Arbitration CAS 2013/A/3331 Football Club Volyn Lutsk v. M., award of 31 July 2014

Panel: Mr José María Alonso Puig (Spain), President; Mr François Klein (France); Prof. Massimo Coccia (Italy)

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

1. **A lack of payment entitles the 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, 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.**

I. THE PARTIES

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

2. The Respondent is M. (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 11 June 2012, the Parties entered into a professional football contract, numbered No. 22/06 (the "Contract")[1].

5. Under the Contract, the Player was hired by the Club as a professional football player. Pursuant to clause 7.1 of the Contract, its validity period would be from 11 June 2012 to 31 May 2014.

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 14750 (fourteen thousand seven hundred fifty) for the full working month".

8. Pursuant to Annex 3 of the Contract, the Player was awarded a monthly remuneration of USD 28,500, payable in Ukrainian Hryvnias ("UAH") at the exchange rate applied by the National Bank of Ukraine[2].

9. On 13 March 2013, the Player, along with other players, sent a collective statement to Volyn FC requesting payment for 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.

10. In May 2013, the Club paid the Player the amount due for the salary of January 2013, leaving the quantities due for February, March and April 2013 unpaid.

11. On 14 May 2013, as payment for USD 114,000, corresponding to four months of remuneration 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".*

12. On 16 May 2013, having been paid USD 28,500, corresponding to the salary for the month of January 2013, the Player sent a new letter to the Club. Therein, the Player stated that considering that in the upcoming two matches, the Club's permanence in the Ukrainian Premier League would be decided, he would be staying at the Club but, if payment was not made by 26 May

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[1] Annex 1 of the Appeal Brief.
[2] Annex 3 to the Contract has not been provided. The Player claims it has not been provided to it by the Club, even during the DRC proceedings. In any case, its existence, signing and content has not been object of dispute neither in this arbitration nor in the DRC proceedings.
[3] Annex 3 of the Appeal Brief.

2013, the Club should *"(…) consider the Contract No. 22/06 of June 11, 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.

13. On 19 June 2013, the Player informed Volyn FC that it considered the Contract to be terminated as of 27 May 2013. Therefore, on 27 June 2013 the Player filed a claim before the Dispute Resolution Chamber of the Football Federarion of Ukraine (the "DRC").

14. On 31 July 2013, the DRC issued its decision regarding the claim brought by the Player (the "Contested Decision"), ruling as follows[4]:

    1. *"Grant in part the claim of M., the Player, on the failure of Volyn Football Club Lutsk Limited Liability Company to meet its financial obligations under the Contract and the Addendum thereto, early termination of the Contract due to the fault of the Club, granting of the free agent status and payment of compensation in his favour.*

    2. *Close due to lack of the subject matter of the dispute the proceedings in the case as to the claim of M., the Player, on granting the free agent status.*

    3. *Consider the Contract No. 22/06, concluded between M., the Player, and Volyn Football Club Lutsk Limited Liability Company on June 11, 2012, terminated as of May 27, 2013 due to the fault of the club.*

    4. *Separate the claim of M., the Player, as to the failure of Volyn Football Club Lutsk Limited Liability Company to meet its financial obligations under the Contract concluded on June 11, 2012, and assign the No. 95-1/07/2013 to it.*

    5. *Send copies of the decision to the Parties to the case.*

    The decision shall take effect upon adoption by the chamber.

    An appeal against the decision of the Dispute Resolution Chamber of the FFU may be filed to the International Court of Arbitration for Sport within 21 (twenty-one) days of receipt of the full decision of the Dispute Resolution Chamber of the FFU by the Party to this address. (…)".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 17 September 2013, pursuant to Articles R47 and R48 of the CAS 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.

16. 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 language of the

[4] Annex 1 of the Statement of Appeal.

proceeding was set to be English. On that same day, the CAS informed the Football Federation of Ukraine of the ongoing procedure.

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

18. On 30 September 2013, the Respondent replied to the CAS' previous request, objecting to the consolidation proposed. The Respondent nominated Prof. Massimo Coccia as arbitrator. On that same date, the Football Federation of Ukraine informed the CAS that it did not intend to participate in the proceedings.

19. On 30 September 2013, Mr. François Klein accepted his nomination as arbitrator. On 1 October 2013, Prof. Massimo Coccia accepted his nomination as arbitrator.

20. 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.

21. On 4 October 2013, FC Volyn expressed its agreement to the proposed consolidation. In that same letter, the Appellant informed the CAS that it is represented in this arbitration by Mr. Ralph Oswald Isenegger, Attorney-at-law in Geneva, Switzerland, enclosing the relevant power of attorney.

22. 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, CAS 2013/A/3330, CAS 2013/A/3331 and CAS 2013/A/3332.

23. 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 the CAS that, pursuant to Articles 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.

24. 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. Massimo Coccia, and Mr. José María Alonso, who had accepted his appointment as President of the Panel on 5 November 2013.

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 4 December 2013, the Respondent requested to be allowed to attend the hearing by video conference with his representative.

28. On 5 December 2013, the Appellant requested that a hearing be held.

29. On 3 January 2014, the CAS informed the Parties that the Panel had decided to hold a hearing, requesting them to inform the CAS, on or before 14 January 2014, which witnesses they wished to hear via videoconference. The CAS also informed the Parties that the Panel had fixed 4 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 as 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 he intended to hear by videoconference 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 in Lausanne on 4 February 2014 at 9:30 pm, noting the witnesses that would be appearing by videoconference. 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 23 January 2013, the Respondent informed the CAS of the witnesses that would be heard at the hearing by videoconference

32. On 28 January 2014, the CAS sent the Parties the Order of Procedure for their signature, informing them that the time of the hearing had been changed to 8:00 am. Furthermore, the CAS informed the Parties on the organization of the hearing, the presence of interpreters and the hearing of witnesses by videoconference.

33. On 29 January 2014, the Appellant informed the CAS that due to *"political troubles"* in Ukraine, neither the Club's representatives nor its witnesses would be travelling 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.

34. 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.

35. On 3 February, the Appellant again requested that the hearing be postponed. On that same date, the Respondent objected to 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.

36. On 4 February 2014, the CAS informed the Parties that the hearing had been rescheduled to 17 March 2014, at the offices of Baker & McKenzie in Kiev, Ukraine.

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

39. 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 to hold the hearing in Lausanne and hear the parties and witnesses by videoconference.

40. On 12 March 2014, the CAS informed the Parties that the Panel had decided to keep the hearing date on 17 March 2014 but, due to the unstable situation in Ukraine, to move the hearing venue back to the CAS headquarters in Lausanne, with the possibility of hearing the Parties' representatives, counsel and witnesses located in Ukraine by videoconference. As counsel for the Appellant was understood to be located in Switzerland, he was invited to personally 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 on the organization of the hearing and the presence of interpreters either in Lausanne or in Kiev.

41. On 17 March 2014, on the day of the hearing, 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 was no impossibility for his attendance. Furthermore, the CAS noted that, based on news reports and personal contacts, on that day there did not appear to be safety concerns in Kiev or travel restrictions within Ukraine. 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.

42. On 17 March 2014, the hearing was held in Lausanne. Neither the Appellant nor its counsel attended. The Respondent attended by video link from Ukraine. 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

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

44. Firstly, the Club understands that the Player did not comply with Ukrainian labor regulations in terminating the Contract and that, thus, in not taking this into account, the DRC erred in its findings. The Club understands 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.

45. As the Contract itself does not provide for a procedure of termination, FC Volyn understands 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 an employment agreement requires the issuance of an order of dismissal, which has not been issued. The Player informed the Club of the possibility of terminating the Contract in numerous occasions but, however, changed its decision and remained as a player at FC Volyn. The Player's communications only contained the possibility of terminating the Contract, but did not terminate it.

46. Furthermore, on 8 June 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.

47. Secondly, the Appellant submits that in bringing its claim to the DRC, the Player abused its 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 done). In this regard, in May 2013, the Player received part of the amount that was due.

48. The Club claims that it did perform all outstanding payments in June 2013 to those players returning from vacation, and that 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.

49. Based on the above, the Club understands that the DRC misapplied the decision taken in the 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 continue with the employment relationship.

B. The Respondent

50. The Player argues that FC Volyn was in constant default to perform 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 unpaid the amounts due for January, February and March 2013. Likewise, after a new

letter sent on 14 May 2013 by the Player, the Club only paid the remuneration of January 2013, leaving the amounts due for February, March and April 2013 still unpaid.

51. Despite the Club's breaches, the Player decided to remain a little longer with the club, considering that in the last two rounds of the championship it would be decided whether FC Volyn would avoid relegation and 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, warning that if payment was not received by such new deadline the Contract would be deemed terminated on 27 May 2013.

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

(a) At the date of termination of 27 May 2013, the Club owed USD 109,403 to the Player as outstanding remuneration;

(b) Based on Articles 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;

53. The Player thus argues that the DRC issued a correct decision and that, in consequence, the Appeal must fail.

V. JURISDICTION AND APPLICABLE LAW

A. Jurisdiction

54. Pursuant to Article R47 of the CAS 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".

55. 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".

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

B. Admissibility

57. There is no discussion between the Parties as to the admissibility and timely filing of the Appeal.

58. It follows from the above that the Appeal is admissible.

C. Applicable law

59. Pursuant to Article R58 of the CAS 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".*

60. There is no discussion between the Parties as to the applicability of the FFU Regulations. Ukrainian national law, of which the Panel has only been provided with the Ukrainian Labour Code, is also applicable where the FFU Regulations or the Contract provide insufficient guidance.

61. 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 without consequences must be respected by national regulations and that Article 10.2 of the FFU Regulations provides similar drafting to that of Article 14 of the FIFA Regulations, commentary and case law on Article 14 of the FIFA Regulations might be looked at by the Panel for interpretive purposes.

VI. MERITS

62. It is undisputed that, on 27 May 2013, the Club owed the Player the outstanding amount of USD 109,403 corresponding to his remuneration under Annex 3 to the Contract for the months of February, March and April 2013, as well as 26 days for May 2013.

63. The main issue thus centers on 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, in 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, on May 2013 and upon a new request by the Player, the amounts due for January 2013 (i.e. with over 3 months of delay) was paid, leaving however the remaining amounts (for February, March, April and May 2013) unpaid.

64. 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".

65. 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 over 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.

66. As the DRC noted, the commentary on Article 14 of the FIFA Regulations[5] is clear in this regard[6]:

"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".

67. 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[7]:

"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".

68. CAS case law, as noted by the DRC, has also considered that continuous breaches by the employer of its duties to comply with its financial commitments towards the player can be understood to be 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

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[5] 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".*
[6] Commentary on the Regulations for the Status and Transfer of Players. FIFA. p. 39.
[7] *Ibid.*

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.)".

69. In the present case, the existence of just cause and the requisites 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 remuneration under Annex 3 of the Contract for the corresponding months;

    2. On March 2013, the Player gave first notice to the Club for its lack of payment, warning on the possible termination of the Contract;

    3. Further notice was given on 14 May 2013;

    4. On 16 May 2013, the Player provided a reasonable extension of the deadline for compliance, until 26 May 2013, or the Contract would be considered terminated.

    5. Due to the Club's lack of payment, on 27 May 2013 the Player could duly consider the Contract as terminated, of which he informed the Club on 19 June, filing the claim with the DRC to enforce such termination.

70. The fact that the Player first provided notice on 13 March 2013, then on 14 May 2013 and then again on 16 May 2013, giving a final extension of the deadline for compliance until 26 May 2013, cannot be construed as a waiver by the Player's of his right to terminate the employment contract. 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 and in a spirit of cooperation with his employer. In this regard, this final extension was granted to help the team in the final decisive two rounds where the Club was playing not to be relegated from the Ukrainian Premier League to a lower division. Furthermore, in relation to the Club's alleged intention to pay, as indicated by the head coach to the players in May 2013, the Panel finds that, notwithstanding such assurance, as of the date of termination the Player was still owed wages equivalent to over three months' salary, 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.

71. Regarding the form of termination, with regard 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 is proven 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 done for just cause by the Player, he cannot

be expected to wait for a formal decision by the Club; absent any other contractual requirement (which cannot be found herein), the Player's only onus is to duly inform the Club of his determination to terminate the Contract. In this case, the Player's notice of 16 May 2013, and the confirmation thereof on 19 June 2013, must be deemed appropriate and sufficient to that effect.

72. 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 Ukranian Labour Code allows employees to terminate their employment contract due to the employer's breach of contract.

73. 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.

74. 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 19 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.

75. Based on the above considerations, all other or further requests or motions submitted by the parties are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 17 September 2013 by Football Club Volyn Lutsk against the decision issued on 31 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.

3. (…).

4. (…).

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