Arbitration CAS 2014/A/3565 FC Metallurg Donetsk v. Erol Bulut, award of 1 July 2015

Panel: Mr Lars Halgreen (Denmark), President; Mr Stuart McInnes (United Kingdom); Mrs Sylvia Schenk (Germany)

Football
Termination of a contract of employment
Objection to FIFA's jurisdiction for the first time before the CAS panel
Waiver of FIFA's jurisdiction in favour of the alternative jurisdiction of another body in disputes of international dimension
Application of the bona fide principle in case the actual common intentions of the parties cannot be established

1. **Any objections to the jurisdiction of the FIFA judicial instances must be raised immediately during the FIFA proceedings as an initial matter and not be raised for the first time before the CAS proceedings in appeal.**

2. **According to the FIFA Regulations on the Status and Transfer of Players (RSTP), in disputes of international dimension, the jurisdiction of FIFA can only be waived in favour of the alternative jurisdiction of another body, where that body is deemed to be an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the player and the clubs has been established at a national level within the framework of the association and/or collective bargaining agreement.**

3. **The *bona fide principle* has been construed by CAS jurisprudence as a conceptual tool for a CAS panel to determine how a statement or a general manifestation by a party could have been reasonably understood by the other. Accordingly, when the actual common intentions of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The judge has to determine how a statement or an external manifestation by a party could have been reasonably understood by the other party, based on the particular circumstances of the case.**

I. THE PARTIES

1. FC Metallurg Donetsk (hereinafter referred to as the "Club" or the "Appellant") is a football club with its registered office in Donetsk, Ukraine. The Club is affiliated with the Ukrainian Football Association.

2. Mr Erol Bulut (hereinafter referred to as the "Player" or the "Respondent") is a professional football player of Turkish nationality.

3. The Appellant and the Respondent together shall hereinafter be referred to as the "Parties".

II. FACTUAL BACKGROUND

4. The circumstances and provisions discussed below constitute a summary of the relevant facts and evidence as set forward by the Parties in their respective written submissions and during the hearing. This factual background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out where relevant, in connection with the legal discussion.

5. On 7 September 2007, the Parties signed an employment contract (hereinafter referred to as "the Contract"), valid as of the date of signature until 30 June 2008.

6. On 4 March 2008, the Parties signed an additional agreement, which extended the Contract until 30 June 2011. All terms and conditions of the Contract remained unchanged.

7. The Parties also signed an undated agreement regarding disciplinary sanctions and bonuses (hereinafter referred to as the "ADSB"), which was valid during the term of the Contract, i.e. until 30 June 2011.

8. The relevant provisions of the ADSB and the Contract provide the following:

ADSB

"Article 1.1. The football player who decreased his playing qualities and has finished fulfilling his professional duties can be placed on a different salary.

Article 1.2. A player who got an injury during the game, training or caused by a decease, has right to get 100% bonus in the period of two calendar games under main coach's consideration.

Article 2.1. For honest discharge of the duties, for high level of sport scores, for professional and sport mastery, for individual contribution on attainment by FC Metallurg victorious sports results, The Club makes payment to Football Player in the following order:

a) The Club pays the sum of money in the amount of 300,000 USD $ net till the 30 of June 2008;
b) 2008/2009 season – 400,000 USD $ net;
c) 2009/2010 season – 400,000 USD $ net;
d) 2010/2011 season – 550,000 USD $ net".

CONTRACT

"Article 3.1. During the Contract validity the Football player undertakes:

(…)

- *to take part in all games by the decision of the Club and coach team, including the games of the first and second teams and fan-clubs.*

(…)

- *to apply obligatory to the Club medical service in case of injuries or illness and exceedingly thoroughly follow the instructions of the specialists of that service…"*

Article 3.3 During the validity of the Contract the Club undertakes:

- *to provide the Football player with the possibility to actualize his professional skills in accordance with the conditions of the present Contract;*

(…)

- *to organize full medical service of the Football player, diagnostics, treatments, provide with medicaments, vitamins, in case of necessity to finance the treatment (operation) by the specialists in the territory of Ukraine;*

- *to administer therapy and diagnostics in abroad in case of lack of necessary equipment of qualified specialists in the territory of Ukraine;*

(…)

Article 3.4. The Club has the rights:

(…)

- *to control the execution by the Football player of his duties, give to the Football player all necessary admonitions, apply to the Football player sanctions and disciplinary actions, provided by the Statue or collective agreement of the Club, Order of the Ukrainian football competitions among professional teams and the labour legislation in force of Ukraine, including the transfer of the Football player to the undermost teams of the Club and decrease the wages;*

(…)

Article 4.4.

The Club can apply to the Football player financial sanctions by the curtailment of the fringe benefits for the infraction of the game rules, violation of the present Contract and for the other sport contraventions in accordance with the Statue of the Club or collective agreement of the Club, Agreement "about bonuses method and social provision of the Football player", and Rules of the Ukrainian football competitions among professional teams as well as at any moment the Club may terminate a present contract based on decision of the Club Council of Sport and appropriate order if the Football player doesn't conform the level of the game in the team or loss of necessary physical form.

Article 4.5.

During the validity of the present Contract, in connection with its non-fulfilment by the Football player, as well as the decrease of the craftsmanship or loss of the necessary physical form, and also in case of exhibiting the football player to a transfer, the rate of the wages can be changed into the way of decreasing amenably the decision of the Club Council of Sport and in concordance with labour legislation in force of Ukraine.

Article 5.3

In case of disagreements, which can appear during the exercise of the present contract, the parties have the rights to determine disputes in regular courts, in accordance with current legislation of Ukraine;

Article 6.4.

(…)

In case of pre-term denunciation of the Contract by the Football player for violation of the Contract conditions by the Club, the Football player has the right to receive the indebtedness of the salary for the period he worked in the Club.

(…)

Article 5.2.

All disputes and disagreements, appearing during the exercise of the Contract's obligations, the Parties undertake to resolve them with the help of discussions and arrangements.
In case of understanding frustration between the Football player and the Club, the Club Council of Sport takes the irreversible decision, which can be appealed in the Bureau of Professional football league of Ukraine, Control-disciplinary committee, Appellate committee of Football Federation of Ukraine.

(…)

Article 6.6.

The Contract can be cancelled by the Club unilaterally at any time and on any basis without written notification of the Player".

9. On 3 May 2008, the Player sustained a Cruciate Rupture in his knee during a game against the club VC Vorskla Plotava.

10. In the Player's opinion, the Club's medical department did not at first determine the seriousness of the injury, and the Player was compelled to attempt training for three more days with a swollen knee and significant pain. He subsequently contacted, by telephone, Dr Grevenstein, in Germany, in the presence of the former team doctor of the Club, to seek medical advice and, if appropriate, to obtain the necessary treatment in Germany. No former written approval to do so was presented in the proceedings. These factual circumstances are thus disputed by the Club, which claims that the Player, of his own accord and without permission from the Club, left for Germany to undergo medical treatment.

11. According to the medical report of Dr Grevenstein, the Player underwent medical treatment on 7 May 2008 at Dr Grevenstein's clinic in Mainz, Germany. Dr Grevenstein undertook an MRI-scan of the Player's right knee on the same day which showed a bone bruise, a rupture of the anterior cruciate ligament (ACL) and retro patellar cartilage damage. On 9 May 2008, Dr Grevenstein performed an ACL-repair with re-fixation of the medial meniscus. After the operation, the Player stayed in Germany for rehabilitation.

12. In the period from 24 June until 10 July 2008, the first team of FC Metallurg stayed in a training camp in Harsewinkel/Marienbild in Germany. According to the Player's statement, he took this opportunity to visit his team mates in the training camp on 27 June 2008 where the Club's team doctor examined the Player's knee, and expressed *"his amazement about the positive healing process"*. The Player was also invited for dinner by the Club's sports director, Mr. B.N. Israelyan, and the trainer, Mr. M. Kostov and neither expressed any concerns or objections to the Player's continued rehabilitation in Germany. On the contrary, they wished him a positive healing process, in Germany, over the next 4-6 months.

13. During the proceedings before the FIFA Dispute Resolution Chamber and the proceedings before CAS, it is undisputed by the Club that the Player had in the period from May 2008 until the end of October 2008, received his monthly salary in the amount of USD 33'333.33 without any delay or deduction by the Club. Furthermore, it is undisputed that no written evidence in the form of letters or emails has been submitted by the Club, demonstrating that during the period from May until October 2008 it protested against the Player's surgery and rehabilitation treatment in Germany, or demanded that he returned to the Ukraine.

14. In October 2008, after the end of his rehabilitation in Germany, the Player returned to Ukraine to take up his position as a professional footballer under contract with the Club. However, on 1 November 2008 shortly after his return, the Sports Board of the Club decided with reference to the Club's purported rights under the Contract and the ADSB to:

- relegate the Player to the second team
- put the Player up for transfer as of 1 November 2008;
- to decrease the Player's salary and other additional payments, including bonuses by 50%, starting on 1 November 2008.

15. On 6 November 2008, the Academy of Medical Science of Ukraine allegedly carried out an examination of the Player's right knee joint, and according to the Club, this examination showed that the Player's treatment in Germany had resulted in an aggravation of the Player's injury.

16. After the decisions of the Club were implemented, around 1 November 2008, the Player asserted that the Club refused him access to the training field and no longer provided him with the proper training equipment, and also that he had been relegated to the Club's second team. Further his normal monthly salary of USD 33'333,33 had as of 1 November 2008 been reduced to USD 15'183,33.

17. Moreover, the Club had only paid a bonus of USD 100'000 out of a total of USD 300'000 as set forth in accordance with Article 2.1. a) of the ADSB.

18. On 5 December 2008, the Player's lawyer contacted the Club, seeking that the Club confirmed *"that the contract will be fulfilled by the Club until its ending by the term of 30 June 2011; that my client is a member of the team of the Club and will participate at the training and any [else] activity of the team; that the money i.e. the sum of USD 200'000 will be paid without delay until 19 December 2008"*.

19. Without answer to the letter of 5 December 2008, the Player's lawyer wrote again on 27 January 2009 to the Club seeking payment of the outstanding amount of USD 200'000 as well as the remaining part of the salary for the months of November and December 2008. Furthermore, the Player sought compensation for his loss due to the fluctuation of the Ukrainian currency, in the amount of USD 6143,52 as well as reimbursement for the expenses paid for the medical treatment and rehabilitation in Germany for USD 27'175. The Player requested that the total outstanding amount of USD 263'618.58 be paid before 10 February 2009; failing which, a claim would be filed with the Dispute Resolution Chamber of FIFA.

20. As no response from the Club was received, on 19 February 2009, the Player lodged a claim (amended on 29 May, 20 July and 13 October 2009) against the Club before the FIFA Dispute Resolution Chamber.

21. On 9 July 2009, the Player terminated his contract with the Club with immediate effect.

22. In his claim before FIFA, the Player made the following requests for relief:

    a) *"USD 200,000 as single payment due on 30 June 2008 according to art. 2.1 of the ADSB (the player alleged to have received only USD 100,000 out of the USD 300,000);*
    b) *USD 45,550 as monthly salaries for November and December 2008 as well as January 2009 (the player allegedly only received USD 18,150 instead of USD 33,333 each month);*

c) USD 31,300 as monthly salaries for February and March 2009 (the player allegedly only received USD 17,683 each month);
d) USD 15,183 as monthly salary for April 2009 (the player allegedly only received USD 18,150 for April);
e) USD 16,199,33 as monthly salary for May 2009 (the player allegedly only received USD 17,134 for May);
f) USD 15,699 as monthly salary for June 2009 (the player allegedly only received USD 17,634 for June);
g) USD 6,450.52 for exchange rate fluctuations;
h) USD 26,882 for medical costs (converted from EUR 21,205.81);
i) USD 3,000 for accommodation costs for the period from January to June 2009;
j) USD 400,000 as compensation for the season 2009/2010;
k) USD 550,000 as compensation for the season 2010/2011.

The interest at the rate of 5% p.a. is calculated as follows:

a) 5% interest on USD 200,000 as of 30 June 2008 (date on which the amount fell due);
b) 5% interest on USD 78,575,52 as of 19 February 2009 (date on which the claim was lodged);
c) 5% interest on USD 32,607 as of May 2009 (date on which the amendment to the claim was lodged);
d) 5% interest on USD 923,987 as of 20 July 2009 (date on which the amendment to the claim was lodged)".

23. On 19 January 2010 the Club filed a counterclaim against the Player based on the following request for relief:

a) "USD 300 as fine for each training session the player missed according to art. 1.4. of the ADSB"For coming late to training or any official event, conducted by the Club, the penalty is 300$".);
b) sporting sanctions of four months for the player due to his unilateral breach of contract;
c) compensation for breach of contract of the whole remaining amount of his salaries as of the date of his departure on 9 July 2009;
d) compensation for the club's sporting loss due to the breach of contract by the player;
e) compensation for the club's sporting loss due to the player's failure to train;
f) reimburse all salaries paid to the player after the date the player missed his first training session;
g) compensation for self-inflicted, which the player aggravated by seeking medical treatment in another territory".

24. On 31 October 2013, the FIFA Dispute Resolution Chamber rendered the following decision (without grounds) (the "FIFA Decision"):

1. "The claim of the Claimant/Counter-Respondent, Erol Bulut, is partially accepted.

2. The counterclaim of Respondent/Counter-Claimant, FC Metallurg Donetsk, is rejected.

3. The Respondent/Counter-Claimant has to pay to the Claimant/Counter Respondent, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 323,931 plus 5% interest p.a. until the date of effective payment as follows:

a) 5% p.a. as of 1 July 2008 on the amount of USD 200,000;
b) 5% p.a. as of 20 July 2009 on the amount of USD 123,931.

4. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 650,000 plus 5% interest p.a. as from 31 October 2013 until the date of effective payment.

5. In the event that the amounts due to the Claimant/Counter-Respondent in accordance with the above-mentioned numbers 3. and 4. are not paid by the Respondent/Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. Any further request filed by the Claimant/Counter-Respondent is rejected".

25. The FIFA Decision was communicated with grounds to the Parties on 25 March 2014.

III. ARBITRAL PROCEEDINGS

A. Proceedings before the CAS

26. On 14 April 2014, the Appellant filed its statement of appeal before the Court of Arbitration for Sport (hereinafter referred to as "the CAS") against the Player with respect to the FIFA Decision and nominated Mr Stuart McInnes as arbitrator.

27. On 24 April 2014, the Player informed the CAS Court Office that he nominated Ms Sylvia Schenk as arbitrator.

28. On 25 April 2014, the Appellant filed its appeal brief with the CAS in accordance with Art. R51 of the CAS Code.

29. On 5 May 2014, FIFA informed the CAS Court Office that it renounced its right to intervene in the present arbitration proceedings.

30. On 9 July 2014, the CAS Court Office informed the Parties that the panel appointed to hear the case was constituted as follows:

President: Mr Lars Halgreen, Attorney-at-law, Copenhagen, Denmark,

Arbitrators:
Mr Stuart McInnes, Solicitor in London, United Kingdom,
Ms Sylvia Schenk, Attorney-at-law, Frankfurt-am-Main, Germany.

31. On 25 July 2014, the Respondent filed his answer with the CAS in accordance with Art. R55 of the CAS Code.

32. On 17 and 22 October the Appellant and Respondent, respectively, signed and returned the Order of Procedure to the CAS Court Office.

B. The hearing

33. On 25 November 2014, a hearing was held in Lausanne. The Panel was assisted at the hearing by legal counsel to the CAS, Mr Antonio de Quesada.

34. The Appellant was represented by Mr Juan de Dios Crespo Pérez, Attorney-at-law in Valencia, Spain and Mr Ivan Bykovskey, Attorney-at-law in Moscow, Russia.

35. At the beginning of the hearing, Mr Pérez explained that due to the unfortunate political situation in the Ukraine, no representatives of the Club were able to be present at the hearing. For the same reasons, the Appellant was not able to present any witnesses. In response to the Panel's question about the possible availability of the witnesses via telephone, Mr Pérez responded that this option was not available either. Hence, the Appellant would solely rely on the written statements and submissions submitted to FIFA and during the proceedings before CAS.

36. The Respondent appeared in person and was represented by Mr Kai Ludwig, Attorney-at-law in Meilen, Switzerland. The Respondent called the following witnesses:

- Dr Jakob Grevenstein
- Mr Ender Kolcak

37. The statement of the Respondent and the witness testimonies may be summarized as follows:

(i) The testimony of Mr Erol Bulut

38. Mr Erol Bulut explained that he is a Turkish national, but he had for many years lived in Germany and worked as a professional footballer. In 2007, he had signed the Contract with the Club and, in January 2008, the parties had discussed the extension of the Contract. These discussions led to the signing of the contract extension in March 2008 together with a side agreement regarding bonuses. He had very good relationship with the club management and the coaching staff. When he was injured during a match in May 2008, he went to the Club's doctor. His knee was swollen, but the Club did not have the proper medical equipment to examine his knee. He discussed the situation with the medical team of the Club, and they agreed that he should contact Dr Grevenstein in Germany and have an MRI-scan performed on his knee. The General Manager of the Club was also informed about the situation, and they shook hands when he went to Germany to undergo surgery. He sent reports back to the Club every

ten days. When his club was at a training camp in Marienbild, he visited the team. His knee was examined by the Club doctor, who was very pleased with the progress, and everybody wished him a speedy recovery and said that the team needed him. In October, he returned to Ukraine following his successful surgery and rehabilitation period. Upon his return, the General Manager told him that the coach no longer wanted him as a member of the team. When he confronted the coach, he said that the 'system' had changed and he should instead talk to the management of the Club. He felt that the Club was looking for a way to push him out of the team. They tried to find a financial solution, but could not agree terms. In the meantime, he was denied access to the training centre, and the Club did not provide him with medical or physiotherapy assistance. Moreover, his salary was cut by 50 per cent in November 2008, and he was relegated to the Club's second team where he played for a couple of months. It was clear to him that the Club felt no responsibility for him anymore, and in the beginning of December 2008, he asked his lawyer in Germany to contact the Club officially. No response was received to his lawyer's letters. In February, he felt compelled to bring a claim before FIFA's Dispute Resolution Chamber. In the spring of 2009, he spoke with the General Manager again, which left him feeling that he was no longer safe in Ukraine. Shortly thereafter, he returned to Germany on the advice of his lawyer. After his return to Germany, he found a new club in Greece (Olympiakos Voulou 1937 FC and later Omilos Filathon Irakliou), and played there for four years. His salary as from 7 September 2009 until 30 June 2011 amounted to approximately USD 95'000. After the operation his right knee has not presented any problems or impacted on his ability to play football at professional level. Presently, he is an assistant coach in Turkey. During cross-examination, Mr Bulut confirmed that the reason for going to Germany in May 2008 was that no MRI-scanning equipment was available in Donetsk. Furthermore, he confirmed that he had not received written consent from the Club to go to Germany to be operated upon. Finally, he explained that 75 per cent of the cost for the knee operation was covered by his private insurance in Germany, which had paid approximately EUR 15'000.

(ii) The testimony of Dr Grevenstein

39. Dr Grevenstein testified that he was a very experienced surgeon who throughout his career had performed approximately 30000 surgeries. In relation to Mr Bulut's surgery, he explained that it was a simple and standard procedure, and that Mr Bulut had a stable knee after the operation. Mr Bulut attended normal check-ups after the operation, and the knee healed in a satisfactory manner. Five to six months after surgery, he was able to participate in training and matches as a professional footballer. During cross-examination, Dr Grevenstein stated that he had no personal knowledge of the medical equipment and the qualifications of the medical staff of either FC Metallurg Donetsk or any other club in Donetsk. When Mr Bulut had arrived at his clinic in May 2008, he did not bring any medical records from the Ukraine, and Dr Grevenstein stated that he had not talked to any of the medical staff from the Club. This was, however, a normal procedure as he did his own examinations of any patient before surgery. He was not able to make a qualified opinion on the medical records from the Academy of Medical Science of the Ukraine, but he could confirm that Mr Bulut's knee operation had been successful, and that the healing process afterwards had been normal. He had heard from Mr Bulut that he had

continued his professional career in Greece after returning from the Ukraine, and he had no knowledge of any subsequent complications following the operation.

(iii) The testimony of Ender Kolcak

40. Mr Kolcak had been called as a witness to testify in his capacity as a friend of Mr Bulut, having visited him on several occasions in Donetsk. However, during the first part of the testimony it became apparent that Mr Kolcak was not able to give his witness statement in English, and since no German/English translator was retained by the Respondent, the Chairman of the Panel excused the witness.

41. Following the testimonies, the Parties presented their closing statements and conclusions. Both Parties declared at the end of the hearing that they had no objection with respect to the formation of the Panel, nor the way in which the proceedings had been concluded, and that their right to be heard and to be equally treated had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The position of the Appellant

42. In the Statement of Appeal, the Club challenged the FIFA Decision and submitted a number of requests for relief.

43. In the Appellant's Appeal Brief, the following requests for relief were submitted:

"A). To declare the nullity of the Decision as per the non-exhaustion of the legal remedies by the Player and consequently to direct the present proceedings to the to the arbitration tribunal of the Football Federation of Ukraine which is the competent entity to deal with the case at stake;

OR ALTERNATIVELY,

B). IN THE UNLIKELY ALTERNATIVE that the Panel does not agree with the aforementioned understanding, to fully accept the present appeal against the Decision of the FIFA Dispute Resolution Chamber dated 31 October 2013. Consequently, to adopt an award annulling said decision and declaring that:

1). The appealed Decision is fully set aside and

2). The Player terminated with no just cause the Employment Contract it had signed with Metallurg,

> *2.1). As consequence of the above to state that the Respondent shall not be entitled to receive any financial amount from the Appellant following to its unilateral termination of the Employment Contract.*

2.2). As consequence of the above to order the Respondent to pay to the Appellant a compensation in the amount of 2,925,000.00/- USD (Two Million Nine Hundred and Twenty Five Thousand USD only) – being the Player's subsequent club the Greek club Olympiakos Volos jointly and severally liable for the payment of said compensation.

2.3). To order the Player to pay an additional 5% annual interest on the amounts due to the Appellant as from the date of the breach of the Employment Contract, i.e., as from 9th of July 2009.

OR IN THE ALTERNATIVE

C). In the unlikely event that the Panel decides that the Appellant was in breach of contract, to mitigate the indemnification according to point 48 to 50 of the present Appeal Brief and limit the compensation to be paid in favour of the Appellant to the salaries he had to be paid up to the date when he unilaterally terminated the Employment Contract, i.e. up to the 9th of July 2009.

D). To fix a sum of 20,000/- CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.

E). To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees".

44. In support of its request for relief, the Appellant's submission, in essence, may be summarized as follows:

Jurisdiction

a) The FIFA Decision should be annulled due to the non-exhaustion of the legal remedies by the Player, both with regard to Art. 52 of the Contract and Art. 24 of the Statutes of the Football Federation of the Ukraine. Furthermore, Clause 1 of Art. 1 of the Regulations of the Dispute Resolution Chamber of the Football Federation of the Ukraine and part 2 of Art. 53 of the Disciplinary Rules of the Football Federation of Ukraine explicitly stipulate that the Chamber shall have exclusive authority to resolve disputes between clubs, football players and coaches, which deal with employment and contractual disputes, which arise from employment relationships. The Appellant also made reference to Art. 68.3 of the FIFA Statutes, which states:… *such dispute shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the association or confederation or to the CAS".* Against this background, the FIFA Dispute Resolution Chamber should have declared itself incompetent to adjudicate the Player's complaint, and subsequently the CAS should dismiss the case for lack of FIFA jurisdiction in the first instance.

The merits

b) The Appellant did not breach any contractual obligation towards the Player by failing to pay USD 200'000 to the Player as a bonus. According to Swiss law, a clear distinction has to be made between remuneration to be considered as a salary or as a bonus. In the latter case, the

payment of a bonus should only be made if the conditions for such bonus payment have been fulfilled according to the contract. Pursuant to Clause 2.1 of the ADSB, payment of USD 300'000 is entirely up to the Club's discretion after evaluation of the Player's individual performance. The condition triggering any payment of a bonus should be the Player's involvement in the Club's success, and the Club's payment of USD 100'000 out of a maximum of USD 300,000 should be regarded as a demonstration of good faith of the Club towards the Player, who for the most part of the season had been injured. Thus, the FIFA Decision to award the Player USD 200'000 as outstanding remuneration is clearly a wrongful interpretation of the Club's obligations to the Player according to the Contract and the ADSB.

c) The Player did not obtain written consent from the Club to leave the Ukraine in order to be operated upon in Germany. This unjustified and unwarranted action by the Player, which led to four consecutive months of absence from his employment at the Club, is a breach of the Player's contractual obligations towards the Club. In this respect, the wording of Art. 1.5 of the ADSB is self-explanatory, in that, absence from training without any justifiable reason is punishable by a 50% reduction in salary up to the dismissal from the team itself.

d) The Player's salary was justifiably reduced by the Club as of 1 November 2008 due to the Player's above-mentioned breach of the employment contract. According to the Contract and Ukrainian labour legislation, the Club had the sufficient legal basis for reducing the Player's salary by 50% as of 1 November 2008. This decision was made by the highest responsible body i.e. the Sports Board of the Club with direct reference to Art. 3.4 of the Contract. This contractual right of the Club to make a reduction in the Player's salary under the given circumstances is embedded in a legally binding agreement between the Parties and pursuant to the general legal principle of *"Pacta Sunt Servanda"*.

e) The Respondent has failed to comply with the training instructions of the Club during the recovery process of his injury. Participation in training sessions is one of the most fundamental aspects of being a professional footballer and by refusing to attend the sessions and to follow the instructions of the Club's medical staff, the Player provided the Club with the right to terminate the Contract prematurely without payment of salary. Hence, given the Club's contractual right to terminate the Contract, the Club equally obtained the right to enforce a lesser sanction by further reducing the Player's salary as from February 2009 and onwards. Accordingly, the Player's salary for the said period was justifiably reduced by 50% by the Club.

f) The Player's demand for compensation in the amount of USD 6450 for exchange rate fluctuations and USD 26'882 for medical costs are to be rejected. The FIFA Decision rightfully dismissed that the Club should be obliged to pay exchange rate fluctuation and accommodation costs. It also follows from Art. 3.3 of the Contract that the Club is only obliged to finance the treatment by specialists *in the territory of Ukraine,* but not pay for any treatment received abroad.

g) On the basis of the Player's gross violation of his Employment relationship with the Club for the above-mentioned reasons, the Club is instead entitled to compensation from the Player in accordance with the well-established jurisprudence of the judicial bodies of FIFA and the jurisprudence of CAS. Pursuant to Art. 17 of the FIFA Regulations, the Club is entitled to

compensation for termination of a contract without "just cause". The amount of compensation to be awarded to the Club can be calculated as follows:

i) Remuneration under existing contract	USD	950'000
ii) The loss of earnings (lucrum cessans)	USD	1'000'000
iii) Replacement costs	USD	500'000
iv) Specificity of sport	USD	475'000
Total amount of compensation	USD	2'925'000

In addition, the Club should also be granted interest at the rate of 5% p.a. from the day when the breach of contract occurred, i.e. 9 July 2009 and until payment is received.

h) Finally, the Player's new Club, Olympiakos, is to be held jointly and severally liable for the payment of compensation in accordance with Art. 17 of the FIFA Regulations and the well-established CAS jurisprudence in relation hereto. Furthermore, sporting sanctions should be imposed on the Player for his breach of contract.

i) In the unlikely event that the Panel awards compensation against the Club, the Player is obliged to mitigate his losses in accordance with generally accepted contractual principles and well established CAS jurisprudence.

B) The position of the Respondent

45. In his Answer, the Respondent submitted the following requests for relief:

1. To dismiss the appeal of the Appellant with costs.

2. To maintain the decision of FIFA's Dispute Resolution Chamber and to declare that the Respondent terminated the Employment Contract with just cause.

3. To rule that the Appellant is committed to pay the Respondent the medical costs in the amount of USD 26,882.00 and exchange rate fluctuations in the amount of USD 6,450.00.

4. To condemn the Appellant to a payment of the whole CAS administration costs, the arbitration fees and the costs of the Respondent's legal representation.

46. In support of his request for relief, the Respondent's submission, in essence, may be summarized as follows:

Jurisdiction

a) The Respondent submits that FIFA's Dispute Resolution Chamber had jurisdiction in this matter in accordance with Art. 22 and 24, lit. b), of the FIFA Regulation for the Status and

Transfer of Players ("the FIFA RSTP"). Thus, FIFA is competent for employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal has been established at national level. The international dimension is represented by the fact that the player concerned is a foreigner in the relevant country. Only disputes between a player who has the nationality of the country to which the Club is affiliated, and the Club, fall under the exclusive jurisdiction of national sports tribunals, if the player registered for a club in the same association, cf. Art. 22, lit. b) of the FIFA RSTP. This is not the case in this matter. As to the question whether an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players is available in Ukraine, the Respondent first of all submits that Art. 5.2 of the Contract does not constitute an arbitration clause, but rather a clause concerning a choice of law; secondly, the Football Federation of Ukraine Dispute Resolution Committee does not meet the minimum procedural standards for independent arbitration tribunals as stipulated in Art. 22, lit. b), of the FIFA RSTP. Finally, the Appellant failed to designate FIFA as a Respondent to the present proceedings, so any question relating to the jurisdiction of the relevant FIFA decision making body will not be taken into consideration by the CAS. The FIFA decision on jurisdiction must be considered as having become final and binding on the Appellant. A different interpretation would per se constitute a violation of FIFA's right to be heard.

The merits:

Outstanding payments

b) With respect to the outstanding amount of USD 200'000, the Respondent submitted that the single payment of USD 300,000 for the season 2007-2008 according to clause 2.1, lit. a) of the ADSB is a fixed payment obligation of the club. In support thereof, the Respondent made reference to the particular wording of the clause, which states that the club *"makes payment to the player… and that the club pays the sum of money in the amount of 300'000 USD net till the 30 of June 2008"*. This wording leaves no room for an individual assessment contingent upon various conditions being met. Independent of the legal certainty of the wording, the Respondent stresses that the total amount of USD 300'000 was due as early as 30 June 2008 and that the amount related to the season 2007/2008, in which season the Club reached the semi-final of the Ukrainian Cup. Moreover, the Player was in the starting line up in the 2007/2008 season more than 18 times. For these reasons, it is not possible for the Club to deprive the Player of the contractually stipulated bonus, which was due for the team's performance in the previous season. Hence, the amount of USD 200'000 relating to the 2007/2008 season remains unpaid and outstanding.

c) With respect to the outstanding remaining salary, due to the unilateral reduction by the club as of 1 November 2008 and onwards, the Respondent submits that the Club's decision to reduce the Player's salary is wrongful and in violation of the Contract and well-established CAS jurisprudence. Firstly, the Respondent argues that the contractual basis does not allow for a unilateral decision to reduce a Player's salary on the grounds of an allegedly insufficient performance. Thus, an inadequate sporting performance does not represent an acceptable reason for a unilateral withholding or reduction of an agreed remuneration according to well-

established jurisprudence of FIFA and the CAS. In addition, the Respondent submits that the medical statement from the Academy of Medical Science of the Ukraine is false, as the Player was fully capable of performing his duties as a professional footballer when he returned from a successful surgery/rehabilitation period in Germany in November 2008. Not once, while in Germany for the surgery and rehabilitation, did the Player receive notice from the Club protesting against his operation in Germany and/or requiring that he returns to the Ukraine. During the entire period, he received his contractual salary of USD 33'333 per month. The Player has in no way whatsoever contributed to an aggravation of his injury; on the contrary he returned to Ukraine in good faith to take up his position as a professional footballer. Against this background, the Appellant's accusations of breach of contract should be dismissed as a fabrication to cover the fact that the Club had lost interest in the Player, when he returned in November 2008 and attempted to make him abandon his contract by reducing his salary and denying him the right to equipment, training etc.

d) With respect to the payment of exchange rate fluctuations and medical costs, the Respondent submits that FIFA's Dispute Resolution Chamber made an error by refusing to award the Player compensation for these costs. As for the exchange rate fluctuation, the Respondent refers to the Contract itself, which clearly states that the Respondent's salary is in American dollars (USD). However, the Club made payment in Ukraine currency (HRYWNJA), which – due to the considerable fluctuation – led to a loss for the Player, when he exchanged the local currency into USD. The risk of currency fluctuation is not on the Player's and therefore the Club should rightfully be condemned to pay USD 6450,52 for the exchange rate fluctuations. As for the medical costs for the operation, in the amount of USD 26'882, the Respondent claims that this amount should also have been awarded as compensation in the FIFA decision. The Player has made reference to article 3.3 of the Contract, which provides him the right to full medical services, including diagnostics treatments, by a specialist. Since, the Club did not have the proper equipment to perform an MRI-scan of his knee, he was forced to be examined and operated upon in Germany. This action was done with the full knowledge and acceptance by the Club and for that reason, the Club should bear the medical costs for the operation abroad, since it was not able to provide one in the Ukraine as stipulated in the Contract.

V. LEGAL ANALYSIS

A. Jurisdiction

47. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a Federation, Association or sports related body may be filed with the CAS in so far as the statutes or regulations of the said body so provide, or as the Parties have concluded a specific arbitration agreement, and in so far as the Appellant has exhausted the legal remedies available to him, prior to the Appeal, in accordance with the statutes or regulations of the said sports related body.

48. In his submissions before CAS, the Appellant has challenged the decision by FIFA's Dispute Resolution Chamber, as the Appellant claims that the FIFA decision should be annulled for the

reasons stated in point 43 a) above. The panel will deal with this issue below as part of the merits of the case.

49. No objections, however, have been raised by the parties as to the jurisdiction of CAS. Moreover, both parties have signed the Order of Procedure without reservation in this respect. Therefore, the Panel confirms that the CAS has jurisdiction to hear this dispute.

B. Admissibility of the appeal

50. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal, if it is manifestly late.

51. The FIFA Decision was communicated to the Parties with grounds on 25 March 2014 and the Appellant subsequently filed its Statement of Appeal on 14 April 2014. Moreover, no objections to the admissibility of the appeal have been raised by the Respondent and both Parties signed the Order of Procedure without reservation in this respect. Accordingly, the Panel concludes that the Appeal has been filed within the 21-day deadline foreseen in Art. 67, par 1 of the FIFA Statutes and, therefore, is admissible.

C. Counterclaim

52. As regards the Player's request for relief regarding reimbursement of medical costs in the amount of USD 26'882 and exchange rate fluctuation in the amount of USD 6450, the Panel notes that the Player did not appeal this part of the FIFA Decision to the CAS within the 21 day deadline as stipulated according to Art. 67, par 1 of the FIFA Statutes. As counterclaims cannot be raised by a respondent to appeal proceedings, the request for reimbursement for medical costs and exchange rate fluctuations is not admissible. Accordingly, the Panel considers that the Respondent's request for reimbursement of these expenses in the total amount of USD 33'332 is not admissible.

D. Applicable law

53. Article R58 of the CAS Code provides as follows:

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

54. Article 5.3 of the Contract contains a provision regarding choice of venue:

"In case of disagreements, which can appear during the exercise of the present contract, the parties have the rights to determine disputes in regular courts, in accordance with current legislation of Ukraine".

55. Based on the wording of the above provision in the Contract, the Panel is not satisfied that Ukraine law has been chosen by the Parties. The optional wording of article 5.3 in the Contract is to be interpreted as a choice of venue and not a choice of law provision. Instead, and as a result of article R58 of the CAS Code, the Panel concludes that FIFA Regulations shall primarily apply and, subsidiarily, Swiss law.

E. Scope of the Panel's review

56. According to Article R57 of the CAS Code:

The Panel shall have 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…

F. The merits

57. The following issues shall be determined by the Panel in these proceedings:

Question 1: Should the FIFA decision be set aside for lack of jurisdiction by the FIFA Dispute Resolution Chamber?

Question 2: Did either of the Parties have the right to terminate the Contract with just cause?

Question3: If so, what should be the consequences of such a termination?

(i) Analyzing Question 1

58. As its first request for relief, the Appellant has in these CAS proceedings submitted that this Panel should declare the FIFA Decision null, as the Player had not exhausted the legal remedies available to him, prior to bringing the case before the FIFA Dispute Resolution Chamber. In this respect, the Appellant has submitted that Art. 52 of the Contract and Art. 24 of the Statutes of the Football Federation of the Ukraine, as well as clause 1 of Art. 1 of the Regulations of the Dispute Resolution Chamber of the Football Federation of the Ukraine and part 2 of Art. 53 of the Disciplinary Rules of the Football Federation of the Ukraine, explicitly stipulate that the Chamber shall have exclusive authority to resolve the dispute between clubs, football players and coaches, which deal with employment and contractual disputes, which arise from employment relationships.

59. This request for relief was not presented by the Appellant before FIFA's Dispute Resolution Chamber. Nonetheless, the Appellant maintained that the FIFA Dispute Resolution Chamber should of its own volition have declared itself incompetent to adjudicate the Player's complaint for lack of jurisdiction.

60. In this respect, the Panel shall refer to Article 186.2 of the Swiss Private International Act ("PILA"), which reads as follows:

"L'exception d'incompétence doit être soulevée préalablement à toute défense sur le fond".

The above-mentioned provision can be informally translated into English as follows:

"Any objection to its jurisdiction must be raised prior any defence to the merits".

61. Therefore, in accordance with Article 186.2 of the PILA, the Panel considers that if the Appellant had any objection against the competence of FIFA, it should have raised such objection during the FIFA proceedings as an initial matter. In this respect, the Panel considers pertinent to refer to well-established jurisprudence of the Swiss Federal Tribunal which provides that *"Dès lors que le défendeur, au principal ou sur reconvention, a procédé sur le fond sans avoir préalablement soulevé l'exception d'incompétence de l'arbitre, il est désormais déchu du droit de soulever ultérieurement"* ("if the Respondent enters into the merits without having raised any objection to the jurisdiction of the arbitrator, he is, from that moment onwards, deprived of raising such objection") (ATF 120 II 155).

62. Moreover, the Panel refers to Article 22 of the FIFA RSTP which provides that, in disputes of international dimension, the jurisdiction of FIFA can only be waived in favour of the alternative jurisdiction of another body, where that body is deemed to be *"an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the player and the clubs has been established at a national level within the framework of the association and/or collective bargaining agreement".*

63. In any case, the Appellant, *in casu*, has provided no evidence to prove that the bodies of the Football Federation of Ukraine offered the guarantees provided under Article 22 of the FIFA RSTP, namely the right of fair proceedings and the respect of the principle of equal representation of players and clubs.

64. The Panel notes that the Appellant referred to the CAS award 2013/A/3305 in order to prove that *"CAS jurisprudence have already confirmed the legitimacy and legality of said bodies"* [i.e. of the Ukrainian Football Federation]. Nevertheless, after having reviewed such award, the Panel notes that, contrary to the present case, the award 2013/A/3305 solved a dispute of national dimension only (Ukrainian player against Ukrainian club) and, therefore, is not applicable to the case at hand.

65. Accordingly, the Appellant's first request for relief shall be dismissed.

(ii) Analyzing question 2

66. In order to resolve the second question, it is important that the Panel outlines the relevant context and factual circumstances, which have been presented in these proceedings.

67. From the evidence presented during these proceedings, and the testimonies given at the hearing, the Panel notes that the Player, having been injured in a match for his club on 3 May 2008, contacted Dr Grevenstein in Germany in order to have an MRI-scan of his knee, which subsequently led to a knee surgery on 9 May 2008 performed in Dr Grevenstein's clinic in Mainz, Germany.

68. The circumstances and arrangements leading up to the Player leaving Donetsk to go to Germany to be operated is disputed, as the Club claims that the Player left without a formal written permission, and that his operation and subsequent rehabilitation period in Germany was not sanctioned or accepted by the Club.

69. The Panel has taken notice of the fact that no written evidence in the form of letters, emails etc. has been presented by either Party to substantiate their position. Thus, the Panel is inclined to put significant weight on the testimonies presented at the hearing. The Panel has noted that the Player explained that the reason for going to Germany was to obtain a proper examination of his knee as no MRI scanning equipment was available to the Club in Donetsk. In order for the Panel to evaluate the veracity of the Player's statement, the Panel has taken into account that none of the relevant persons from the Club, such as members of the medical staff or management, gave evidence in these proceedings. Therefore, the testimony of the Player has not been challenged.

70. On the contrary, the Panel has noted that the testimony of Dr. Grevenstein, who made the examination of the Player's knee and undertook the subsequent surgery, corroborates the statement of the Player. The Panel also accepts the testimony that the Player consulted Dr. Grevenstein with the full knowledge of the Club's medical staff and management, and that he left for Germany to be examined and operated upon with the implicit acceptance of the Club.

71. The testimony of the Player is, in the opinion of the Panel, supported by the fact that during his entire stay in Germany for surgery and rehabilitation, the Player received his contractual entitlement of USD 33'333 per month without deduction or objection from the Club. The Panel finds it inconceivable that a player who had left his club to undergo surgery in another country, without permission, would receive his salary without delay or deduction. The Player's visit to the training camp in Germany on 27 June 2008 furthermore underlines the veracity of the Player's statement that the Club's medical staff and management had accepted his surgery in Germany and the subsequent rehabilitation period, outside the supervision of the Club's medical staff. For these reasons, it is the Panel's firm conviction that the Player did not breach his employment relationship with the Club by undergoing surgery and rehabilitation in Germany.

72. Having established the above, it is for the Panel to evaluate the events that took place when the Player returned to the Club in Donetsk in October 2008. From the evidence submitted during these proceedings, and the testimony of the Player, the Panel is satisfied that the Player was able to fulfill his contractual obligations towards the Club, as of November 2008. In the opinion of the Panel, the decision of the Sports Board of the Club as of 1 November 2008 to relegate the Player to the second team, to put him up for transfer, and to decrease his salary and additional payments by 50% was an unjustified and unilateral decision by the Club. Again, the Panel was not presented with any evidence from either the management or medical staff of the Club to rebut the Player's statement. Dr Grevenstein's testimony about the Player's successful rehabilitation combined with the fact that the Player, after the termination of his contract with the Club, played for a number of years in a Greek club at a high professional level, leads the Panel to conclude that the result of the examination by the Academy of Medical Science of Ukraine of 6 November 2008 must be dismissed as unsubstantiated evidence.

73. Hence, the Panel is comfortably satisfied to assume that the Club's decision of 1 November 2008 should be regarded as evidence that the Club had lost interest in the Player's services and purported to make the Player's surgery/rehabilitation in Germany justification for the reduction in his salary and eventually to make him abandon his contract with the Club without financial compensation.

74. In reaching this conclusion, the Panel has also evaluated the validity of the Club's arguments for not paying, as of 30 June 2008, the outstanding amount of USD 200'000 to the Player, according to Art. 2.1a) in the ADSB. The Panel has, by virtue of the wording of the contract, found that this remaining sum was in fact the Player's bonus payment for the previous 2007/2008 season. According to the wording of the Contract, and the fact that no other written evidence has been presented by the Club, the Panel is of the opinion that the full amount of USD 300'000 was due to the Player as of 30 June 2008. The Panel concurs with the Player that the amount of USD 200'000 was therefore outstanding when he returned to the Ukraine in October 2008, and that the Club had no right to reduce or withhold the remaining part of the bonus for the previous season in November 2008.

75. The Panel moreover places significant importance on the fact that the Player's lawyer contacted the Club on 5 December 2008 and again on 27 January 2009 seeking payment of the outstanding amounts as well as reinstatement of the Player in the training of the team and any other club activity. None of these letters was answered by the Club, and nobody from the Club Management made any effort in good faith to resolve the matter.

76. In this respect, the Panel is of the opinion that the unanswered letters of the Player's lawyer, must be construed as justification for the Player terminating the employment relationship on 9 July 2009.

77. The Panel finds that the relationship between the Parties was governed by the Contract, and that this relation must be interpreted in accordance with the general principles developed by international arbitration practice. In particular, the Panel believes that the silence on the Club's side shall be interpreted in accordance with the *bona fide* principle (cf. CAS 2006/A/1062 and

CAS 2008/A/1447; see also art. 2 of the Swiss Civil Code). This principle has been construed by CAS jurisprudence as a conceptual tool for the Panel to determine how a statement or a general manifestation by a party could have been reasonably understood by the other. Thus, according to CAS 2005/O/985: *"When the actual common intentions of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The judge has to determine how a statement or an external manifestation by a party could have been reasonably understood by the other party, based on the particular circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422)".*

78. The Panel is of the opinion that the Club has not discharged the burden of proof imposed upon it as Appellant. In this regard, it should also be noted that CAS jurisprudence has repeatedly interpreted the burden of proof to mean that any facts pleaded have to be proved by those who plead them (CAS 2011/A/2625). According to CAS *2007/A/1380, "This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. These rules are clearly enshrined in art. 12 para. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber and were duly taken into consideration by the DRC".* Thus, the Panel finds no evidence that the statements submitted by the Club are correct given the other written submissions and all the evidence submitted during these proceedings.

79. In consequence, the Panel has come to the conclusion that the Player was entitled to terminate his contract with "just cause" in accordance with Art. 17 of the FIFA RSTP. The Panel finds that the primary justification for the "just cause" termination lies in the fact that the Player's remaining bonus of USD 200'000, which fell due as of 30 June 2008, was arbitrarily and without any contractual basis not paid by the Club. Moreover, the decision to reduce the Player's salary and to deny him access to training and medical facilities was equally unjustified, given that the Club's reason for taking such critical steps against the Player was without merit. On the contrary, the Panel is satisfied that the actions of the Club must be construed as an attempt to relieve itself of a financial obligation and to put pressure on the Player to abandon his contract without any financial compensation.

80. In reaching the conclusion that the Player was entitled to terminate his contract with "just cause", the Panel therefore also dismisses the Club's claims and arguments that the Player unilaterally breached his contractual obligation by leaving the Club to undergo surgery in Germany and by not attending the training sessions according to the Club's instructions once he returned to the Ukraine. Consequently, the Panel also dismisses the claim for financial damages and/or sporting sanctions for the alleged breach of contract.

(iii) Analyzing question 3

81. Having established that the Player was entitled to terminate the employment relationship with the Club with "just cause", the Panel will now deal with the issue of financial damages. Taking into consideration Art. 17, Para 1 of the FIFA RSTP, the Panel finds that the Respondent is

entitled to receive any outstanding payments due under the terms of the Contract and, in addition, compensation for breach of contract.

82. With respect to the outstanding payment of the remaining part of the Player's bonus for the season 2007/2008 in the amount of USD 200'000 pursuant to clause 2.1 (a) of the ADSB, the Panel concurs with the FIFA Decision and awards this sum to the Player as the Panel rejects the arguments made by the Club that the payment was contingent upon the Player's individual performance in the 2008/2009 season. In the opinion of the Panel, the contract clearly stipulates that the bonus of USD 300'000 is a fixed amount, and that the payment fell due on 30 June 2008.

83. Likewise, the Panel concurs with the FIFA Decision in relation to the quantum of damages in the sum of USD 123'931 representing the remainder of the monthly remuneration as of November 2008 until June 2009 in accordance with the ADSB. The Panel finds that the decision by the Club to reduce the Player's salary is without merit, cf. the discussion above regarding "just cause".

84. With respect to interest payments, the Panel also concurs with the FIFA Decision that the Player is entitled to 5% interest as of 1 July 2008 on the amount of USD 200'000 and 5% interest as of 20 July 2009 on the amount of USD 123'931, until the day of effected payment of both amounts.

85. With respect to the award of compensation for breach of contract for the remaining part of the contractual period, i.e. from July 2009 until 30 June 2011, the Panel holds that the amount of compensation pursuant to Art. 17, par 1 of the FIFA RSTP shall be calculated, unless otherwise provided for in the Contract, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remunerations and other benefits due to the Player under the existing contract and/or the new contract, the time remaining on the existing contract, up to a maximum of 5 years, and depending on whether the contractual breach fell within the Protected Period.

86. According to these principles, the FIFA Decision concluded that the amount of USD 950'000 (being salary due until expiration of the Contract) should serve as the basis for computation of the amount of compensation payable to the Player for breach of contract The evidence presented during these proceedings, and the testimonies at the hearing, leads the Panel also to concur with the FIFA Decision that a deduction of an amount of USD 95'573, equating to the payments received by the Player under his new employment contract with two Greek clubs (Olympiakos Voulou 1937 FC and Omilos Filathon Irakliou) for the period from 7 August 2009 until 30 June 2010 should be made by way of mitigation of the Player's losses.

87. In the FIFA Decision, the FIFA Dispute Resolution Chamber further took into account that the Player had not demonstrated that he was willing to play for the Club's second team. In addition, FIFA's Dispute Resolution Chamber had noted that the dispute between the Parties related to a period of time during which the Player was not or less able to play football.

Consequently, and on account of all considerations and the specificities of the case at hand, the FIFA Decision fixed the total amount of compensation of breach of contract to USD 650'000.

88. As the Respondent in his request for relief has asked the Panel to uphold the FIFA Decision, the Panel is unable to deviate from the assessment made by the FIFA Dispute Resolution Chamber and concurs with the FIFA Decision in fixing the total amount of compensation of breach of contract in an amount of USD 650'000.

89. With respect to interest on this amount, the Panel also concurs with the FIFA Decision that interest at the rate of 5% p.a. on the sum of USD 650'000 should be added as of 31 October 2013, until the date of payment.

VI. CONCLUSIONS

90. Accordingly, the Panel upholds the decision of the FIFA Dispute Resolution Chamber and rules that the Club is liable to pay the outstanding remuneration in the amount of USD 323'931 plus interest at the rate of 5% p.a. until the date of effective payment as follows:

    a. 5% p.a. as of 1 July 2008 on the amount of USD 200'000;

    b. 5% p.a. as of 20 July 2009 on the amount of USD 123'931.

91. In addition hereto, the Club is liable to pay a compensation for breach of contract for the remaining part of the Contract (July 2009 until 30 June 2011) in the amount of USD 650'000 plus 5% interest p.a. as of 31 October 2013 until the date of effective payment. All other or further requests of the Parties shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by FC Metallurg Donetsk on 14 April 2014 against the Decision issued by the Dispute Resolution Chamber of FIFA on 31 October 2013 is dismissed.

2. The Decision issued by the Dispute Resolution Chamber of FIFA on 31 October 2013 is upheld.

3. Mr Erol Bulut's request for the reimbursement of the medical costs and the financial lost he suffered due to the exchange rate fluctuations in the total amount of USD 33'332 is inadmissible.

(…)

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