Arbitration CAS 2013/A/3332 Football Club Volyn Lutsk v. P., award of 31 July 2014

Panel: Mr José María Alonso Puig (Spain), President; Mr François Klein (France); Prof. Michael Geistlinger (Austria)

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 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.**

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, the Panel cannot order interests requested by the respondent because Article R55 of the Code does no longer provide the possibility to request counterclaims.**

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 P. (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 8 January 2012, the Parties entered into a professional football contract, numbered No. 21/41 (the "Contract")[1].

5. Under the Contract, the Player entered as a professional football player for the Club. Pursuant to clause 7.1 of the Contract, its validity period would be from 1 August 2012 to 31 May 2014.

6. Remuneration for the Player was established in clause 5 and Annexes 1 and a supplement to 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:

"1. The Club shall pay o [sic] *the Player salary in accordance with staff table of the football team".*

8. Pursuant to the Supplement to the Contract, signed on 8 January 2012 (the "Supplement")[2]:

"2. FC "Volyn" (Lutsk) shall pay the monthly salary to the football player Pilipchuk S. V. in the amount of $ 32 000 (thirty-two thousand U.S. dollars)".

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. For January to May 2013, the Club paid the Player the amount of UAH 58,514.16 = 7,323 USD, leaving the remaining quantities in the amount of 152,500 USD unpaid, as calculated by the Respondent and not objected to by the Appellant.

11. On 11 June 2013, as the payment of the arrear of USD 152,500, corresponding to five months of pay pursuant to the Supplement minus the amounts already paid were still due, the Player

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

sent a new letter to FC Volyn requesting payment[3]. In such letter, the Player stated that *"Systematic breach of financial obligations from the Club's party and complete lack of cash payments for the five calendar months gives me the right to appeal to the Ukranian Football Federation, the dispute resolution chamber on the issue of early unilaterally terminate the Contract (…) in the event of non-repayment in full the existing arrears for the period from January 1, 2013, to June 11, 2013, till June 16, 2013, I reserve the right to appeal to the Ukranian Football Federation".*

12. On 27 June 2013, the Player informed FC Volyn that it considered the Contract to be terminated. Therefore, on 1 July 2013 the Player filed a claim before the Dispute Resolution Chamber of the Football Federarion of Ukraine (the "DRC").

13. On 24 August 2013, the DRC issued its decision regarding the claim brought by the Player (the "Contested Decision"), ruling that (sic)[4]:

    1. *"Grant in full P.'s claim of 27 June 2013 on the failure of Volyn Football club Lutsk Limited Liability Company to meet financial obligations under the Contract No. 21/41 and the Addendum thereto, early termination of the contract due to the fault of the Club and awarding a free agent status.*

    2. *Bind Volyn Football Club Lutsk Limited Liability Company to pay P. the arrears under the Contrat No. 21/41 of 8 January 2012 in the amount of USD 152,500 (one hundred fifty-two thousand five hundred US dollars) payable in UAH at the exchange rate of the National Bank of Ukraine set as of the day of payment.*

    3. *Consider contract No. 21/41 of 08.01.2013, concluded between Volyn Football Club Lutsk Limited Liability Company and Player P., to be terminated due to the fault of the Club from the date of issue of this decision.*

    4. *Grant Player P. a free agent status from the date of issue of this decision.*

       The decision is not subject to appeal with regard to Contract termination and granting a free agent status.

       The decision with regard to the salary arrears repayment may be appealed in the Court of Arbitration for Sport within 21 (twenty-one) days from the day the Party receives the full text of the decision of the FFU Dispute Resolution Chamber.(…)".

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

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

invited the Parties to comment on the consolidation of the cases. The language of the proceeding was set to be 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 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.

19. On 3 October 2013, the Respondent named Mr. Mikhail Lebedev as his representative in the proceedings.

20. On 4 October 2013, FC Volyn expressed its agreement to the proposed consolidation. On 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.

21. On 10 October 2013, the CAS informed the parties that, in the 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.

22. On 14 October 2013, Ms. Nataliia Serhyenko informed the CAS that she would represent the Respondent in these proceedings, enclosing the relevant power of attorney. The Respondent nominated Prof. Michael Geistlinger as arbitrator. Furthermore, the Respondent refused to pay the advance on costs, requesting the CAS 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.

23. On 16 October 2013, Mr. François Klein accepted his nomination as arbitrator. On that same day, Prof. Michael Geistlinger accepted his nomination as arbitrator.

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. Michael Geistlinger, 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 that a hearing be held.

28. 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 6 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.

29. On 14 January 2014, the Respondent informed the CAS of the witnesses it 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 on 6 February 2014, at 9:30 pm at the Lausanne Palace, 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.

30. On 28 January 2014, the CAS sent the Parties the Order of Procedure for their signature, informing them that the hearing venue had been changed to the CAS Court Office, at 8:30 am. Furthermore, the CAS informed the Parties on the organization of the hearing, the presence of interpreters and the hearing of witnesses by videoconference.

31. 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 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 cancelling their flights until the Panel reached a decision on the issue. Later, the CAS informed the Parties that the hearing would be maintained.

32. 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.

33. On 3 February, the Appellant again requested that the hearing be postponed. On that same date, 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.

34. On 4 February 2014, the CAS informed the Parties that the hearing had been rescheduled to 20 March 2014, at the offices of Baker & McKenzie in Kiev, Ukraine.

35. 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.

36. 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 video conference conducted between the offices of Baker & McKenzie in Kiev and the CAS Headquarters in Lausanne.

37. 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.

38. On 12 March 2014, the CAS informed the Parties on 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 videoconference. 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 on the organization of the hearing and the presence of interpreters either in Lausanne or in Kiev.

39. 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 was no impossibility for 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 no 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.

40. On 20 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

41. 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.

42. Firstly, the Club understands 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 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 on June 2013.

43. 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 a labour 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 ar FC Volyn.

44. Furthermore, during the period of pretended termination (25 May – 9 June 2013), 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, in this period, could not be dismissed and neither could the Contract be terminated.

45. 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 the Supplement (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.

46. In June 2013, for those players returning from vacation, the Club claims that it did pay all outstanding payments and, 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.

47. Based on the above, the Club understands that the DRC misapplied the decision taken in the case CAS 2009/1934,1936. 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 labour relationship.

48. Further, the Club argues that on 16 May 2013, the Club had imposed sanctions to the Player amounting to 30% of his salary, but that the DRC failed in taking it into consideration.

49. Finally, the Club argues that even if considering that it breached the Contract and that the Player terminated the Contract, the DRC erred in failing to award compensation to the Club for counterclaims. The Club claims for such expenses based on 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"*. FC Volyn claims that such compensation is irrespective of whether the Player's termination of the Contract was or not justified.

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 failed to inform regarding the planned time limits for clearing the arrears and continued to stay in arrear for the period January – May 2013 in an amount of 152,500 USD.

51. Despite the Club's breaches, the Player decided to remain with the club and performed his duties faithfully as far as his health allowed to do so.

52. 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 after his notifications and warnings correctly recognized its 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, the Club owed USD 152,500 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.

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

54. Regarding the imposing of sanctions by the Club, the Player argues that on that time he was injured, incapable of playing, and provides a medical certificate to that effect.

V. JURISDICTION AND APPLICABLE LAW

A. Jurisdiction

55. 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".

56. 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".

57. 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

58. 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 is 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.

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

C. Applicable law

60. 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".

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

62. 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, where applicable, will be used by the Panel.

VI. MERITS

63. It is undisputed that, at the beginning of June 2013, the Club owed the Player the outstanding amount of USD 152,500 corresponding to the months of January, February, March, April and May 2013, minus certain amounts paid beforehand.

64. 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, 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, on May 2013 and upon a new request by the Player, part of the amounts due for January 2013 (i.e. with over 3 months of delay) was paid, leaving however the remaining amounts (all for February, March and April and May) unpaid.

65. 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".

66. 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.

67. 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".

68. 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]:

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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.*

"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".

69. 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 a 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.)".

70. 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 salary under the Supplement for the corresponding months;

2. On 13 March 2013, the Player gave first notice to the Club for its lack of payment, warning on the possible termination of the Contract;

3. On 11 June 2013, the Player provided a reasonable deadline for compliance, considering that the club had already been notified on March, until 16 June 2013, or he would appeal to the DRC for confirmation of early unilateral termination of the Contract as of the date of decision of the DRC.

4. Due to the Club's lack of payment, the Player could appeal to the DRC to duly consider the Contract as terminated at that date, of which claim and consequences he informed the Club on 27 June 2013, filing the claim with the DRC to enforce such termination.

71. On the other hand, in relation to the Club's alleged intention to pay, as provided by the head coach in May 2013, truth is that, notwithstanding the fact that the specific undertakings have

not been provided, at the date of the filing of the claim with the DRC was still owed wages equivalent of over three months' of 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.

72. Regarding the issue on 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".

73. 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.

74. Regarding the form of termination, 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 from 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 by just cause by the Player, he cannot be expected to await for a formal decision by the Club, being appropriate, 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 11 June 2013 must be deemed sufficient to this effect.

75. 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.

76. Finally, the Panel, as the DRC is satisfied by the sick leave certificate provided by the Respondent, confirming thus that the Appellant had no justification to reduce the Player's salary or impose financial sanctions.

77. Additionally, 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 that:

1. The appeal filed on 17 September 2013 by Football Club Volyn Lutsk against the decision issued on 23 August 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.