Arbitration CAS 2014/A/3579 Anorthosis Famagusta FC v. Emanuel Perrone, award of 11 May 2015

Panel: Mr Marco Balmelli (Switzerland); Mr Pedro Tomás Marqués (Spain); Mr Mark Hovell (United Kingdom)

Football
Termination of a contract of employment entered into between a player and a club
FIFA competence to adjudicate on employment-related disputes between a club and a player
Duties of a club towards its players
Just cause to terminate the contract without prior warning
Ne ultra petita in the awarding of compensation for damages

1. **According to Article 22 lit b) of the FIFA RSTP, the FIFA DRC is competent to adjudicate on employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement. Where an employment contract makes reference to several courts and arbitration bodies, including the FIFA DRC and CAS, the provision of the contract cannot be considered as an exclusive arbitration clause in favor of the national deciding body. The FIFA DRC is therefore competent to hear the case regarding the employment contract as well as an image right agreement that appears to have nothing to do with image rights but rather to be an additional understanding to the employment contract.**

2. **The parties to an employment contract do have certain reciprocal contractual duties of care and loyalty towards each other. A professional football player relies on being able to play or at least to train on a professional level in order to keep up his level of play. In case this is, for whatever reason, not possible, a club, in order to fulfill its contractual obligations, has to strive to find a different solution. Otherwise, a club as an employer infringes its contractual duty of care towards a player and also the personality rights of a player generally granted under Swiss law. A professional football club cannot expect a player to do nothing than to wait for further instructions after the club notifies the player – especially during the transfer period – that his services are no longer needed. The club rather has the explicit duty to offer training on a professional level and also, in fulfillment of its contractual duty of care, to help finding a solution for the player regarding the continuation of his career as a professional football player. This obligation to provide assistance can either be manifested in working on finding a loan solution or in cooperating with the agent of the player at a more concrete level in order to seek a definitive transfer solution.**

3. According to CAS jurisprudence, the breach of contract must have a certain seriousness in order to justify a termination of the latter without prior warning due to "just cause". The lack of opposition by a club to an ITC request concerning a player combined with its behavior, notably the fact to make clear to the player that he is no longer part of the team suggests that it was pleased to see the player signing with another club. Therefore, the breach of contract by the club reached a level of severity which allowed the player to unilaterally terminate the employment contract with just cause.

4. The lack of any appeal against a DRC decision by a player, bars from awarding a higher amount of compensation to the player than the one granted by said decision.

I. THE PARTIES

1. Anorthosis Famagusta FC (hereinafter referred to as the "Club" or the "Appellant") is a Cypriot football club which competes in the Marfin Laiki League (first division). It is a member of the Cyprus Football Association (hereinafter referred to as the "CFA") which is affiliated to FIFA.

2. Emanuel Perrone (hereinafter referred to as the "Player" or the "Respondent") is an Italian professional football player born on 14 June 1983.

II. THE DECISION AND ISSUES ON APPEAL

3. The Club appealed a decision of the FIFA Dispute Resolution Chamber (hereinafter referred to as the "FIFA DRC") dated 31 October 2013 (hereinafter referred to as the "Appealed Decision") awarding the Player a compensation payment of EUR 190,000 following the termination by the Player of his employment contract and image rights agreement with the Club with just cause pursuant to article 14 of the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP").

4. The Club considers that the Player did not terminate the employment contract and the image rights agreement with just cause and that FIFA DRC was not competent to decide on the matter at hand. Furthermore, the Club claims that the Player should pay a compensation due to the termination of the contracts without just cause and that sporting sanctions should be imposed.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 31 January 2011, the Player and the Club entered into an employment contract valid as of 1 February 2011 until 3 May 2013 (hereinafter "the Employment Contract") and also an Image Rights Agreement (hereinafter "the IRA") valid for the same period of time.

7. The Parties agreed that the Club would pay to the Player under the Employment Contract:

- From 1 February 2011 until 31 May 2011: EUR 50,000 in 4 monthly instalments of EUR 12,500;
- From 1 June 2011 until 31 May 2012: EUR 125,000 in 10 monthly instalments of EUR 12,500;
- From 1 June 2012 until 31 May 2013: EUR 125,000 in 10 monthly instalments of EUR 12,500.

8. Additionally, the IRA stated that the Club would pay to the Player, inter alia, the following:

- From 1 February 2011 until 31 May 2011: EUR 58,000 in 4 monthly instalments of EUR 14,500;
- From 1 June 2011 until 31 May 2012: EUR 146,000 in 10 monthly instalments of EUR 14,600;
- From 1 June 2012 until 31 May 2013: EUR 146,000 in 10 monthly instalments of EUR 14,600;
- EUR 10,000 in case the Club qualified to the UEFA Europa League competition;
- Several other bonuses.

9. Clause 17 and 20 of the Employment Contract stated:

"17) If the player shall be guilty of serious misconduct of the disciplinary Rules of the Club or the terms and conditions of this Agreement, the Club may, on giving notice to the player by recorded delivery letter, stating the full reasons for the action taken, terminate this Agreement. Such action shall be subject to the player's right of appeal as follows:

17.1 to the Dispute Resolution Chamber established to the Cyprus Football Association;

17.2 to any tribunal or labour Court in Cyprus;

17.3 to FIFA and its competent departments;

17.4 to the court of arbitration in Lausanne".

"20) If the Club intentionally fails to fulfill the terms and conditions of this Agreement the Player may, on giving sixty days written notice to the Club, terminate this Agreement. The Player shall forward a copy of such notice to The Cyprus Football Association and the Club shall have the right of appeal set out in clause 17. If this Agreement is terminated on these justified grounds, the Player shall be entitled to sign and be registered for any other club only after completion of the procedure".

10. On 10 June 2011, the Club handed the Player a letter stating the following:

"Dear Emanuel,

It is with great regret that we write to inform you that the Coach has decided not to include you in the roster of the Club's roster for the coming season with effect from today.

The Club therefore decided to extend your leave and/or holiday so as to discuss with you the possibilities of either mutually terminating the contract of employment and/or other agreements with you or of transferring you on loan to any other team in Cyprus or abroad.

Please acknowledge receipt of this letter by signing and returning the acknowledgement on the enclosed copy of this letter".

11. The Player terminated the Employment Contract by a letter dated 8 July 2011 in which he stated that he sees himself forced to terminate the Employment Contract and that the Club *"had no right to extend the player's leave and/or holiday without training offered to the player".*

12. The Club replied by a letter dated 11 July 2011 stating that the Player did not acknowledge receipt of their letter from 10 June 2011. More importantly, the Club also stated that it had provided the Player with *"the official ground, the gym for use twice a day as well as the attendance of professional training staff and doctors to conduct and supervise their training"*, however, according to the Club, the Player did not attend any of the trainings and his agent informed the Club that he did not want to participate in any training. Furthermore, the Club stated that it tried to negotiate with the Player's agent in order to reach an amicable solution and that it was, thus, surprised that the Player terminated the Employment Contract.

13. In response to the Club's letter, the Player wrote on 25 July 2011 reiterating that the fact that the Club instructed him to *"extend"* his *"leave and/or holiday"* left him no other choice but to terminate the Employment Contract because by asking him to extend his leave he was prohibited from taking part in any training. Moreover, the Player disagreed with the Club's description of offering him to participate in any training and of negotiating for an amicable solution as *"they never offered any kind of compensation against the remaining two years Contract of the player".*

14. On 9 August 2011, the Player signed a new employment contract with the Greek club Asteras Tripolis Football Club. Subsequently, on 19 August 2011, the CFA issued an International Transfer Certificate (hereinafter referred to as the "ITC") to the Hellenic Football Federation regarding the Player.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

15. On 18 April 2012, the Player filed a claim before the FIFA DRC requesting compensation for breach of contract in the amount of EUR 392,000, as follows:

- EUR 250,000 as the remaining value of the Employment Contract (20 x EUR 12,500);
- EUR 302,000 as the remaining value of the IRA (20 x EUR 14,600 + EUR 10,000 as bonus for the Club having qualified for the UEFA Europa League competition);
- Minus EUR 160,000 as the amount the Player received under the new contract;
- Legal expenses.

16. On 23 May 2012, the Club presented its response to the Player's claim firstly claiming that FIFA had no jurisdiction to decide on the dispute. In this respect, the Club sustained that *"according to the DRC and/or the case law FIFA has no jurisdiction to try any claim filed by the player concerning image rights agreements"*. Equally, the Club invoked art. 17 of the Employment Contract alleging that the Player had agreed to file any claim in front of the Dispute Resolution Committee of the CFA (hereinafter referred to as the "DRC of the CFA").

17. In this regard, the Club provided FIFA with the *"Regulations for the registration and transfer of football players Cyprus Football Association (2005)"* (hereinafter referred to as the "Cypriot Regulations"). According to these Cypriot Regulations, the DRC of the CFA is composed of five members, namely the Chairman, the Vice-Chairman and one member, all appointed by the Executive Committee of the CFA and two members appointed by the Pancyprian Football Players' Association (art. 22.1.1 and art. 22.1.3).

18. The decisions are taken by simple majority (art. 22.8.1), subsequent to a summary and written procedure (art. 22.13.1 and art. 22.13.3), clubs affiliated to the CFA, football players and other interested persons are entitled to lodge a claim before the DRC of the CFA (art. 22.13.5). Any decision of the DRC of the CFA may be appealed to the Disciplinary Authority of the CFA, which shall reach a final decision (art. 22.10).

19. Furthermore, the Club claimed that the Player terminated the Employment Contract without just cause and that, therefore, sanctions should be imposed on the Player. The Club stated that the Player was guilty of gross negligence for not appearing on the Club's training sessions.

20. In his replica dated 27 June 2012, the Player asserted that the Club had the right to submit a *"recourse"* to the DRC of the CFA against the Player's termination within 30 days from the date of receipt of the notice of termination. The Club did not file such a recourse and therefore the Player concluded that the termination of the Employment Contract became legal and he was correctly transferred to Asteras Tripolis Football Club. Under the new employment contract, the Player was entitled to EUR 160,000 for the period of time between 9 August 2011 and 30 June 2013.

21. Upon request of FIFA, the Player stated his opinion on the competence of the FIFA DRC

contested by the Club. In his statement, dated 19 July 2012, the Player argued that article 17.3 of the Employment Contract gives the Player the right to choose between the listed bodies in order to submit a potential claim concerning the Employment Contract.

22. On 25 July 2012, the Club submitted its final position in the matter stating that *"according to the terms of the contract of employment any dispute should have been tried by the DRC of CFA"*.

23. On 31 October 2013, the FIFA DRC rendered its decision in the matter (the "Appealed Decision"). Upon request of the Club, the FIFA DRC provided the Parties with the grounds for its decision on 20 February 2014. In the Appealed Decision, FIFA DRC first noted that it analyzed whether it was competent to deal with the matter at stake. It stated that the claim was filed on 18 April 2012 which means that edition 2008 of the Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber (hereinafter referred to as the "Procedural Rules") is applicable to the matter at hand.

24. According to art. 3 par. 1 of the Procedural Rules and art. 24 par. 1 in combination with art. 22 (b) of the RSTP (edition 2010), which the FIFA DRC found to be applicable, , the FIFA DRC found itself to be competent to adjudicate on employment-related disputes between a club and a player that have an international dimension. The FIFA DRC therefore declared that it would, in principle, be the competent body to decide on the present litigation involving an Italian player and a Cypriot club regarding an employment-related dispute, unless the jurisdiction of an independent arbitration tribunal is agreed upon in the employment contract.

25. The FIFA DRC acknowledged that the Club contested its competence on the basis of article 17 of the Employment Contract and stating that the CFA has an independent deciding body competent to deal with the matter.

26. Upon analyzing article 17 of the Employment Contract, the FIFA DRC came to the conclusion that *"the employment contract did not make reference to <u>one</u> specific national dispute resolution chamber"* in the sense of art. 22 (b) of the RSTP, but, *"to the contrary, to several courts and arbitration bodies, including FIFA. Therefore, the members of the Chamber deemed that said clause can by no means be considered as an exclusive arbitration clause in favour of the CFA national deciding body"*, as asserted by the Club.

27. Concerning the IRA, the FIFA DRC stated that it normally would not be competent to deal with disputes related to image rights. However, the FIFA DRC was of the opinion that the IRA contained elements which *"led to believe that it was not in fact an image rights agreement but rather a separate agreement to the employment contract, i.e. directly linked to the services"* of the Player. The FIFA DRC noted that *"the agreement contains inter alia stipulations regarding bonuses directly related to the achievement of sporting objectives, which are typical for employment contracts and not for image rights agreements. Consequently, the Chamber decided not to consider the image rights agreement as such, but determined that said agreement was in fact an additional agreement to the employment contract instead"*.

28. The FIFA DRC then turned its attention to the termination of the Employment Contract and the IRA. Although the Club stated that the Player did not attend the offered trainings, the FIFA DRC noted that the Club never provided any evidence to prove the existence of any

communication expressing the Club's interest in the Player's participation in said training sessions. In fact, the Club told the Player to *"extend"* his *"leave and/or holiday"*, i.e. to stay away. Therefore, the FIFA DRC decided, the Player was forced to terminate the Employment Contract in writing on 8 July 2011 with just cause due to the Club's lack of interest in his services and in view of the fact that during the period of almost one entire month (i.e. from 10 June 2011 to 8 July 2011), he did not receive any further explanations from the Club regarding his situation. In the opinion of the FIFA DRC, the Club therefore is to be held liable for the termination.

29. As to the amount of compensation the Club has to pay to the Player, the FIFA DRC found that there is no specific amount on which the Parties have agreed upon in case of breach of contract by one party. Furthermore, the Player signed with the Greek club Asteras Tripolis Football Club on 9 August 2011 in order to reduce his loss of income. The new employment contract entitled the Player to receive a total remuneration of EUR 160,000 until 30 June 2013.

30. The FIFA DRC considered the amount of EUR 190,000 to be paid by the Club to the Player as a *"reasonable and justified amount of compensation for breach of contract in the matter at hand"*. However, the FIFA DRC rejected the Player's claim pertaining to legal costs in accordance with art. 18 par. 4 of the Procedural Rules and the FIFA DRC's *"longstanding jurisprudence in this regard"*.

31. The Appealed Decision reads as follows:

> *"1. The claim of the Claimant, Emanuel Perrone, is admissible.*
>
> *2. The claim of the Claimant is partially accepted.*
>
> *3. The Respondent, Anorthosis Famagusta FC, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 190,000.*
>
> *4. If the aforementioned sum is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and 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 remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

V. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 11 March 2014, the Club filed an appeal against the Appealed Decision with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") pursuant to art. R47 and R48 of the Code of Sports-related Arbitration Rules (hereinafter referred to as the "Code").

33. On 26 March 2014, the Appellant filed its Appeal Brief, requesting that the CAS:

"1. Renounces FIFA's DRC decision dated October 31st, 2013.

2. Accept all and every manifestation, argument, document and proof that the Respondent [recte: Appellant] made and present as valid and true.

3. Decide that competent for the hearing of any dispute in relationship with the Employment Contract signed between the Appellant and the Respondent on January 31st, 2011 was exclusively the CAS.

4. Decide that the Respondent terminated the employment contract dated January 31st, 2011 and the Image Rights Agreement with the same dated without just cause.

5. Decide that the Respondent should pay compensation for such termination equal to remaining value of both the employment contract and the IR Agreement which amounts to EUR 542.000, plus interest 5% from the day of the decision.

6. Decide to impose sporting sanctions to the Respondent.

7. Condemn the Respondent to bear all the administrative costs and legal expenses of this case before CAS.

8. Condemn the Respondent to compensate the legal costs of the Appellant of as a sum of CHF 25.000".

34. On 22 May 2014, the Respondent filed its answer, requesting *"that the Appeal filed by the Appellant must be rejected"* and that the Appellant should bear all administrative costs, legal expenses and the Respondent's attorney's fees amounting to CHF 20,000.

35. On 17 July 2014, the CAS Court Office informed the Parties that pursuant to art. R54 of the Code, the Panel appointed to decide the case was constituted as follows:

President:	Dr. Marco Balmelli, Attorney-at-Law, Basel, Switzerland
Arbitrators:	Mr Pedro Tomás Marqués, Attorney-at-Law, Barcelona, Spain
	Mr Mark Andrew Hovell, Solicitor, Manchester, England

36. On 16 October 2014, a hearing was duly held in Lausanne, Switzerland. All members of the Panel were present. At the beginning of the hearing, the Parties' counsels made their respective opening statements and answered the questions raised by the Panel. Questions were also addressed to the Player, Mr Emanuel Perrone, in person and to the Managing Director of the Appellant, Mr Andreas Themistocleous, by teleconference. Finally, the Parties' respective counsels made their closing statements.

37. Both at the beginning and at the end of the hearing, the Parties expressly declared that they were satisfied with the way in which the proceedings had been conducted.

VI. SUMMARY OF THE PARTIES' SUBMISSIONS

38. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions, their verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

A. Anorthosis Famagusta FC

39. In the Appeal Brief, the Appellant stated the following:

- The Respondent did not sign the letter handed to him on 10 June 2011 in acknowledgment of receipt which demonstrates bad faith by the Respondent;
- The Appellant sustains that the FIFA DRC was not competent to take a decision in the present case concerning the IRA which states in article 7 that any *"dispute between the parties should be submitted exclusively to the court of arbitration of sports"*;
- Article 17 of the Employment Contract does not let the Player choose the entity which should decide the case, it provides, on the contrary, an order of precedence applicable to the disputes mentioned in the article;
- The Appellant notes that article 17 of the Employment Contract is referring to the right of the Player to appeal before different bodies only in case that the Employment Contract was terminated by the Club *"due to a misconduct of the Player"* and not in case the Player terminated the Employment Contract by himself;
- If the Employment Contract and the IRA are to be considered as one contract the exclusive jurisdiction should apply to both documents;
- The Appellant states that it provided *"the official ground, the gym for the use twice a day as well as the attendance of professional training staff and the doctors to conduct and supervise the training"* and that the Player did not attend to the offered trainings although he did not indicate as to when, how and where he was prevented from training;
- From the Appellant's letter dated as of 10 June 2011 there is *"not the slightest indication"* that the Appellant lost interest in the Respondent's services or that the Appellant prohibited him from training. The Appellant wanted to give the Player the opportunity to try to find another club to play for the next season and did not want to prevent him from training. Even more, the Respondent never tried to attend the training during the period of time in question;
- The Player's agent contacted the Club to discuss possibilities of a transfer and then all of a sudden, the Player terminated the Employment Contract;
- Art. 13 of the RSTP states that the Parties have to respect a contract. Also, the FIFA DRC stated in a cited decision that *"only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, a contract may be terminated*

prematurely only, when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an ultima ratio";

- The Appellant refers to art. 82 of the Swiss Code of Obligations (hereinafter referred to as the "CO") and states that the Player should have offered his appearance at the trainings if he wanted to be compensated.

B. Emanuel Perrone

40. In the Answer, the Respondent stated the following:

- The IRA was part of the Employment Contract and therefore only to review it in this context;

- The FIFA DRC accepted the Respondent's claim as it considered paragraph 17 as unlawful discrimination for the Respondent by stipulating that this clause was only applicable when the Employment Contract was terminated due to a misconduct of the Respondent;

- The Respondent terminated the Employment Contract with just cause because the Appellant told him that it wasn't interested anymore in his services and told him explicitly to extend his leave. After that letter the Appellant did not contact the Respondent during a period of almost one month (10 June 2011 to 8 July 2011);

- The Appellant did not appeal against the termination of the Employment Contract before the DRC of the CFA within 30 days in accordance to article 19.1.B. of the Cypriot Regulations;

- In conclusion, the Respondent was allowed to terminate the contract with just cause and is entitled to a compensation to be paid by the Appellant. Therefore, the Appealed Decision was correct and the Appeal shall be dismissed.

C. Statement of FIFA

41. With respect to its competence challenged by the Appellant, FIFA made the following statement:

"FIFA renounces its right to request its possible intervention in the present arbitration procedure (cf. arts. R54 and R41.3 of the Code of Sports-related Arbitration)

In this respect, despite renouncing to intervene in the present matter, we hereby would like to clarify that, by the fact that Anorthosis Famagusta FC (the Appellant) has not designated FIFA as a respondent to the present procedure, whereas one of its main contention is related to an alleged incompetence of FIFA's decision-making

body to pass a decision in connection with the matter having opposed the parties of the reference, any question related to the competence of the relevant FIFA's deciding body to pass a decision on the substance of such dispute may not be taken into consideration by the CAS and the specific Panel.

From a formal point of view, the competence-related aspect does not fall within the discretion of any deciding body anymore. A different interpretation would per se constitute a violation of FIFA's right to be heard.

In other words, the respective part of the challenged decision must be considered as having become final and binding in the meantime. Consequently, also a decision of the CAS annulling the challenged decision based on considerations about FIFA's competence would be affected by the formal error of a violation of FIFA's right to be heard, and would therefore, at the least, not be binding for FIFA".

VII. JURISDICTION OF THE CAS, ADMISSIBILITY AND SCOPE OF REVIEW OF THE PANEL

42. Pursuant to article R47 of the Code:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

43. The jurisdiction of the CAS to hear this dispute derives from art. 66 and 67 of the FIFA Statutes, which state in particular that CAS has jurisdiction to consider appeals against a decision of the FIFA DRC.

44. In particular, art. 67.1 of the FIFA Statutes provides as follows:

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

45. The signature of the Order of Procedure by the Parties confirmed that the jurisdiction of the CAS in the present case was not disputed.

46. The motivation of the Appealed Decision having been notified to the Parties on 20 February 2014, the Appeal filed by the Appellant on 11 March 2014 is therefore admissible.

47. Under art. R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *"de novo"* decision superseding, entirely or partially, the appealed one.

VIII. APPLICABLE LAW

48. Article R58 of the Code provides as follows:

"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

49. Article 66.2 of the FIFA Statutes provides as follows:

"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".

50. Article 27 of the Employment Contract provides that the *"Agreement and the terms and conditions thereof shall be as to its suspensions and termination, subject to the Articles of the Cyprus Football Association"* whereas the IRA does not contain provisions determining the applicable regulations. Also, both agreements between the Parties do not expressly confirm the applicability of any specific national law.

51. In view of the above, the Panel considers that this appeal is governed by the FIFA Statutes and regulations, the CFA regulations, and Swiss law where appropriate.

IX. MERITS OF THE APPEAL

52. The Appellant requests the Panel to set aside the Appealed Decision and demands that CAS shall order the Respondent to pay compensation for the termination of the Employment Contract and the IRA without just cause instead. The central issues to be determined in the present matter are (i) whether FIFA DRC was competent to hear the case and (ii) which Party was in breach of the Employment Contract and the IRA and thus whether the Respondent unilaterally terminated these contracts without just cause or whether the Appellant breached the contracts, entitling the Player to unilaterally terminate the contracts with just cause. The Panel notes the position of FIFA, that the Panel should not consider the Appellant's challenge to the jurisdiction of the FIFA DRC, else the Panel would offend FIFA's right to be heard; however, the Panel has considered FIFA's letter to the CAS dated 29 July 2014 and, as can be seen at paragraph 41 of this Award, has noted its position on the challenge.

53. In considering the question of breach of contract, it is important to note that it is, in the present case, undisputed that the Respondent terminated the Employment Contract and the IRA. As such, the burden of proof is on him to demonstrate that he had just cause to do so.

A. Was the FIFA DRC competent to hear the case at hand?

54. The Appellant claims that the FIFA DRC was not competent to hear the case at hand because (i) the Employment Contract between the Parties would state in article 17 an exact order of precedence concerning the relevant bodies to deal with a contractual dispute between the Parties and (ii) the IRA, which the Appellant claims to be an entirely separate agreement from the Employment Contract, stipulates the exclusive jurisdiction of CAS.

55. As rightly pointed out by the FIFA DRC in the Appealed Decision, the edition 2008 of the

Procedural Rules is to be applied to the case at hand (cf. art. 21 par. 3 of the Procedural Rules, edition 2012 and art. 21 par. 2 of the Procedural Rules, edition 2014).

56. According to art. 3 of the Procedural Rules, the FIFA DRC shall examine its jurisdiction, in particular in the light of arts 22 to 24 of the RSTP (in the case on hand, edition 2010 of the RSTP). According to these provisions, the FIFA DRC is competent to adjudicate on employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.

57. As illustrated under para. 9 above, clause 17 of the Employment Contract between the Parties refers to four different bodies competent to decide in the case of a contractual dispute between the Parties. The Appellant alleges that the FIFA DRC is not competent to decide in the matter on hand because of the asserted jurisdiction of the DRC of the CFA.

58. CAS acknowledges that an independent national deciding body can be competent to deal with contractual disputes between a club and a player if the jurisdiction of said national deciding body derives directly from a clear reference in the employment contract.

59. Considering only its wording, article 17 of the Employment Contract specifies the Player's possibilities for action in case of termination of the Employment Contract by the Club due to a serious misconduct of the Player. Nevertheless, in the Panel's opinion, this clause has to be applicable also to other contractual disputes between the Parties. Otherwise, the contractual balance would be adversely affected.

60. Upon review of article 17 of the Employment Contract, the Panel is of the opinion that this clause does not explicitly and in a clear way make reference to one specific deciding body, but to several courts and arbitration bodies, including the FIFA DRC and CAS. The Panel, therefore, adopts the view of the FIFA DRC and deems that article 17 of the Employment Contract cannot be considered as an exclusive arbitration clause in favour of the CFA national deciding body, as asserted by the Appellant.

61. Considering the established competence of the FIFA DRC to hear the case regarding the Employment Contract, the question arises whether the FIFA DRC was also competent to decide on the contractual disputes concerning the IRA. In this regard, the Panel notes that this second agreement between the Parties dated 31 January 2011 is entitled "Image Rights Agreement" and that paragraph 1 stipulates that the Player will assign *"all his image rights for commercial exploitation to the Club"*. Nevertheless, the IRA also contains paragraph 2, stating the following:

> *"2. It is agreed between the parties the following bonuses for the period of this agreement:*
>
> *a) The amount of twenty five thousand Euro net (€25,000.00) in case that the club will be the Cyprus First Division Championship winners*

b) The amount of fifteen thousand Euro net, (€15,000.00) in case that the club will be the Cup Winners

c) The amount of ten thousand Euro net, (€10,000.00) in case that the club will qualifying and participate at UEFA Europa League competition (not as cup winner)".

62. In the opinion of the Panel, the abovementioned clause does not seem to have anything to do with image rights, but rather appears to be an additional understanding to the Employment Contract agreed upon between the Parties. There is no separate image rights company that the Player has established which contracts with the Club. This conclusion is further supported by the fact that the parties of the two agreements are the same and also, the remuneration stipulated in the two contracts is similar. Furthermore, the IRA does not explicitly regulate what the payments stipulated in this contract are for, apart from a general reference to image rights and *"activities organized by the Club and its commercial sponsors"* (paragraph 3 of the IRA).

63. Therefore, the Panel concludes that pursuant to the principle "falsa demonstratio non nocet" the IRA is to be considered as an additional agreement to the Employment Contract and that on these grounds the two agreements could validly be reviewed by the same deciding body, i.e. the FIFA DRC in the present case.

B. Did the Respondent have just cause to terminate the Employment Contract and the IRA?

64. The Appellant mainly argues that the Respondent, after receipt of the Appellant's letter dated 10 June 2011, did not try to personally contact the Appellant neither did he participate in any training offered by the Appellant. Furthermore, the Appellant claims that the Respondent is to be held liable for the early termination of the Employment Contract and the IRA without just cause.

65. Pursuant to the principle of *"pacta sunt servanda"*, obligations deriving from contracts which are validly entered into must be executed pursuant to the contract's terms until the parties consensually adopt a new contractual arrangement (Decision of the Swiss Federal Tribunal ("SFT") of 28 October 2008, BGE 135 III 1, c. 2.4).

66. Article 14 of the RSTP provides for the possibility of terminating a contract with "just cause" as follows:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

67. The Commentary on the RSTP states the following with regard to the concept of "just cause": *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally"* (RSTP Commentary to art. 14 para. 2).

68. The CAS has had the opportunity of specifying in its jurisprudence that while the FIFA rules do not define the concept of "just cause", reference should be made to the applicable law if the Panel deems it appropriate (CAS 2008/A/1447). When Swiss law applies, as in the particular case (see recitals 48 et seq.), art. 337 para. 2 of the CO provides that *"In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice"*. The concept of "just cause" as defined in art. 14 RSTP can therefore be likened to that of "good cause" within the meaning of art. 337 para. 2 CO.

69. The CAS has adopted the jurisprudence of the SFT. According to the SFT, an employment contract may be terminated immediately for good cause when *"the main terms and conditions (either general/objective or specific/personal), under which it was entered into are no longer implemented"* (adopted by CAS in CAS 2013/A/3091). The SFT states in this regard that the circumstances of the case must leave no other choice to the party terminating the employment relationship than to do so (Decision of the SFT of 17 September 1975, BGE 101 Ia 545).

70. The SFT also states in its jurisprudence that when an employee generally terminates a contract without notice, a serious infringement of the employee's personality rights (Decision of the SFT of 2 February 2001, 4C.240/2000), consisting, for example in unilateral or unexpected change in the employee's status which is not related either to company requirements or to organization of the work or the failings of the employee (unpublished Decision of the SFT of 7 October 1992, SJ 1993 I 370) may be deemed good cause.

71. According to CAS jurisprudence, the breach of contract must have a certain seriousness in order to justify a termination of the latter without prior warning due to "just cause" (CAS 2006/A/1100). In this regard, the CAS decided in CAS 2006/A/1180 that *"In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as serious breach of confidence (…). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted"* (CAS 2006/A/1180, para. 25).

72. In order to decide whether the Employment Contract and the IRA had been terminated by the Respondent with just cause, the Panel has to clarify the contractual duties of the Parties in general and especially during the period between 10 June 2011 and 8 July 2011.

73. It is indisputable that the parties of an employment contract do have certain reciprocal contractual duties of care and loyalty towards each other. Article 321a para. 1 CO states as a general rule that *"The employee must carry out the work assigned to him with due care and loyally safeguard the employer's legitimate interests"*. In reverse, the employer is bound to protect the employee's personality rights and offer the work which the employee was hired to do against a compensation.

74. A professional football player such as the Respondent relies on being able to play or at least to train on a professional level in order to keep up his level of play. In case this is, for whatever reason, not possible, a club, in order to fulfill its contractual obligations, has to strive to find a different solution. Otherwise, a club as an employer infringes its contractual duty of care towards a player and also the personality rights of a player generally granted under Swiss law

(see art. 27 ss. Swiss Civil Code).

75. The main underlying question that has to be answered by the Panel in regard to the fulfillment of the Parties' contractual duties is how the Respondent had to understand the information given to him by the Appellant and whether he would have had to react in any different way than he did.

76. In light of the present case and, in general, of the burden of proof principle contained in article 12 par. 3 of the Procedural Rules (according to which any party deriving a right from an alleged fact shall carry the respective burden of proof) the Panel underlines that it is up to the Appellant to provide compelling evidence demonstrating that the alleged training was offered after it made clear to the Respondent that he is no longer part of the team and also that he can *"extend"* his *"leave and/or holiday"*.

77. If the Panel should come to the conclusion that the Appellant is to be considered in breach of the Employment Contract and the IRA, this would raise the question whether this possible breach had been such a severe contractual violation that it was not reasonably permitted to expect the Respondent to continue the employment relationship.

78. As has already been clarified by the Panel, it is evident that a professional football player such as the Respondent has to train on a certain level to remain being able to practice his profession.

79. In the case at hand, the Player was informed on 10 June 2011 that he was no longer a member of the team just before the team's presentation to the media. The Appellant handed a letter to the Respondent on the same day stating that the coach decided not to include the Respondent in the roster for the upcoming season. Furthermore, the letter informed the Respondent that the Club *"decided to extend your leave and/or holiday so as to discuss with you the possibilities of either mutually terminating the Contract of employment and/or other agreements (...) or of transferring you on loan to any other team in Cyprus or abroad"*. According to the Respondent, a few days after this information the team left for training camp to which he was not invited by the Appellant.

80. After the aforementioned incident, the Parties have, according to the findings of the Panel, been in loose contact through the Respondent's agent without being able to concretely discuss a possible solution to the Respondent's situation at the Club until the notice of termination by the Respondent, dated 8 July 2011. In reaction to this notice of termination, the Appellant sent a letter to the Respondent dated 11 July 2011 stating that training had been offered and that the contents of the Respondent's letter *"are dismissed"*. The Respondent answered by a letter dated 25 July 2011 disagreeing with the Appellant's views.

81. The Panel would like to clarify in this respect that a professional football club cannot expect a player to do nothing than to wait for further instructions after the club notifies the player – especially during the transfer period – that his services are no longer needed. The club rather has the explicit duty to offer training on a professional level and also, in fulfillment of its contractual duty of care, to help finding a solution for the player regarding the continuation of his career as a professional football player. This obligation to provide assistance can either be manifested in working on finding a loan solution or in cooperating with the agent of the

player at a more concrete level in order to seek a definitive transfer solution.

82. In this connection, it clearly is in the responsibility of the club to provide convincing evidence to prove its efforts in trying to find an acceptable solution for both the club and the player.

83. Given the circumstances of the matter at hand however, since the Appellant does not provide such evidence on the alleged attempts on finding a solution with the Respondent or the claimed offer of professional training sessions, the Appellant is the Party to be considered in breach of the Employment Contract and the IRA. The Respondent did not need to draw the Appellant's attention to the fact that its conduct was not in accordance with the Employment Contract and the IRA because of the severity of the infringement and the factual prohibition of work resulting from it.

84. As a consequence of his termination, the Respondent furthermore requested an ITC which was issued on 19 August 2011 by the CFA to the Hellenic Football Federation. The Appellant did not oppose to said ITC request. Its reaction to the ITC request combined with its first letter to the Respondent and its behavior in the relevant period of time, therefore, suggests that it was pleased to see the Respondent signing with another club because, as the Appellant made clear to the Respondent, the Respondent was no longer meant to play a meaningful role in the Appellant's plans.

85. The Panel, therefore, concludes that the breach of contract by the Appellant reached a level of severity which allowed the Respondent to unilaterally terminate the Employment Contract and the IRA with just cause on 8 July 2011 and that, in consequence thereof, the Appellant is to be held liable for said breach of contract justifying the termination by the Respondent.

86. As a result of the termination of the Employment Contract and the IRA with just cause by the Respondent, the Panel is obliged to consider whether the party in breach of the Employment Contract and the IRA has to disburse a compensation. When evaluating the matter at hand and determining on a certain amount of compensation, art. 17 par. 1 of the RSTP has to be taken in consideration:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration 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 five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

87. In application of this provision, the Panel, upon review of the Employment Contract and the IRA, concludes that the Parties did not agree on a specific remuneration that would have had to be paid in the event of breach of contract by either Party.

88. The Panel also notes in this regard that the total remuneration to be paid by the Appellant under the contract would have amounted to EUR 650,000 (excluding bonuses) had the

Employment Contract together with the IRA been duly executed until their respective expiry dates. Of this total remuneration, the Respondent had already received the amount of EUR 108,000 when terminating the Employment Contract and the IRA.

89. The Appellant, according to its own statement which was not contested by the Respondent, also had to pay a transfer fee in the amount of EUR 150,000 in order to secure the Respondent's services for the Club.

90. The Respondent, after terminating the Employment Contract and the IRA, had signed an employment contract with the Greek club Asteras Tripolis on 9 August 2011 in order to reduce his loss of income. This employment contract entitled the Player to receive a total remuneration of EUR 160,000 until 30 June 2013.

91. In view of the above, the FIFA DRC considered the amount of EUR 190,000 to be paid by the Appellant to the Respondent as a *"reasonable and justified amount of compensation for breach of contract in the matter at hand"*.

92. The Panel is, in view of the lack of any appeal against the Appealed Decision by the Respondent, barred from awarding a higher amount of compensation to the Respondent. Considering all circumstances in the case at hand, especially the unfortunate communication between the Parties, the remaining contract duration and remuneration, the transfer fee paid by the Appellant and the compensation under the new employment contract signed by the Respondent, the Panel finds that the amount of EUR 190,000 to be paid as compensation to the Respondent is, if anything, not too high.

93. Finally and in view of the foregoing, the Panel holds that there is no legal basis to impose sporting sanctions on the Respondent as requested by the Appellant.

X. CONCLUSION

94. The Panel holds, in conclusion, that:

- the FIFA DRC was the competent body to hear the claim brought before it by the Respondent;
- the Respondent terminated the Employment Contract and the IRA with just cause;
- the amount of compensation awarded to the Respondent by the FIFA DRC was, if anything, not too high and,

thus, dismisses the Appeal and upholds the Appealed Decision in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 March 2014 by Anorthosis Famagusta FC against the decision adopted by the FIFA Dispute Resolution Chamber on 31 October 2013 is dismissed.

2. The decision adopted by the FIFA Dispute Resolution Chamber on 31 October 2013 is confirmed.

3. (…).

4. (…).

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