



Arbitration CAS 2012/A/2932 AEK Larnaca v. Jean Francisco Rodrigues, award of 1 July 2013

Panel: Mr Manfred Nan (The Netherlands), President; Mr Markus Bösiger (Switzerland); Mr Rui Botica (Portugal)

Football

Early termination of a contract of employment concluded between a club and a player

Witness statements

Just cause to terminate the contract

Compensation for damages

Reformatio in peius

1. In light of Article R51 of the CAS Code, should a party desire to rely on the witness statement of a witness, it must enclose it to its written submissions. Moreover, if a CAS Panel did not have the opportunity to interrogate a witness during the hearing, it has the discretion to draw the conclusions from such witness statement it deems fit.
2. The non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated– constitute “just cause” for termination of the contract. Where the amount at stake is not “insubstantial” or completely secondary and where the employee/player put the employer/club in default in two occasions, the prerequisites for the employee/player to terminate his employment contract with just cause have been complied with.
3. The principle of the “positive interest” shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. In principle, a player’s objective damages incurred based on the breach of the employment contract by a club will first be assessed, before the application by a CAS panel of its discretion in adjusting this total amount of objective damages based on the *specificity of sport* and the other criteria set out in article 17 of the FIFA Regulations for the Status and Transfer of Players.
4. Considering the general legal principle of *reformatio in peius*, if a party has not filed an independent appeal with CAS to request a higher compensation than awarded by a first instance decision, a CAS panel in appeal is not in a position to award that higher compensation even if the party would have been entitled to it.

I. PARTIES

1. AEK Larnaca (hereinafter: the “Appellant” or the “Club”) is a football club with its registered office in Larnaca, Cyprus. AEK Larnaca is registered with the Cyprus Football Association (hereinafter: the “CFA”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: the “FIFA”).
2. Mr Jean Francisco Rodrigues (hereinafter: the “Respondent” or the “Player”) is a football player of Brazilian nationality. The Player currently has an employment contract with the Polish club Polonia Bytom and has previously played for the Appellant.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties, the proceedings before the FIFA Dispute Resolution Chamber (hereinafter: the “FIFA DRC”) and the evidence examined in the course of the present appeal proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 19 May 2010, the Player and the Club entered into an employment contract (hereinafter: the “Employment Contract”) for a period of two seasons; valid until 31 May 2012.
5. The Employment Contract contained, *inter alia*, the following relevant terms regarding the Player’s salary:

“2.a. For the period 01/06/10 – 31/05/11 of his employment a salary of EURO 10,000 (Ten Thousand Euro) payable in 10(Ten) equal instalments of EURO 1000 (One Thousand Euro),- per month beginning 01/08/10 – 01/05/2011.

b. For the period 01/06/11 – 31/05/12 of his employment a salary of EURO 10,000 (Ten Thousand Euro) payable in 10(Ten) equal instalments of EURO 1000 (One Thousand Euro),- per month beginning 01/08/11 – 01/05/2012.

(...)

3.g. It is further agreed that in case [the Player] does not participate in more than 60% of all the games in the season 2010-2011 then [the Club] have [sic] the right to terminate the contract for the season 2011-2012 without any financial consequences.

3.l. [The Club] undertakes to pay the agreed salary, signing on and bonuses and all other benefits net of tax. All tax and social security will be paid by [the Club] that fully indemnify [the Player] of any costs arising from this obligation and agreed contractual conditions”.

6. The Player asserts that next to the Employment Contract referred to above, a supplementary agreement was concluded between the two parties, allegedly signed on the same date. However, the Player claims not to be in possession of this supplementary agreement as the Club never provided him with a copy. In this respect, the Player asserts that in accordance with the supplementary agreement, he was entitled to receive a further EUR 7,000 per month, *i.e.* a total monthly salary of EUR 8,000.
7. According to the Player, the Club failed to pay his salaries for December 2010, January 2011, February 2011 and March 2011, whereas the salaries for August 2010 until November 2010 were paid with about a month's delay.
8. The Player put the Club in default of payment by letters dated 25 January and 1 February 2011.
9. On 1 March 2011, the Player informed the Club in writing about his decision to terminate the Employment Contract with just cause, referring to the last three salaries having remained unpaid.
10. On 6 September 2011, the Player signed an employment contract with the Polish club Polonia Bytom. This employment contract contains, *inter alia*, the following relevant terms:

§3 Remuneration

1. *The Club undertakes to unconditionally pay to the Player:*
 - a. *In season 2011/2012, the following basic remuneration:*

PLN 123,720.00 (in words: one hundred and twenty three seven hundred and twenty zloty) gross. [Translator's comment: the word "thousand" is missing between "twenty three" and "seven"].

§4 Method of payment

1. *The remuneration shall be paid in the following manner:*
 - a. *in season 2011/2012, starting from 6 September 2011 until 31 December 2011:*

*for the Image – **PLN 11,120.00** (in words: eleven thousand one hundred and twenty) gross monthly*
 - b. *in season 2011/2012, starting from 1 January 2012 until 30 June 2012:*

*for the Image – **PLN 13,580.00** (in words: thirteen thousand five hundred and eighty) gross monthly*
2. *The remuneration shall be paid monthly in arrears within 15 days from the end of a month".*

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 3 March 2011, the Player lodged a claim against the Club in front of FIFA, claiming that on 1 March 2011, he was left with no other option but to unilaterally terminate the Employment

Contract, invoking just cause. The Player claimed to be entitled to an outstanding salary of EUR 32,000 and compensation in an amount of EUR 96,000.

12. In its reply, the Club acknowledged the Employment Contract signed on 19 May 2010 but rejects the existence of a supplementary agreement. According to the Club, the Player was not owed EUR 32,000, as according to the Employment Contract his annual remuneration was of EUR 10,000, receipt of which the Player had already acknowledged through the bank statements presented. In line with the above, the Club alleged that the Player received a total amount of EUR 32,000, thus being a surplus of EUR 22,000, and that such amount was to be refunded to the Club. This argument was interpreted as a counterclaim by the FIFA DRC.
13. On 1 March 2012, the FIFA DRC rendered its decision (hereinafter: the “Appealed Decision”) with, *inter alia*, the following operative part:
 1. *“The claim of the [Player] is partially accepted.*
 2. *The [Club] has to pay to the [Player] the amount of EUR 88,000 within 30 days as from the date of notification of this decision.*
 - (...)
 4. *Any further request filed by the [Player] is rejected.*
 - (...)
 6. *The counterclaim of the [Club] is rejected”.*
14. On 4 September 2012, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:
 - Regarding the issue of the existence of the supplementary agreement “(...) *the Chamber focused its attention on the cheque presented by the [Player] and noticed that it can clearly be attributed to the [Club]. The Chamber considered that the mentioned cheque corresponded to the [Player’s] August salary payment, thus being the first instalment due in accordance with the employment contract signed by the parties on 19 May 2010. Moreover, taking into account the [Player’s] salary in accordance with the contract (i.e. EUR 10,000 a year, EUR 1,000 a month), and the aforementioned cheque for EUR 8,000 which was provided, the Chamber considered it very odd and rather implausible that the [Club] would practically have paid the [Player’s] full annual wage in advance during the first month of employment.*
 - *In addition, the Chamber also paid due consideration to the bank account statements provided by the [Player]. Notwithstanding the fact that they were not considered very solid and substantial evidence, the Chamber nevertheless deemed it appropriate to underline the importance of the amounts portrayed in the [Player’s] bank account statements. The amounts corresponded to EUR 8,000 each whilst more or less coinciding with the salary due dates (i.e. salary for September, October and November 2010).*
 - *Furthermore, the members of the Chamber acknowledged that the Club does not contest that the [Player] received the amount of EUR 32,000 although EUR 22,000 were allegedly paid on a private basis by the [Club’s] ex-president. The Chamber found it highly contradictory, in this respect, that the [Club] now asks that this amount be refunded to the [Club] by the [Player].*

- *On account of the above, the Chamber could not uphold the [Club's] arguments and concluded that the parties had agreed that the [Player's] monthly remuneration was in fact EUR 8,000 and not EUR 1,000 as put forward by the [Club]*”.
- Regarding the analysis as to whether the Player had terminated the Employment Contract with just cause on 1 March 2011, the FIFA DRC considered the following: *“In this respect, the Chamber considered that the [Club's] argumentations were mainly based on the alleged non-existence of a supplementary agreement, as a result of which it held that it had, in fact, paid EUR 22,000 in excess of the [Player's] financial entitlements. As stated above, the Chamber could not uphold the [Club's] line of defence in this respect.*
- In respect of article 3(g) of the Employment Contract, the FIFA DRC *“deemed it important to highlight that art. 3. g) of the contract, in accordance with which the [Club] would have been in the position to unilaterally terminate the employment contract and [sic] the end of the first season, without any financial consequences, is not acceptable due to its potestative character. Indeed, such clause appears to be unilateral and to the benefit of the [Club] only”.*
- For this reason the FIFA DRC came to the conclusion that such clause is *“unacceptable and could not be validly invoked for any potential termination of the employment contract by the [Club]*”.
- *“On account of all the above, the Chamber decided to reject the [Club's] arguments and subsequent counterclaim, and to accept the [Player's] argumentation according to which he had terminated the contract with just cause on 1 March 2011, after having failed to receive his salaries for December 2010, January 2011 and February 2011”.*
- Regarding the outstanding salaries to be paid by the Club to the Player *“the Chamber decided that the [Club] is liable to pay to the [Player] the amount of EUR 24,000 relating to the monthly payments due to the latter as from 1 December 2010 up to 1 February 2011”.*
- Regarding the compensation to be paid to the Player by the Club, the FIFA DRC concluded that, in the absence of a compensation clause in the Employment Contract, *“the amount of EUR 104,000 (i.e. salary as from 1 March 2011 until 1 May 2011 + salary as from 1 August 2011 until 1 May 2012) serves as the basis for the final determination of the amount of compensation for breach of contract.*
- *In continuation, the Chamber verified as to whether the [Player] had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the [Player's] general obligation to mitigate his damages.*
- *The Chamber noted that, according to the [Player's] declaration, he had not been able to sign an employment contract with another club during the relevant period of time. However, and regarding the matter at hand, the Chamber deemed it fit to point out that after the early termination of the contract on 1 March 2011, the [Player] had opportunities to find a new club given that at least two registration periods had been open until today and, thus, to mitigate his loss to some extent.*
- *Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided to partially accept the [Player's] claim and that the [Club] pay compensation*

amounting to EUR 64,000, which was to be considered reasonable and proportionate as compensation for breach of contract in the case at hand”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 24 September 2012, the Club filed a statement of appeal together with 4 exhibits with the Court of Arbitration for Sport (hereinafter: the “CAS”).
16. On 4 October 2012, FIFA informed the CAS Court Office that it renounced its right to a possible intervention in the present arbitration proceedings.
17. On 4 October 2012, the Appellant filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 8 exhibits. The Appellant challenged the Appealed Decision taken by the FIFA DRC on 1 March 2011, submitting the following requests for relief:
 - (a) *“The decision of the Dispute Resolution Chamber, issued on the 01/03/2012, to be overruled.*
 - (b) *Judgment to be issued directing the Player – Respondent to the appeal, to suffer the arbitration and all procedural costs.*
 - (c) *Judgment in favor of the Club and against the Player directing the Player to pay the amount of €22.000 as a consequence of breach of contract and/or unjust enrichment.*
 - (d) *Declaration that the unilateral termination of employment by the Player was without just cause”.*
18. On 8 October 2012, the Respondent nominated Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrator.
19. On 26 October 2012, the Respondent filed its answer, with 23 exhibits, whereby he requested CAS to decide the following:

“It is the Respondent’s position that the information and evidence provided herewith is sufficient to convince the Panel that the Appellant’s Appeal is absolutely groundless and should be dismissed with costs against the Appellant.

More specifically, it is the Respondent’s position that the FIFA DRC was correct in awarding to the Respondent the total amount of €88.000 and in rejecting the Appellant’s claim for €22.000 as absolutely unsubstantiated. Therefore, it is the Respondent’s position that the Panel should uphold the DRC decision on this dispute”.
20. On 30 October 2012, the Appellant nominated Mr Markus Bösiger, attorney-at-law in Zürich, Switzerland, as arbitrator.
21. On 18 January 2013, the Respondent informed the CAS Court Office that no settlement agreement had been reached between the parties.
22. On 21 January 2013, the Appellant requested the CAS Court Office to hold a hearing so that testimony would be heard.

23. On 30 January 2013, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
- Mr Manfred Nan, attorney-at-law in Arnhem, the Netherlands; as President
 - Dr Markus Bösiger, attorney-at-law in Zürich, Switzerland, and
 - Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrators.
24. On 22 February 2013, upon the request of the Panel, the Respondent provided translations of certain exhibits to his answer, a witness statement of Mr Spyros Neofytides and the employment contract he concluded with the Polish club Polonia Bytom.¹
25. On 26 February 2013, the Appellant requested permission to supplement one of the requests for relief in its appeal brief because of exceptional circumstances, in particular the fact that the Appellant had no means of access to the contract revealed by the Respondent and that this contract could greatly affect the decision to be issued, as evidence of the exact figures by which the Respondent had mitigated his losses. Such supplementation consisted of the following:
- “The Player did indeed sign a Contract of Employment (attached as **Appendix I**) with Club Colonia [sic] Bytom SA, dated 6/9/2011, for providing his services as a professional football Player and the use of his image by the Club. The remuneration received in exchange of his services were as follows*
- PLN 123.720** (or the equivalent of €29.734,33)
- PLN 44.480** as image rights for the period Sept – Dec 2011 (or the equivalent of €10.691,04)
- PLN 81.480** as image rights for the period Jan – June 2012 (or the equivalent of €19.584,22)
- PLN 12.000** rent allowance for the period Sep 2011 – June 2012 (or the equivalent of €2.884,22)
- The Player therefore concluded a contract six months prior to the issuance of the decision by the Chamber, however failed to reduce his claim accordingly and or disclose the facts to the Chamber”.*
26. On 27 February 2013, the Respondent informed that he did not object to the Appellant’s request, on the condition that he would be allowed to add some paragraphs regarding his employment contract with Polonia Bytom to his answer. Accordingly, the Respondent requested the Panel to dismiss “*the Appellant’s allegations regarding the amount of his emoluments from Club Polonia Bytom*” and corroborated this with certain arguments. The Respondent also provided evidence of the payments he received from Polonia Bytom in the 2011/2012 season and the costs of a surgery the Respondent had to pay himself due to the alleged unlawful termination by the Appellant.

¹ Only at this stage in the proceedings the content of the Player’s employment contract with Polonia Bytom became known to the Club. This employment contract was also not known to the FIFA DRC when it rendered its Appealed Decision.

27. On 1 March 2013, the CAS Court Office advised the parties that their written submissions had been admitted to the file and the Appellant was invited to comment on the content of the new exhibits provided by the Respondent.
28. On 11 March 2013, the Respondent provided a new document which was allegedly the bill from the Saint George Clinic where the operation was performed.
29. On 12 March 2013, the Appellant argued that the Respondent did not put forward any exceptional circumstances to allow the Respondent to produce new exhibits, which were in any way already at his disposal since 2011, when the Respondent allegedly undertook the surgery. Moreover, the Appellant rejected the Respondent's assertions regarding the medical expenses as they were not part of the claim in the proceedings before the FIFA DRC.
30. On 15 March 2013, the CAS Court Office, informed the parties that the Panel considered that there were no exceptional circumstances which would allow the Respondent to submit its exhibits filed with its letters dated 27 February and 11 March 2013. Accordingly, these exhibits were denied by the Panel, in accordance with Article R56 of the CAS Code.
31. On 26 March 2013, the Respondent expressed his surprise that the exhibits filed with his letters dated 27 February and 11 March 2013 were not admitted to the file. The Respondent considered this to be a misunderstanding as these exhibits, allegedly, had already been admitted to the file by the correspondence from the CAS Court Office dated 1 March 2013. The Respondent considered that any decision to reject the exhibits now would constitute a procedural irregularity as 1) the Respondent only agreed to the Appellant supplementing its appeal brief on the condition that the Respondent would also be allowed to supplement his answer; and 2) by the letter of the CAS Court Office, the parties were informed that both parties' new written submissions (including of course the Exhibits attached thereto) were admitted to the file. Furthermore, by letter of 15 March 2013, the CAS Court Office requested the Appellant to comment on the content of the exhibits filed by the Respondent. However, the Appellant did not comment on the content of the exhibits, but purports to argue that the exhibits should be rejected and to rebut the Respondent's allegations contained in his letter dated 27 February 2013. Finally, the Respondent argued that he had not been given the opportunity to comment on the Appellant's letter dated 12 March 2013.
32. On 28 March 2013, the Appellant agreed to the admissibility of all the appendices to the Respondent's letter dated 27 February 2013. The Appellant however argued that appendix 1 to the Respondent's letter dated 11 March 2013 (the bill of the Saint George Clinic) was not an attachment to his letter of 27 February 2013.
33. On 3 April 2013, the CAS Court Office informed the parties that a hearing would be held on 7 May 2013. In addition the parties were informed as follows regarding the procedural issues:
 - Pursuant to Article R56 of the CAS Code and in light of the parties' agreement, the documents filed by the Respondent on 27 February 2013 were admitted to the file.
 - Pursuant to Article R56 of the CAS Code, considering the disagreement of the Appellant and the fact that the Respondent did not raise any exceptional circumstances, the Panel

confirmed its decision to deny the new document filed by the Respondent on 11 March 2013 (the bill of the Saint George Clinic).

- Regarding the Appellant's letter dated 12 March 2013, the parties were informed that the Panel had decided to admit the entire content of this letter to the file. Although the Appellant was strictly speaking not invited by the Panel to file its observations in respect of the Respondent's letter dated 27 February 2013, the Panel finds that it would be a violation of the Appellant's right to be heard if it would not be given the opportunity to comment on the Respondent's reasoning based on these newly admitted documents.
34. On 25 April 2013, both parties signed and returned copies of the Order of Procedure.
 35. A hearing was held on 7 May 2013 in Lausanne, Switzerland. At the outset of the hearing the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
 36. In addition to the Panel and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:
 - a) For the Club:
 - 1) Ms Pella Demetriades, Counsel;
 - b) For the Player:
 - 1) Mr Paris M. Spanos, Counsel;
 - 2) Mr Jean Francisco Rodrigues, the Player.
 37. During the hearing the Panel heard evidence of Mr Spyros Neofytides, Chairman of the Pancyprian Footballers Association, which is the only association in Cyprus representing professional football players and which is a member of FIFPro. Mr Neofytides was called to be heard as a witness by the Player.
 38. Mr Neofytides was heard by teleconference pursuant to Article R44.2 of the CAS Code and was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Both parties and the Panel had the opportunity to examine and cross-examine the witness. The parties then had ample opportunity to present their case, submit their arguments and answer questions posed by the Panel.
 39. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected.
 40. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the written submissions, evidence and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

41. The Appellant's submissions, in essence, may be summarized as follows:

- The Club strongly rejects the allegation that next to the Employment Contract, a supplementary agreement was concluded. To the contrary, the Club argues that the former President of the Club agreed, in his personal capacity, to pay an additional amount to the Player for his transfer to the team. The Club further argues that the FIFA DRC has been misguided in reaching the conclusion that a supplementary agreement exists, believing that it is undisputed that the Club had defaulted in making salary payments, thus implying that it has accepted that the salary of the Player was higher than EUR 1,000 monthly. Moreover, in the absence of proof of an agreement made in writing, the Club believes that these assertions should be rejected. The Player has provided no proof that the payments totaling to the amount of EUR 32,000 were made by the Club and represent remuneration for four months, nor that the check presented by the Player corresponds to the August salary.
- Following the filing of the case against it by the Player, the Club was informed that the Player had made an oral agreement with the Club's former President, for an additional amount of EUR 43,300, over and above his salary. This agreement was made in the former President's personal capacity and was agreed to be paid by him personally. As a consequence, the Player has no right to request and or receive such monies from the Club, and if he has indeed received such remuneration, this amount should be refunded to the Club.
- The Club is of the opinion that the FIFA DRC erred in respect of the invalidity of article 3(g) of the Employment Contract and finds that such clause is perfectly valid.
- The conclusion of the FIFA DRC that it was undisputed that the Employment Contract was terminated by the Player on 1 March 2011 after having put the Club in default on two occasions is unfounded and contradicting to the parties pleadings, as the Club never accepted the Player's allegations of non-payment or late payment of his salaries.
- In awarding EUR 64,000 as compensation to the Player, the FIFA DRC took into account that the Player had asserted not having been able to find other employment. The Player did not mention any other employment. Moreover, in the opinion of the Club, the FIFA DRC concluded, with no justification, that a proportionate and reasonable sum for compensation for breach of contract is the amount of EUR 64,000, adding also EUR 24,000 as outstanding salaries.
- Finally, the Club considers it to be a fact that the Player signed an employment contract with another club for the season 2011-2012, contrary to his allegations. This is supported by a simple search in the "Google" search engine, where a series of websites show that the Player was employed by the Polish club Polonia Bytom. In result, the Appealed Decision led to the unjust enrichment of the Player, as he has been successful in mitigating his damages, whereas, at the same time, he has received compensation for these damages.

42. The Respondent's submissions, in essence, may be summarised as follows:

- In respect of the existence of a supplementary agreement, the Player asserts that the reasoning of the FIFA DRC in this respect is clear and unambiguous and, without a hint of exaggeration, impeccable. The FIFA DRC attributed the appropriate weight to the documentary evidence provided by the Player proving beyond any doubt that his monthly salary was EUR 8,000 and not the amount alleged by the Club. Next to a check indicating a payment of EUR 8,000 by the Club to the Player and three bank statements showing anonymous payments of EUR 8,000, the Player asserts that the Club has put forward five different and contradicting versions regarding the payment of EUR 32,000 to the Player.
- Regarding the validity of article 3(g) of the Employment Contract, the Player is of the view that the decision of the FIFA DRC in this respect was correct. At the same time, however, it is the Respondent's position that whether the said provision is valid or invalid is absolutely immaterial as this could not have affected the outcome of the case.
- According to the Player, the FIFA DRC's finding that the termination by the Player of the Employment Contract was undisputed was misinterpreted by the Club. The FIFA DRC did not find that the Club did not dispute the claim of the Player for non-payment of his salaries. What the FIFA DRC correctly found is that the Club did not dispute the fact that (a) the Employment Contract had been terminated by the Respondent on 1 March 2011, and; (b) that the Player sent two letters to the Club claiming that the Club was in default for non-payment of his salaries.
- Regarding the Club's allegation that the amount of compensation awarded by the FIFA DRC to the Player (EUR 64,000) was incorrect, the Player maintains that the FIFA DRC applied article 17 of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations") correctly and that this ground of appeal must be rejected as absolutely unfounded.
- Finally, the Player confirms that he had indeed found new employment after the termination of the Employment Contract with the Club. The Player however disputes to have refused or willfully failed to disclose any information to the FIFA DRC. On the contrary, the Clubs tries to deceive and mislead the Panel in this respect. The Player purports that the investigation-phase of the proceedings before the FIFA DRC had closed on 17 June 2011 and that he only signed an employment contract with a new club on 6 September 2011.
- In light of the Club's conduct towards the Player, the FIFA DRC was very lenient by awarding the Player EUR 64,000 while it could have awarded EUR 104,000. In the opinion of the Player, this is the very minimum the FIFA DRC should have awarded and therefore the Panel is requested not to interfere with the amount awarded to it.

V. ADMISSIBILITY

43. The appeal was filed within the deadline of 21 days set by article 67(1) FIFA Statutes. The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fees.
44. It follows that the appeal is admissible.

VI. JURISDICTION

45. The jurisdiction of CAS, which is not disputed, derives from article 67(1) FIFA Statutes (2012 edition) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
46. It follows that CAS has jurisdiction to decide on the present dispute.
47. Under article R57 of the CAS Code, the Panel has full power to review the facts and the law and it may issue a new decision that replaces the decision challenged.

VII. APPLICABLE LAW

48. 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”.

49. The Panel notes that article 66(2) FIFA Statutes stipulates the following:

“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”.

50. The parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

51. In view of the above, the main issues to be resolved by the Panel are:
- a) Was a supplementary agreement to the Employment Contract concluded between the parties?
 - b) Was there just cause for the Player to terminate his Employment Contract with the Club on 1 March 2011?
 - c) If so, should the amount of compensation awarded to the Player in the Appealed Decision be reduced?

a) *Was a supplementary agreement to the Employment Contract concluded between the parties?*

52. The Club strongly rejects the Player's allegation that next to the Employment Contract, a supplementary agreement was concluded. The Club argues that the former President of the Club agreed, in his personal capacity, to pay additional amounts to the Player for his transfer to the team. The Club further argues that the FIFA DRC has been misguided in reaching this conclusion, believing that it is undisputed that the Club had defaulted in making salary payments, thus implying that it has accepted that the salary of the Player was higher than EUR 1,000 monthly. Moreover, in the absence of proof of an agreement made in writing, the Club believes that these assertions should be rejected. The Player has provided no proof that the payments totalling to the amount of EUR 32,000 were made by the Club and represents the Player's remuneration for four months, nor that the cheque presented by the Player corresponds to the August salary.
53. Furthermore, the Club purports that following the filing of the case against it by the Player, it was informed that the Player had concluded an oral agreement with the Club's former President, for an additional amount of EUR 43,300, over and above his salary pursuant to the Employment Contract. This agreement was made in the former President's personal capacity and was agreed to be paid by him personally. As a consequence, the Player has no right to request and or receive such monies from the Club, and if he indeed received such remuneration, this amount should be refunded to the Club.
54. At the occasion of the hearing, the Club made reference to the witness statement of Mr Marios Ellinas, former President of the Club, in which it was determined that he had concluded a private agreement with the Player for an additional amount of EUR 43,300. Such witness statement was filed in the proceedings before the FIFA DRC, but not in the proceedings before CAS. However, the Club maintained that any relevant evidence shown before the DRC can be taken in consideration by a CAS Panel in appeals arbitration proceedings.
55. In respect of the existence of a supplementary agreement, the Player asserts that the reasoning of the FIFA DRC in this respect is clear and unambiguous and, without a hint of exaggeration, impeccable. The FIFA DRC attributed the appropriate weight to the documentary evidence provided by the Player proving beyond any doubt that his monthly salary was EUR 8,000 and not EUR 1,000 as alleged by the Club. Next to a check indicating a payment of EUR 8,000 by the Club to the Player and three bank statements showing anonymous payments of EUR 8,000, the Player asserts that the Club has put forward various different and contradicting versions regarding the payment of EUR 32,000 to the Player. First, in the proceedings before the FIFA DRC, the Club argued that the Player's salary was EUR 1,000 per month and that the surplus amounted to an "advance payment". Second, the Club argued that the Player agreed to receive a "combined salary" for the first six months of his contract, *i.e.* from August 2010 to January 2011. Third, the Club maintained that the Player was only entitled to EUR 10,000 and that the additional EUR 22,000 constituted an overpayment.
56. Furthermore, the Player argues that the witness statement of Mr Ellinas is untrue and cannot be taken into account by CAS. The witness statement was part of the FIFA DRC proceedings,

not of the CAS proceedings. The Player argued that this is a witness statement and if the Club would have desired to rely on such document before CAS, the Club should have enclosed it to its appeal brief. Furthermore, the former President should have been present at the hearing, so the Player would have had the opportunity to cross-examine him. Subsequently, the Player finds that the witness statement cannot be taken into account in the present appeal arbitration proceedings.

57. The Panel observed that in his witness statement and at the occasion of the hearing, Mr Neofytides declared that it has long been the practice in Cyprus that two employment contracts are signed; a) the main employment contract specifying the main terms of employment and providing a very low salary, and b) a supplementary agreement determining the additional salary as agreed by the parties and the rest of the benefits to which the player will be entitled for the duration of his employment with the club. Furthermore, Mr Neofytides declared that to his knowledge *“no non-Cypriot player, playing for a First Division club, such as [the Club], has ever agreed to a salary as low as €1,000 per month with no other benefits. Such an agreement would be unrealistic for Cyprus standards as the costs of living in Cyprus is such that €1,000 per month would not be sufficient for any person to rent a house for his family and pay for food, transportation and all other maintenance costs”*. Mr Neofytides furthermore stated that foreign football players playing in Cyprus, on average, have a monthly salary of around EUR 8,000.
58. In view of the parties’ conflicting positions regarding the existence of a supplementary agreement and taking into account the information provided by Mr Neofytides, the Panel examined the documentary evidence provided by the Player and noted that the Player submitted a check issued by the Club, dated 26 August 2010, and bank statements of his personal bank account, according to which, three payments of EUR 8,000 were made on 8 October, 29 November and 29 December 2010 respectively. Although initially disputed, at the occasion of the hearing, the Club confirmed that it was responsible for these consecutive payments, but that the former President of the Club paid such amounts with the Club’s funds, while they should have been paid from his private funds as he had allegedly concluded a personal agreement with the Player, pursuant to which the Player was entitled to an additional monthly payment of EUR 7,000 on top of his EUR 1,000 monthly salary pursuant to the Employment Contract.
59. The Panel noted that Article R51 of the CAS Code determines the following:
“In his written submissions, the Appellant shall specify any witnesses, including a brief summary of their expected testimony (...)”.
60. The Panel observed that the witness statement of the former President of the Club was not enclosed to the statement of appeal or the appeal brief of the Club. In light of Article R51 of the CAS Code, the Panel adheres to the position of the Player that should the Club have desired to rely on the witness statement of its former President, the Club should have enclosed it to its written submissions. Moreover, since the Panel did not have the opportunity to interrogate Mr Ellinas during the hearing, the Panel finds that it has the discretion to draw the conclusions from such witness statement it deems fit.

61. The Panel finds that because the Club basically confirms the evidence produced by the Player, but then puts forward an alternative explanation regarding unauthorised payments made by the former President of the Club from the Club's funds, the burden of proof in this respect is on the Club. In the absence of any additional documentary evidence corroborating that indeed the former President of the Club was personally responsible for these payments from his own funds, the Panel is not persuaded by such line or argumentation. The Panel is also not convinced to accept such allegations from the Club in light of the contradictory arguments put forward by the Club throughout the proceedings before the FIFA DRC and the present appeal proceedings.
 62. Consequently, the Panel is satisfied to accept that indeed a supplementary agreement was concluded between the Club and the Player and that the Player was entitled to a yearly salary of EUR 80,000 (*i.e.* 10 instalments of EUR 8,000).
- b) Was there just cause for the Player to terminate his Employment Contract with the Club on 1 March 2011?**
63. The Club maintains that the conclusion of the FIFA DRC that it was undisputed that the Employment Contract was terminated by the Player on 1 March 2011 after having put the Club in default on two occasions is unfounded and contradicting to the parties pleadings, as the Club never accepted the Player's allegations of non-payment or late payment of his salaries.
 64. According to the Player, the FIFA DRC's finding that the termination by the Player of the Employment Contract was undisputed was misinterpreted by the Club. The FIFA DRC did not find that the Club did not dispute the claim of the Player for non-payment of his salaries. What the FIFA DRC correctly found is that the Club did not dispute the fact that (a) the Employment Contract had been terminated by the Respondent on 1 March 2011, and; (b) that the Player sent two letters to the Club claiming that the Club was in default for non-payment of his salaries.
 65. The Panel adheres to the statements put forward by the Player. As adjudicated *supra* (cf. §52-62), the Panel examined the parties discussion regarding the existence of a supplementary agreement. The outcome of such discussion is that the Panel has decided that the Player was entitled to a yearly salary of EUR 80,000.
 66. Having established this, it remains undisputed by the Club that four payments were made to the Player. It appears to the Panel that these payments constitute the Player's August, September, October and November 2010 salaries. No evidence is provided that the Club made additional payments to the Player. Accordingly, it appears the Club stopped paying the Player's salaries as from December 2010.
 67. The Panel noted that the Player provided evidence that he put the Club in default of payment on two occasions, *i.e.* on 25 January and 1 February 2011. In the absence of any answer from the Club, the Player finally terminated his Employment Contract with the Club on 1 March 2011, invoking just cause.

68. The Panel observed that on 1 March 2011, the Player's salaries of December 2010, January and February 2011 remained unpaid. CAS jurisprudence determines the following in case a player is not paid for his services during a certain period of time and invokes "just cause" to terminate his employment contract:

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

69. The Panel finds that the prerequisites for the Player to terminate his Employment Contract with "just cause" have been complied with. The amount (a sum of EUR 24,000) is not "insubstantial" or completely secondary, particularly in view of the fact that the Player's yearly salary amount to EUR 80,000. In this respect, although not directly applicable, the Panel feels itself comforted by the Commentary to the FIFA Regulations, which provides the following example in paragraph 3 on article 14 of the FIFA Regulations:

"A player has not been paid his salary for over three months. Despite having informed the club of its default, the club does not settle the due amount. The player notifies the club that he will terminate the employment contract with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".

70. As the Player also put the Club in default of payment on two occasions, the Player drew the Club's attention to the fact that its conduct was not in accordance with the Employment Contract.
71. In this respect, the Commentary to the FIFA Regulations determines in paragraph 5 and 6 to article 14 of the FIFA Regulations that the party "who is responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".
72. Consequently, the Panel finds that the Player had just cause to terminate his Employment Contract with the Club on 1 March 2011 and that the Club is liable to pay compensation for damages incurred by the Player because of the breach by the Club.

c) If so, should the amount of compensation awarded to the Player in the Appealed Decision be reduced?

73. As the breach of the Employment Contract by the Club has been established above, the Panel will now turn its attention to the consequences thereof. In this respect, article 17(1) of the FIFA Regulations (edition 2010) determines as follows:

“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. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. 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”.*

ca) *Outstanding salaries*

74. The Panel will commence with establishing the salaries that remained unpaid to the Player by the Club on the moment the Employment Contract was terminated with just cause by the Player, *i.e.* 1 March 2011.
75. In this respect, it derives from the above (cf. §68) that the Player's salaries of December 2010, January 2011 and February 2011 remained unpaid by the Club. Subsequently, the Panel finds that the Player is entitled to these amounts, constituting a total amount of EUR 24,000 (EUR 8,000 x 3).

cb) *Remaining term under the Employment Contract*

76. Subsequently, the Panel turns its attention to the compensation due for breach of contract by the Club. In order to establish the total amount of compensation due, the Panel must first determine when the Employment Contract was supposed to end pursuant to the Employment Contract as this is disputed by the parties.
77. The Employment Contract clearly determines that it was valid until 31 May 2012. However, the Club appears to have relied on article 3(g) of the Employment Contract in the proceedings before the FIFA DRC, which clause determines the following:

"It is further agreed that in case [the Player] does not participate in more than 60% of all the games in the season 2010-2011 then [the Club] have [sic] the right to terminate the contract for the season 2011-2012 without any financial consequences".

78. The Panel observed that in its Appealed Decision, the FIFA DRC determined that such clause *"is unacceptable and could not be validly invoked for any potential termination of the employment contract by the [Club]"*.
79. The Club is of the opinion that the FIFA DRC erred in respect of the invalidity of article 3(g) of the Employment Contract for two reasons. First, the Club purports that the Player did not invoke any abuse of the article by the Club and that the FIFA DRC, pursuant to article 12(3) of the FIFA Procedural Rules, does not have the power to examine a legal matter *ex officio*. Second, deciding that the relevant provision is invalid lacks reasoning and is based merely on the FIFA DRC's subjective opinion. The Club alleges that the Player's non-participation is clearly evidence of lack of skill and as such the Club's right to dismiss an employee under such condition is not potestative. Most importantly, the FIFA DRC failed to consider that the Player does have the right, by virtue of the FIFA Regulations to terminate his contract if he participates in less than 10% of the matches, on the grounds of "sporting just cause". As a result, this clause was not only far from potestative, but on the contrary, aimed to reach a balance between the parties' right in termination.
80. Regarding the validity of article 3(g) of the Employment Contract, the Player is of the view that the decision of the FIFA DRC in this respect was correct. At the same time, however, it is the

Player's position that whether the said provision is valid or invalid is absolutely immaterial, as this could not have affected the outcome of the case for two reasons. First, irrespective of whether the Club had the right or did not have the right to terminate the Employment Contract on the basis of article 3(g), the fact remains that the Club had never exercised that right. The "intention" of the Club to terminate, if there was any such intention, is absolutely irrelevant. Second, whether the Club had the right or did not have the right to terminate the Employment Contract on the basis of article 3(g) is immaterial because that right, even if valid, had not yet accrued by the time of termination of the Employment Contract by the Club.

81. The Panel adheres to the position of the Player that the Club never attempted to exercise this provision and finds that it is not put in a position to assess the validity of the present clause as no evidence was provided by the parties, based on which the Panel could possibly conclude that the triggering element of article 3(g) was complied with.
82. Furthermore, the fact remains that the Club did not exercise such option as the Employment Contract was legitimately terminated by the Player already on 1 March 2011. Insofar as the Club intends to do so, the Panel finds that it cannot rely on such provision retroactively by arguing that it would have invoked such provision if the Employment Contract would not have been terminated prematurely by the Player.
83. Consequently, the Panel has no hesitation determining that article 3(g) of the Employment Contract did not become material and that, should the Employment Contract not have been breached by the Club, it would normally have ended on 31 May 2012.

cc) Compensation for breach of contract

84. The Panel noted that there is ample jurisprudence of CAS on the issue of breach of contract. The majority of this jurisprudence establishes that the purpose of article 17 of the FIFA Regulations is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, §80, with further references to: CAS 2005/A/876, p. 17: "[...] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' [...]"; CAS 2007/A/1358, §90; CAS 2007/A/1359, §92: "[...] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability [...]"; confirmed in CAS 2008/A/1568, §6.37).
85. In respect of the calculation of compensation in accordance with article 17 of the FIFA Regulations, the Panel follows the framework as set out by previous CAS Panels as follows:

"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof."

As it 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 (or “expectation 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 had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (...).

The principle of the “positive interest” shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations” (CAS 2008/A/1519-1520, at §80 et seq.).

86. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Panel will now proceed to assess first the Player’s objective damages incurred based on the breach of the Employment Contract by the Club, before applying the discretion of the Panel in adjusting this total amount of objective damages based on the *specificity of sport* and the other criteria set out in article 17 of the FIFA Regulations.
87. In respect of the compensation for breach of contract, the Club argued that in awarding EUR 64,000 as compensation to the Player, the FIFA DRC took into account that the Player had asserted not having been able to find new employment. However, the Club considers it to be a fact that the Player signed an employment contract with another club for the season 2011-2012, contrary to his allegations. This is supported by a simple search in the “Google” search engine, where a series of websites show that the Player was employed by the Polish club Polonia Bytom.
88. As a consequence, the Club finds that the Appealed Decision led to the unjust enrichment of the Player, as he had been successful in mitigating his damages, whereas, at the same time, he has received compensation for these damages. In the opinion of the Club, the FIFA DRC concluded, with no justification, that a proportionate and reasonable compensation for breach of contract is the amount of EUR 64,000 (together with the amount awarded as outstanding payments leading to a total compensation of EUR 88,000).
89. Regarding the Club’s allegation that the amount of compensation awarded by the FIFA DRC to the Player (EUR 64,000) was incorrect, the Player maintains that the FIFA DRC applied article 17 of the FIFA Regulations correctly and that this ground of appeal must be rejected as absolutely unfounded.

90. Also, the Player confirms that he had indeed found new employment after the termination of the Employment Contract with the Club. The Player however disputes to have refused or wilfully failed to disclose any information to the FIFA DRC. To the contrary, the Player finds that the Club tries to deceive and mislead the Panel in this respect. The Player purports that the investigation-phase of the proceedings before the FIFA DRC had closed on 17 June 2011 and that he only signed an employment contract with a new club on 6 September 2011.
91. In light of the Club's conduct towards the Player, the Player finds that the FIFA DRC was very lenient by awarding the Player only EUR 64,000 while it could have awarded EUR 104,000. In the opinion of the Player, this is the very minimum the FIFA DRC should have awarded and therefore the Panel is requested not to interfere with the amount awarded to it.
92. The Panel noted that pursuant to the Employment Contract and the additional agreement, the Player was entitled to receive a total amount of salary of EUR 104,000 net (from March until May 2011 and ten months of the 2011/2012 season) until the end of his Employment Contract.
93. The Panel finds that the Player was not obliged to inform the FIFA DRC of the employment contract he concluded with Polonia Bytom because the investigation-phase had already ended. However, following the *de novo* competence of CAS this is a fact that can be taken into account in the present appeal arbitration proceedings. In this respect, Article R57 of the CAS Code determines that “[*t*]he Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.
94. Therefore, the Panel proceeds to review the content of this employment contract. The Panel noted that paragraph 3 of this employment contract, titled “Remuneration”, determines that Polonia Bytom undertook to pay an unconditional amount of remuneration of PLN 123,720.00 gross to the Player in the 2011/2012 season.
95. Paragraph 4 of the employment contract, titled “Method of payment”, determines the following:
- “1. *The remuneration shall be paid in the following manner:*
- a) *in season 2011/2012, starting from 6 September 2011 until 31 December 2011:*
for the Image – PLN 11,120.00 (in words: eleven thousand one hundred and twenty) gross monthly
- b) *in season 2011/2012, starting from 1 January 2012 until 30 June 2012:*
for the Image – PLN 13,580.00 (in words: thirteen thousand five hundred and eighty) gross monthly
2. *The remuneration shall be paid monthly in arrears within 15 days from the end of a month”.*
96. In this respect, the Club argued that the Player was entitled to a total amount of PLN 261,680 or the equivalent of EUR 62,893.81 (PLN 123,720 (EUR 29,734.33) + PLN 44,480 (EUR 10,691.04) + PLN 81,480 (EUR 19,584.22) + PLN 12,000 (EUR 2,884.22)).

97. The Player maintained that the “**total amount of remuneration Club Polonia agreed to pay to the Respondent for the football Season 2011 – 2012 is PLN123.720 as specified in paragraph 3 of the Contract of Employment**” and that paragraph 4 of such employment contract only determined the method of payment. According to the Player, this is corroborated by the fact that if the total amounts in paragraph 4 of the employment contract are added up, they lead to a total amount of PLN 123,720, which is exactly the amount of remuneration specified in paragraph 3. Additionally, the Player maintained that the Club used an incorrect conversion rate and that the amount of PLN 123,720 is not EUR 29,734.33, but EUR 27,218.40.
98. The Player therefore argues in its letter to CAS of 27 February 2013, that it is evident that due to the Club’s unlawful termination of the Player’s Employment Contract, the Player suffered the following damage:
- “(a) €24.000 for unpaid salaries for the months of December, January and February 2011, which was awarded to him by the FIFA decision
 - (b) €24.000 for the salaries he would have earned for March, April and May 2011, which was also awarded to him by the FIFA decision and
 - (c) €52.781,60 which is the difference between the amount the Respondent would have received from the Appellant for the football season 2011 – 2012 (€80.000) and the amount of his contract with Club Polonia (€27.218,40), but FIFA only awarded to him €40.000.
- In a nutshell, the Respondent suffered a total damage equaling to €100.781,60 but FIFA only awarded to him €88.000. Therefore, the Appellant’s allegation that the amount awarded to the Respondent by FIFA should be reduced should be dismissed as unfounded”.*
99. As set out *supra* (cf. §92), the Panel noted that should the Player’s Employment Contract not have been breached by the Club, he would, in principle, have been entitled to a total payment of EUR 104,000 net.
100. The Panel adheres with the position expressed by the Player, that paragraph 4 of the Player’s employment contract with Polonia Bytom only determines the method of payment of the amount determined in paragraph 3 of such contract. Consequently, the Panel finds that only the amount of PLN 123,720 can be taken into account in determining the total amount of compensation due to the Player.
101. The Panel noted that this amount of PLN 123,720 gross, either in the calculation applied by the Club (EUR 29,734.33), or in the calculation applied by the Player (EUR 27,218.40), does not lead to a lower amount than the amount of EUR 64,000 that was awarded by the FIFA DRC in its Appealed Decision, if such amount is deducted from the base amount of EUR 104,000.
102. Hence, the objective damages incurred by the Player because of the breach of the Employment Contract by the Club are in fact higher as the EUR 64,000 awarded in the Appealed Decision.
103. Based on article 17 of the FIFA Regulations and the above-reference CAS jurisprudence, a CAS Panel has the discretion to adjust the amount of objective damages awarded in light of the *specificity of sport, i.e.* by taking into account certain sport specific circumstances that would justify

a higher or lower amount of compensation to be awarded, or based on the other criteria mentioned in such provision.

104. The Panel finds that in the present matter there are no circumstances proven by the Club that would justify the amount of objective damages incurred by the Player to be reduced. The Panel adheres to the position expressed by the Player, that the FIFA DRC was actually very lenient in awarding the Player only EUR 64,000 while it could have awarded EUR 104,000. However, considering the general legal principle of *reformatio in peius* and the fact that the Player did not file an independent appeal with CAS against the Appealed Decision, the Panel is not in a position to award a higher compensation to the Player.
105. Consequently, the amount of compensation awarded to the Player by the FIFA DRC is confirmed and the Club's appeal is dismissed.

B. Conclusion

106. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
1. A supplementary agreement to the Employment Contract, pursuant to which the Player was entitled to an additional monthly payment of EUR 7,000 on top of his EUR 1,000 monthly salary, was concluded by the parties.
 2. The Player had just cause to terminate his Employment Contract with the Club on 1 March 2011.
 3. The amount of compensation awarded by the FIFA DRC in its Appealed Decision is confirmed.
107. Consequently, the Panel confirms the Appealed Decision in full. Any other requests and prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 September 2012 by AEK Larnaca against the Decision issued on 1 March 2012 by the FIFA Dispute Resolution Chamber is dismissed.
2. The Decision issued on 1 March 2012 by the FIFA Dispute Resolution Chamber is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.