



Arbitration CAS 2013/A/3107 FC BATE Borisov v. Aleksandr Petrovich Gutor, award of 31 January 2014

Panel: Mr José Juan Pintó (Spain), President; Mr Efraim Barak (Israel); Mr Bernhard Heusler (Switzerland)

Football

Contract of employment between a player and a club

CAS jurisdiction

Termination of contract by a player without sporting just cause

Determination of the financial compensation

1. The applicable provisions of a federation and of an employment agreement shall be interpreted together and not isolated from each other since they are part of a single and same regulatory framework. In this regard, the decisions of the arbitration body of a federation shall be deemed final and binding if all the internal legal remedies have been exhausted. However, if, according to the applicable provisions, once the legal remedies within the federation are exhausted, its members have the right to seek an independent and impartial arbitral tribunal to solve their potential disputes, where there is no independent and impartial arbitral tribunal recognized by the federation's regulations other than the CAS, and as the CAS is a truly independent and impartial arbitral tribunal recognized by the FIFA Statutes expressly mentioned in the federation's statutes, CAS has jurisdiction to hear the employment related dispute.
2. In accordance with the national federation's regulations, a player is entitled to unilaterally terminate his contract on the basis of sporting just cause if three cumulative prerequisites are met. A player who failed to comply with one of the prerequisite i.e. the legal deadline to execute the unilateral termination of the agreement, is not entitled any more to terminate the agreement for sporting just cause.
3. In light of the applicable provisions and of the fact that a party terminated an employment agreement without sportive just cause, compensation shall be in principle payable by the party in breach to the injured party. In light of the choice of law clause foreseen by the parties in the agreement, which also calls for the applicability of the FIFA Regulations, the criteria foreseen in article 17 of the FIFA RSTP shall be also taken into account in the determination of the compensation. Article 17 of the FIFA RSTP stipulates that one of the "objective criteria" to be considered in the task of determining the compensation is also the remuneration under the existing contract. Another criterion to be taken into account as a moderating factor is the "*specificity of sport*". In this respect, fairness can require to take into account the very specific circumstances surrounding the termination of the agreement for the calculation of the amount of the compensation.

I. THE PARTIES

1. FC BATE Borisov (hereinafter, also referred to as “Bate” or the “Appellant”) is a football club with its registered office in Minsk, Belarus. It is a member of the Association Belarusian Football Federation (hereinafter also referred to as “ABFF”), affiliated to the Fédération Internationale de Football Association (hereinafter, “FIFA”).
2. Mr. Aleksandr Petrovich Gutor (hereinafter, the “Player” or the “Respondent”) is a professional football player of Belarusian nationality who plays as goalkeeper.

II. FACTS OF THE CASE. THE PROCEEDINGS BEFORE FIFA AND THE CAS

3. A summary of the facts and background giving rise to the dispute will be developed below based on the parties’ submissions and the evidence taken. Additional background may be also mentioned in the legal considerations of the present award. In any case, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

II.1 THE AGREEMENT SIGNED BY BATE AND THE PLAYER. THE EVENTS GIVING RISE TO THE DISPUTE

4. In 2008, the Player joined the professional team of the Appellant.
5. On 20 January 2011, Bate and the Player entered into a new employment agreement in Russian (hereinafter referred to as the “Agreement”) starting 1st February 2011 and ending 31 December 2015 which comprised, among others, the following clauses (the translation of the Agreement was provided by the Appellant as exhibit 5 of its Statement of Appeal):

“3. The Player undertakes:

[...]

3.4 to abide by the statutes of the Federation Internationale de Football Association, the Union des Associations Europeennes (sic) de Football, the Statues (sic) of the Association “Belarus Football Federation”, decisions of the Court of Arbitration for Sport in Switzerland, Regulations of the Football Championship and Regulations of the Football Cup of the Republic of Belarus;

3.5 to recognize the disciplinary and judicial bodies, created and acting on the basis of the statutes of the organizations mentioned in paragraph 3.4 of this Contract, as well as to recognize and to comply with their regulations and decisions that comply with the laws of the Republic of Belarus;

[...]

4. *The Player shall have the right:*

[...]

4.8 to protection of his labour rights in competent judicial bodies of ABFF in compliance with ABFF's Statutes, as well as to apply to FIFA, or a court, or another state body after having applied to all judicial instances of the ABFF.

[...]

8. *The following remuneration of labour is fixed for the Player:*

8.1 *Salary on the date of signing this Contract in the amount:*

- *12,672,410 (twelve million six hundred seventy-two thousand four hundred and ten) Roubles a month, including;*

- *tariff rate of 1,125,263 Roubles;*

- *monthly premium to the tariff rate of 50% which totals 562,631 Roubles, as an additional labour incentive for employment on contract in compliance with the Decree of the President of the Republic of Belarus n° 29 dated 26.07.1999;*

- *monthly increment of 5% for the length of service, which totals 84,395 Roubles;*

- *monthly personal bonus of 10.900,121 Roubles.*

[...]

18. The matters not provided for in this Contract shall be governed by the labour legislation, FIFA and UEFA statutes, FIFA, UEFA and ABFF Regulations on the status and transfer of players, Statutes of ABFF, Regulations of the Football Championship and Regulations of the Football Cup of the Republic of Belarus, with regulations and rules of ABFF, other regulatory documents. In case of failure agree, all disputes arising between the parties shall be submitted to the competent bodies of the ABFF and shall be considered with its governing documents. The decisions of the competent bodies of ABFF are final".

6. At the end of the Belarusian National Championship season 2011, which calendar, contrary to the calendar of other European national championships, spans over the course of a natural year, the Player was named player of the year by the readers of *Pressball*, a Belarusian newspaper. During the season 2011, the Player participated in 42 matches.
7. On 30 March 2012, Bate and the Player agreed to increase the Player's monthly salary from 12.672.410 Rubles to 68.390.800 Rubles via an amendment to the Agreement.
8. In the season 2012, the Player only participated in 4 Bate's official matches, namely the following: Bate v. Gomel (Supercup), Minsk v. Bate (National Championship), Naftan v. Bate (National Championship) and Bate v. Shakhter (National Championship). It was A. Gorbunov,

the other Bate's goalkeeper, the one who participated in most of the official matches (39) during the same season.

9. The Player was absent from the following 8 official matches of Bate during the 2012 season: (i) 2 matches on 18 and 24 May 2012 due to his participation in an unofficial tournament in Toulon, representing his national team in the preparation for the Olympic Games, (ii) 4 matches dated 13 July, 18 July, 25 July and 1 August 2012 due to his participation in the Olympic Games as member of his national team, and (iii) 2 matches on 2 September and 13 October 2012 due to the participation of his national team in the World Cup qualifiers.
10. On 25 November 2012, Bate played its last match of the 2012 Belarusian National Championship.
11. On 5 December 2012, Bate played against Bayern Munich in the UEFA Champions League group stage.
12. On 20 December 2012, the Player sent a fax to Bate in which he unilaterally terminated the Agreement on the basis of sporting just cause, alleging that he had participated in less than 10% of Bate's official matches during the season 2012. The relevant part of this fax reads as follows:

"I [...] would like to claim labour contract termination with FC Bate Borisov from 20 December 2012 on the basis of point 11 article 9 chapter three of ABFF Regulations on status and transfer, as I took part in less than 10 per cent official games of FC Bate Borisov in 2012 season".
13. On 19 February 2013, the Player signed an employment agreement with the Belarusian club FC Dinamo Minsk.

II.2 THE PROCEEDINGS BEFORE THE ABFF

1. Court of First Instance: Players' Status Committee of the ABFF

14. On 14 January 2013, Bate filed a claim against the Player seeking compensation in the amount of USD 1.800.000 before the Players' Status Committee of the ABFF (hereinafter, "PSC"), arguing that the Player did not have sporting just cause to terminate the Agreement.
15. On 22 January 2013, the PSC rendered the following decision:
 - a. *To entertain the Statement of Gutor A.P. dated December 20, 2012.*
 - b. *To recognize the Statement of Gutor A.P. for termination of the Labour Contract with BATE FC to be grounded on the sports reasonable excuse.*
 - c. *To oblige Gutor A.P. to pay for the benefit of BATE FC a compensation at a rate of USD 180 000 (One hundred eighty thousand) at the rate of the NB of RB by the date of payment. Payment should be executed within 30 days form the moment of conclusion of the Labour Contract with the new Club.*

The present Decision can be appealed in the Football Arbitration of Belarusian(sic) Football Federation Association till February 7, 2013.

The PSC decision was in Russian. The translation of this decision was provided by the Appellant as exhibit 2 of its Statement of Appeal.

16. The PSC was of the opinion that all the prerequisites established in article 9 paragraph 11 of the ABFF Regulations on the Status and Transfer of Players 2012 (hereinafter, “ABFF RSTP”) to consider that a player had sporting just cause to terminate the Agreement were met. Summarizing, the PSC (i) noted that the Player had been a professional since the season 2008, (ii) considered that the Player participated in less than 10% of the matches that Bate had played during the season 2012, (iii) understood that the Player complied with the 15-day notice term required by article 9.11 of the RSTP of the ABFF as Bate’s last official match of the 2012 season was on 5 December 2012 and the Player sent his notice of termination to Bate on 20 December 2012, and (iv) considered that the personal circumstances of the Player entitled him to terminate the contract on the basis of sporting just cause.

2. Court of Appeals: Football Arbitration Body of the ABFF

17. On 7 February 2013, Bate appealed the decision of the PSC before the Football Arbitration Body of the ABFF (hereinafter, the “FAB”).
18. On 15 February 2013, the FAB rendered the following decision:

- a. *To take the claim of FC BATE for consideration.*
- b. *To reject the claim of FC BATE on cancellation of the decision of Committee on status and transfers of players dated 22 January 2013.*
- c. *The expenses for the claim to be paid by FC BATE.*

According to article 6.16 of ABFF Statute this decision is final and not subject to any appeal.

The FAB decision was in Russian. The translation of this decision was provided by the Appellant as exhibit 1 of its Statement of Appeal.

II.3 THE PROCEEDINGS BEFORE THE CAS

19. On 7 February 2013, Bate decided to appeal the decision of the FAB (hereinafter referred as to the “Appealed Decision”) before the CAS and thus filed the relevant Statement of Appeal.
20. On 15 February 2013, Bate filed its Appeal Brief before the CAS with the following request for relief:
 - a. *To accept this Appeal against the decision of Football Arbitration Body of the BFF.*

- b. To adopt an award annulling the decision of the Football Arbitration Body and adopt a new one.*
 - c. To adopt an award declaring that the Player has unilaterally terminated his Contract without just cause and that there was no sporting just cause.*
 - d. To adopt an award declaring the Player is liable to pay USD 500.789 in accordance with what he would have earned in 3 seasons prior to his unilateral termination.*
 - e. To declare the Respondent's new club is jointly and severally liable in accordance with the BFF RSTP.*
 - f. To direct the BFF to sanction the Player with disciplinary measures in accordance with the BFF RSTP.*
 - g. To direct the BFF to sanction the Player and his new club with sporting sanctions due to the Player's unilateral termination of contract without just cause during the Protected Period as defined in accordance with the BFF RSTP.*
 - h. To direct the BFF to declare that the new club is responsible to pay training compensation.*
 - i. To fix a sum of 40,000 CHF to be paid by the Respondent to the Appellant to aid the Appellant in the payment of its defence fees and costs.*
 - j. To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees.*
 - k. That in accordance with Swiss law, the Player be liable to pay 5% annual interest on the amount of compensation due to be calculated from the date of the unilateral termination of the Contract.*
21. On 11 March 2013, the CAS Court Office requested the Respondent to appoint an arbitrator from the CAS list within the term of 10 days as well as to inform the CAS whether he had any objection with these proceedings being conducted in English.
22. On 19 March 2013, the CAS acknowledged receipt of Bate's Appeal Brief and granted the Respondent a term of 20 days for filing his answer.
23. The Panel invited the ABFF to inform the CAS Court Office whether it intended to participate as a party to these arbitration proceedings or not and on the basis of which reasons (letters to the ABFF dated 28 March 2013, 22 April 2013, 3 May 2013 and 4 June 2013). The ABFF did not provide a direct answer to such request. Consequently, considering the time limit given to the ABFF to answer had expired, the fact that the parties were not in agreement about the ABFF's intervention in the proceedings, and the lack of uncontested evidence that the ABFF was bound by the arbitration agreement, the Panel ruled that the ABFF would not be a party to the proceedings pursuant to article R41.4 of the CAS Code (letter to the parties dated 21 June 2013).
24. On 29 March 2013, the Player sent a letter to the CAS challenging CAS' jurisdiction to deal with these proceedings.

25. On 11 April 2013, the CAS informed the parties that due to the Respondent's failure to appoint an arbitrator, the CAS Court Office would proceed to appoint an arbitrator pursuant to article R53 of the CAS Code. Furthermore, the CAS communicated to the parties that the language of these proceedings was English since the Respondent did not file any objection in this respect.
26. On 17 April 2013, the Respondent sent a letter to the CAS by means of which he once again contested the CAS' jurisdiction to entertain these proceedings and requested a preliminary decision on jurisdiction before any further written submissions was to be filed.
27. On 19 April 2013, the CAS Court Office requested the Respondent to inform the CAS whether he confirmed that his letter dated 29 March 2013 was to be considered as his official answer.
28. On 23 April 2013, the Respondent informed the CAS Court Office that his letters dated 29 March 2013 and 17 April 2013 should be jointly deemed as his Answer to Bate's written submissions. Furthermore, the Respondent requested that these proceedings will be conducted in Belarusian and that a preliminary decision on jurisdiction be handed down.
29. On 26 April 2013, the CAS sent a letter to the parties in order to (i) grant a term of 10 days to the Appellant to file comment on the Respondent's objection to the CAS jurisdiction and (ii) to clarify that, pursuant to article R29 of the CAS Code, the CAS Court Office usually does not conduct proceedings in Belarusian. However, the CAS invited the Appellant to state its position regarding the Respondent's language request before the CAS will take its final decision in this regard.
30. On 25 April 2013 (*sic*)¹, the Appellant sent a letter to the CAS objecting to the proceedings being conducted in any language other than English, and requesting the CAS to grant an extension of term to file its submissions on jurisdiction until 13 May 2013.
31. On 2 May 2013, the CAS sent a letter to the parties (i) confirming that the proceedings were to be conducted in English, (ii) requesting the parties to express their preference on whether to hold a hearing on this matter or not and (iii) granting a term of 1 day to the Respondent to inform whether he agreed with the Appellant's extension of term request or not.
32. On 3 May 2013, the CAS granted the extension of term requested by the Appellant for filing its submission on jurisdiction.
33. On 8 May 2013, the Respondent sent a letter to the CAS in which it was stated that (i) the law applicable to this dispute should be the ABFF RSTP and the laws of the Republic of Belarus, (ii) his letters dated 29 March 2013 and 17 April 2013 were to be considered as his official answer pursuant to article R55 of the CAS Code, (iii) a preliminary decision on jurisdiction was to be handed down before a hearing on the merits of the dispute was held, (iv) his objection to conducting the proceedings in English be re-confirmed, and (v) the extension granted to the

¹ The Appellant's letter was dated 25 April 2013; however its contents acknowledge receipt of a letter from the CAS on 26 April 2013, thereby leading the Panel to conclude the date of the letter in question is incorrect.

Appellant for filing its submission on jurisdiction be objected by him. In particular, the Respondent requested the following in his letter:

- *to grant a preliminary decision on the CAS jurisdiction in the present dispute;*
- *to recognize the Belarusian as the language of the arbitration proceedings as this is reasonable and convenient to the proceedings between residents of the Republic of Belarus in a dispute governed exclusively by Belarusian laws;*
- *not to take into consideration any FC Bate Borisov written submissions regarding the CAS jurisdiction, which was filed after 6 May 2013;*
- *to accept the BFF legal opinion and admit it to the CAS case file when considering the jurisdiction of CAS would be held.*

34. On 13 May 2013, Bate filed written submissions on jurisdiction, in which it explained the reasons why it considered the CAS to be competent to deal with the present dispute.
35. On 16 May 2013, the CAS Court Office informed the parties that the Panel was constituted in the following manner: Mr. José Juan Pintó (President), Mr. Efraim Barak (appointed by the Appellant) and Mr. Bernhard Heusler (appointed by the Deputy President of the Appeals Arbitration Division *in lieu* of the Respondent).
36. On 16 May 2013, the Respondent informed the CAS that he had not yet received the Appellant's submissions on jurisdiction and requested to be sent a copy of them.
37. On 28 May 2013, the Appellant sent a letter to the CAS requesting that the Respondent's latest submissions, dated 8 May 2013, be disregarded in its entirety on the basis of lack of exceptional circumstances grounding any leniency in this regard.
38. On 29 May 2013, the Respondent informed the CAS again that he had not yet received the Appellant's submission on jurisdiction and requested to be sent a copy of them.
39. On 30 May 2013, the CAS informed the parties that the CAS Court Office had received the Appellant's payment of both shares of the advance of costs for the present matter. Furthermore, the CAS stated that, due to an administrative oversight, the Appellant's submissions on jurisdiction had not been sent to the Respondent and were sent that same day.
40. On 4 June 2013, the Panel invited the parties to file their comments regarding the independence of the FAB and, in particular, concerning the following issues: (i) who appoints the members of the FAB? (ii) who finances the FAB? and (iii) would the FAB exist even without the existence of the ABFF? Furthermore, the Panel confirmed that these proceedings were to be conducted in English pursuant to article R29 of the CAS Code and ratified the admissibility of the Appellant's submissions on CAS jurisdiction.
41. On 6 June 2013, the Respondent once again informed the CAS that he had not yet received the Appellant's submission on jurisdiction and requested to be sent a copy of them. In this same

letter, the Respondent also requested to be informed of the calculation of the advance of costs in these proceedings.

42. On 13 June 2013, the CAS stated that it had already sent the Appellant's submissions on jurisdiction to the Respondent and granted an extension of seven days to the Respondent, starting from the date of receipt of the Appellant's submission on jurisdiction, to respond to the Panel's questions included in the letter to the parties dated 4 June 2013.
43. On 18 June 2013, the CAS granted an additional extension to the parties to reply to the Panel's questions included in the letter to the parties dated 4 June 2013.
44. On 21 June 2013, the Respondent sent a letter to the CAS in order to request the Panel to order the Appellant to provide a certified translation into English of all the documents attached to its written submissions. It is important to clarify that that the request referred to the documents that were already submitted with their English translation, however the Respondent asked that the translation will be certified.
45. On 24 June 2013, the CAS sent a letter to the parties in order to clarify that, pursuant to article R29 of the CAS Code, the Panel is entitled to order the parties to provide certified translations of documents at its own discretion if the Panel deems it convenient. On the basis of the above mentioned the Panel informed the parties that it did not deem it convenient at this stage to request certified translations of all the documents that the Appellant filed along with its written submissions because the Respondent had not identified any specific inaccuracies in the Appellant's translations. Therefore, the Panel confirmed that the parties had to file, on or before 25 June 2013, their responses to the Panel's questions in its letter dated 4 June 2013. Moreover, the Panel informed the parties that the aim of these arbitration proceedings was to decide on the dispute between the parties and not to answer questions or to clarify any legal doubts of the parties.
46. On 25 June 2013, the Appellant filed its response to the Panel's questions included in the letter to the parties dated 4 June 2013. In this letter, the Appellant pointed out that the members of the FAB are appointed by the ABFF. Secondly, the Appellant noted that the FAB, as a judicial body of the ABFF, is funded by the ABFF and, for this reason, these two institutions cannot be considered as two independent entities. Finally, the FAB would not exist without the ABFF because the FAB is a judicial organ of the ABFF.
47. Also on 25 June 2013, the Respondent filed new written submissions without addressing any of the queries posed by the Panel in its letter to the parties dated 4 June 2013. In lieu of it, the Respondent complained about some alleged inaccuracies in the translation of the documents provided by the Appellant and made the following requests:
 - *to leave the FC Bate Borisov Statement of Appeal without consideration until removal of the aforementioned disorders;*
 - *to obligate the FC Bate Borisov to provide the certified translation of all annexed documents to the Statement of Appeal dated 7 March 2013, the brief statement dated 18 March 2013, and the statement on jurisdiction dated 3 June 2013;*

- *to give me a time limit equal to the term that would be granted to the FC Bate Borisov for providing the certified translation in order to find qualified the English-speaking lawyer;*
- *to provide calculation of the advance of costs as I repeated request previously.*

Additionally, the Respondent stated that only after the Appellant's filing of the mentioned certified translation, he would be able to answer the Panel's queries in its letter dated 4 June 2013.

48. On 1 July 2013, the CAS informed the parties that the Panel had decided that the CAS had jurisdiction to rule on this case and that the reasons for such a decision would be given in the final award. Furthermore, the parties were informed that, for the time being, the Panel did not consider it necessary to order the Appellant to submit certified translations of the documents filed, as the Respondent did not point out specific substantial and particular inaccuracies in the translations. Finally, the Respondent was given an additional 20-day term to file an answer on the merits of the dispute.
49. On 4 July 2013, the Appellant sent a certified translation of the document attached as Annex 15 to its Appeal Brief and informed the CAS that it did not oppose the 20-day extension granted to the Respondent to file an answer on the merits.
50. On 12 July 2013, the Respondent sent a letter to the ICAS outlining his complaints and concerns regarding these proceedings, basically the ones referred to in the previous paragraphs of this award.
51. On 15 July 2013, the Respondent filed new written submissions requesting the following:
 - *to request the ABFF (as the body which issue and approve the document) to provide with us a certified translation of the BFF Regulations on the Status and Transfer of Players in addition, which apply to the present dispute;*
 - *to request the FC Bate Borisov to provide us with its statutes (the charter) with certified translations;*
 - *to provide me a duly executed part of the Panel's decision with grounds regarding the CAS jurisdiction.*
52. On 16 July 2013, the Panel informed the parties that, on the basis of article R57 and R44.3 of the CAS Code, the Panel decided to accept the translation of Annex 15 of the Appeal Brief.
53. On 19 July 2013, the Respondent's requests made in his letter dated 15 July 2013 were responded by the CAS as follows: (i) the Panel rejected the first request because the ABFF is not a party to these proceedings and therefore cannot be forced to provide any documents, (ii) the Panel asked the Respondent to justify the need for a translated version of the Bate's statutes, and (iii) article R55.5 of the CAS Code enables the Panel to provide the grounds for its decision on jurisdiction in the final award.
54. On 22 July 2013, the Respondent sent a letter to the CAS complaining about the Panel's decision on jurisdiction and requesting Bate's Statutes to be provided. The Respondent also reiterated his request for a reasoned decision on CAS jurisdiction and for the calculation of the advance

of costs. Moreover, the Respondent alleged that the Statement of Appeal was signed by persons who were not duly authorized to do so.

55. On 2 August 2013, the Panel sent a letter to the parties clarifying and referring to various issues. First of all, the Panel clarified that it never mentioned that the ABFF regulations would not be accepted into the case file, but only that it could not request ABFF to produce a certified translation of the regulations because it was not a party to these proceedings. Secondly, the Panel requested the Appellant to provide a certified translation into English of its Statutes. In addition, the Panel once again stated that the grounds for its decision on jurisdiction would be included in the final award. Moreover, the Panel noted that the Respondent did not file any response on the merits of the dispute within the time limit granted by the Panel, and that therefore, pursuant to article R56 of the CAS Code, the Panel would not accept any further written submissions or documents or accept any amendments thereto from that point on unless the parties agreed otherwise or the President of the Panel ordered it based on exceptional circumstances. Additionally, the Panel invited the parties to express their preference on whether a hearing should be held or not. Finally, the CAS informed the parties that the CAS Court Office had estimated the amount of advance of costs of these proceedings and the final amount of the arbitration costs would be calculated at the end of the proceedings in accordance with article R64.4 of the CAS Code.
56. On 7 August 2013, the Appellant sent a letter to the CAS expressing its willingness that a hearing be held on this matter.
57. On 19 August 2013, the CAS sent a lengthy letter to the parties addressing all of the Respondent's complaints, the contents of which will be detailed in section IV.1 *infra*.
58. On 19 August 2013, the Appellant filed an official translation into English of Bate's Statutes, but stressed that these Statutes were inadmissible because the Respondent did not timely file written submissions outlining the justifications on the basis of which Bate's Statutes were relevant.
59. On 20 August 2013, the Panel informed the parties that it had decided to hold a hearing on the matter.
60. On 23 August 2013, the Respondent sent a letter to the CAS complaining about the Panel's decision on jurisdiction, alleging that he was an improper respondent in this matter and pointing out that the proper respondent in this case would be the ABFF.
61. On 27 August 2013, the Panel informed the parties that it had decided to accept the Bate's Statutes and its translation into English into the file since it considered that the Respondent gave sufficient reasons supporting their relevance.
62. On 2 September 2013, the Appellant sent a letter to the CAS rebutting the Respondent's claims about the alleged falsification of the translated documents, the purported contradictions within Bate's Statutes regarding jurisdiction, and the validity of the power of attorney.

63. On 16 September 2013, the Panel informed the parties that a hearing would be held on 28 October 2013.
64. On 18 October 2013, the Respondent sent a letter to the CAS complaining again about the Panel's decision on CAS jurisdiction.
65. On 21 October 2013, the Panel informed the parties that, pursuant to article R56 of the CAS Code, it disregarded all the legal arguments raised by the Respondent in his letter dated 18 October 2013.
66. On 25 October 2013 (i.e. 3 days before the hearing and extensively after the deadline fixed to such purpose), the Respondent sent written submissions to the CAS concerning the merits of the dispute.
67. The language of these proceedings is English.
68. The hearing took place in Lausanne on 28 October 2013. The Panel was assisted by Mr. Pedro Fida, CAS Counsel, and Mr. Antonio de Quesada, *ad-hoc* clerk. None of the parties raised any objection as to the appointment of the Panel.
69. At the beginning of the hearing, the Panel asked the Appellant whether it agreed that the Respondent's written submissions dated 25 October 2013 were accepted to the file or not, to which the Appellant objected. In view of this objection and of the fact that these submissions were extemporaneous, on the basis of article R56 of the CAS Code the Panel decided not to accept these submissions. Thereafter, the Panel invited the parties to try to settle the dispute, but after a short period of discussions between the parties, they did not reach an agreement. In light of it the hearing went on and the parties' counsels made their respective opening statements, after which the Appellant informed that its proposed witness, Mr. Victor Goncharenko, could not attend the hearing, and requested the Panel to accept the examination of a new witness not mentioned in its Appeal Brief. The Respondent objected the examination of this witness and the Panel decided to deny the request of the Appellant and did not hear this witness. The Panel then addressed some questions to the Respondent. Finally, the parties' counsels made their respective closing statements. At the end of the hearing, the Panel presented to the parties an informal translation of article 9.11 of the ABFF RSTP as well as of the definition of the word "season" in the ABFF RSTP. None of the parties agreed to the text of the informal translation provided. Therefore, the Panel informed the parties that it would order a certified translation of the aforementioned provision of the ABFF RSTP.
70. At the beginning and at the end of the hearing, respectively, the parties expressly declared that they have no objection in respect of the composition of the Panel and that they were satisfied with the way in which the proceedings had been conducted and the right to be heard.
71. On 28 November 2013, the Panel informed the parties that the translation into English of article 9.11 of the ABFF RSTP and the definition of the word "season" in such RSTP provided by the certified translator read as follows:

Article 9 (11) – second part:

“[...] Additionally, a football player with professional status for three consecutive seasons who has spent less than 10% of official games on a club’s main roster in all competition in which the club took part may terminate his contract early for that reason by way of filing an appropriate request with the Association within 15 days of his club’s last official game of the season”.

“Season”:

“Season – a time period extending from the beginning of registration to take part in national championship competition through the end of national championship competition”,

and invited the parties to submit their comments in such respect within a term of 5 days, which the parties did on 3rd December 2013.

III. SUMMARY OF THE PARTIES’ POSITIONS

A. BATE

a) Jurisdiction of the CAS

72. The CAS has jurisdiction to deal with this dispute since Bate exhausted all internal remedies in the ABFF and the recourse to CAS is foreseen in articles 1.5 and 14.6 of the ABFF Statutes.
73. Furthermore, clause 3 of the Agreement provides that the Player recognizes CAS as a competent judicial body to solve disputes between the parties, which constitutes a specific arbitration clause.
74. The FAB does not meet the mandatory requirements for a national arbitral tribunal to be considered independent and impartial by FIFA. The FAB is comprised of 5 members, who are chosen by the ABFF General Assembly. There is no equal representation in the composition of the arbitral panel for the proceedings before the FAB because the ABFF was not only naming the FAB arbitral panel (through its General Assembly) but was also one of the parties to the arbitration proceedings before the FAB. On the contrary, the CAS is an independent court which can know about the decisions of this internal body of the ABFF.
75. Article 68 of the FIFA Statutes stipulates that FIFA and its members shall recognize the CAS jurisdiction, which the ABFF intends to comply by including articles 1.5 and 14 in its Statutes. Therefore, the ABFF, like any member of FIFA, must accept the CAS as a competent forum for appeals and must accept its decisions.
76. Paragraphs 5 and 6 of article 14 of the ABFF Statutes and article 67.2 of the FIFA Statutes prohibit members to submit their disputes to the jurisdiction of ordinary courts. Likewise, sections 4 and 5 of clause 3 of the Agreement contain the parties’ agreement to comply with the FIFA Statutes and the ABFF Statutes, thereby establishing the parties’ intention to waive any

right to bring their claims to ordinary courts. This also confirms the CAS jurisdiction in this case.

2) On the merits

77. The Player did not have sporting just cause to terminate the Agreement as the prerequisites of article 9 paragraph 11 were not met. In particular, the Player did not give the 15-day prior notice of the termination of the Agreement in due and timely manner and did not play less than 10% of the matches in the season 2012.

78. In order to determine whether the Player notified the termination within the 15-day time period established in article 9.11 of the ABFF RSTP or not, it is necessary to consider the definition of “season” in the ABFF RSTP:

“Season: the period starting with the official first match of the relevant national league championship and lasts until the end of the national championship”.

In light of this definition, and bearing in mind that the last match of the season 2012 in the Belarusian National Championship took place on 25 November 2012, the Player, by notifying the Appellant of its decision of terminating the Agreement of 20 December did not comply with the deadline foreseen in article 9.11 of the ABFF RSTP.

In addition, under Belarusian law, the letter the Player sent to Bate via fax and email on 20 December 2012 does not constitute a proper notification of termination of the Agreement because the authenticity of said letter cannot be verified. This letter cannot be considered an official document because it is merely a copy of an original document that probably never existed. Moreover, the Player’s letter dated 20 December 2012 intending to terminate the Agreement was sent at 19:32 hrs. However, an ordinary business day in Belarus ends at 17:00 hrs. Therefore, pursuant to Belarusian law, the letter is deemed to have been received on 21 December 2012.

79. The Player participated in more than 10% of the matches in the season 2012. Bate participated in 44 official matches during the 2012 season, which does not include the 5 December 2012 match against Bayern Munich since it took place after the last match of the Belarusian National Championship and is therefore “off-season”. The Player was unable to participate in 8 of the club’s official matches (7 for being called up to his national association team, 1 by mutual agreement between the Player and Bate). These 8 matches should not be considered when calculating the percentage of matches the Player participated in during the 2012 season because he could not have played in any of those 8 matches. Therefore, the Player participated in 4 out of 36 possible official matches, or 11.11% of Bate’s official matches during the season 2012.
80. According to article 15 of the FIFA RSTP, the personal circumstances of a player must be considered in determining whether he can terminate a contract unilaterally on the basis of sporting just cause or not. These “personal circumstances” include the position of the player on the pitch, whether there was a technical decision involved or not, and whether there was any expression of a willingness to leave the team or sign a new contract or not. In the present matter, it is necessary to note the Player is a goalkeeper and, considering the nature of such a position

(namely, that only one goalkeeper per team can play in a match), it would be absurd to allow a reserve goalkeeper to invoke sporting just cause and terminate his contract because this would only lead to contractual instability. Along these lines, it should also be noted for the reference that the Russian league's Regulations on the Status and Transfer of Players actually prohibits goalkeepers to invoke sporting just cause to terminate a contract. In addition the Player neither complained about his situation to Bate nor showed his discontent with it. Rather, the Player and the Appellant revised the Player's salary via amendment to the Agreement" in 2012. In addition, it is to be noted that the Player waited until what he considered the very last day of the relevant time period to terminate the Agreement not to leave Bate sufficient time to react accordingly.

81. In conclusion, the Player terminated the Agreement without just cause and shall be ordered to indemnify Bate in the sum of USD 500.789 (i.e., the amount the Player received from Bate in the previous 3 seasons). Likewise, the Panel shall order the Player's new club, FC Dinamo Minsk, to pay a compensation of USD 1.502.367 to Bate.
82. Finally, disciplinary sanctions should be imposed on the Player and FC Dinamo Minsk because the Player terminated the Agreement during the protected period.

B. THE PLAYER

a) Jurisdiction of the CAS

83. Clause 18 of the Agreement reads in the pertinent part as follows:

"[...] all disputes arising between the parties shall be submitted to the competent bodies of the ABFF and shall be considered with its governing documents. The decisions of the competent bodies of ABFF are final".

The plain language of this clause leaves no room for doubt that the CAS is not competent to deal with this matter. The current dispute involves parties belonging to the same national association and therefore must be finally resolved by the ABFF dispute resolution bodies.

84. Articles 4.3.2 and 6.20 of the ABFF Statutes provide that any dispute of domestic nature shall be submitted to and finally resolved by the ABFF without the possibility of appeal. These articles, together with clause 18 of the Agreement, clearly establish that the dispute must be settled by the PSC and the FAB, being the FAB's decision final.

b) On the merits

85. Despite having had the opportunity to do so, the Respondent did not file his answer on the merits of the case in writing in timely manner. At the hearing, he did not enter in detail into the merits of the case beyond generally expressing his dissatisfaction with his situation at Bate at the relevant time and explaining that he acted in terminating the agreement pursuant to legal advice that he received according to which he was entitled to act the way he did.

IV. LEGAL CONSIDERATIONS

A. PRELIMINARY ISSUES

86. Before entering into the substance of the present appeal (including the jurisdiction issue), the Panel, in light of several events that have taken place in the course of these proceedings and of various issues raised by the parties in it, deems it convenient to preliminarily address them and clarify some points related to this arbitration procedure.
87. With regard to the Respondent's request that the Panel took a preliminary decision on jurisdiction before allowing any further written submissions from the parties, and the subsequent requests for the immediate issuance of the grounds on which the Panel based its decision on jurisdiction (Respondent's letters to the CAS dated 17 April 2013, 23 April 2013, 8 May 2013, 15 July 2013, 22 July 2013, 23 July 2013, 9 August 2013, and Respondent's letter to the ICAS dated 12 July 2013), the Panel shall point out that on the basis of article R55 of the CAS Code, it exercised its discretionary faculty of firstly notifying the parties via letter dated 1 July 2013 its decision on the CAS jurisdiction, and then include the grounds of its decision in this award (letters to the parties dated 19 July 2013, 2 August 2013 and 19 August 2013). The Panel was entitled to so do under the CAS Code, therefore there were no grounds to the Respondent's complaints in this regard.
88. With regard to the Respondent's statements that his economic and financial situation at the time made him unable to afford the costs of the proceedings, as well as his request to be given a calculation of the costs of the proceeding (Respondent's letters dated 23 April 2013, 8 May 2013, 25 June 2013 and 9 August 2013, and letter to ICAS on 12 July 2013), the Panel shall remind that the CAS responded that there are many factors affecting the estimate of costs requested as advance of costs according to article R64.2 of the CAS Code, and that the final amount is determined and communicated to the parties at the end of the proceedings pursuant to article R64.4 (letter to the parties dated 19 August 2013). Therefore, in the Panel's opinion, the answers given to the Respondent in this respect were accurate and within the framework of the CAS Code. Moreover, and for the sake of completeness, it shall be stressed that the Appellant paid the total amount of the advance of costs (letter to the parties dated 30 May 2013 and 13 June 2013), without detriment to the decision to be taken concerning the costs in this award.
89. With regard to the Respondent's complaints that he never agreed that English was the language of the procedure (Respondent's letters dated 23 April 2013, 8 May 2013 and 6 June 2013), the CAS informed the parties in due time, and the Panel confirms again hereto, that, pursuant to article R53 of the CAS Code, *"the parties may request that a language other than French or English be selected, provided that the Panel and the CAS Court Office agree. If agreed, the CAS Court Office determines with the Panel the conditions related to the choice of the language; [...]"*. The CAS Court Office does not conduct proceedings in Belarusian as a general rule, and the Appellant objected to the proceedings being conducted in Belarusian, in light of which the CAS Court Office duly decided that English would be the language of the proceedings (letters to the parties dated 2 May 2013 and 10 May 2013) and the Panel confirmed this decision (letters to the parties dated 4 June 2013 and 13 June 2013).

90. Concerning the Respondent's complaints about the extension given to the Appellant to file its submissions on jurisdiction, the Panel shall note that the Respondent, who was asked about his opinion on this extension, failed to timely object such extension within the deadline given on him to such purpose. In light of this silence, and not having any conclusive reason to deny the extension, the CAS (letter to the parties dated 3 May 2013) and thereafter the Panel agreed to grant it (letter to the parties dated 4 June 2013).
91. Concerning the Respondent's request that the Panel ordered the Appellant to provide official translations of all the documents attached to the Statement of Appeal, the Appeal Brief and the submissions on jurisdiction (Respondent's letters dated 21 June 2013, 25 June 2013, 15 July 2013, 22 July 2013, 9 August 2013, and letter to the ICAS dated 12 July 2013), the Panel found such a general request to be unnecessary in this case. The Panel has the faculty of ordering official translations of documents submitted in a language other than that of the proceedings at its own discretion by virtue of article R29 of the CAS Code (letters to the parties dated 24 June 2013 and 19 August 2013). In light of the fact that all the documents in the proceedings had been translated into English and the fact that the Respondent only complained about translation mistakes in general without pointing out any specific inaccuracies, the Panel found that it was not necessary to order official translations at that time. Only when some ambiguities arose later on with regard to the translation of article 9.11 of the ABFF RSTP and the definition of the term "season" included in those regulations, the Panel deemed it convenient to request a certified translation of these particulars and indeed the Panel so ordered.
92. With respect to the Respondent's request that the Panel asked the ABFF to provide a certified translation of the ABFF RSTP (Respondent's letters dated 15 July 2013 and 23 July 2013), the Panel denied the request because the ABFF is not a party to these proceedings (letter to the parties dated 19 July 2013).
93. Concerning the Respondent's complaint that his right to appoint an arbitrator had been violated (letter to the ICAS dated 12 July 2013), the Panel would like to clearly stress that the Respondent was duly requested to appoint an arbitrator (letter to the parties dated 7 March 2013), and he voluntarily failed to do so. In addition, the Respondent was notified that he had failed to appoint an arbitrator within the prescribed time limit (letter to the parties dated 26 April 2013) and that, in accordance with article R53 of the CAS Code, the President of the CAS Appeals Arbitration Division or his Deputy would proceed with the appointment of an arbitrator in lieu of the Respondent (letter to the parties dated 11 April 2013). The Panel, with due respect, cannot understand the complaint that was raised in this respect by the Respondent.
94. With regard to the Respondent's contention that he is not a proper respondent in this case (Respondent's letters dated 9 August 2013 and 23 August 2013, and letter to the ICAS dated 12 July 2013), there is no question in the Panel's view that he is indeed a proper respondent in this proceedings because the Appealed Decision, and by definition, the dispute between the parties itself, arose out of the Respondent's termination of an employment contract with the Appellant. The ABFF may or may not take part in the proceedings (in this case, it did not), but this does not affect the standing to be sued of the Player in the dispute.

95. Finally, with regard to the Respondent's general remarks that in his opinion, his requests were not being answered or given the attention they deserved, the Panel shall note that the CAS Court Office and the Panel worked diligently to answer all of the Respondent's requests in strict accordance with the CAS Code and their best judgment. In particular, the Panel shall remind that the CAS provided a lengthy and detailed response to each one of the Respondent's complaints in its letter to the parties dated 19 August 2013.

B. CAS JURISDICTION

96. After having clarified the aforementioned preliminary issues, the Panel shall address the matter of the CAS jurisdiction in this case by firstly referring to article 176.1 of the Swiss Private International Law Act (hereinafter, "PILA"), which reads as follows:

"Les dispositions du présent chapitre s'appliquent à tout arbitrage si le siège du tribunal arbitral se trouve en Suisse et si au moins, l'une des parties n'avait, au moment de la conclusion de la convention d'arbitrage, ni son domicile, ni sa résidence habituelle en Suisse".

This article to be translated into English as follows:

"The provisions of this chapter shall apply to all arbitrations if the seat of the arbitral tribunal is in Switzerland and if, at the time of the conclusion of the arbitration agreement, at least one of the parties had neither its domicile nor its habitual residence in Switzerland" (See ARROYO M. (ed), Arbitration in Switzerland, The Practitioner's Guide, 2013, p. 40).

97. Considering article 176.1 PILA, the Panel highlights the fact that: (i) the parties to the present dispute are an association and a player who are both domiciled in Belarus, and (2) the seat of the CAS is in Switzerland. As such, and subject to the existence of a valid arbitration agreement between the parties referring disputes or appeals to CAS, the rules and regulations established in Chapter 12 of the PILA are applicable to the present dispute pursuant to article 176.1 PILA.
98. The authority of the Panel to decide on its own competence emanates from article 186 PILA, which discusses the generally accepted principle of *Kompetenz-Kompetenz* recognized in both international arbitration and CAS jurisprudence (see, for example CAS 2004/A/748; CAS/A/952; CAS 2006/A/1190; CAS 2011/A/2363) in the following manner:

"1 Le tribunal arbitral statue sur sa propre compétence.

1bis Il statue sur sa compétence sans égard à une action ayant le même objet déjà pendante entre les mêmes parties devant un autre tribunal étatique ou arbitral, sauf si des motifs sérieux commandent de suspendre la procédure.

2 L'exception d'incompétence doit être soulevée préalablement à toute défense sur le fond.

3 En général, le tribunal arbitral statue sur sa compétence par une décision incidente".

This article to be translated into English as follows:

“1 The arbitral tribunal shall itself decide on its jurisdiction.

1bis It shall decide on its jurisdiction notwithstanding an action on the same matter between the same parties already pending before a state court or another arbitral tribunal, unless serious reasons demand the stay of the proceedings.

2 Incompetence plea of lack of jurisdiction must be raised prior to any defense on the merits.

3 The arbitral tribunal shall, as a rule, decide on its jurisdiction by preliminary award” (See ARROYO M. (ed), Arbitration in Switzerland, The Practitioner’s Guide, 2013, p. 146).

99. In determining the CAS’ competence in this matter, the Panel must take into consideration the first paragraph of article R27 of the CAS Code, which in the pertinent part states that:

“These Procedural Rules apply whenever the parties have agreed to refer a sports related dispute to CAS. Such reference [...] may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement, provide for an appeal to CAS (appeal arbitration proceedings)”.

as well as article R47 of the CAS Code, which reads as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance.

100. Keeping in mind the contents of these articles of the CAS Code, the Panel notes that, as sustained by the Respondent, both clause 18 of the Agreement and article 6.20 of the ABFF Statutes establishes that decisions of the competent bodies of the ABFF are final.
101. However, the Panel also notes that article 1.5 of the same Statutes, included in the chapter so-called “General Arrangements”, grants ABFF’s members the following right:

*“To refer any dispute of national dimension arising from BFF’s Statutes provisions or regulations **after having used all remedies used presented by this Statutes only to an independent and impartial court of arbitration as to the last instance** (emphasis added by the Panel), which will settle the disputes to the exclusion of any ordinary court, unless expressly prohibited by the legislation in force” (emphasis added by the Panel).*

102. In addition it is also noticed that (i) article 14 of the referred Statutes (“The Members of the Association are obliged to settle each of the potential disputes pursuant to the rules established by the Statutes of BFF, UEFA and FIFA and to submit any such dispute to the competent bodies of these organisations or, if

applicable, to the Court of Arbitration for Sport (CAS) with headquarters in Lausanne, Switzerland”.) and clause 3.4. of the Agreement (“The Player undertakes: [...] 4 to abide by the statutes of the Federation Internationale de Football Association, the Union des Associations Europeennes (sic) de Football, the Statutes (sic) of the Association “Belarus Football Federation”, decisions of the Court of Arbitration for Sport in Switzerland, Regulations of the Football Championship and Regulations of the Football Cup of the Republic of Belarus”) make direct references to the CAS jurisdiction, and (ii) that clause 4.8 of the Agreement refers to seek protection to a “court” after having applied to all judicial instances of the ABFF (“4. The Player shall have the right: [...] 4.8 to protection of his labour rights in competent judicial bodies of ABFF in compliance with ABFF’s Statutes, as well as to apply to FIFA, or a court, or another state body after having applied to all judicial instances of the ABFF”).

103. At first glance, some of the aforementioned provisions may appear to be contradictory if interpreted independently. On one side, article 6.20 of the ABFF Statutes and clause 18 of the Agreement provide for the final nature of the FAB decisions, while the other provisions refer to further remedies once the proceedings at the National federative level are exhausted.
104. Nevertheless, the Panel is of the opinion that these provisions shall be interpreted together and not isolated from each other since they are part of a single and same regulatory framework. In the performance of such interpretative task, the Panel has concluded that indeed, in accordance with article 6.20 of the ABFF Statutes, the decisions of the FAB shall be deemed final and binding, but in the sense that they are the last remedy at the disposal of the members of the ABFF within ABFF’s own field or scope. In other words, with the decision of the FAB, all the internal legal remedies provided by the Statutes of the ABFF are exhausted. However, once the legal remedies within the ABFF are exhausted, its members have the right to seek an independent and impartial arbitral tribunal to solve their potential disputes (article 14 of the ABFF Statutes and clause 4.8 of the Agreement). Which Tribunal? Considering that it has been sufficiently proven that there is no independent and impartial arbitral tribunal recognized by the ABFF Regulations other than the CAS, and that the CAS is a truly independent and impartial arbitral tribunal recognized by article 68.3 of the FIFA Statutes, and that the CAS is expressly mentioned in the ABFF Statutes, the Panel concluded that the CAS should be this tribunal to which the appeal of the Appealed Decision can be addressed.
105. This interpretation, in the Panel’s view, is in line with article 68.3 of the FIFA Statutes which imposes the obligation on the ABFF as a member of FIFA the obligation of inserting “*a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, clubs, members of clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS*”.
106. Therefore, it appears clear to the Panel that with the Appealed Decision, the parties exhausted all the internal legal remedies provided within the ABFF Regulations but the Appellant was nevertheless entitled to contest the Appealed Decision before a truly independent and impartial arbitral tribunal recognized under the ABFF Regulations, namely the CAS.

107. Therefore the CAS has jurisdiction to deal with this case.

C. APPLICABLE LAW

108. Article R58 of the CAS Code reads as follows:

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

109. The Panel notes that in the Agreement, the Appellant and the Player made reference to a choice of law in a very broad way in the pertinent part of clause 18 of the Agreement, which reads as follows:

“The matters not provided for in this Contract shall be governed by the labour legislation, FIFA and UEFA statutes, FIFA, UEFA and ABFF Regulations on the status and transfer of players, Statutes of ABFF, Regulations of the Football Championship and Regulations of the Football Cup of the Republic of Belarus, with regulations and rules of ABFF, other regulatory documents [...]”.

The Agreement was in Russian. The translation of the Agreement was provided by the Appellant as exhibit 5 of its Statement of Appeal.

110. In light of the aforementioned contractual provision, the Panel considers that the present dispute shall be resolved in accordance with the regulations referred to in clause 18 of the Agreement.

D. ABOUT THE DISPUTE SUBMITTED TO THE COURT BY THE PARTIES

a) The object of the dispute

111. According to the parties' written submissions and the arguments raised in the hearing, the dispute may be briefly summarized as follows: on one hand, Bate seeks a declaration that the Player did not have sporting just cause to unilaterally terminate the Agreement and seeks the corresponding indemnification for this breach as well as the imposition of sanctions; on the other hand, the Player rejects that the ABFF's decision is appealable before CAS and generally opposes to the claim of Bate.

b) The termination of the Agreement by the Respondent. Sporting just cause or not

112. In light of the framework of the dispute as described above, the Panel shall firstly examine whether the Respondent terminated the Agreement with sporting just cause or not.

113. Article 9 paragraph 11 of the ABFF RSTP (as per the certified translation requested by the Panel) refers to the termination of contracts with sporting just cause in the following terms:

“[...] a football player with professional status for three consecutive seasons who has spent less than 10% of official games on a club’s main roster in all competition in which the club took part may terminate his contract early for that reason by way of filing an appropriate request with the Association within 15 days for his club’s last official game of the season”.

114. In accordance with this provision, a player is entitled to unilaterally terminate his contract on the basis of sporting just cause if three cumulative prerequisites are met: (i) the player has professional status for three consecutive seasons, (ii) the player appeared in less than 10% of the official games on the club’s main roster in all competitions the club has participated in, and (iii) the player files the appropriate request with the ABFF within a 15-day period following the last official game of the season of the club.
115. The Panel shall therefore analyze if in the case at stake, the aforementioned prerequisites were met.
116. Concerning the first prerequisite (professional status), the Panel points out that it is undisputed that the Player had professional status during three consecutive seasons as requested by article 9.11 of the ABFF Statutes. None of the parties raised any issue in this respect.
117. Concerning the second prerequisite (appearance in less than 10% of the matches in the season), the Panel notes that even if it is undisputed that the Player played 4 official games for Bate in the season 2012, there is a discrepancy on the number of matches to be considered to calculate if this 4 matches represent more or less than 10% of the matches of the season.
118. In accordance with the decisions of instance, Bate apparently played 45 games in all competitions in which it took part during the season 2012. However, the Appellant contends that (i) Bate only played 44 games as the match played by Bate against Bayern Munich occurred after the conclusion of the Belarusian national championship, and thus, in accordance with the RSTP of the ABFF, shall not be considered in the calculation of the relevant percentage, and (ii) the following matches should not be taken into account for the calculation of the relevant percentage since Bate released the Player in favour of the Belarusian national team:
- i. Two matches played on 18 and 24 May 2012 in which the Player was absent due to his participation in the non-official Toulon competition, preparing the Olympic Games 2012.
 - ii. Four matches played on 13, 18, 25 July and 1 August 2012 in which the Player was absent due to his participation in the London Olympic Games 2012.
 - iii. Two matches played on 9 September and 13 October 2012 in which the Player was absent due to his participation in the qualifiers for the World Cup.
119. At this stage, the Panel shall examine whether these controversial matches shall be considered in order to calculate the percentage of matches disputed by the Player during the season 2012.

120. In this respect, the Panel refers to article 24 of the ABFF RSTP, which reads as follows:

“1. Clubs are obliged to release their registered players to the country national teams for which the player is eligible to play in accordance with the FIFA Regulations.

2. Release of players under the terms of this article is mandatory for matches on dates the listed in the coordinated international match calendar and for all matches for which a duty to release players exists on the basis of a special decision by FIFA, the UEFA and the ABFF.

3. It is not compulsory to release players for matches scheduled on dates not listed in the coordinated international match calendar (emphasis added by the Panel).

121. Consequently, the Panel shall now refer to the 2012 FIFA International Match Calendar which provides that clubs were obliged to release players in favour of national teams on the following dates: 29 February, 7 and 11 September as well as 12 and 16 October.

122. In light of the above, the Panel is of the opinion that the Appellant could only disregard 2 out of the referred 8 matches for the calculation of the relevant percentage, in particular those of 9 September and 13 October 2012, as these were the only ones in which Bate was obliged to release the Player in favour of the Belarusian National team. Concerning the other 6 matches, Bate was not obliged to allow the Player to go.

123. This being said, irrespective of whether the match played by the Appellant against Bayern Munich on 5 December 2012 should be taken into account for the calculation of the relevant percentage, the Panel understand that the Respondent played less than 10% of the Appellant’s official matches during said season (4/42, which means 9.52%, or 4/43 counting the match against Bayer Munich, that is to say 9.3%).

124. Therefore, the Panel considers that the actual occurrence of this second prerequisite foreseen in article 9.11 of the ABFF Statutes was also established by the Player.

125. Concerning the third prerequisite (filing an appropriate request with the Association within 15 days from the club’s last official game of the season), the Panel notes that the Player sent a fax to Bate on 20 December 2012 notifying this club of the Agreement’s termination, and that the Player also sent the same via email.

126. However, there is no indication whatsoever that the Player filed the relevant application with the ABFF or that he even notified the ABFF of the termination of the Agreement.

127. In addition, aside from the Player failing to file the relevant application with the ABFF in order to terminate the Agreement for sporting just cause, the Panel notes that a question has been raised by the parties regarding the precise date in which the 15-day notification period began.

128. The ABFF RSTP defines “official match” as “a football match played within the framework of a competition”, whereas “Competition” is defined in the ABFF RSTP as “championships, contests, match events, the Cup of Belarus, tournaments, other contests between football clubs (teams) organized under the auspices of FIFA, UEFA and ABFF”.

129. In turn, the ABFF RSTP define “season” as “*a time period extending from the beginning of registration to take part in national championship competition through the end of national championship competition*”.
130. The Panel shall point out in this respect that from these definitions, the term “*official match*” appears to be broader than “*season*”, because “*official match*” includes national and international competitions, whereas “*season*” only includes the national championship.
131. The Panel notes that the Player understood article 9 para. 11 to mean that the notification period began as of Bate’s last official match of 2012, which technically was the UEFA Champions League match held on 5 December 2012 against Bayern Munich. On this basis, the Player sent his notification of termination 15 days after such date, on 20 December 2012, in the belief to be on time, and the PSC was of the opinion that the Player was right and correct in this belief and therefore confirmed that the player had the right to terminate the Agreement.
132. Notwithstanding this, the Panel, in light of the ABFF RSTP’s relevant provisions, does not share this interpretation. In the Panel’s view, the reference to “*club’s last official game of the season*” contained in the aforementioned article 9.11, shall refer, by virtue of the definition of “*season*” foreseen in the ABFF RSTP (which does not include international matches), to the last official match of the national championship of Belarus.
133. This being said, taking into account that the last official game of the Appellant in its national championship took place on 25 November 2012, this is the starting date, the *dies a quo*, of the 15-day notification period for the Player to terminate the Agreement with sporting just cause.
134. Given that the notification was sent by the Player on 20 December, the Panel finds and decides that Player failed to comply with the legal deadline to execute the unilateral termination of the Agreement.
135. Following the abovementioned reasoning, the Panel considers that the Player failed to comply with the third prerequisite of article 9.11 of the ABFF Statutes and thus, that the Player was not entitled any more to terminate the Agreement for sporting just cause at the moment he sent the termination letter.

c) The consequences of the termination of the Agreement

136. Having made clear that the Player did not comply with and could not rely on the terms of the article that could have grant him the right to terminate the Agreement for sporting just cause, the Panel shall analyze the consequences resulting from the termination which in this circumstances should be considered as a termination without sporting just cause.
137. Both the ABFF RSTP and the FIFA RSTP (which are part of the Applicable Law) foresee the consequences of the termination of employment contracts without sporting just cause, namely compensation and sporting sanctions. In particular:
 - a) Article 23 of the ABFF RSTP reads in the pertinent part as follows:

1. In case of termination of the contract without sporting just cause, the party in breach shall pay compensation (clause 10 article 9 of these Regulations). In case of a unilateral termination of the contract by a player without just cause or during the protected period, the football player shall pay to his former club compensation, the amount of which is equivalent to the remuneration and other benefits received by the player from this club, but during a term not exceeding longer three years.[...]

3. In addition to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of the contract during the protected period. These sanctions shall be:

3.1 A four-month disqualification

3.2 In case of aggravating circumstances existence, the disqualification shall last six months.

4. In all cases, these disciplinary sanctions shall take effect from the beginning of the following season at the new club.

5. A 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 for a failure to deliver a duly executed notice of termination to the Association and the former club within 15 days from the last official match of the season. The protected period shall start again when the previous contract is extended.

The ABFF RSTP are in Russian. The translation of these regulations was provided by the Appellant as exhibit 8 of its Statement of Appeal.

b) Article 17 of the FIFA RSTP reads in the pertinent part 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. [...]

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.

138. In light of the abovementioned provisions and the fact that the Player terminated the Agreement without sportive just cause the Panel considers that compensation shall be in principle payable to the Appellant by the Respondent.
139. Concerning the amount of this compensation, the Panel notes that if one strictly and solely applied article 23 of the ABFF Statutes, the Player should be ordered to pay an amount of ca. USD 500.000, the sum apparently earned by the Player in the three seasons prior to the unilateral termination of the Agreement (2010-2012).
140. However, in light of the choice of law clause foreseen in clause 18 of the Agreement, which also calls for the applicability of the FIFA Regulations, the Panel understands that the criteria foreseen in article 17 of the FIFA RSTP shall be also taken into account in the determination of the compensation.
141. Article 17 of the FIFA RSTP stipulates that one of the “objective criteria” to be considered in the task of determining of the compensation is also the remuneration under the existing contract.
142. Furthermore, in accordance with the referred article, another criterion to be taken into account is the “*specificity of sport*”.
143. CAS jurisprudence (for instance, in the decision of the case CAS 2008/A/1519) has stated concerning this criterion of specificity of sport that “*the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case*”.
144. Bearing the above mentioned in mind, in the case at stake the Panel shall emphasize that the very specific circumstances surrounding the termination of the Agreement are to be taken into account for the calculation of the amount of the compensation to be paid to the Appellant by the Respondent. Among others:
 - The fact that article 9.11 of the ABFF RSTP could have lead the Player to confusion on the *dies a quo* for the notification of the decision of terminating the Agreement. In fact, not only the Player but also the instance resolving bodies in this case came to understand that the “season” in Belarus ended at the time of the last official match (whether national or international) played by the Club, not at the time of the last national match. Therefore in the Panel’s view, even if the interpretation made by the Player of the referred provision was not correct, it was not entirely unreasonable or temerarious that the Player could have considered that he timely communicated the Appellant his decision to terminate the Agreement with sporting just cause.

- In accordance with the wording of article 9.11 of the ABFF RSTP, it is true that the Player should have addressed his termination to the relevant association instead of to the Appellant. However, it is not less true that the Club (the one with major interest in the relationship with the Player) was notified by the Player of its decision, so we are not in a situation of unawareness by the Club of the Player's decisions. The Player did not make the notification in due form, it is a fact, but he did not simply leave the Club with no communication.
- The Respondent actually only played 4 official matches in the season 2012. Furthermore, the Appellant released the Player in favour of the Belarusian National team even when he was not obliged to do so. Therefore, the Panel is of the opinion that the value and importance given by the Appellant to the Player's services was at least not so high.

145. Therefore, in the light of the abovementioned circumstances the Panel considers that it is fair and reasonable to apply the principle of specificity of sport as a moderating factor on the criterion of contractual remuneration foreseen in article 23 of the ABFF RSTP and 17 of the FIFA RSTP, and on this basis, that the Respondent is to be ordered to pay the Appellant a compensation in the amount of USD 200.000, plus 5% interest per year in accordance with articles 102 and 104 of the Swiss Code des Obligations from 14 January 2013, date in which Bate filed the initial claim in the ABFF PSC.
146. Finally and for the sake of completeness, considering that neither the Player's new club Dynamo Minsk, nor the ABFF are parties to these proceedings, points 5, 6, 7, and 8 of the Appellant's prayers for relief in the Appeal Brief, which directly and specifically refer to them, must be rejected.

V. DECISION

147. Taking the abovementioned legal considerations into account, the Panel has decided to partially uphold the appeal, and thus, to revoke the Appealed decision and issue a new one in which the Player is ordered to pay to the Appellant the amount of USD 200.000 plus 5% interest per year from 14 January 2013 as regards the termination without just cause of the Agreement.
148. On the basis of the reasoning explained in the considerations of the present award, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by FC BATE Borisov is partially upheld.
2. The decision by the Football Arbitration Board of the Association Belarusian Football Federation in the dispute between FC BATE Borisov and Mr. Aleksandr Gutor is revoked.
3. Mr. Aleksandr Gutor is ordered to pay compensation to FC BATE Borisov in the amount of USD 200.000 plus 5% interest per year from 14 January 2013 as regards the termination without just cause of an employment agreement.
4. (...).
5. (...).
6. All other prayers for relief are rejected.