Arbitration CAS 2013/A/3329 Football Club Volyn Lutsk v. N., award of 31 July 2014

Panel: Mr José María Alonso Puig (Spain), President; Mr François Klein (France); Prof. Martin Schimke (Germany)

Football
Termination of a contract of employment with just cause
Breach of the employer's payment obligations and right of the employee to terminate the contract with just cause
Conditions for the termination of the contract with just cause due to the non-payment of salaries
Termination of contract with just cause and training compensation
Respondent's request to be awarded interests and Article R55 CAS Code

1. **A lack of payment entitles a player to unilaterally terminate the contract with his club with just cause. In addition to the FIFA Commentary to Article 14 of the FIFA Regulations on the Status and Transfer of Players, CAS case law has also considered that continuous breaches by the employer of its duty to comply with its financial commitments towards the player can constitute just cause for termination. The non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated – constitute "just cause" for termination of the contract. The employer's payment obligation is his main obligation towards the employee. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost.**

2. **The non-compliance with the employer's obligation to pay the employee can only constitute a just cause for the employee under two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.**

3. **Regarding training compensation, termination with just cause determines that the player be granted the status of a free agent. As such, the player cannot be held liable as a consequence of the club's breaches of its contractual obligations. In any case, training compensation is due between clubs, not between the player and the training club.**

4. **If the previous decision made no reference to interest payment, a CAS panel cannot order interests requested by the respondent because Article R55 of the CAS Code does no longer provide the possibility to request counterclaims.**

I. THE PARTIES

1. The Appellant is the Football Club Volyn Lutsk ("FC Volyn", the "Club" or the "Appellant"). FC Volyn is a football club currently playing in the Ukranian Premier League.

2. The Respondent is N. (the "Player" or the "Respondent"). The Player is a professional football player, formerly employed by FC Volyn.

3. The Appellant and the Respondent are referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

4. On 25 April 2012, the Parties entered into a professional football contract, numbered No. 22/01 (the "Contract")[1].

5. Under the Contract, the Player was to play as a professional football player for the Club. Pursuant to clause 7.1 of the Contract, it entered into force on 1 July 2012 and would have expired on 30 June 2015.

6. Remuneration for the Player was established in clause 5 and Annexes 1 and 3 of the Contract. Pursuant to clause 5.1.:

   "5.1. For the performance of work under this Contract the Player shall be monthly paid the salary in the amount specified in the Annex to this Contract".

7. Pursuant to Annex 1 of the Contract:

   "3. For the period of contract validity a monthly salary is set in the amount of UAH 9800 (nine thousand eight hundred)".

8. Pursuant to Annex 3 of the Contract[2]:

   "3. FC "Volyn" (Lutsk) shall pay the monthly remunerations for football player's work in such amounts:

   3.1. 9 000 (nine thousand) USD from July 01, 2012 to June 30, 2013 for the full month.;

   3.2. 14 000 (forteen thousand) USD from July 01, 2013 to June 30, 2014 for the full month;

   3.3. 19 000 (nineteen thousand) USD from July 01, 2014 to June 30, 2015 for full month".

9. On 13 March 2013, the Player, along with other players, sent a collective statement to Volyn FC requesting payment of amounts due under Annex 3 of the Contract, stating that otherwise they would be terminating their respective contracts in advance because of Volyn FC's breach of contract.

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[1] Annex 1 of the Appeal Brief.
[2] Annex 1 of the Answer.

10. On 14 May 2013, as payment of USD 36,000, corresponding to four months of pay pursuant to Annex 3 of the Contract, was still due, the Player sent a new letter to Volyn FC requesting payment[3]. In such letter, the Player stated that *"in the event of non-repayment in full the existing arrears for the period from January 1, 2013, to April 30, 2013, till May 15, 2013, the Contract will be deemed terminated due to the fault of the Club since May 16, 2013"*.

11. On 15 May 2013, having been paid USD 9.000, corresponding to his salary for the month of January 2013, the Player sent a new letter to the Club[4]. Therein, the Player stated that considering that the upcoming two matches would decide whether the Club would remain in the Ukranian Premier League, he would be staying at the Club but, if payment was not made by 26 May 2013, the Club should *"(…) consider the Contract No. 22/01 of April 25, 2012, terminated due to the fault of the «Volyn» Football Club» LLC since May 27, 2013"*. The Club, however, failed to pay the amount requested.

12. On 7 June 2013, the Player informed Volyn FC that it considered the Contract to be terminated as of 27 May 2013. Therefore, on 14 June 2013 the Player filed a claim before the Dispute Resolution Chamber of the Football Federation of Ukraine (the "DRC").

13. On 17 July 2013, the DRC issued its decision regarding the claim brought by the Player (the "Contested Decision"), ruling that (sic)[5]:

    1. *The Claim of the football Player N. concerning the non-performance by Volyn Football Club Lutsk Limited Liability Company of the financial obligations under the Contract and Annexes thereof, early termination of the Contract due to the fault of the Club, granting the status of "free agent" without compensation and compensation payment un his favour, shall be granted in part.*

    2. *To recognize the Contract No. 22/01, concluded on 25.04.2012 between Volyn Football Club Lutsk Limited Liability Company and Football Player N., as early terminated on 27.05.2013 due to the fault of Volyn Football Club Lutsk Limited Liability Company.*

    3. *To bind Volyn Football Club Lutsk Limited Liability Company to pay debt in favour of N. on compulsory monthly remunerations in the amount of USD 34,548 (thirty-four thousands five hundred and forty-eight), which shall be subject to payment in UAH, national currency of Ukraine, according to the official exchange rate of NBU as of the date of payment.*

    4. *To grant the status of "free agent" without compensation to the Football Player N.*

    5. *To bind Volyn Football Club Lutsk Limited Liability Company due to the early termination of the Contract due to the fault of Volyn Football Club Lutsk Limited Liability Company to pay in favour of N. compensation in the amount of USD 100,000 (one hundred thousand), which shall be subject to payment hryvnias, national currency of Ukraine, according to the official exchange rate of NBU as of the date of payment.*

    6. *To bind Volyn Football Club Lutsk Limited Liability Company according to the procedure and by means provided by the legislation and regulatory norms, to perform all necessary actions concerning:*

[3] Annex 3 of the Appeal Brief.
[4] Annex 6 of the Appeal Brief.
[5] Annex 1 of the Statement of Appeal.

- *Duly execution of dismissal of N. from the Club and giving him back the employment record book;*
- *Provision of possibility of unimpeded employment of N. at any other football club;*
- *Notification of all subjects (authorities and interested parties), which belong to the FFU jurisdiction, concerning termination of contract (labour) relationships with N..*

7. *The other part of the claims shall be dismissed.*

8. *According to paragraph 1 of Article 35 of the Regulation of FFU Dispute Resolution Chamber, paragraphs 2, 4, 6 of this Decision shall become valid immediately upon receiving by the Parties the operative part of the Decision. In the other part the Decision shall become valid upon the termination of the period for submission of the Statement of appeal.*

   Statement of appeal for the FFU Dispute Resolution Chamber Decision may be filed to Court of Arbitration for Sport within 21 (twenty-one) days upon the receipt of complete Decision of the FFU Dispute Resolution Chamber by the Party. (…)".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 17 September 2013, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), the Club filed its Statement of Appeal against the Contested Decision. In its Appeal, the Appellant nominated Mr. François Klein as arbitrator.

15. On 26 September 2013, the CAS acknowledged receipt of the Appeal. Considering that other Appeals had been filed by FC Volyn, in which it had nominated the same arbitrator, the CAS invited the Parties to comment on the consolidation of the cases. The chosen language of the proceeding was English. On that same day, the CAS informed the Football Federation of Ukraine of the ongoing procedure.

16. On 27 September 2013, the Appellant filed its Appeal Brief.

17. On 30 September 2013, the Respondent replied, objecting to the consolidation proposed. The Respondent nominated Prof. Dr. Martin Schimke as arbitrator. On that same date, the Football Federation of Ukraine informed the CAS that it did not intend to participate in the proceedings.

18. On 2 October 2013, the CAS acknowledged receipt of the Appeal Brief, granting the Respondent, pursuant to Article R55 of the Code, 20 days after receipt of the letter to submit its Answer. On that same day, Mr. François Klein and Prof. Dr. Martin Schimke accepted their nomination as arbitrators. Prof. Dr. Schimke disclosed certain information which, however, he considered did not affect his independence. No comments were raised by the Parties in this regard.

19. On 7 October 2013, FC Volyn expressed its agreement to the proposed consolidation. In that same letter, the Appellant informed the CAS that Mr. Ralph Oswald Isenegger, Attorney-at-

law in Geneva, Switzerland, would be representing it in the arbitration, enclosing the relevant power of attorney.

20. On 10 October 2013, the CAS informed the Parties that, in absence of an agreement between the Parties, the President of the CAS Appeals Arbitration Division had decided not to consolidate the cases CAS 2013/A/3329, 2013/A/3330, 2013/A/3331 and 2013/A/3332.

21. On 14 October 2013, Ms. Nataliia Sergienko informed the CAS that she would represent the Respondent in these proceedings, enclosing the relevant power of attorney. Furthermore, she requested that, pursuant to Article R39 and R64.2 of the Code, the time limit for filing the Answer be fixed after payment in full by the Appellant of the advance on costs.

22. On 22 October 2013, the CAS invited the Respondent to provide contact details for his counsel, as at the current address provided the courier could not be delivered. On 25 October 2013, Ms. Sergienko provided the requested contact details.

23. On 6 November 2013, the CAS acknowledged receipt of the Appellant's share of the advance on costs. Furthermore, the CAS informed the Parties that the Panel had been formed and was constituted by Mr. François Klein, Prof. Dr. Martin Schimke, and Mr. José María Alonso, who had accepted his appointment on 5 November 2013 and would be acting as President of the Panel.

24. On 19 November 2013, the Appellant provided the CAS with Mr. Isenegger's contact details.

25. On 26 November 2013, the Respondent filed its Answer, in accordance with Article R55 of the Code.

26. On 28 November 2013, the CAS acknowledged receipt, inviting the Parties to inform the CAS before 5 December 2013 whether they preferred a hearing to be held.

27. On 5 December 2013, the Appellant informed the CAS of its intention to hold a hearing, stating that it would not oppose hearing witnesses by video conference.

28. On 17 December 2013, the CAS forwarded to the Parties the delivery report of the Contested Decision, as provided by the DRC.

29. On 3 January 2014, the CAS informed the Parties that the Panel had decided to hold a hearing, requesting that they inform the CAS, on or before 14 January 2014, which witnesses they wished to hear via video conference. The CAS also informed the Parties that the Panel had fixed 5 February 2014 as the date for the hearing. Unless any objections were raised by the Parties on or before 14 January 2014, 5:00 pm CET, the hearing date would be confirmed by the Panel and only cogent reasons for altering the hearing would be taken into consideration.

30. On 14 January 2014, the Respondent informed the CAS of the witnesses it intended to hear by video conference and agreed to the date set by the Panel for the hearing. On 16 January 2014, in the absence of an answer from the Appellant, the Panel called the Parties to appear at the hearing to be held on 5 February 2014, at 9:30 am at the CAS Headquarters, noting the witnesses that would be appearing by video conference. The CAS further informed the Parties

that the Panel had appointed Mr. Sebastián Mejía, attorney-at-law in Madrid, Spain, as ad-hoc clerk.

31. On 28 January 2014, the CAS sent the Parties the Order of Procedure for their signature. Furthermore, the CAS informed the Parties about the organization of the hearing, the presence of interpreters and the hearing of witnesses by video conference.

32. On 29 January 2014, the Appellant informed the CAS that due to the "political troubles" in Ukraine, neither the Club's representatives nor its witnesses would be traveling to the hearing, thus requesting that it be postponed. On 30 January 2014, the Respondent replied to the Appellant's letter, claiming that the political situation at the time in Ukraine was no obstacle to the adequate development of the hearing. On that same day, the CAS advised the Parties to refrain from canceling their flights until the Panel reached a decision on the issue. Later that day, the CAS informed the Parties that the hearing would be maintained.

33. On 30 January 2013, the Respondent sent to the CAS a signed copy of the Order of Procedure. On 31 January 2013, the Appellant sent the CAS a signed copy of the Order of Procedure.

34. On 3 February, the Appellant again requested that the hearing be postponed. On that same day, the Respondent rejected the request, but informed the CAS that its representative would not be able to be present at the hearing due to problems to obtain a visa in good time. The CAS thus informed the Parties that due to the absence of both of their counsel from the hearing, the hearing was called off.

35. On 4 February 2014, the CAS informed the Parties that the hearing had been rescheduled to 19 March 2014, at the offices of Baker & McKenzie in Kiev, Ukraine.

36. On 5 February 2014, the Appellant filed a letter requesting the postponement of the hearing. In response, the CAS referenced its previous letter of 4 February.

37. On 17 February 2014, the CAS informed the Respondent that it was requested to provide, on or before 28 February 2014, the collective statement of the Respondent and other players to FC Volyn dated 13 March 2014.

38. On 21 February 2014, the Respondent informed the CAS that Mr. Romanovskiy would be representing the Respondent during the hearing, even though Ms. Sergienko would still represent the Respondent in the proceedings.

39. On 21 February 2014, the Appellant informed the CAS of the witnesses that would be present at the hearing.

40. On 10 March 2014, due to the increase in political and diplomatic tensions in Ukraine, the CAS requested that the Parties to express their preference to maintain the hearing date and venue or move the hearing venue to Lausanne. Should the hearing venue be moved to Lausanne, the Panel would allow hearing the Parties and their witnesses by video conference conducted between the offices of Baker & McKenzie in Kiev and the CAS Headquarters in Lausanne.

41. On 11 March 2014, the Appellant informed the CAS that it had no problem with holding the hearing on the established date. On that same day, the Respondent informed the CAS of its preference, agreeing to hold the hearing in Lausanne and hear the parties and witnesses by video conference.

42. On 12 March 2014, the CAS informed the Parties about the change of the hearing venue to the CAS Court Office in Lausanne, with the possibility of hearing the Parties' representatives, counsel and witnesses located in Ukraine by video conference. As counsel for the Appellant was understood to be located in Switzerland, he was requested to appear at the CAS Court Office. The Parties were informed that neither the date nor the venue of the hearing could be subject to further alterations. On 14 March 2014, the CAS further informed the Parties about the organization of the hearing and the presence of interpreters either in Lausanne or in Kiev.

43. On 17 March 2014, the Appellant requested that the hearing be postponed, informing the CAS that neither the Appellant nor its representatives or counsel would be attending the hearing. On that same day, the CAS informed the Appellant that the hearing would be held, noting, amongst other issues, that the Appellant's counsel is located in Geneva and that thus, there were no impediments to his attendance. Furthermore, the CAS reiterated there were apparently no travel restrictions within Ukraine and that on that day, based on news reports and personal contacts, there did not appear to be any safety concerns in Kiev. In this regard, the CAS advised again on Article 57, paragraph 4, of the Code, pursuant to which the Panel, in case a party fails to appear despite being duly summoned, may proceed with the hearing and render an award nevertheless.

44. On 19 March 2014, the hearing was held. The Respondent and his counsel participated in the hearing via video conference. Neither the Appellant nor its counsel attended. Pursuant to Article 57, paragraph 4, of the Code, the Panel proceeded nevertheless with the hearing and the issuance of this award as all parties, and in particular the Appellant, had been duly summoned. By letter of the same date, the CAS informed the parties of such course of action.

IV. OUTLINE OF THE PARTIES' POSITIONS

A. THE APPELLANT

45. FC Volyn avers that in granting the Player compensation and the status of a free agent as a consequence of the Club's breach of contract, the DRC erred. Thus, it considers that the Contested Decision should be overturned.

46. Firstly, the Club allege that the Player did not comply with Ukrainian labour regulations in terminating the Contract and that, thus, in not taking this into account, the DRC failed in its findings. The Club holds that the Player did not adequately terminate the Contract and, for this reason, it informed the Ukrainian Football Federation and the Player of his non-attendance to training in June 2013.

47. As the Contract itself does not provide for a procedure of termination, FC Volyn believes that such procedure shall abide by that provided in the Labour Code of Ukraine and, in

particular, articles 36 and 39 of the same. In this regard, pursuant to Article 47 of the Labour Code of Ukraine, termination of a labour agreement requires the issuance of an order of dismissal, which has not been issued in this case according to FC Volyn. The Player informed the Club of the possibility of terminating the Contract in numerous occasions but, however, changed his decision and remained as a player at FC Volyn. The notices issued by the Player only contained the possibility of terminating the Contract, but did not terminate it.

48. Furthermore, on 27 May 2013, date of alleged termination, the Player was on his annual leave. Pursuant to Article 2.25 of the Ukrainian Labour Code, the day of dismissal can only be the last working day and, therefore, the Player, on 27 May, could not be dismissed and neither could the Contract be terminated.

49. Secondly, the Appellant submits that in bringing his claim to the DRC, the Player abused his rights. This is so, according to the Appellant, because in early May 2013, all players were informed of the planned schedule of payments to be implemented by the Club in order to complete performance of the delayed payments under Annex 3 (as payments under Annex 1 had been effectively made). In this regard, on 14 May 2013, the Player received part of the amount that was due.

50. Moreover, the Club claims that in June 2013 it did pay all outstanding salaries for those players returning from vacation and that, , as such, those players recognized that they had no further financial claims against the Club. The Player, however, did not come back from vacation to the Club and, although the Club informed him of the possibility of payment if he returned to perform the Contract, the Player decided not to do so. This offer of payment was reiterated during the DRC hearings.

51. Based on the above, the Club believes that the DRC misapplied the decision taken in case CAS 2009/A/1934 & 1936. As the Player was aware of the measures taken to perform payment of the due wages, he had grounds to expect future compliance by the Club of the schedule of payments and should have continued with the labour relationship.

52. Finally, the Club argues that even if it were to be found that it breached the Contract and that the Player terminated the Contract, the DRC erred in failing to award compensation to the Club for training and other expenses. The Club claims such expenses based on section 3 of Article 22 of the Regulations on the Status and Transfer of Players of the Football Federation of Ukraine (the "FFU Regulations") that provides for training compensation, and clause 7.4 of the Contract, under which *"[i]n the case of unilateral termination of the Contract by the Football Player, it has to compensate the Club all the funds, spent for him and plus moral damages"*. The Club estimated those expenses to amount to USD 423,591.91. FC Volyn claims that such compensation is due irrespective of whether the Player's termination of the Contract was or was not justified.

B. THE RESPONDENT

53. The Player argues that FC Volyn was in constant default in performing its obligations of payment under the Contract. Because of this, on 13 March 2013 the Player sent, along with

other players, a letter requesting payment. However, the Club only paid the amounts due for December 2012, leaving January, February and March 2013 unpaid. Likewise, after a new letter was sent on 14 May 2013 by the Player, the Club only paid January 2013, leaving February, March and April 2013 still unpaid.

54. Despite the Club's breaches, the Player decided to remain with the club, considering that in the last two rounds of the championship it would be decided whether FC Volyn would keep on playing in the Ukrainian Premier League for the following season. Because of this, the Player extended the deadline for payment until 26 May 2013, noting that if payment was not received, the Contract would be deemed terminated on 27 May 2013.

55. Given the Club's systematic breaches of contract and that the amount due was essential for the Player, he was forced to appeal to the DRC. In this proceeding, the Player contends that the DRC correctly recognized his right to terminate the Contract, claim compensation due and obtain the status of a free agent, when taking into consideration that:

(a) At the date of termination, 27 May 2013, the Club owed USD 34,458 to the Player as outstanding salaries;

(b) Based on Article 9 and 10 of the FFU Regulations, Article 14 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA Regulations"), the Comments to the FIFA Regulations and CAS practice, the DRC adequately assessed that the Player had the right to terminate the Contract;

(c) Finally, section 6 of Article 9 of the FFU Regulations provides that *"[i]n the event of termination of the contract due to the fault of the club, the body authorized by the relevant association shall provide the football player with the status of «free agent» and club shall be deprived of the right of compensation and shall clear arrears to the football player during the period of his work in the club"*. Therefore, in granting the status of free agent without compensation, the DRC acted correctly.

56. The Player thus is of the view that the DRC issued a correct decision and that, in consequence, the Appeal must fail.

V. JURISDICTION AND APPLICABLE LAW

A. JURISDICTION

57. Pursuant to Article R47 of the Code:

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

58. Under article 34 of the Regulations of the Dispute Resolution Chamber of the Football Federation of Ukraine (the "DRC Regulations"):

"Article 34

1. As a last resort, the DRC's decisions may be the subject of an appeal before the International Court of Arbitration for Sport (CAS, Lausanne, Switzerland).

2. The 21-day time limit for appeals shall begin on the day the decision is received in full".

59. There is no discrepancy between the Parties regarding the submission of the present dispute to the CAS. The Panel is thus satisfied that the CAS has jurisdiction to hear this case.

B. ADMISSIBILITY

60. The Respondent claims that the Appeal is late. The Respondent argued that the Contested Decision was received by fax on 23 August 2013 and, thus, the Appeal lodged on 17 September 2013 was late. The Appellant, however, claims that it received the Contested Decision not on 23 August, but on 27 August 2013 and that, therefore, the Appeal was filed within the prescribed time limit.

61. Upon request to the DRC for the delivery receipts, the Panel considers it proven that the DRC Decision was sent to and received by FC Volyn on 27 August 2013. Therefore, the Appeal filed on 17 September 2013 was timely.

C. APPLICABLE LAW

62. Pursuant to Article R58 of the Code:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

63. There is no argument between the Parties regarding the applicability of the FFU Regulations. Ukrainian national law, the only aspect of which that has been provided is the Ukrainian Labour Code, is also applicable where the FFU Regulations or the Contract provide insufficient guidance.

64. The FIFA Regulations are not directly applicable to the case. However, considering that pursuant to Article 1 of the FIFA Regulations, the principles set forth in Article 14 regarding termination with just cause must be respected by national regulations, and that Article 10.2 of the FFU Regulations contains similar wording to that of Article 14 of the FIFA Regulations, commentary and case law on Article 14 of the FIFA Regulations, where applicable, will be referred to by the Panel.

VI. MERITS

65. It is undisputed that, at the date of effective termination, 27 May 2013, the Club owed the Player the outstanding amount of USD 34,548 corresponding to his salary for the months of February, March and April 2013, as well as 26 days of May 2013.

66. The main issue, thus, is whether the Player was entitled to terminate the Contract with just cause based on such lack of payment. In this regard, the Panel notes that, on March 2013, the Player was owed salaries from December 2012, of which only the equivalent of one month was paid after the Player's request. Two months later, in May 2013 and upon a new request by the Player, the amount due for January 2013 (i.e. with over 3 months of delay) was paid, leaving however the remaining amounts (for February, March and April) unpaid.

67. Article 10.2 of the FFU Regulations provides that:

"Contract may be terminated by one of the parties without any consequences (compensation or sanctions) in the case of a just cause".

68. The Panel must therefore determine whether the lack of payment of the salaries pursuant to Annex 3 of the Contract can be considered as just cause for termination. The Panel agrees with the DRC in considering that such lack of payment entitled the Player to unilaterally terminate the contract with just cause. In this regard, the Panel must note that the final amount owed was equivalent to nearly four months of salaries and that, at least from March 2013 (i.e. over 2 months before termination), the Player was owed three months' worth of salary.

69. As the DRC noted, the commentary on Article 14 of the FIFA Regulations[6] is clear in this regard[7]:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. The following examples explain the application of this norm".

70. The examples provided by the Commentary to the FIFA Regulations, based on decisions by the FIFA Dispute Resolution Chamber, are very illustrative to this case[8]:

"Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such long period of time entitles him to terminate the contract, particularly because persistent non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".

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[6] Artide 14 of the FIFA Regulations: *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".*
[7] Commentary on the Regulations for the Status and Transfer of Players. FIFA. p. 39.
[8] *Ibid.*

71. CAS case law, as noted by the DRC, has also considered that continuous breaches by the employer of its duty to comply with its financial commitments towards the player can constitute just cause for termination. In case CAS 2006/A/1180, the panel ruled:

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

72. In the present case, the existence of just cause and the prerequisites established in CAS case law are clear:

1. The Club, since December 2012, had been failing on its payment duties towards the Player. The amounts due are far from insignificant, as they represent the totality of the Player's monthly salary under Annex 3 of the Contract for the corresponding months;

2. In March 2013, the Player issued the Club with a first notice regarding its lack of payment, warning the Club about the possible termination of the Contract;

3. Further notice was given on 14 May 2013;

4. On 15 May 2013, the Player provided a reasonable deadline for compliance, until 26 May 2013, or the Contract would be considered terminated.

5. Due to the Club's lack of payment, on 26 May 2013 the Player could duly consider the Contract as terminated, of which fact he informed the Club on 7 June, filing the claim with the DRC to enforce such termination.

73. Moreover, the fact that the Player first provided notice on 13 March 2013, then on 14 May and then on 15 May, giving a final deadline for compliance of 26 May 2013 cannot be contrary to the Player's claim for termination. On the contrary, from the file the Panel understands that the extensions of the deadline and, in particular, the final extension to 26 May 2013, were done in good faith. In this regard, this final extension was granted to help the team in the final decisive two rounds in which the Club was playing to remain in its division in the Ukrainian Premier League. Furthermore, in relation to the Club's alleged intention to pay, as provided by the head coach in May 2013, the truth is that, notwithstanding the fact that the specific undertakings were not provided, at the date of termination the Player was still owed wages equivalent to over three months' salary, a debt that existed since March 2013 and that

clearly undermined the Player's confidence in future performance of the Contract, allowing him to terminate the same.

74. Regarding the issue of the status of a free agent granted by the DRC, Article 9.6 of the FFU Regulations provides:

"In the event of termination of the contract due to the fault of the club authorized by the appropriate authority association the football player has the status of "free player" and the club loses the right to compensation and shall pay to the player arrears which occurred during the period of his work at the club".

75. As already noted, the lack of payment by the Club of over three months' worth of wages entitled the Player to terminate the Contract with just cause. Under Article 9.6 of the FFU Regulations, the status of a free agent and the loss of the right to compensation by the Club are direct consequences of the same.

76. Regarding the form of termination, in regards to which the Appellant claims that it should have been done in the form of an order issued by the Club, pursuant to clause 7.3 of the Contract and Article 47 of the Ukrainian Labour Code, the Panel is convinced that such formality is only necessary for a dismissal order, i.e. when the contract is terminated by the Club. This can be seen by the fact that clause 7.3 of the Contract refers exclusively to *"[g]ood reasons for the unilateral termination on the part of the Club"*. When termination is effected with just cause by the Player, he cannot be expected to await a formal decision by the Club absent any other contractual requirement (which cannot be found herein), that the Club is duly informed of the Player's intent to terminate the Contract. In this case, the Player's notice of 15 May 2013 must be deemed sufficient in this regard.

77. The same must be said of the request by the Club that compensation under clause 7.4 of the Contract be granted. Such compensation can only be considered in regard to a unilateral termination by the Player without just cause. Termination with just cause by the Player is not regulated in the Contract and is thus subject to the rule established in Article 10.2 of the FFU Regulations cited above.

78. Regarding training compensation, as noted, termination with just cause determines that the Player be granted the status of a free agent. As such, the Player cannot be held liable as a consequence of the Club's breaches of its contractual obligations. In any case, training compensation under Article 22 of the FFU Regulations, as well as under the FIFA Regulations, is due between clubs, not between the player and the training club.

79. In light of the above, the Panel is of the view that the FFU's calculation of compensation should not be disturbed.

80. Furthermore, the Panel rejects the Appellant's allegation, based on Ukrainian law, that the Player did not have the right to terminate the Contract. Indeed, the Panel notes that Article 39 of the Ukrainian Labour Code allows employees to terminate their employment contract due to the employer's breach of contract.

81. The Panel also dismisses the Appellant's argument that the Player abused its rights, for being manifestly unfounded. The right to remuneration is the most basic right for an employee. A

professional football player cannot be expected to keep playing for a club that, during a period of several months, does not remunerate him for his services. In such a situation, even if several other players accepted to keep waiting for the payment without terminating their employment contracts, the Player was entitled to terminate his individual employment contract and was far from committing an abuse of right if he decided to leave the Club.

82. The Panel is also not persuaded by the Appellant's argument that the Player could not terminate the Contract because in June he was on vacation. The Player exercised his right to terminate the Contract already on 16 May 2013 when he very clearly notified the Club that a failure to pay the overdue remuneration by 26 May 2013 would have automatically entailed the termination of the Contract as of the following day (*"in the event of non-repayment in full the existing arrears … the Contract will be deemed terminated due to the fault of the Club since May 27, 2013"*). Therefore, given that on 16 May 2013 the last matches of the football season were still to be played, the Panel is of the view that the Player most certainly was not on vacation when he exercised his right to termination, which was merely conditionally suspended until 27 May 2013. The subsequent communication sent by the Player on 7 June 2013 was only a further clarification of a situation – the end of the contractual relationship – that had already legally occurred on 27 May 2013. Accordingly, the Appellant's argument that the termination was invalid because the Player was already on vacation fails.

83. Finally, regarding the Player's request that the Club be ordered to pay interest on the outstanding sums, the Panel finds that it cannot issue such order. The DRC decision made no reference to interest payment. Had the Player been in disagreement with such finding on interest, he should have lodged an appeal against the decision. Given that since the 2010 revision, Article R55 of the Code does no longer provide the possibility for a respondent to file counterclaims, the Player cannot expect the Tribunal to grant a 5% interest that it has only claimed by way of such inadmissible "counter-claim".

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 17 September 2013 by Football Club Volyn Lutsk against the decision issued on 17 July 2013 by the Dispute Resolution Chamber of the Football Federation of Ukraine is rejected.

2. The decision issued on 17 July 2013 by the Dispute Resolution Chamber of the Football Federation of Ukraine is confirmed.

(…)

5. All other motions or prayers for relief are dismissed.