**Arbitration CAS 2013/A/3128 MFK Ružomberok, a.s. v. Suzana Zoran, award of 28 November 2013**

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

*Football*
*Contract of agency for the transfer of a player*
*Validity of the contract*
*Consequences of clauses contrary to the FIFA Players' Agent Regulations over the overall validity of the contract*

1. **If all the factual elements of the case confirm that the club has perfect knowledge of its financial obligations towards the players' agent and if the agency contract is subsequent to (or at least coeval) to the employment contract and expressly indicates, without any doubts, who must pay the commission and to what amount, the burden of proving that the agency contract is not valid and that the obligations arising for the club from the agency contract must not be enforced rest with the club.**

2. **Even if clauses of the agency contract are contrary to the FIFA Players' Agent Regulations, they would still not be binding (and at the most could be declared partially null), but in any case they do not affect the overall validity of the agency contract and of the other clauses in conformity with the FIFA Players' Agent Regulations.**

## 1. THE PARTIES

1.1 MFK Ružomberok, a.s. (the "Club" or the "Appellant") is a Slovak professional football club affiliated to the Slovak Football Association and a member of the Fedération Internationale de Football Association ("FIFA").

1.2 Suzana Zoran (the "Agent" or the "Respondent") is a football players' agent, with a license obtained in the Republic of Bosnia and Herzegovina, where she is still a resident, and who today is settled in Brno, in the Czech Republic

## 2. FACTUAL BACKGROUND

2.1 The background facts stated herein are a summary of the main relevant facts, as established on the basis of the parties' written submissions and of the evidence examined in the course of the proceedings. Although the Sole Arbitrator has considered all the factual allegations, legal

arguments and evidence submitted by the parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

2.2 The parties entered into an agency contract for the transfer of the player G. (the "Player) on 1 February 2010 (the "Agency Contract"), which resulted in the signature of the employment contract between the Club and the Player on 21 January 2010 (the "Employment Contract").

2.3 The Agency Contract provided for the payment of € 18,000.00 by the Club once the Player was transferred to it from the Dutch club FBC Rosendhal. Once the transfer was completed, the Agent would be entitled to receive payment but the Club did not fulfill the obligation.

2.4 In view of the foregoing, the Agent filed a claim before the Single Judge of the Players' Statute Committee of the FIFA on 11 April 2011 (the "PSC of FIFA") seeking judgment against the Club to pay the sum of € 18,000.00 in addition to interest and legal costs.

2.5 In support of her claim the Agent noted in summary that:

- the Agency Contract, originally drafted in the Czech language, was completely valid and binding between the parties; since the Agent had in fact rendered the services related to the Player, the Club owed her the payment of the commission fees;
- she had exchanged (cf. note of the agent's lawyer on 12 May 2011) correspondence with the club, and in particular with its Director Milan Balanik, who offered to settle the dispute by paying the sum of EUR 4,000 as well as legal fees of EUR 10,000.00. However, the Agent did not accept this offer.

2.6 In contrast the Club, in a note of 14 June 2011, had denied that anything was due to the Agent for the following reasons:

- First of all the Agent had issued a credit note on 23 March 2010 to cancel the invoice originally issued by the Club; according to the Club's perspective this behavior was necessarily identified as an express forfeit of the right to the credit accrued by the Agent.
- The same exchange of emails which had been highlighted by the defense of the Agent certainly did not lead to an admission of liability on the part of the Club.
- The Agency Contract was contrary to the provisions contained in the FIFA Players' Agents Regulations (the "FIFA PAR"), and in particular Articles 19 and 20.5. In this respect, the Club avers that the Agent who handled the transfer of the Player was not Suzana Zoran, but her husband Zoran Zoran. And in any case, even giving credit to the argument of the Agent, there was a prohibition to represent simultaneously the Player and the Club. For these reasons the Club alleges that the Agency Contract was null and void.
- Finally, the Club reserved the right to seek damages from the Player – who then returned to the Netherlands - for the unjustified breach of the Employment Contract that would have bound him until 30 June 2012.

2.7 In a letter dated 20 July 2011, the Agent challenged the deductions made by the Club. In particular she highlighted that:

- The issue of a credit note was only due to reasons of a fiscal nature.
- Mr. Milan Baranik had proposed a settlement of the matter with this expressly recognizing as valid and binding on the Agency Contract.
- The Player's behavior and, therefore, the presence or not of a just cause in terminating the Employment Contract, appeared in this context completely irrelevant.
- The exchange of emails (and in particular the message of 15 February 2011 from Mr Milan Baranik of the Club to the Respondent) demonstrated without any doubt that the Club was aware and understood the validity of the Agency Contract. In this respect, the Sole Arbitrator notes the content of said e-mail:

  *"As I say I will not bay any of the players.*

  *I conclude that I am ready to settle the financial commitment to you, but in a limited amount. Because I insist on your belief, the agent must conform for the player.*

  *We need to take into account the extra costs and inconvenience associated with "leaving" the player and his replacement. Player is not paid to date incurred damage to quantify the club 10,000 euro.*

  *I propose the following settlement:*

  - *Payment on behalf of 4.000 EUR*
  - *Assignment of legal claims against the player's 10.000 EUR*
  - *The possibility of selling players MFK Ruzomberok*

  *I believe that the proposal is acceptable and achievable mainly offers fast agreement.*

  *Please your opinion.*

  *Sincerely,*

  *Ing. Milan Baranik"*
- Any provision, even if contrary to the PAR, did not in any case invalidate the Agency Contract.
- The Agent had worked for and represented only the Club's interests. The fact that the proposal to transfer the Player originated from Suzana Zoran did not mean that she had actually worked in the interests of the Player.

2.8 On 24 October 2011, the Single Judge of PSC of FIFA granted the deadline until 28 October 2011 for a possible counter-claim. The Club did not send any further submissions supporting its position. The Player did not reply to any of the requests for clarifications posed by FIFA, while the Dutch Football Federation sent, on FIFA's request, the updated personal data of the Player with the latest issuing of membership available.

2.9 On 23 October 2012 the Single Judge of the PSC of FIFA issued a decision (the "Appealed Decision") which ruled as follows:

*"1. The claim of the claimant, Suzana Zoran, is partially accepted.*

*2. The respondent, MFK Ruzomberok, has to pay to the claimant, Suzana Zoran, within 30 days as from the date of notification of this decision, the amount of EUR 18.000,00 as well as 5% interest per year on the said amount as from 14 April 2011 until the date of effective payment.*

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

*4. Any other claims lodged by the Claimant, Suzana Zoran, are rejected.*

*5. The final costs of the proceedings in the amount of CHF 4.000 are to be paid by the Respondent, MFK Ruzomberok, within 30 days as from the date of notification of the present decision as follows:*

*(i) The amount of CHF 3.000 has to be paid to FIFA*

*(ii) The amount of CHF 1.000 has to be paid directly to the Claimant Suzana Zoran*

*6. The Claimant Suzana Zoran is directed to inform the Respondent, MFK Ruzomberok, immediately and directly of the account number to which the remittance under points 2 and 5.2 above is to be made and to notify the Players' Status Committee of every payment received".*

2.10 The Club was notified of the decision on the date of 1 November 2012. On the date of 8 November 2012 the club asked FIFA PSC for the grounds of the decision. These were sent on 7 March 2013.

2.11 The Single Judge of FIFA reasoned, in very brief summary, as follows:

- There can be no doubt as to the fact that the sending of the credit note did not signify forfeit of the right, as, in any case, this note did not expressly specify such a forfeit; moreover, the transaction offer formulated again on the date of 15 February 2011 clearly demonstrated that the Club was perfectly aware of the residual obligations to the Agent even after the credit note was issued.
- Instead, with regard to the conflict of interests and the declared double representation (which would have rendered the Agency Contract null and void), according to the Single Judge of the FIFA PSC the Club had not provided any proof that could indicate that the Agent was in fact the representative of the Player at the time in which the Employment Contract was undersigned by the parties.
- In view of the foregoing, it followed that the Agent's claims were in substance well founded.

## 3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (edition 2012) (the "Code"), the Appellant filed its statement of appeal on 27 March 2013 and appointed Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as sole arbitrator.

3.2 On 15 April 2013 the Appellant filed the appeal brief before the Court of Arbitration for Sport (the "CAS").

3.3 On 8 April 2013, upon consultation with the parties, the CAS Court Office suspended this appeal in order for the parties' representatives to amicably discuss the resolution of this case through settlement.

3.4 On 11 April 2013 FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present appeal.

3.5 On 15 April 2013, the Appellant informed that the parties could not find an amicable settlement and, therefore, the suspension of the procedure was lifted on 16 April 2013.

3.6 On 19 April 2013, the Respondent agreed to the appointment of a sole arbitrator in this appeal; however he disagreed with the nomination of Mr Botica Santos and suggested the appointment of Mr Hendrik Kesler Willem, attorney-at-law in Enschede, The Netherlands, as sole arbitrator. Furthermore, the Respondent requested an extension of its time limit to file an answer and informed that Mr Frank Bahners, attorney-at-law in Dusseldorf, Germany would no longer represent her.

3.7 On 26 April 2013, the Appellant objected to the nomination of Mr Willem Kesler as sole arbitrator and, therefore, in view of the parties' disagreement on a name and pursuant to Article R54 of the Code, the Deputy President of the CAS Appeals Arbitration Division nominated a sole arbitrator. Furthermore, the Appellant objected to the extension of the Respondent's time limit for filing the answer.

3.8 On 29 April 2013, the Appellant was informed that Mr Paul Greene, attorney-at-law in Maine, United States of America, would represent the Respondent in this procedure.

3.9 On 13 May 2013 the Respondent filed her Answer in accordance with Article R55 of the Code.

3.10 On 3 June 2013 the CAS informed the parties that the Deputy President of the Appeal Division had appointed as Sole Arbitrator Mr. Jacopo Tognon, attorney-at-law in Padova, Italy.

3.11 Following a consultation with the parties, on 21 June 2013 the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing, consulted their availability, and requested to FIFA the first instance proceedings' case file. Furthermore, the Sole Arbitrator requested the Appellant to provide written witness statements of the witnesses listed within its Appeal Brief.

3.12 On 24 June 2013 the Respondent requested the Sole Arbitrator to reconsider his decision with respect to the need of hearing, especially in view of the low amount in dispute. However, on 28 June 2013 the CAS Court Office informed the parties that the Sole Arbitrator maintained his decision to hold a hearing.

3.13 On 28 June 2013, FIFA sent a copy of the file of the procedure which resulted in the Appealed Decision.

3.14 On 1 July 2013 the Appellant only filed the witness statement of Mr. Michal Mertinyak and informed that it decided to withdraw the other witnesses listed in the Appeal Brief (i.e. Mr Libor Hrdlicka, Mr Ladislav Juremik and Juraj Sabo).

3.15 On 3 July 2013, the CAS Court Office informed the parties that the hearing would be held on 6 August 2013 at the CAS Headquarters in Lausanne.

3.16 On 24 July 2013 the CAS Court Office invited the parties to sign and return a copy of the Order of Procedure issued in this matter.

3.17 On 24 July 2013 the Respondent provided a copy of the Order of Procedure signed by her legal counsel, without any reservation or remarks.

3.18 On 25 July 2013 the Appellant provided a copy of the Order of Procedure signed by its legal counsel, without any reservation or remarks.

3.19 The Hearing took place in Lausanne on 6 August 2013. The parties were represented by the following persons: Mr. Svetozar Pavlovic for the Appellant; Mr. Paul J. Green for the Respondent.

3.20 In addition to the Sole Arbitrator, the parties' representatives and Mr Pedro Fida, Counsel to the CAS, the following people attended the hearing:

(i) Mrs. Suzana Zoran (the Respondent)
(ii) Mr. Zoran Zoran (Respondent's husband)
(iii) Mr. Michal Mertinyak (by telephone and Skype)

3.21 During the Hearing, the Sole Arbitrator sought to resolve the dispute by conciliation, pursuant to Article R56 of the Code; however, no amicable agreement was reached between the parties and the proceedings continued.

3.22 During the Hearing the Respondent requested to introduce new documents in the file (namely some e mails concerning the transfer of the player Libora Hrdlicka), to which the Appellant objected. In any event, pursuant to Article R56 of the Code, the Sole Arbitrator decided not to admit these new documents, especially in the absence of any exceptional circumstances which could justify this late submission.

3.23 During the Hearing the parties were granted the opportunity to present their oral arguments and answer the questions posed by the Sole Arbitrator and at the conclusion of the Hearing, the parties confirmed that they had no objections in respect to their right to be heard, to the composition of the Panel, and that they had been given the opportunity to fully present their arguments.

## 4. THE PARTIES' POSITIONS

### A. Appellant's Submissions and Requests for Relief

4.1 In summary, the Appellant submits the following in support of his appeal.

4.2 The first ground concerned the fact that the Respondent did not have the national requirement in order to obtain the license for players' agent. Indeed, according to MFK Ruzomberok, the Agent, as a Czech national, had to obtain the license in the Czech Republic and not in Bosnia and Herzegovina.

4.3 Secondly, the Appellant argued that the Respondent had to comply with the national laws of the Czech Republic since she was established there. After having carried out research in the trade registry, the Club stated that she did not fulfil requirements according to the valid legislation, both in Czech law and in EU Law. For this reason the Appellant had already filed a petition before Czech's Republic Ministry of Labour and Social Affairs against the Respondent for unauthorised business according to the Czech penal Code.

4.4 On the other hand, the Agency Contract was contrary to the provision of Art. 19, chapter 3 of the Players' Agent Regulations of FIFA (the "PAR") since it sets the length of the contract as "indefinite".

4.5 According to the Appellant's perspective, future commissions were forbidden on the basis of art. 29, chapter 2 and 4 of PAR.

4.6 In addition, it was important to underline that there had been a conflict between the Employment Contract, signed on 21 January 2010 and annexed for the first time in the appeal proceeding before the CAS, and the Agency Contract.

4.7 Indeed, the Employment Contract, drafted in Slovakian, contained the Respondent's signature by the side of the Player's signature. Moreover, the Employment Contract also contains the following wording *"the player is using the services of the licensed agent Suzana Zoran"*.

4.8 In view of the foregoing, the Appellant argues that there was a double representation and under those circumstances the Agency Contract, being in conflict of interests, could be considered null and void.

4.9 In the Appellant's opinion, these facts shift the burden of proof to the Agent's side, and as a result the Respondent has to prove her intervention by representing the Club (cf. CAS 2009/A/1906).

4.10 According to the Appellant, the real agent was the Respondent's husband, Mr. Zoran Zoran. And in this particular situation it was clear that several e-mails and communications in general were made between the Respondent's husband and the Club, having had a decisive role in this matter.

4.11 It is also important to stress that the Respondent never appeared in the Club and this was not usual when finalizing transfer contracts of football players.

4.12 Concerning the invoice, the signature of the Agent seems totally different from the other ones presented in the aforementioned contracts. In addition, the Agency Contract was also in breach of Art. 3, Chapter 2 of the FIFA PAE, since Mr. Zoran Zoran acted throughout the whole contracting process as a real agent of the Player.

4.13 In any case, the Respondent was again in violation of Art. 19, Chapter 8 of the FIFA PAR, for double representation and conflict of interest.

4.14 The Appellant avers a problem with the credit note which the Respondent issued for the Club in accordance with the Agency Contract, assuming that the first judge made an incorrect decision regarding the interpretation of those facts.

4.15 Finally, the Appealed Decision should be set aside because of the violation of the right to be heard; given that the Agency Contract is null and void and due to the fact that the burden of proof lies with the Respondent, who has not proved anything according to this criterion.

4.16 At the Hearing the Appellant also sustained that the Agency Contract is not valid in view of Art. 20 of the Swiss Code of Obligations (the "SCO") since the object of the Agency Contract is impossible. Moreover, in any event its object was not fulfilled.

4.17 In its Appeal Brief, the Appellant submitted the following prayers for relief:
*"1 – To accept the appeal filled by the appellant and to annul appealed decision rendered by FIFA DRC on 23rd October 2012.*
*2 – To determine that the Respondent shall bear all procedural cost including advance of costs and total costs of proceedings and/or in the alternative.*
*3 – To condemn the Respondent to the payment of legal expenses in favor of the appellant incurred amounting to EUR 8.000,00 and/or in the alternative".*

## B. Respondent's Submissions and Requests for Relief

4.18 In summary, the Respondent submits the following in support of her Answer.

4.19 After having recalled the Respondent's history and her will to fight for her rights, the Agent holds that the Appealed Decision would be in full conformity with the law, being founded on fully shareable principles, beginning with the most general of *pacta sunt servanda.*

4.20 In any case, the burden of proof must necessarily rest with the Club, in particular regarding the reasons for appeal, which appear *prima facie* completely unfounded and unproven.

4.21 In addition, it is important to remember that the Appellant has not provided any documentation relating to the fact that the Respondent herself was also representing the Player at the time the Employment Contract was signed; and that, as also known from the two *affidavits* annexed, the Respondent not only never forfeited her rights, but in fact has always tried to obtain the commission payment owed, even though the Club did not respect the Appealed Decision.

4.22 In light of the above, the Respondent requests the Appealed Decision to be confirmed.

4.23 After an extension of time to file the answer had been granted, in accordance with Article R55 of the Code, Suzana Zoran asked to the CAS that these requests for relief would be confirmed:

4.24 In her Answer, the Respondent submitted the following prayers for relief:

*"(1) Uphold the FIFA DRC decision of 23 October 2012.*

*(2) Order Appellant to pay all of Mrs. Zoran costs and legal fees associated with this appeal in an amount no less than EUR 8.000 within 30 days.*

*(3)Order Appellant to pay all of Mrs. Zoran consistent with the FIFA DRC Decision, EUR 18.000 plus 5% interest per year on the said amount as from 14 April 2011 until the date of effective payment, plus a payment of CHF 1.000 to Mrs. Zoran for costs associated with the FIFA proceedings.*

*(4) Order any other relief that this deems to be just and equitable".*

## 5. ADMISSIBILITY

5.1 Article R49 of the Code provides as follows:

*"In the absence of a time limit set in the Statutes or Regulations of the Federation, association or sports-related body concerned, or in a previous agreements, the time limit for the appeal shall be twenty one days from the receipt of the decision appealed against [...]".*

5.2 Based on the documents submitted, the grounds of the Appealed Decision were notified on 7 March 2013 to the parties, and the Appellant filed its Statement of Appeal on 27 March 2013.

5.3 The Sole Arbitrator is satisfied that the Appellant's appeal was timely filed and is therefore admissible.

## 6. JURISDICTION

6.1 Article R47 of the Code provides 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".*

6.2 Article 67 par. 1 and 2 of the FIFA Statutes provides as follows:

*"1. Appeals 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.*

*2. Recourse may only be made to CAS after all other internal channels have been exhausted".*

6.3 In light of the fact that jurisdiction i) is not contested by either of the parties and is also clearly confirmed by the above-mentioned Articles and that ii) both parties have signed the Order of Procedure on 25 July 2013, the Sole Arbitrator is satisfied that CAS has jurisdiction to resolve and decide the present case.

## 7. APPLICABLE LAW

7.1 Article R58 of the Code provides 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".*

7.2 In their submissions, the parties make reference to and rely on provisions of the 2008 FIFA RPA, as well as provisions of Swiss law. Accordingly, the FIFA RPA and Swiss law are applicable on the merits of the parties' dispute.

## 8. MERITS OF THE APPEAL

8.1 The appeal is unfounded and has to be rejected for the following reasons.

8.2 The claim at stake, as is known, relates to (i) the payment that the Respondent demands for having transferred the Player and (ii) the object of the Agency Contract.

8.3 In the Appeal Brief, nevertheless, the Club also produced the Employment Contract, from which one could evince an intervention of the Respondent as agent of the Player, and thus in violation of the PAR rule (Art. 19, Chapter 4), which prohibits double representation and, therefore conflict of interest.

8.4 The Sole Arbitrator considers that the Appellant's claims, although reasoned, are not persuasive.

8.5 Given that the two contracts at issue do not bear a certain date in order for it to be said that one of them actually precedes the other (indeed, the Employment Contract was only registered on 18 February 2010) the fact that the Agency Contract appears to be subsequent to the employment contract (which also seems to be in contradiction with the Agency Contract) does not render it invalid.

8.6 It is indeed clear that in this case the parties intended to ratify, at the most *ex post*, a conclusive behavior, recognized as such by the Club, according to which the Respondent in fact worked in favor of the Club in order to promote the transfer of the Player.

8.7 And this is also evident from an e-mail of 31 January 2010 (the day before the undersigning of the Agency Contract), in which the Respondent sends precisely the referred Agency Contract, subject to agreement, which was then accepted and signed by the Club.

8.8 An interpretation necessarily in good faith of said event can only lead to a conclusion of such a kind. The reasoning would not change in the case where it was believed that, more than ratification, it involved a rectification of a hypothetical error in the Employment Contract. It is important to note, however, that the Employment Contract was prepared by the Club in their own language, i.e. Czech (and the Agent is instead of Bosnian nationality).

8.9 It does not seem in any case that the Appellant was forced in any way to sign the Agency Contract which provides, indeed, a very specific amount for the transfer that was approved by the Club; and which it was obliged to pay.

8.10 It is no coincidence that the problems arose just after the Player left the club (for unknown reasons and in any case not of interest in this context.) Otherwise, in the event that things had gone well, it is reasonable to believe that no problems would have arisen with regard to the payment of commission.

8.11 This conclusion is also supported by the fact that the Appellant's witness, Mr. Mertinyak, during the Hearing, significantly conceded that for a similar operation (the transfer of the player Libora Hrdlicka) the commission had been paid, according to his belief.

8.12 Therefore, the fact that in the Employment Contract the name of the Agent (the position of whose signature is not relevant in the contract) is actually referred to as the agent of the player seems – in the absence of other evidences – to be an attempt by the Club not to pay the commission in the event that the Agent requested it.

8.13 Differently, as it is correct to reiterate, the circumstance that only 10 days after the Club decided to sign precisely for that amount and for that transfer a commitment to pay € 18,000.00 is incomprehensible.

8.14 This behavior appears unequivocally aimed at confirming an obligation that is not contrary to any rule of law, not even to Article 20 of the SCO. Therefore, the Sole Arbitrator sees no plausible reason to determine that the object of the Agency Contract would be impossible.

8.15 But there is another decisive reason for which it cannot be doubted that the Agency Contract is valid and has not been respected. In this context, the Sole Arbitrator notes that the Appealed Decision correctly addressed this issue And further notes that the credit note issued by the Respondent a few days after the sending of the first invoice cannot constitute, in absence of further proof, a forfeit of this credit but - always interpreting in good faith the behavior of the parties - it appears rather as an attempt to make a compromise with the Club (regardless of the fiscal issues which can be evinced from the e-mail of 13 May 2010 in the Agent's dossier of the first instance proceeding) and to postpone the due payment.

8.16 On the other hand, it is relevant that after the second invoice was issued on 23 August 2010, the Club said nothing for 10 months. It was not until the first appearance in front of the Single Judge of the FIFA PSC that the Club raised its claims. It is not credible, in the Sole Arbitrator's view, that the new issuing of the invoice, if the credit was in fact contested, did not receive any reaction from the Club for such a long time.

8.17 In this context, then, the email of Mr. Baranik of 15 February 2011 (sent 6 months after of the issuing of the second invoice) is relevant because it confirms the credit (or in any case its existence) and because the behavior of the Director of the club (a high level professional figure) could not be interpreted otherwise, having proposed a new settlement.

8.18 It is important to clarify that the previous decision in CAS 2009/A/1906 is not suitable in the case at stake. Indeed, the award in said case is without doubt important and significant (while not directly binding on this Sole Arbitrator), but does not overlap in the context of the present dispute.

8.19 In the case CAS 2009/A/1906, the agency contract was signed prior (and not subsequent) to the employment contract of the player; and in the employment contract of the player, differently from the present case, there was no signature of the agent. Therefore, it is clear that in such circumstances the burden of proof lies with the agent.

8.20 Instead, in our case, beyond the numerous elements that confirm the knowledge of the obligation by the Club, the Agency Contract is subsequent to (or at least coeval) to the Employment Contract and expressly indicates, without any doubts, who must pay the commission and to what amount.

8.21 The burden of proving the arguments rests with the Appellant, which has not demonstrated in any way its thesis.

8.22 Differently, it is undisputed that the obligations arising from the Agency Contract were respected and, therefore, payment by the Club must be enforced, in full conformity with the first judgment.

8.23 Even if these arguments appear decisive enough for the appeal to be rejected, it is worth briefly discussing the other grounds which corroborate the Sole Arbitrator's position for dismissing the Appellant's claims.

8.24 Above all, the idea that the real agent of the player was the Respondent's husband is not persuasive.

8.25 Beyond the fact that the use of the e-mails forwarded by the Respondent from her professional address to the one referred to as of Zoran Zoran, does not mean that her husband was the actual sender of them (and during the hearing this did not emerge). Instead, it did in effect emerge that the Respondent maintained contact with the Director of the Club Mr. Juri Sabo, who was not called as a witness by the Club.

8.26 Furthermore, the same e-mail of 3 August 2010, proves at the most that in order to maintain good business relationships with the Club, the Agent would in fact have proposed a transfer of the Player without fees.

8.27 Proposing to transfer another player to replace G., and in this way forfeiting the commission due from the transfer of the latter, appears to be a normal course of action. For the Sole Arbitrator, this behavior shows even more the correctness and validity (and good faith) of the Agent.

8.28 In light of the foregoing, there was no involvement of the Agent's husband since he only performed tasks of a secondary and accessory nature, which do not invalidate the right of the Agent to receive payment of the commission agreed in accordance with the Agency Contract.

8.29 Moreover, it is unusual that the witness called by the Appellant hesitated about the existence of a power of attorney, in this case not required, in favor of the Respondent, as if he knew that she was the Agent; but then he stated that the Player's Agent was the Respondent. In any event, the Sole Arbitrator did not find convincing the declaration put forward by the Appellant's witness.

8.30 The statements of the Respondent's husband, on the other hand – beyond certain confusion in the use of the terms concerning who actually had the control for managing of the Player – are congruent with the developments in this matter.

8.31 Indeed, the proposal, following the Club's request, means having the power to bring the Player from Netherlands to the Slovak Republic (which in effect occurred), but does not necessarily mean to be the Agent of the same Player. In this regard, besides the fact it was the Club which was responsible to pay the commission (*de iure condendo* we could say in lieu of the Player) according to the subsequent employment contract.

8.32 The Sole Arbitrator further states that the arguments put forward by the Appellant concerning the Agent's nationality are completely unfounded. There are no doubts about the validity of

the Respondent's players' agent license or that said license could not be obtained in Bosnia by a Bosnian citizen, free to move to the Czech Republic: as provided in FIFA rules.

8.33 As for having violated the aforementioned Czech legislation, the Sole Arbitrator disagrees with this argument on the basis of lack of convincing evidence.

8.34 The duration of the Agency Contract, together with the fees due for the transfer of the Player, are both clear in all the basic aspects.

8.35 Even if the clauses of the Agency Contract were contrary to the FIFA Regulations, they would still not be binding (and at the most could be declared partially null), but in any case they do not affect the overall validity of the Agency Contract and of the other clauses in conformity with the aforementioned FIFA Regulations.

8.36 The fact, then, that the Respondent did not go to Ruzomberok in order to sign the Employment Contract does not have any relevance in this context, since the matter would have been successfully concluded, as occurred previously, by fax, registered mail or similar methods.

8.37 In any case, it is appropriate to reiterate that until 14 June 2011, and thus for approximately 16 and a half months, the Club never contested the validity of the Agency Contract, and also proposed a settlement in order to resolve the dispute amicably.

8.38 Finally, with regard to the right to be heard, even if it could be said that it had been compromised in the first instance proceedings, based on previous CAS rulings this violation could be cured with an appeal before the CAS (cf. CAS 2008/A/1574, CAS 2009/A/1840 & CAS 2009/A/1851, CAS 2008/A/1545, CAS 2012/A/2698). Therefore, any prejudice suffered by the Appellant before the Single Judge of the PSC of FIFA has been cured by virtue of this appeal in which the parties had the right to present their arguments and evidence. Furthermore, this is also confirmed by the parties' statements during the hearing and the signature of the Order of Procedure.

8.39 In conclusion, from the complete examination of the proof emerging from both the documents and the hearing, the Sole Arbitrator firmly believes that the arguments and evidence put forward by the Respondent are more convincing than those of the Appellant.

8.40 In view of the foregoing, the Appealed Decision is confirmed, as well as in relation to the legal fees in the first instance proceeding, which shall be borne by the Club, and to the amount of the rate of interest, otherwise not the object of particular claims.

8.41 The appeal must, therefore, be rejected with all other and further requests of relief coming from the parties.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The Appeal filed by MFK Ružomberok, a.s. on 27 March 2013 is dismissed.

2. The Decision issued by the Single Judge of FIFA PSC dated 23 October 2012 is fully confirmed.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.