/liquidated damages clause in the meaning of article 17 of the FIFA Regulations. In view of its content and structure, it appears that the purpose of article VIII is to implement a code of conduct outlining the principles, values and other rules of behaviour which apply to the Player. Article VIII.2 obviously comes into play exclusively when the Player does not meet the requirements of article VIII.1 and, consequently, causes harm *"in a careless way"*. Nothing in this provision indicates that the Parties have provided how compensation for breach or unjustified termination shall be calculated and have agreed on the amount to be paid by the breaching party in the event of a breach and/or of a unilateral, premature termination of the employment contract. The *"Discontinuation and termination of the legal relations"* is actually featured in another article (IX of the Contract), which does state that *"The parties will settle with each other at the discontinuation of the legal relations"*.

64. In other words, article VIII appears to be a general clause, exclusively of disciplinary nature, sanctioning possible breaches of the *"provisions of the Act on Sport"*.

C) How should the compensation be calculated?

65. Considering that the issue to be resolved is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called *"positive interest"*, i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have been, had the contract been performed properly. What the Sole Arbitrator tries to establish here is a counterfactual, that is, the financial position of the injured party 'but for' the commission of the illegality. (CAS 2008/A/1519-1520, par. 86, p. 24; CAS 2009/A/1856-1857, par. 186, p. 46; CAS 2010/A/2145-2147, par. 61, p. 27).

66. In the case at hand, the Respondent limits its claim for compensation to the agent fees of EUR 25,000 paid to Mr Jozef Tokos when recruiting the Player. In its answer, the Respondent alleges that the DRC *"rightly pointed out the fact that the football player's services had been acquired for duration of 3 sporting seasons by the originally agreed time between the parties and amount of € 25.000.- was invested into that by Respondent, so this was the basis of the calculation of financial compensation to be paid by the football player who breached the contract without just cause"*. In this regard and in its request for

relief, the Respondent *"requests the Sole Arbitrator* (…) *To approve The Decision taken by Dispute Resolution Chamber of Federation Internationale de Football Association issued 15 June 2011".*

67. The Sole Arbitrator observes that the Respondent is not asking for any compensation with respect to the loss of the value of the Player's services, the loss of possible earnings, or the eventual replacement costs. By doing so, the Respondent is consistent and in line with its attitude towards the Player during the first trimester of 2008: at that moment, the Image Contract was terminated due to the fact that it was impossible to generate any advertising income from the Player's image, whose performance was obviously a source of disappointment.

68. As a result and in order to establish the compensation due, the Sole Arbitrator does not need to take into account any objective criteria other than the amount of fees and expenses paid or incurred by the Respondent, and in particular the expenses incurred in order to acquire the Player. Article 17 par. 1 requires those expenses to be amortised over the whole term of the contract, irrespective whether the club has amortized the expenditures in linear manner or not (CAS 2008/A/1519-1520 par. 126, p. 32; CAS 2009/A/1856-1857, par. 206, p. 50).

69. Based on the evidence presented by the Respondent (an invoice of EUR 25,000 signed by Mr Jozef Tokos in relation with *"consultation services regarding the signing of a contract with the* [Player]*"*; a photocopy of Mr Tokos' agent card; a copy of an agreement between the Respondent and Mr Tokos in relation with the recruitment of the Player and with the agent's fees of EUR 25,000; a copy of a bank statement confirming that a payment of EUR 25,000 was made by the Respondent), the Sole Arbitrator has no difficulty to accept that the Respondent paid EUR 25,000 to Mr Jozef Tokos in relation with the signing of the Player.

70. By terminating the Second Contract prematurely, the Player did not allow the Respondent to amortize the amount of the costs which it agreed to pay for the acquisition of his services for a period of three seasons. The contract was considered terminated upon breach of the Player two years before the agreed term.

71. As a result, by breaching the Second Contract, the Player did not allow the Respondent to amortize the cost of its investment, thereby causing a financial damage of EUR 16,666 (EUR 25,000 ./. 3 x 2).

72. In view of the foregoing, the Sole Arbitrator reaches the same result as the DRC in the Appealed Decision. However, the DRC failed to take into account the money actually saved by the Respondent due to the Player's breach of the contract. As a matter of fact, the Respondent has not tried to allege that it had to replace the Player, who was *"not member of first class football team* [and] *was not able to implement the image-transfer contract"* (according to Mr Tibor Klement's own terms). Considering that the Respondent has not claimed that it had to bringt back a replacement for the Player, it actually saved two years of his wages and loyalties that it did not have to pay to the Player.

73. Pursuant to the terms of the Second Contract, the Player was entitled to a monthly salary of 200,000 Hungarian Forint (corresponding approximately to EUR 700 at the current exchange

rate, which is lower than the exchange rate in 2008). Hence, the amounts actually saved by the Respondent amounts to at least EUR 16,800 (= 24 months x EUR 700).

74. In view of the above, the Sole Arbitrator concludes that in these circumstances, the Respondent saved more money compared to its losses because of the breach of contract committed by the Player, and, consequently, no compensation should be awarded to the Respondent after all. It bears repetition that the standard for compensation applied here in line with applicable Swiss law requests from the Sole Arbitrator to determine what the financial situation of the club would have been had the Player not committed the illegality: the club suffered a damage of EUR 16,666 but profited at least EUR 16,800 by not being obliged to pay the Player. The decision could have been different had the club claimed that it was forced to seek reinforcements as a result of the Player's conduct. No similar claims were presented to the Sole Arbitrator. (CAS 2009/A/1856-1857, par. 221, p. 52).

75. The above conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

V.4.3 Is a sporting sanction to be imposed?

76. The deterrent effect of article 17 FIFA Regulations shall be achieved not only through the risk to have to pay a compensation for the damage caused by the breach or the unjustified termination but also through the impending risk for a party to incur disciplinary sanctions, if some conditions are met (cf. article 17 par. 3 of the FIFA Regulations) (CAS 2008/A/1519-1520, par. 82, p. 23).

77. In the case at hand, when it initiated proceedings with the DRC, the Respondent sought an order a) awarding it compensation as well as b) sanctioning the Player by a ban from playing. However, in its Appealed Decision, the DRC did not address the question of sporting sanctions against the Player in accordance with article 17 par. 3 of the FIFA Regulations. As a consequence no ban was imposed upon the Player. In its answer filed before the CAS, the Respondent requested the Sole Arbitrator to confirm the Appealed Decision.

78. Under the circumstances, there is no ground for the Sole Arbitrator to intervene and make a determination on an issue which was of no relevance for the FIFA or the injured party. Consequently, no disciplinary sanction will be imposed upon the Player in the present proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 25 May 2012 by Mr Rudolf Urban is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber dated 15 June 2011 is partially reformed in the sense that Mr Rudolf Urban must not pay any compensation to FC Györi ETO kft. for terminating prematurely and without just cause the Second Contract.

3. (…).

4. (…).

5. All other or further claims and counterclaims are dismissed.