



**Arbitration CAS 2014/A/3577 FC Vojvodina v. Ralph Serginho Greene, award of 8 May 2015**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Bernhard Heusler (Switzerland); Mr Hendrik Kesler (The Netherlands)

*Football*

*Termination of a contract of employment with just cause by the player*

*Duty of a player to mitigate damages in case of breach of the contract of employment by the club*

*Bonuses as flexible salary payments paid by clubs counting towards mitigation*

1. **There is a long and consistent line of jurisprudence resulting in the duty for players to mitigate in the case of a club's breach. The compensation from the club for breach of the employment contract can be calculated as the amount of money that the player would have earned with his former club until the end of his contract, but deducted from that is the amount of money that he earns with his new club for the same period. This deduction is consistent with the principle of positive interest embodied in Art. 17(1) RSTP and the practice of other CAS panels.**
2. **It is not uncommon for clubs to provide a base level of salary for a player, but for there to be an additional flexible element, so if the player is featuring with the first team, his salary increases. In reality, the bonuses are flexible salary payments and are to be taken into consideration as mitigation.**

**I. PARTIES**

1. FC Vojvodina (hereinafter referred to as "the Club" or the "Appellant") is a football club with its registered office in Novi Sad, Serbia. The Appellant is registered with the Football Association of Serbia (hereinafter referred to as the "FAS"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").
2. Ralph Serginho Greene (hereinafter referred to as "the Player" or the "Respondent") is a football player from the Netherlands. The Player is currently playing for AEK Larnaca.

**II. FACTUAL BACKGROUND**

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although

the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 3 July 2012, the Club and the Player entered into a professional player contract (hereinafter referred to as “the Contract”). The Contract provided:

*“Article 1*

*This Contract is concluded for the period from 03.07.2012. to 03.07.2014. i.e. until the beginning of the summer transfer period 2014, registration period in the year in which the Contract expires.*

*Article 2*

- 1. In consideration for the Player obligations towards the Club, the parties hereto have agreed upon the following monthly remuneration in the amount of minimal salary in Republic of Serbia published in Official Gazette of Republic of Serbia payable as follows on the bank account. Such remuneration shall not be modified unless by an annex to this Contract.*
- 2. The parties hereby also set forth the following special compensation: upon signing annex of the contract from 03.07.2012. between the Club and the Player.*
- 3. The parties hereby also set forth the following special bonuses: upon signing annex of the contract from 03.07.2012. between the Club and the Player.*
- 4. The amounts of special bonuses referred to in Article 3 hereof are subject to changes and the parties hereto agree that the amount of such bonuses may be changed in accordance with Club regulations. Any change of the amount of a bonus shall be valid without execution of an annex to this Contract and the bonuses set forth by Club regulations shall apply.*
- 5. Upon signing hereof, the Club shall provide to the Player the Club’s Bonus Rules and Disciplinary Regulations. The Player shall sign an acknowledgement of receipt of Club Rules and Regulations.*

*Article 3*

- 1. The Player shall comply with the rules and regulations of FIFA, UEFA and the Football Association of Serbia, and in particular with the Statutes of the Football Association of Serbia, Regulations of the FA of Serbia for Player Registration, Status and Transfer, the Football Competition Rules of the FA of Serbia, as well as Club Statutes and other rules and regulations promulgated by the Club.*

...

*Article 10*

- 1. The parties hereto agree that Player transfer shall be carried out under the following terms and conditions: regarding the agreement of the Club and the Player (the “Transfer”).*

2. *The parties hereto mutually agree that the Transfer shall be carried out in compliance with the provisions of the Regulations of the FA of Serbia for Player Registration, Status and Transfer and/or FIFA regulations governing international player transfer.*

...

*Article 12*

1. *By signing this Contract, the parties acknowledge that they have read and understood the Contract, and that they assume all rights and obligations, as well as all legal consequences arising out of this Contract.*
  2. *Any matters not contemplated herein shall be governed by the laws of the Republic of Serbia, the rules and regulations of FIFA, UEFA, FA of Serbia and the Club”.*
5. Further, the Club and the Player, in accordance with article 2 paragraph 2 of the Contract, entered into an annex to the Contract in relation to the remuneration to be paid to the Player (hereinafter referred to as “the Annex”). The main provisions of the Annex are as follows:

“....

2. *The Club is obligated to pay to the Player 135.000 euros net per contracted year. With the Club TMS’ registration, the Club will pay the amount of 20.000 euros net on the bank account of the Player, between 15<sup>th</sup> to 25<sup>th</sup> July 2012.*

....

4. *For the second year of the Contract, 20.000 euros net will be paid to the Player until the end of August 2013 on his bank account.*
5. *For both contracted years the Player will have a salary in the amount of 115.000 euros net that will be divided in 12 equal monthly instalments.*
6. *The player will receive bonus that are prescribed by the Club rules.*

...”.

6. On 30 January 2013, the Club entered into a loan agreement with AEK Larnaca FC (hereinafter referred to as “Larnaca”), Cyprus, for the loan of the Player for the period 30 January 2013 until 30 May 2013 (hereinafter referred to as “the Loan Agreement”).
7. On 14 June 2013, the Club informed the Player that he did not need to start training and that he could look for another club.
8. On 17 June 2013, the summer registration period of players commenced in Serbia.

9. On 17 July 2013, the Club again confirmed that the Player did not need to start with sports training and that he could look for another club. Further, that the Club would not request a transfer fee for the Player and that this “free transfer” was valid until 19 August 2013.
10. On 31 July 2013, the Player’s lawyer wrote to the Club stating that the Player had explained that he had not been paid his salary for the months of January, June and July 2013. Further, that the payments of July to December 2012 had not been completely paid and that the Player was owed EUR 10,925 net. The letter stated that the Player was entitled to his January, June and July 2013 salary (totalling EUR 28,749.66) and the EUR 10,925, thus a total of EUR 39,674.65. The letter stated that the payment should be made by 7 August 2013 and that if payment was not received then the Player would commence proceedings before FIFA.
11. On 16 August 2013, the Player’s lawyer wrote again to the Club requesting the payment of the outstanding amounts of EUR 39,674.66 net. The letter gave a deadline for payment of 23 August 2013.
12. On 28 August 2013, the Dutch Players’ Association, on the Player’s behalf, wrote to the Club informing the Club that the Player terminated the Contract with just cause (hereinafter referred to as the “Termination Letter”). The letter requested that the Club pay EUR 39,674.66 for the outstanding salaries and EUR 135,000 for the residual value of the Contract
13. On 8 January 2014, the Player signed a professional player contract with Larnaca for the period until 3 July 2014 with a monthly remuneration of EUR 2’500 consisting of a base salary in the amount of EUR 1,500 and EUR 1,000 for the Player’s image rights. In addition, the Player was entitled to an additional payment of EUR 500 for each match appearance of at least 20 minutes.

#### **Proceedings before the Single Judge of the FIFA Players’ Status Committee**

14. On 18 October 2013, the Player lodged a claim against the Club with FIFA requesting the payment of EUR 165,090.98 plus interest.
15. On 30 October 2013, FIFA wrote to the FAS providing FAS with a copy of the Player’s claim and requesting that the Club respond to the claim by 18 November 2013.
16. On 2 December 2013, FIFA wrote to the Club and the Player noting that the Club had not responded to the 30 October 2013 letter. FIFA confirmed that the investigation-phase had been concluded and requested the Player to provide any employment contract that he may have entered into with a new club.
17. On 2 December 2013, the FAS acknowledge receipt of the FIFA correspondence and stated that it had forwarded the letter to the Club. Further, the FAS confirmed the fax number for the Club.
18. On 3 December 2013, the Player’s representative confirmed that the Player had not signed an employment contract with a new club.

19. On 23 January 2014, FIFA requested the Player to confirm his contractual situation.
20. On 23 January 2014, the Club confirmed that on 13 January 2014 it had sent all documentation for registration of the Player with Larnaca. Further, that the Player was registered with Larnaca since 14 January 2014.
21. On 30 January 2014, the Player's representative confirmed that the Player had entered into a contract with Larnaca for the initial period from 8 January 2014 until 31 May 2014.
22. On 31 January 2014, FIFA informed the Player and the Club that the matter was to proceed to the FIFA Dispute Resolution Chamber (hereinafter referred to as "the DRC") on 7 February 2014.
23. On 7 February 2014, the DRC held (hereinafter referred to as the "Appealed Decision"):
  1. *The claim of the Claimant, Ralph Serginho Greene, is partially accepted.*
  2. *The Respondent, FK Vojvodina, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 39,674.31, plus 5% interest until the date of effective payment as follows:*
    - a. *5% p.a. as of 1 January 2013 on the amount of EUR 10,924.65;*
    - b. *5% p.a. as of 1 February 2013 on the amount of EUR 9,583.33;*
    - c. *5% p.a. as of 1 July 2013 on the amount of EUR 9,583.33;*
    - d. *5% p.a. as of 1 August 2013 on the amount of EUR 9,583.*
  3. *The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 117,916.63 plus 5% interest p.a. on said amount as from 18 October 2013 until the date of effective payment.*
  4. *In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
  5. *Any further claim lodged by the Claimant is rejected.*
  6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".*
24. On 24 February 2014, the Appealed Decision was notified to the parties. The Club requested the grounds of the Appealed Decision.

25. On 1 April 2014, FIFA provided the Club and the Player with the grounds of the Appealed Decision.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 22 April 2014, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”). In this submission the Club made the following requests for relief:

*“The Appellant’s Appeal shall be accepted and the FIFA DRC Decision dated 7 February 2014 revised in Chapter III par. 3 so that:*

1. *Par. 3 of the operative part of the FIFA DRC Decision dated 7 February 2014 shall be partially set aside and the claim of Ralph Serginho Greene, which exceeds the amount of EUR 58.333,36 plus 5% interest as from 18 October 2013 shall be dismissed.*
2. *The Respondent shall pay all costs in relation to the present procedure including the compensation of Appellant’s expenses in this procedure and attorney’s fees”.*

27. On 28 April 2014, the CAS Court Office acknowledge receipt of the Statement of Appeal. The CAS Court Office acknowledged the Club’s nomination of Mr. Michele Bernasconi as an arbitrator. Further, the Respondent was requested to nominate an arbitrator within ten days of receipt of the letter.

28. On 2 May 2014, the Club filed its Appeal Brief, in accordance with Article R51 of the CAS Code. The Club challenged the Appealed Decision, submitting the following amended requests for relief:

*“The Appellant’s Appeal shall be accepted and the FIFA DRC Decision dated 7 February 2014 revised in Chapter III par. 3 so that:*

1. *Par. 3 of the operative part of the FIFA DRC Decision dated 7 February 2014 shall be partially set aside and the claim of Ralph Serginho Greene, which exceeds the amount of EUR 58,500.- plus 5% interest as from 18 October 2013 shall be dismissed.*
2. *The Respondent shall pay all costs in relation to the present procedure including the compensation of Appellant’s expenses in this procedure and attorney’s fees”.*

29. On 6 May 2014, the CAS Court Office acknowledged receipt of the Club’s Appeal Brief. Further, the Player was invited to file his Answer within twenty days of receipt of the letter.

30. On 14 May 2014, the Player nominated Mr. Hendrik W. Kesler as arbitrator.

31. On 21 May 2014, the Player filed his Answer, in accordance with Article R55 of the CAS Code, with the following requests for relief:

*“The Respondent therefore requests that the Panel rejects the Appeal and confirms the FIFA DRC Decision of 7 February 2014. In addition to the above defence and in the event that this is successful, the Respondent shall request the Panel to grant an order that the Appellant shall be liable for all costs and expenses incurred by the Respondent in bringing this Statement of Defence, including the costs and expenses of the CAS”.*

32. On 23 May 2014, the CAS Court Office acknowledged receipt of the Player’s Answer. Further, the parties were requested to confirm, by 30 May 2014, whether they preferred for a hearing to be held or for the Panel to issue an award based solely on the parties’ written submissions.
33. On 26 May 2014, the CAS Court Office informed the parties that Mr. Michele Bernasconi had declined his nomination as arbitrator. Thus, the Club was invited to nominate another arbitrator by 30 May 2014.
34. On 28 May 2014, the Player confirmed that he wished for the Panel to issue an award based on the parties written submissions.
35. On 29 May 2014, the Club confirmed that it wished for a hearing to be held.
36. On 30 May 2014, the Club nominated Mr. Bernhard Heusler as an arbitrator.
37. On 20 August 2014, the CAS Court Office informed the parties that, pursuant to Article 54 of the CAS Code, Mark A. Hovell, solicitor from Manchester, England, had been appointed as the President of the Panel and that Mr. Bernhard Heusler and Mr. Hendrik W. Kesler had been appointed as arbitrators in this matter.
38. On 28 August 2014, the CAS Court Office, on behalf of the Panel, requested the FIFA file in relation to the dispute.
39. On 9 September 2014, the Player provided the CAS with his employment contract and image rights agreement with Larnaca (hereinafter referred to as the “Larnaca Agreements”). Further, the Player confirmed that he was available for a hearing on 13 November 2014. Subsequently, the CAS Court Office provided the Club with the agreements.
40. On 11 September 2014, FIFA provided the complete file in relation to the matter.
41. On 11 September 2014, the CAS Court Office, on behalf of the Panel, called the parties and their witnesses to appear at the hearing on 13 November 2014 at the CAS headquarters.
42. On 12 September 2014, the CAS Court Office provided the FIFA file to the parties.
43. On 14 October 2014, the Club, having reviewed the Larnaca Agreements and the FIFA file, made a further procedural request concerning other documents referred to within the Larnaca Agreement and for details of payments made by Larnaca to the Player.
44. On 16 October 2014, the CAS Court Office wrote to the Player confirming the Panel’s decision to allow the Club’s procedural request.

45. On 21 October 2014, the Player provided the CAS Court Office with a settlement agreement dated 30 September 2013 with Larnaca (hereinafter referred to as the “Settlement Agreement”).
46. On 11 November 2014, the CAS Court Office reminded the Player of the Panel’s procedural request and asked each party to provide the other with any jurisprudence either intended to rely upon at the hearing.
47. On 11 November 2014, the Player provided a copy of a letter from Larnaca addressed to the CAS Court Office stating that it was unwilling to provide any documents relating to the Larnaca Agreements, or payments made pursuant to these, as this was confidential information. Larnaca did, however, confirm that the Larnaca Agreements provided by the Player were “the correct contract”.
48. On 12 November 2014, the Club submitted a witness statement of Mr. Marko Nikolic, the former head coach of the Club. Also, on 12 November 2014, the Player submitted a copy of CAS 2008/A/1677 and a summary of many other breach of contract cases from the DRC.

#### **IV. THE HEARING**

49. On 14 September 2014, the CAS Court office informed the parties that the Panel had determined to convene a hearing.
50. A hearing was held on 13 November 2014 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the appointment of the Panel. The Panel was assisted by Mr. Christopher Singer, Counsel to CAS. The following persons attended the hearing:
  - i. Appellant: Mr. Damjanovic, Mr. Del Fabro and Ms. Damjanovic, all counsel;  
Mr. Radisav Rabrenovic, former General Secretary of the Club, witness (by telephone); and  
Ms. Jelena Lukic, interpreter.
  - ii. Respondent: The Player and Mr. Van Megen, counsel.
51. At the hearing, the Club provided the Panel and the Player with some print outs from the internet, demonstrating the playing record of the Player with Larnaca and a schedule produced by the Club calculating what it submitted was the total amount of income the Player had received from Larnaca between 8 January and 31 May 2014.
52. The Player contested these late filings, along with the witness statement of Mr. Nikolic. The Panel determined to allow these late filings as (1) in the case of the internet print outs, these assisted the Panel and the Player was given the opportunity during the hearing to confirm the accuracy of them; (2) in the case of the schedule, the Player was again given the opportunity during the hearing to confirm or dispute each line and the Panel further noted that the Player had not complied with its procedural request by producing either evidence from Larnaca or a

statement from his own bank account (albeit at the very end of the hearing the Player did offer to produce the bank statement, but the Panel determined that he had ample time to do this prior to the hearing) to demonstrate exactly what sums he had received from Larnaca; and (3) in relation to Mr. Nikolic's statement, the Panel noted that the question of whether the Player had terminated with or without just cause was not disputed, so placed no real importance on this statement.

53. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its detailed decision to this written award.
54. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they had not been summarised in the present award.

## **V. THE PARTIES' SUBMISSIONS**

### **A. Appellant's Submissions**

55. In summary, the Club submits the following in support of its Appeal:
56. The Player was engaged by the Club as a professional football player. In the period from August to December 2012, the Player played in less than 40% of the matches for the Club. Despite the failed expectations from the Player, all financial obligations towards him were fulfilled. In the period from August to December 2012 the Player was paid an amount of 7,583.531 RSD, approximately EUR 66,575.35.
57. In January 2013, the Player insisted on being loaned to Larnaca until the summer registration period of 2013. At the time when the Loan Agreement was concluded, the Player was owed one month's salary for December 2012 in the amount of EUR 9,583.33 and an unpaid bonus in the amount of EUR 1,341.32. A total of EUR 10,924.65.
58. Whilst the Player was on loan at Larnaca, the Club had no financial obligations towards the Player. In accordance with the Loan Agreement, the Player was on loan from 30 January 2013 until 17 June 2013.
59. Due to the sudden death of the President of the Club, the Club suffered financial difficulties. From the Summer of 2013, the Club was late with the payment of salaries to its players.
60. The Club offered the Player, on more than one occasion, compensation to terminate the Contract and provided him with a free transfer to any other Club. However, it was obvious that the Player did not take any reasonable actions to find new employment.

61. The Player terminated the Contract in August 2013 and subsequently signed for Larnaca in January 2014. The Club submitted that the Player should have earned at Larnaca at least as much as he earned whilst he was with the Club.
62. Before the DRC, the Player stated that he earned only EUR1,500 per month whilst at Larnaca. Taking into account that Larnaca, under the Loan Agreement, were covering EUR 9,583.32 per month, this is “obviously wrong”. If the Player has concluded an employment contract with such a low salary, such behaviour would be “an abuse of legal right” and the Player would intentionally have failed to earn an adequate remuneration. The Club assumed that the Player earned at Larnaca as much as he would have earned at the Club. Further, the Club requested that the Panel should also take into account the Player’s salary for any period after July 2014 in case the initial contract with Larnaca had been manipulated with the knowledge of this case.
63. The appeal procedure dealt only with the amount of compensation corresponding to the remaining value of the Contract. The Panel should take into account the Player’s responsibility and liability for the termination of the Contract and therefore reduce the amount awarded. Further, a possible signing on fee and any image right sums have to be deducted. As the Club believe the Player has or could have fully mitigate his position with Larnaca, the Player’s claim is unjustified as from 1 January 2014 and therefore has to be dismissed.
64. The Player, knowing that the Club had financial difficulties due to the sudden death of the President, is also liable for the termination of the Contract as he was not willing to find a reasonable settlement. Therefore, a deduction of around a sixth of any compensation is justified. The Club relied upon Article 337(b)(2) of the Swiss Code of Obligations (hereinafter referred to as the “SCO”) arguing that the Player was also in breach of the Contract by refusing to train and by not being willing to accept a settlement to leave the Club.
65. At the hearing, the Club focused on the Settlement Agreement and the Larnaca Agreements. It submitted that the Player had been paid in full by Larnaca during his loan period, in accordance with the Loan Agreement and that the EUR 20,250 referred to in the Settlement Agreement was in reality 5 monthly salaries of EUR 4,050 that were hidden from (or in addition to) the EUR 1,500 monthly salary declared to FIFA. The Club also noted that there was an additional monthly sum of EUR 1,000 for the Player’s image rights and a payment of EUR 500 each time the Player took the field for more than 20 minutes for Larnaca, under the exhibit to the Larnaca Agreements, which had not been provided to FIFA. Further, the Club questioned the validity of the Settlement Agreement as it was never signed by Larnaca. Further, if the Player was really owed EUR 20,500 by Larnaca, why did he not complain to FIFA? Why would he rejoin a team that wasn’t paying him before?
66. In total, the monthly payments from Larnaca to the Player were closer to those the Club had been paying the Player under the Contract. The Club argued that Larnaca had already shown its willingness to pay the Player at that rate under the Loan Agreement, so why wouldn’t it pay the same to the Player a few months later and why would the Player accept the low basic wage he declared to FIFA? There was no “Article 17 risk” to Larnaca in signing the Player. It knew the Player had more than 3 month’s arrears due from the Club, which FIFA would treat as grounds for the Player to end the Contract, and that he was allowed to leave, free of any transfer

fee. The Player and Larnaca were in reality hiding other sums, so the Panel should treat the Player as having fully mitigated his losses from January 2014, when he joined Larnaca.

67. In the alternative, when looking at the month of June 2014 too, the Club calculated that Larnaca had in reality paid the Player the sum of EUR 45,416, so that sum should be used by the Panel as the amount by which the Player mitigated his losses.

## **B. Respondent's Submissions**

68. In summary, the Player submits the following in defence:
69. After not receiving a large part of the salary agreed upon and after putting the Club on notice, the Player lodged his claim before FIFA for termination of the Contract with just cause. It is important to note that the Club, although having been invited to by FIFA, never replied to the claim of the Player.
70. There is an obligation for parties to respond properly on requests of a governing body within sport. It is also compliant with principles of due process and governance to do so. The Club has not explained or given a satisfactory reason for not doing so. As the Club have waited for the Appealed Decision and then appealed, this is evidence of the Club's bad faith as the only reason for doing so is to gain time so that they do not have to pay what is due to the Player.
71. The evidence produced by the Club as part of the Appeal Brief to the CAS should be excluded pursuant to Article R57 of the CAS Code, as the Club could have produced it all before FIFA. Further, the Appeal is lacking grounds and substantiation and has to be rejected.
72. After returning to the Club, after being loaned to Larnaca, the Player was excluded from the team and not allowed to train with the squad. He was also not being paid.
73. In July 2013, the Player's representative informed the Club in writing that the Player had not been paid for different periods. Further, in August 2013, another letter was sent to the Club in relation to the non-payments and the fact that the Player was not being allowed to train. The Player explicitly offered his services to the Club and insisted on fulfilling the mutual obligations. These letters (which the Club acknowledged receiving) were clear notices that if the payments were not made the Player would terminate the Contract and go to FIFA.
74. Having not received the claimed payments from the Club within the deadlines set, by way of the Termination Letter, the Player terminated the contract with just cause, in order to be able to sign with another club in the summer transfer window.
75. In its Appeal Brief, the Club acknowledges that it was in breach of the Contract and it acknowledges that it owed the Player an amount of EUR 58,500. The Club refers to the sudden death of the President of the Club, however they had not mentioned this before. Moreover, the Contract was between the Player and the Club, not the President.

76. The Player did not receive the Club's letters of 14 June 2013 and 17 July 2013. These letters were addressed to a third party who was not the agent of the Player. They also contradict the letters sent by the Player in July and August 2013, in which he offered his services to the Club.
77. Although the Club did offer compensation to terminate the Contract, the Player saw no reason to accept these offers due to the difference between the offers and the remaining value of the Contract. At the time, there was no reason for the Player to take any actions in finding new employment as he was still under contract with the Club and intended to respect his obligations.
78. The Player submitted that there is no reason for the Panel to take mitigation into account. If the Panel determines to do so, then the new contract with Larnaca reflected the Player's position, at that time. Firstly he had not been able to play for half a season and therefore was not up to match fitness. Secondly, the fact that he was in dispute with the Club meant that there was an "Article 17 risk" that any new club could be held jointly and severally liable in case the Player did not terminate with just cause and had to pay damages to the Club. Thirdly, the winter transfer window was closing and he had to take the only offer to carry on playing. Fourthly, moves in winter transfer windows are difficult, as most clubs have full squads and have spent their budgets. This all reduced the Player's bargaining power and together resulted in the reduction in wages he could earn to the level in the Larnaca Agreements.
79. FIFA correctly applied the relevant amounts deriving from the new contract with Larnaca. The Club has not substantiated the argument that the Player was also at fault in relation to the termination of the Contract and there is no reason for the Panel to apply Swiss law.
80. At the hearing, the Player confirmed that the Settlement Agreement was in relation to unpaid salaries during his loan period with Larnaca and had now been paid. He disputed the Club's allegation that this was a sham and really represented part payment for his services post-January 2014. He also disputed that it was invalidated as the copy he had provided to the CAS was not signed by Larnaca.
81. The Player, when examined by the Club at the hearing, did confirm all payments from Larnaca (including for his image rights) went into his Cypriot bank account. However, when going through the Club's schedule produced at the hearing, he denied receiving any payments for his image rights. He also said that he did not receive any monies for June 2014, just for the 5 months prior to that. Finally, he confirmed receipt of his bonuses for the "fourteen or fifteen" league matches and three cup matches he represented Larnaca in. However, he argued that such bonuses should not be taken into account as mitigation, as he lost the opportunity to earn similar bonuses with the Club.
82. The Player finally confirmed that he rejoined Larnaca as he had no other choice and that by then a new management regime existed at that Club and indeed, at the Cyprus Football Association, which helped players get paid.

## VI. JURISDICTION OF THE CAS

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

*“An appeal against a 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”.*

84. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2013 edition) as it determines that:

*“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”.*

85. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

86. It follows that the CAS has jurisdiction to decide on the present dispute.

## VII. APPLICABLE LAW

87. Article R58 of the CAS Code provides the following:

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

88. The Panel notes that Article 66(2) of the FIFA Statutes stipulates the following:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

89. The Appellant submitted that although the parties had chosen Serbian law in the Contract, Swiss law should be applied to the matter. The Respondent referred to the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the “FIFA Regulations”) in his Answer and submitted that neither Swiss law or Serbian law was applicable in this matter. The Panel, in light of article R58 of the CAS Code, is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various statutes and regulations of FIFA, including the FIFA Regulations.

### VIII. ADMISSIBILITY

90. The Appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes (2013 edition). The Appeal complied with all other requirements of Articles R48 of the CAS Code, including the payment of the CAS Court Office fee.
91. It follows that the Appeal is admissible.

### IX. SCOPE OF THE APPEAL

92. The Player submitted that as the Club had not participated before the DRC, pursuant to Article R57 of the CAS Code, it should not be able to produce any evidence or advance any submissions before the CAS that it could have produced or advanced before.
93. On the other hand, the Club submitted that in order for its right to be heard not to be violated, it should be able to produce such evidence and make such submissions, as it deemed fit before an arbitral body. It referred to Article 75 of the SCO and submitted that the CAS (not the DRC) was the first arbitral body in this appeals procedure.
94. The Panel notes the wording of the relevant part of Article R57 of the CAS Code:  
*“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered”.*
95. The Panel further notes this provides it with a discretion that it can exercise in relation to evidence produced by the Club (in this instance), but does not curb the submissions of the Club in any way. Further, the Panel notes the approach of other panels (such as in CAS 2012/A/2874) in a developing area of CAS jurisprudence.
96. In the case at hand, the Panel sought the clarification of the parties at the hearing as to whether there was any challenge as to whether the Player’s termination of the Contract was with or without just cause. There was not. The case at hand concerns mitigation and the Panel was satisfied that the vast majority of the evidence attached to the Appeal Brief was largely irrelevant when considering that subject and as such, saw no reason to exclude it.
97. The Panel focused its attention on the subject of mitigation and the key evidence and documents that were the Larnaca Agreements, the Settlement Agreement, the Contract and the Loan Agreement along with the Player’s own testimony, all of which were advanced by the Player.

**X. MERITS OF THE APPEAL**

**A. The Main Issues**

98. The Panel observes that the main issues to be resolved are:

- a) Is there a duty on the Player to Mitigate?
- b) If so, has the Player mitigated?
- c) What is the position with the bonuses in the Larnaca Agreement?
- d) What is the position with the Settlement Agreement?
- e) Could the Player have done more?
- f) Are the Player's actions before the termination of the Contract a factor?
- g) What is the position with regard to interest on any sums due?

*A. A duty to mitigate?*

99. Much as the Panel noted the Player's reference to the fact that clubs do not seem obliged to mitigate if a player breaches the contract without just cause, but players are required to mitigate when clubs are in breach, the Panel notes that there is a long and consistent line of jurisprudence resulting in the duty for players in the case of a club's breach to mitigate. The Player did refer to *CAS 2008/A/1644* on this point, but the Panel noted that the case at hand involved an undisputed breach by the Club that resulted in the termination of the Contract with just cause, whereas the cited case involved a breach by the player. The compensation from the club for breach of the employment contract can be calculated as the amount of money that the player would have earned with his former club until the end of his contract, but deducted from that is the amount of money that he earns with his new club for the same period (*CAS 2008/A/1453* and *CAS 2008/A/1469*, para 27). This deduction is consistent with the principle of positive interest embodied in Art. 17(1) RSTP, the practice of other CAS panels (*CAS 2010/A/2202*, paras 24 et seq and *CAS 2006/A/1180*, para 41) and Swiss legal doctrine, Article 337c(1) and (2) of the SCO, which apply by analogy to Article 337b.

*B. Has the Player mitigated?*

100. It is undisputed that the Player endured a period of time after the termination of the Contract before he was able to secure a new club, Larnaca, on 8 January 2014. The term of the Contract was to run until 3 July 2014, so the initial task of the Panel was to determine what remuneration the Player earned with Larnaca during that period.

101. The Panel noted that the Club alleged that the Player would be on exactly the same level of remuneration with Larnaca, as he had been under the Contract and invited the Panel to simply

disregard the period from January 2014 onwards, when looking at the level of compensation. The Club submitted that Larnaca had been happy to cover the Player's wages under the Contract whilst he was on loan, so why would the Player look to enter into a permanent contract with Larnaca at a fraction of the wages just a few months later? The Club believed the Player and Larnaca had hidden the true level of payments, presumably to lessen the impact of mitigation.

102. The Player, on the other hand, stated that he was forced to take this lower offer. He had not been able to secure a position elsewhere at the end of the summer 2013 window and was facing another window closing without a job, so took the only one available to him.
103. The Panel noted that the Player neither provided his bank statements (albeit he belatedly offered to do so) nor did he provide any evidence from Larnaca confirming what payments it had made to him, but he did produce the Larnaca Agreements and the Club provided the Panel with his playing record at Larnaca. Ultimately, whilst the Club has questioned whether there was some hidden agreement between the Player and Larnaca, it has failed to provide the Panel with any evidence to back up its suspicions. The Player spoke convincingly about the steps he took to secure his job with Larnaca and why he was forced to accept it on such terms. The Panel has no reason to doubt his evidence and was satisfied that the Player mitigated in accordance with the Larnaca Agreements.
104. The Panel also noted that the Player only provided the DRC with part of his arrangements with Larnaca and, if he had produced his bank statements or evidence from Larnaca, in accordance with the Panel's request, then he could have proved exactly what he received. Instead, the Panel must work from the evidence before them, namely the Larnaca Agreements and the information detailing how many matches he played during the relevant period.
105. Under the employment agreement with Larnaca, he was to be paid EUR 1,500 per month; under his image rights agreement he was to be paid EUR 1,000 per month and he received EUR 500 per appearance. Therefore, over a 6 month period, playing 14 league games and 3 cup games, he should have received EUR 21,000.
106. The Panel noted that the Player stated he only received 5 monthly payments in the 6 month period and that he never received monies for his image rights. The Panel noted that the Player did not prove this (no bank statements, nothing from Larnaca) and instead the Panel looked at the Larnaca Agreements, which set out his entitlement to 6 monthly payments (of both salary and for image rights) in that 6 month period, so determined that is the level of mitigation he achieved.

C. *Should the bonuses count towards mitigation?*

107. The Player argued that bonuses were not part of the salary and should not be deducted as part of the mitigation. The Player stated that under the Contract he was entitled to bonuses and he had not been awarded any compensation from the DRC for the loss of those, so equally no account of bonuses under the Larnaca Agreements should be taken into account by the Panel when considering mitigation.

108. The Panel considered the bonus provisions in both the Contract and in the Larnaca Agreements. In the former, the bonuses were performance related and depended on the results of the team. However, the bonuses in question in the Larnaca Agreements were for personal appearances. The Panel determined that the bonuses in the Larnaca Agreement were salary payments. It is not uncommon for clubs to provide a base level of salary for a player, but for there to be an additional flexible element, so if the player is featuring with the first team, his salary increases. In reality, the bonuses were flexible salary payments. The Player did indeed play nearly 20 times for Larnaca and substantially enhanced his salary accordingly, which the Panel has determined to take into consideration as mitigation above in contrast to the Appealed Decision which did not address this issue and appears to have taken only the Player's base salary of EUR 1'500 into account.

*D. The Settlement Agreement*

109. The Club, as part of its suspicions that the Player was receiving more from Larnaca than he had disclosed, also questioned the validity of the Settlement Agreement. Firstly, in general terms, the Club alleged that Larnaca had made all salary payments to the Player during his loan spell and that the Settlement Agreement was a fictitious way of paying a salary under his permanent move there; and secondly, as the Settlement Agreement had not been signed by Larnaca, it was invalid. The Club argued that if the Player was truly due EUR 20,250 from his loan spell, he would never have signed permanently for a club that had not paid him. He would also have started a claims procedure against Larnaca.

110. The Player stated that he did complain to Larnaca, as it had underpaid him during the loan period and it had agreed a repayment schedule through the Settlement Agreement months before he signed with them permanently. There was a reference to the Settlement Agreement within the Larnaca Agreements, but it was a separate agreement and related solely to his salaries during the loan period.

111. The Panel again had little by way of evidence to consider this issue. Again, the Player's bank statements would have demonstrated what he received during the loan period, a letter from Larnaca could have helped. The Panel ultimately determined that the two agreements were separate and sums received under the Settlement Agreement were not relevant as mitigation. The balance was tipped by the Player's own testimony and by the Panel's impression that the Player might be better placed to collect these arrears if he was playing permanently for Larnaca. The Panel noted the copy of the Settlement Agreement the Player retained was the one he made after he had signed the original, which was then sent to Larnaca. The lack of a copy with Larnaca's signature on it did not (and had not, as the Player confirmed Larnaca had honoured the Settlement Agreement and paid him) invalidated the Settlement Agreement.

*E. Could the Player have done more?*

112. The Club argued that the Player could have got a better contract with another club and quicker. As such, the Panel has to consider whether the Player fully mitigated.

113. The Panel noted that the Player had significant arrears prior to terminating the Contract. He gave the appropriate warning and terminated with just cause. However, by the time he had done all that, he was up against a closing summer transfer window. Whilst he had a few days, he was unable to secure another position. The Player argued that there was an “Article 17 risk” following his termination, that would make him unattractive to the next club, in case it was determined that he had terminated without just cause. However, there was no evidence that there were other clubs that were initially interested, but were then put off.
114. The Panel noted that the Player was then looking for a position a few months later in the winter transfer window and ultimately only had the one offer from Larnaca and that was what he took. The Panel are satisfied that the Player fully mitigated in the circumstances. Whilst the Club has articulated its suspicions, there is no evidence that there were other, better deals that the Player turned down, nor any evidence that the Larnaca Agreements are not genuine. Rather, the Panel notes the realities of football – if a player has been out of work for a while, a club may make a low offer to allow him to start playing again if it is the only offer on the table, then the player has to decide whether to take it or go for a longer period of non-performing in the hope something better might materialise. It rarely does.

F. *Should the Player’s actions result in an additional deduction?*

115. The Club submitted that the Player knew that the Club had financial difficulties following the death of the Club’s President and he should therefore have settled his Contract with the Club, instead of terminating it and claiming compensation. Offers were made, but the Player turned these down. The Club also alleged he refused to train. The Club submitted that the Player’s actions should justify a reduction in his compensation payments by one sixth.
116. The Panel saw no merit in this argument whatsoever. The Club had signed the Contract with the Player and were bound by that. The Player was owed a significant amount of money, in his warnings he repeated his willingness to perform his side of the agreement (to play and to train), but was under no obligation to settle the Contract for the sums offered. Exercising his right to terminate the Contract with just cause and then claiming his arrears and the entire balance of the Contract (subject to mitigation) was not, in the opinion of the Panel, any reason to justify a reduction of one sixth or any reduction at all.

G. *Interest*

117. The Panel noted that in the Appealed Decision, the DRC had awarded interest on the compensation element due to the Player from the Club at the rate of 5% per year from 18 October 2013 (being the date the Player brought his claim to FIFA) until the date of effective payment. The parties made no comment on this and, as such, the Panel determines to apply the same rate from the same date.

**B. Conclusion**

118. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel:
- a. amends paragraph 3 of the Appealed Decision and replaces it with this decision;
  - b. orders the Club to pay as compensation for its breach of the Contract the sum of EUR 104,416.63 (being the balance of sums due under the Contract, namely EUR 125,416.63, having been being mitigated by the sum of EUR 21,000) to the Player, with interest at the rate of 5% per annum from 18 October 2013 until the eventual payment date; and
  - c. confirms the rest of the Appealed Decision.
119. Any further claims or requests for relief are dismissed.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules:**

1. The appeal filed on 22 April 2014 by FC Vojvodina against the Decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association issued on 7 February 2014 is partially upheld.
2. Clause 3 of the Decision issued on 7 February 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is varied by this award.
3. FC Vojvodina shall pay to Ralph Serginho Greene the sum of EUR 104,416.63 (one hundred and four thousand four hundred and sixteen euros, sixty three cents) together with interest at the rate of 5% per year from 18 October 2013 until the eventual payment date.
4. The remainder of the Decision issued on 7 February 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed, including, inter alia, the obligation that FC Vojvodina shall pay to Ralph Serginho Greene the sum of EUR 39,674.31 (thirty nine thousand six hundred and seventy four euros and thirty one cents) together with interest, as outstanding remuneration.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.