



Arbitration CAS 2014/A/3544 AS Monaco Football Club v. Football Club Dynamo Kiev, award of 28 November 2014

Panel: Mr José María Alonso (Spain), President; Mr Paul Mauriac (France); Mr Stuart McInnes (United Kingdom)

Football

Transfer agreement

Interpretation of the unclear terms of the contract according to Swiss law

Principle “contra proferentem”

Starting date for interest

1. **Absent clarity in the Parties’ expression, a CAS panel must interpret the meaning behind the contract. Pursuant to art. 18 of the Swiss Code of Obligations, when assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.**
2. **If the drafting of a contract was undertaken in its entirety by one party, absent clarity, the contract must be construed against this party, in accordance with the principle *contra proferentem*.**
3. **As a general rule, interest is accrued from the date upon which the unpaid amounts are due.**

I. THE PARTIES

1. AS Monaco Football Club (the “Appellant” or “Monaco FC”) is a football club based in the city of Monte Carlo, Monaco. According to FIFA, it is a first category club which plays in the French Ligue 1.
2. Football Club Dynamo Kiev (the “Respondent” or “Dynamo Kiev”) is a football club based in the city of Kiev, Ukraine. According to FIFA, it is a first category club which plays in the Ukrainian Premier League.
3. The Appellant and the Respondent are referred to collectively as the “Parties”.

II. FACTUAL BACKGROUND

4. On 20 June 2011, Monaco FC and Dynamo Kiev signed a transfer agreement (the “Contract”) for the transfer of the player Lukman Haruna (the “Player”), from the Appellant to the Respondent, for a transfer compensation of EUR 1,500,000 (the “Transfer Compensation”).
5. The Contract contains two provisions, Articles 1.3 and 3 (the “Clauses”), which provide for an additional conditional transfer compensation (the “Additional Transfer Compensation”):

Art. 1.3: “The Parties have also agreed that in case of the qualification of [the Respondent] to the group stage of the UEFA Champions League in the seasons of 2012/13, 2013/14, 2014/15, 2015/16, [the Respondent] shall be obliged to pay to the [Appellant] an additional conditional transfer compensation in the amount and subject to the conditions stipulated in the art. 3 of the present Contract”.

Art. 3: “In addition to the above mentioned fixed transfer compensation, the Parties have agreed that [the Respondent] shall pay an additional conditional transfer compensation in amount of 500,000 (five hundred thousand) Euros, subject to the conditions that due to the results of performance in the Football Championship of Ukraine [the Respondent] qualifies to the group stage of the UEFA Champions League in the seasons of 2012/13, 2013/14, 2014/15, 2015/16 (per each such qualification), and the Player still has valid employment contract with [the Respondent] on the end of the season in which [the Respondent] obtains the qualification to participate in the UEFA Champions League for the next season”.

6. On 6 June 2013, Monaco FC, after an unresolved correspondence between the Parties, filed a claim before the Single Judge of the FIFA Players’ Status Committee against Dynamo Kiev, requesting payment of the Additional Transfer Compensation in the amount of EUR 500,000 on the basis of articles 1.3 and 3 of the Contract, as well as the payment of EUR 10,000 as compensation for “abusive resistance” to the payment of the Conditional Transfer Compensation, plus an interest of 5% *per annum*.
7. On 14 March 2014, the Single Judge of the FIFA Players’ Status Committee issued the following decision (the “Challenged Decision”):

1. *The claim of the Claimant, AS Monaco, is rejected.*
2. *The final costs of the proceedings in the amount of CHF 12,000 are to be paid by the Claimant to FIFA, of which CHF 5,000 have already been paid by the Claimant as advance of costs at the start of the present proceedings. Consequently, the amount of CHF 7,000 is to be paid by the Claimant, within 30 days of notification of the present decision, to FIFA to the following bank account with reference to case nr. 13-01490/cpe: [...]*

Note relating to the motivated decision (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives

issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

8. In summary, the FIFA Players' Status Committee found that it seemed that the Parties wanted to link the participation of the Player in the results of the Respondent in the Football Championship in Ukraine to the direct qualification for the UEFA Champions League group phase and not to the qualification to the play-offs. Therefore, it was considered that all the conditions of the Contract were met during the 2011/2012 season as the Respondent had only qualified for the play-offs of the 2012/2013 UEFA Champions League before being qualified for the group stage of such competition.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

9. On 1 April 2014, the Appellant filed with the Court of Arbitration for Sport (CAS), pursuant to Article 67 of the FIFA Statutes and Article R48 of the Code of Sports-related Arbitration (the "Code"), its Notice of Appeal in which it nominated Mr. Paul Mauriac as arbitrator and chose French as the operative language for the arbitration proceedings.
10. On 10 April 2014, Dynamo Kiev opposed to the Appellant's choice of French as the language of this arbitration, and proposed instead English. On the same date, CAS acknowledged receipt of Respondent's request and invited the Appellant to answer the Respondent's request for the choice of language.
11. On 10 April 2014, the Appellant filed its Appeal Brief.
12. On 11 April 2014, the Appellant opposed the choice of English as the language of this arbitration.
13. On the same date, CAS acknowledged receipt of the Appellant's letter and informed the Parties that an Order on Language would be made by the President of the CAS Appeals Arbitration Division.
14. On 14 April 2014, CAS issued the Order on Language (the "Order"), whereby it ruled that English was to be the language of this arbitration. The Appellant was ordered to file translations in English of its statement of appeal and appeal brief.
15. On 22 April 2014, the Respondent nominated Mr. Stuart McInnes, as arbitrator.
16. On 24 April 2014, the Appellant filed translations in English of its statement of appeal and appeal brief.
17. On 30 May 2014, in accordance with Article R55 of the Code, the Respondent filed its Answer.

18. On 4 June 2014, CAS informed the Parties, pursuant to Article R54 of the Code, that the Panel appointed to decide this appeal is constituted by:
 - President: Mr. José María Alonso, Attorney-at-law in Madrid, Spain.
 - Arbitrators: Mr. Paul Mauriac, Attorney-at-law in Paris, France.
Mr. Stuart C. McInnes, Attorney-at-law in London, United Kingdom.
19. On 10 June 2014, CAS informed the Parties that the Panel had decided to hold a hearing. Furthermore, CAS informed the Parties that the Respondent's request for the appointment of a linguistic expert was rejected by the Panel.
20. On 1 and 4 July 2014, the Appellant and the Respondent, respectively, sent CAS a copy of their signed Order of Procedure.
21. On 25 September 2014, a hearing was held in Lausanne attended by representatives of both Parties.

IV. OUTLINE OF THE PARTIES' POSITIONS

A. The Appellant: AS Monaco Football Club

1. Jurisdiction of the CAS

22. The Appellant invokes Article 67 of the FIFA Statutes (2013 edition), and Article R47 of the Code to recognize the jurisdiction of the CAS over this dispute.

2. Merits of the dispute

23. Monaco FC, Dynamo Kiev and the Player signed the Contract under the terms of which the Player was transferred from Monaco FC to Dynamo Kiev in return for a fixed fee of EUR 1,500,000.
24. The Contract also provided for the Conditional Transfer Compensation of EUR 500,000 a year for each of the seasons 2012/2013, 2013/2014, 2014/2015, 2015/2016, on the double condition that Dynamo Kiev qualify for the UEFA Champions League and that the Player still be under contract with Dynamo Kiev at the end of the season during which Dynamo Kiev qualified for the following season (Article 3.1 of Contract).
25. Dynamo Kiev qualified for the group stage of the UEFA Champions League in the season 2012/2013.
26. In several letters, Monaco FC requested Dynamo Kiev to pay the Conditional Transfer Compensation. Dynamo Kiev answered to the latest indicating that the terms of the Clauses were not met.

27. The terms of Articles 1.3 and 3.1 of the Contract clearly demonstrate that the spirit of these articles was indeed to compensate Monaco FC by the Conditional Transfer Compensation following qualification to participate in the group stage of the UEFA Champions League, irrespective of the way in which said qualification was achieved. The Conditional Transfer Compensation is intended to preserve only the interests of Monaco FC.
28. According to the Single Judge of the FIFA Players' Status Committee, the Clauses clearly provide that payment of the additional fee is conditional upon direct qualification for the Champions League. He justifies this interpretation by stating that the Clauses refer to qualification "*as a result of the club's performance in the Ukrainian football championship*".
29. Nevertheless, qualification, whether direct or indirect, for the UEFA Champions League is necessarily due to the club's performance in its championship, and the Judge cannot under any circumstances therefore draw such a consequence from this simple fact.
30. The fact that qualification was only obtained after having played the preliminary stage of the UEFA Champions League can under no circumstances deprive Monaco FC of payment of the Additional Transfer Compensation.
31. Under any circumstances, the aim of the Clauses was to render payment of the Additional Transfer Compensation to the benefit of Monaco FC and rendering its payment only upon direct qualification is contrary to the spirit of clause 3 of the Contract.
32. Furthermore, the bad faith of Dynamo Kiev is manifest. It is attempting to avoid its obligation to make payment by an erroneous interpretation of the clause which is, moreover, utterly contrary to the Parties' intention when concluding the Contract.

3. Prayers for relief

33. The Appellant thus requests the following:

AS MONACO requests that the Court of Arbitration for Sport:

kindly ANNUL the decision passed by the Single Judge of the Players' Status Committee on 2 October 2013 and served on Maître Jean-Jacques BERTRAND, Lawyer for AS MONACO on 14 March 2014,

Ruling once again and substituting said decision:

FIND that the conditions laid down in Article 3.1 of the transfer agreement concluded on 20 June 2012 between AS MONACO, FC DYNAMO KIEV and the player HARUNA have been met.

FIND THAT FC DYNAMO KIEV breached its contractual obligations, and in particular Article 3.1 of the Transfer Agreement concluded on 20 June 2012.

Consequently,

FIND AND RULE that FC DYNAMO KIEV must pay AS MONACO the sum of EUR 500,000 as the additional transfer fee for the season 2012/2013 as stated in Article 3.1 of that Agreement.

FIND AND RULE that FC DYNAMO KIEV must pay AS MONACO the sum of EUR 10,000 for wrongful resistance to make payment.

FIND AND RULE that FC DYNAMO KIEV must pay AS MONACO the sum of CHF 12,000 for the costs of the proceedings filed before FIFA

FIND that the sums due by FC DYNAMO KIEV will be increased by interest of 5% as from the filing of the application before the FIFA Players' Status Committee.

B. The Respondent: Football Club Dynamo Kiev

1. Jurisdiction of CAS

34. The Respondent agrees with the jurisdiction of CAS.

2. Merits of the dispute

35. The Respondent argues that evidence by the Appellant does not support the Appellant's position as it does not add anything to the merits assessed in the Challenged Decision. A closer analysis indicates that the adduced evidence undermines the Appellant's position rather than supports it.
36. The core of this dispute is the interpretation of clauses 1.3 and 3.1 of the Contract. The Respondent holds that these articles, especially if read together, are so clear that the interpretation is necessary not because they lack clarity but because it can help unveil the erroneous interpretation held by the Appellant.
37. The Parties had expressly verbally reflected a causal link between these two specific notions in Article 3.1 of the Contract: on the one hand, the results of the Football Championship of Ukraine, and on the other hand, the qualification to the group stage of the UEFA Champions League. These two concepts indicate that they in fact viewed the Club's performance in the Ukrainian football championship (with its direct causal link to the second element of the condition, i.e. obtaining qualification to the group stage of the UEFA Champions League) as a meaningful factor conveying the relevant direct causation between those elements.
38. If the "qualification" condition was supposed to be both directly and/or indirectly dependent on the results of the National Championship (i.e. irrespective of Dynamo Kiev's entitlement to directly go to the UEFA Champions League group stage based on its results in the National Championship), as the Appellant states, then it would make no sense to refer in Article 1.3 to the conditions [in plural] stipulated in Article 3, -namely the contested one that "*due to the results*

of performance in the Football Championship of Ukraine, Dynamo Kiev qualifies to the group stage of the UEFA Champions League in the seasons of 2012/13, 2013/14, 2014/15, 2015/16". It would be unnecessary, because this notion, if read as a condition in Appellant's version, is already contained in Art. 1.3- "qualification of Dynamo to the group stage of the UEFA Champions League in the seasons of 2012/13, 2013/14, 2014/15, 2015/16". If it was meant to be a sufficient ground for an additional compensation, Article 1.3 alone would suffice and it would not have been further conditioned by the very same ground in yet another article (3. 1) worded in a different way.

39. The above logic is also strongly supported by the linguistic analysis of Article 3.1.
40. The legal, structural, logical and linguistic interpretations of the articles contested by the Appellant all uphold one and the same conclusion derived in the Challenged Decision.

3. Prayers for relief

41. The Respondent thus requests the following:
 1. *To dismiss all claims made by the Appellant.*
 2. *To request from FIFA Players' Status Committee the respective case file and to add it to the present CAS file.*
 3. *To grant to the Respondent a contribution towards its expenses, incurred in connection with the proceedings, amount of which will be defined later based on the relevant actual expenditures.*
 4. *To grant to the Respondent the right to call up the linguistic expert if necessary.*

V. JURISDICTION, APPLICABLE LAW AND ADMISSIBILITY

A. Jurisdiction

42. 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.

43. Both Parties agree that CAS has jurisdiction to hear and resolve the dispute, pursuant to articles 66 and 67 par. 1 of the FIFA Statutes (2013 edition).
44. Pursuant to arts. 66.1 and 67.1 of the FIFA Statutes:

Art. 66.1:

“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents”.

Art. 67.1:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

45. Pursuant to art. 23 of the FIFA Regulations on the Status and Transfer of Players:

“Decisions reached by the single judge or the Players’ Status Committee may be appealed before the Court of Arbitration for Sport (CAS)”.

46. On the basis of the above and both Parties having signed the Order of Procedure, the Panel is satisfied of its jurisdiction to decide this case.

B. Applicable law

47. Article R58 of the Code provides as follows:

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

48. The Contract contains no specific choice of law clauses. FIFA is an association with its seat in Zurich, Switzerland. Absent specific claims by the Parties in this regard, the Panel holds that the applicable FIFA regulations shall apply to determine the dispute and subsidiarily Swiss Law shall be applicable.

C. Admissibility

49. Pursuant to Article R49 of the Code:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

50. Pursuant to art. 67 of the FIFA Statutes:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

51. The Challenged Decision was communicated to the Appellant on 14 March 2014. The Appeal was filed on 1 April 2014. Therefore, the Panel is satisfied that the Appeal was filed within the required time limits and is admissible.

VI. MERITS

A. Scope of review

52. Pursuant to Article R57 of the Code:

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal”.

B. Claim for Additional Transfer Compensation

53. The main issue under discussion in this case is the interpretation of clauses 1.3 and 3.1 of the Contract. Pursuant to the same:

“1.3 The Parties have also agreed that in case of the qualification of Dynamo to the group stage of the UEFA Champions League in the seasons 2012/13, 2013/14, 2014/2015, 2015/2016, Dynamo shall be obliged to pay to the Club an additional conditional transfer compensation in the amount and subject to the conditions stipulated in the art. 3 of the present Contract”.

(...)

“3. ADDITIONAL CONDITIONAL TRANSFER COMPENSATION

3.1. In addition to the above mentioned fixed transfer compensation, the Parties have agreed that Dynamo shall pay an additional conditional transfer compensation in amount of 500’000 (five hundred thousand) Euros, subject to the conditions that due to the results of performance in the Football Championship of Ukraine Dynamo qualifies to the group stage of the UEFA Champions League in the seasons 2012/13, 2013/14, 2014/2015, 2015/2016 (per each such qualification), and the Player still has valid employment contract with Dynamo on the end of the season in which Dynamo obtains the qualification to participate in the UEFA Champions League for the next season”.

54. It is undisputed between the Parties that:
- Dynamo Kiev qualified to play the UEFA Champions League for the season 2012/2013 after playing the qualifying play-offs;

- The Player was still under employment with Dynamo Kiev at the end of the season during which qualification was obtained.
55. Therefore, the Parties' main point of discrepancy lies on whether such Additional Transfer Compensation arises upon qualification, direct or indirect, by Dynamo Kiev to the UEFA Champions League, as understood by Monaco FC or, on the contrary, if the only form of qualification that generates compensation is direct qualification, as held by Dynamo Kiev.
56. The Panel cannot agree with the interpretation carried out by the Single Judge in the Challenged Decision. Indeed, as will be developed below, the Panel understands that the appropriate interpretation of the Contract requires that compensation arises upon qualification by Dynamo Kiev to the UEFA Champions League, irrespective of whether such qualification was direct or indirect.
57. Contrary to the findings by the Single Judge, the Panel understands that the wording of clauses 1.3 and 3.1 of the Contract is unclear. Their meaning is not straightforward and from their plain wording it cannot be solely understood that only direct qualification for the UEFA Champions League gives rise to payment of the Additional Transfer Compensation. In particular, the requirement that qualification be "*due to the results of performance in the Football Championship of Ukraine*" cannot be readily construed as exclusively referable to direct qualification. Indeed, indirect qualification is also dependent on the results achieved in the national league. In Ukraine, for the 2012/2013 season, such performance required achieving 2nd place in the Ukrainian Premier League, as Dynamo Kiev did.
58. The Single Judge's holding that the clarity from the Contract arises from the fact that the term "*conditions*", in plural, is employed in clause 1.3 of the Contract when referring to clause 3.1 cannot be upheld. Indeed, art. 3.1 does contain two conditions, albeit one may be a repetition of what is established in clause 1.3: (i) qualification to the group stage of the UEFA Champions League; and (ii) that the Player be under employment with Dynamo Kiev at the end of the season upon which qualification is obtained.
59. Absent clarity in the Parties' expression, the Panel must interpret the meaning behind the Contract. Pursuant to art. 18 of the Swiss Code of Obligations (SCO):
- "When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*
60. Due regard can be given in this case to the Parties' negotiation of the Contract, the *contra proferentem* rule and the logical interpretation of the objective of the Additional Transfer Compensation.
61. Regarding negotiations, Dynamo Kiev first requested the transfer of the Player by letter dated 10 June 2011. Herein, Dynamo Kiev already proposed that "*FC Dynamo Kyiv would be ready to propose conditional payments to your club in amount of 200,000 EUR for each qualification of our club to the UEFA Champions League group stage within the next two seasons, as well as given that the contract*

between the player and FC Dynamo Kyiv shall still be in force, as of the date of such conditional payments". A similar proposition was presented on 14 June 2011, albeit increasing the amount of compensation to EUR 500,000. However, the wording "*for each qualification of our club to the UEFA Champions League group stage*" remains.

62. In its answer to Dynamo Kiev's proposal, Monaco FC confirmed its agreement which included, amongst other possible payments, "*500.000,00 € (five hundred thousand EUR) of bonus each year if «DYNAMO» KYIV qualifies itself in UEFA Champions League and if the player is under contract the year of the qualification*". Eventually, the Contract was signed on 20 June 2011.
63. From the Parties' correspondence regarding the negotiation of the terms of payment no reference whatsoever can be found regarding the requirement that qualification to the UEFA Champions League be direct. On the contrary, payment is foreseen for "*each qualification (...) to the UEFA Champions League group stage*" and "*each year if «DYNAMO» KYIV qualifies itself in UEFA Champions League*".
64. The drafting of the Contract was undertaken in its entirety by Dynamo Kiev, a fact that remains undisputed. As a consequence, the Contract, absent clarity, must, on the basis of well-established principles, be construed *contra proferentem*.
65. Pre-contractual communications between the Parties, by which they apparently reach the agreement finally embodied in the Contract, make no reference to a distinction between direct and indirect classification to the UEFA Champions League. As draftsman of the Contract, had Dynamo Kiev pretended that any additional compensation should be due only upon direct qualification, this should have been clearly provided for. On the contrary, the Contract only contains a vague reference to classification "*due to the results of performance in the Football Championship of Ukraine*" which, as already noted, can easily be understood to refer to indirect qualification that also requires specific achievements in the domestic championship.
66. Furthermore, the Panel finds that absent a clear wording of the Contract, there is no logical reason to grant a premium on the basis of qualification to the UEFA Champions League that, nonetheless, is excluded in the case of indirect qualification. Indeed, the sporting achievement and additional income for participation is the same for both direct and indirect qualification. The reason behind these kind of premiums is to provide an increase in the price of the transfer of a player under the condition of any sporting achievements by the buying club that, amongst other issues, may grant an additional income.
67. In a case such as the one at hand, the Panel cannot find justification in limiting the premium to only one of the means of reaching a certain achievement when the sporting and financial consequence for the club are basically identical.
68. Besides, as noted by the Parties, traditionally only the champion of the Ukrainian Football Championship has direct qualification. Even though this could hypothetically be different for the future, such was the case at the time of signature of the Contract and has been so for both preceding and posterior years. Direct qualification can therefore be rationally linked to winning the domestic championship. If Dynamo Kiev pretended that only direct qualification

allowed for the Additional Transfer Compensation, the easiest reference would have been to link the premium not to qualification to the UEFA Champions League but to winning the Ukrainian national championship and this was not the case.

69. Again, as draftsman of the Contract, Dynamo Kiev left an unclear and vague reference to qualification to the UEFA Champions League “*due to the results of performance in the Football Championship of Ukraine*”. The fact remains that qualification to the UEFA Champions League may be obtained by up to two clubs in the Ukrainian domestic league: the champion directly and the runner-up by playing the corresponding play-offs. The possibility of participating in the UEFA Champions League is directly linked to a club’s “*results of performance in the Football Championship of Ukraine*”. This unclear reference must therefore be understood to include both direct and indirect qualification.
70. In summary, the Panel finds that (i) the Contract is unclear regarding the accrual of the Additional Transfer Compensation; (ii) this means that the Contract must be construed by the Panel; (iii) the Contract was drafted in its entirety by Dynamo Kiev; and (iv) in the interpretation of the Contract, its objective and that of the Additional Transfer Compensation, the Parties’ contemporary correspondence when negotiating the Contract and the *contra proferentem* principle all lead to the conclusion that qualification to the UEFA Champions League, regardless of the way in which it was achieved, determines the accrual of the Additional Transfer Compensation provided in clauses 1.3 and 3.1 of the Contract.
71. As a consequence of the above, the Panel holds that the conditions established in clauses 1.3 and 3.1 of the Contract have been fulfilled and Dynamo Kiev is obliged to pay EUR 500,000 to Monaco FC.

C. Other claims for compensation

72. Monaco FC requests that this Panel also grant compensation for (a) wrongful resistance; and (b) costs incurred in the proceedings before FIFA.
73. Regarding wrongful resistance, the Panel understands that this claim is completely unsubstantiated. The Panel finds that no bad faith has been proven to exist by Dynamo Kiev which, as far as the Panel is concerned, has merely defended the legal interpretation of the Contract that it understood to be correct, which interpretation coincided with the, now overturned, decision of the FIFA Single Judge. In any case, the Appellant has not proven any legal basis or effective damage suffered that would allow the Panel to award the damages requested.
74. On the costs incurred in the proceedings before FIFA, the Panel finds that no justification is provided by Monaco FC. Furthermore, and as noted above, the Panel finds that Dynamo Kiev’s position before the FIFA Single Judge cannot be understood to have been in bad faith. Monaco FC’s request in this regard must, therefore, be also rejected.

D. Interest

75. As a general rule, the Panel finds that interest is accrued from the date upon which the unpaid amounts are due.
76. However, the Panel notes that the Respondent requests the payment of interest “*as from the filing of the application before the FIFA Player’s Status Committee*”. Granting interest from an earlier date would be in excess of what the Panel has been asked to rule upon in this arbitration. Furthermore, the Panel finds no impediment to grant the interest from the date and at the interest rate requested *ex. art. 73 SCO*.
77. As a consequence of the above, the Panel rules that the sums due by Dynamo Kiev shall accrue interest at the rate of 5% *per annum* from the date of filing of the application before the FIFA Player’s Status Committee by Monaco FC (i.e. 6 June 2013).

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed on 1 April 2014 by Monaco Football Club against the Decision of the Single Judge of the FIFA Player’s Status Committee of 2 October 2013, is partially upheld.
2. The decision of the Single Judge of the FIFA Players’ Status Committee of 2 October 2013, is set aside.
3. The conditions established in clause 3.1 of the transfer agreement between Monaco Football Club and Football Club Dynamo Kiev have been met.
4. Football Club Dynamo Kiev breached clause 3.1 of the transfer agreement between Monaco Football Club and Football Club Dynamo Kiev.
5. Football Club Dynamo Kiev is ordered to pay the amount of EUR 500,000 as Additional Transfer Compensation under clause 3.1 of the transfer agreement between Monaco Football Club and Football Club Dynamo Kiev.
6. Football Club Dynamo Kiev shall pay interest of 5% per annum over the amount established in point 5. above, starting from 6 June 2013.
- (...)
9. All other requests and prayers for relief are rejected.