



Arbitration CAS 2014/A/3582 S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic, Fédération Internationale de Football Association (FIFA) & Romanian Professional Football League (RPFL), award of 8 May 2015

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football

Termination of employment contract for outstanding salaries

Jurisdiction of FIFA Dispute Resolution Chamber for international employment disputes

Principle of res judicata

1. **Article 22 of the FIFA Regulations on the Status and Transfer of Players (“RSTP”) gives the FIFA Dispute Resolution Chamber (“FIFA DRC”) jurisdiction over international employment disputes between a club and a player; however there are some provisos: (a) either party may chose the state courts; or (b) if there is a domestic or national dispute resolution chamber that one can deal with such disputes; and (c) the parties have agreed to go to such domestic or national dispute resolution chamber; and (d) the dispute resolution chamber fulfils the basis requirements of FIFA; provided these requirements are met the dispute may be dealt with nationally or domestically. If a decision is passed by a national body that was not entitled to adjudicate on a specific matter for formal reasons (e.g. the national body does not comply with the pre-requisites of Article 22 of the RSTP) then such decision does not have to be recognised by the FIFA DRC and the FIFA DRC is competent to a pass a decision.**

2. **In order for the principle of *res judicata* to be applicable it is not sufficient that the parties to the two disputes are the same; the disputes in question also have to be based on the same grounds. If a judicial body is aware that a dispute of the same nature involving the same parties as the dispute in front of it is already pending with a different judicial body it should refuse jurisdiction.**

I. PARTIES

1. S.C. Fotbal Club Otelul S.A. (hereinafter referred to as “Otelul” or the “Appellant”) is a football club with its registered office in Bucharest City, Romania. The Appellant is registered with the Romanian Football Federation (hereinafter referred to as the “RFF”), which in turn is affiliated to FIFA.

2. Mr. Zdenko Baotic (hereinafter referred to as “the Player” or the “First Respondent”) is a Croatian football player currently living in Bosnia and Herzegovina.

3. Fédération Internationale de Football Association (hereinafter referred to as “FIFA” or the “Second Respondent”) is the international world governing body of association football with its headquarters in Zurich, Switzerland.
4. Romanian Professional Football League (hereinafter referred to as “RPFL” or the “Third Respondent”) is the sport association in charge of the football development in Romania.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced to the file. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
6. On 1 July 2009, Otelul entered into an employment contract with the Player for the period from 1 July 2009 until 30 June 2012 (hereinafter referred to as the “Contract”). In accordance with the Contract, the Player was to receive EUR 60,000 per annum in monthly instalments of EUR 5,000.
7. In July 2010, Otelul allegedly requested the Player take a reduction in salary. When the Player refused, he was sent to the second team. The Player accepted this decision and trained with the second team.
8. On 26 October 2010, the Player lodged a claim before FIFA, claiming EUR 15,000 as arrears of salaries for July, August and September 2010, EUR 9,625 as arrears of accrued bonuses and EUR 105,000 as compensation for breach of the Contract. Thereafter, the Player remained at Otelul, pending the decision of FIFA.
9. On 4 November 2010, the Player informed FIFA that he had not been paid his October 2010 salary of EUR 5,000 either.
10. On 15 January 2011, Otelul responded to FIFA, citing its internal disciplinary regulations (hereinafter referred to as the “Disciplinary Regulations”) that allowed it to reduce the salaries of the Player by 25%, as he had been sent to the second team as from August 2010 and that he lost his entitlement to bonuses too.
11. On 17 January 2011, the parties accepted that the Contract is terminated by the Player leaving Romania.
12. On 3 February 2011, the coach sent a letter to the chairman of Otelul stating that the Player had not attended training on 17 January 2011.
13. On 11 February 2011, Otelul wrote to FIFA stating that FIFA was not competent to adjudicate on the matter and explained that the RFF had a national independent tribunal which fulfilled

the requirements of Article 22 (b) of the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the “RSTP”).

14. On 14 February 2011, the Player was sanctioned with a penalty of 25% of the value of the Contract for the 2010-2011 season (EUR 15,000) due to his absence on 17 January 2011 and the Player’s absence from that date until 14 February 2011.
15. On 9 March 2011, the RPFL Disciplinary Committee (hereinafter referred to as the “Disciplinary Committee”) ratified Otelul’s decision to sanction the Player with a 25% penalty on 14 February 2014 (hereinafter referred to as the “Disciplinary Decision”).
16. On 7 April 2011, Otelul wrote to FIFA confirming that it had paid the amount of EUR 28,860 to the Player on 10 March 2010 and that it had thus fulfilled its financial obligations to the Player.
17. On 9 February 2012, Otelul allegedly filed a statement of claim before the RPFL Commission for Solving Litigations (hereinafter referred to as the “Litigation Committee”) seeking a declaration of the termination of the Contract.
18. On 28 February 2012, the Litigation Committee admitted the petition filed by Otelul and “ascertains the termination of the contractual relationship ... following the unilateral denunciation without just cause by the Player” (hereinafter referred to as the “Litigation Decision”).
19. On 10 April 2012, the Secretariat of the Litigation Committee wrote to the RPFL stating that the Litigation Decision was communicated to the Player via DHL and was received on Monday 2 April 2012.
20. On 10 July 2013, Otelul was subject to insolvency proceedings as a result of a decision passed by the Bucharest Tribunal.
21. On 4 October 2013, the FIFA Dispute Resolution Chamber (hereinafter referred to as the “FIFA DRC”) considered the Player’s original claim and held (hereinafter referred to as the “Appealed Decision”):

- “1. *The claim of the Claimant, Zdenko Baotić, is admissible.*
2. *The claim of the Claimant is partially accepted.*
3. *The Respondent has to pay to the Claimant, compensation for breach of contract in the amount of EUR 89,515 within 30 days as from the date of notification of this decision.*
4. *In the event that the amount due to the Claimant in accordance with the above-mentioned number 3 is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of the 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”.*

22. On 8 April 2014, the Appealed Decision was notified to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 17 April 2014, Otelul 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 Otelul requested the appointment of a sole arbitrator. Further, Otelul made the following requests for relief:

- “1. *Suspend the settlement of the claim formulated by the player against the club, respectively the present appeal, based on the provisions of Article 36 of the Insolvency Law no. 85/2006.*
2. *State that Dispute Resolution Chamber of FIFA had no jurisdiction to settle the case between the player Zdenko Baotić and the club S.C. Fotbal Club Otelul S.A.*
3. *Annul the Decision from 4 October 2013 issued by Dispute Resolution Chamber of FIFA in the case player Zdenko Baotić, Croatia/ Club FC Otelul Galati, Romania.*
4. *Reject the claim of the player Zdenko Baotić lodged before Dispute Resolution Chamber of FIFA on 26 October 2010 as inadmissible.*

Subsidiary, only if the aforementioned prayers for relief are rejected:

5. *To state that the 2nd Respondent had no jurisdiction over the Decision no. 435 from 9 March 2011 issued by the Disciplinary Commission of the Romanian Professional Football League in the case file no. 9/CD/2011;*
6. *To ascertain that the Decision no 435 from 9 March 2011 issued by the Disciplinary Commission of the Romanian Professional Football League in the case file no. 9/CD/2011 is finding and binding upon the Respondents;*
7. *To ascertain that the amount of 15.000 Euros owed by the 1st Respondent toward our club as financial penalty is deducted from his salaries and other financial rights which became due under the employment contract;*
8. *To state that the 2nd Respondent had no jurisdiction over the Decision no. 582 from 28.02.2012 issued by the Dispute Resolution Commission of the Romanian Professional Football League in the case file no. 32/CSL/2012;*

9. *To find that the conflict between the parties was already settled through a final and binding decision (Decision no. 582/28.02.2012) at the time when the appealed decision was issued (04.10.2013) and to reject the claim of the player formulated in front of FIFA on the basis of res judicata.*
 10. *To state that our club does not owe any amount to the 1st Respondent as contractual right or compensation;*
 11. *To condemn the Respondents 1 and 2, jointly and severely, to the payment of legal expenses incurred by our club in the present procedure;*
 12. *To establish that the costs of the arbitration procedure shall be borne by the Respondents 1 and 2, jointly and severely”.*
24. On 9 May 2014, Otelul wrote to the CAS Court Office and stated that it did not have the financial resources to pay the costs and fees of three arbitrators. Otelul also reiterated that it was placed under judicial administration due to the insolvency procedure and stated that its financial position was “bad”. Otelul also requested, in accordance with Article R52(2) of the CAS Code, that the advance of costs be kept to a minimum.
 25. On 16 May 2014, the CAS Court Office confirmed that the President of the CAS Appeals Arbitration Division decided to grant Otelul an extension until 19 May 2014 to file its Appeal Brief. Further, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division decided to submit the case to a Panel consisting of a sole arbitrator.
 26. On 19 May 2014, Otelul filed its Appeal Brief, in accordance with Article R51 of the CAS Code. Otelul challenged the Appealed Decision and reiterated its requests for relief contained within the Statement of Appeal.
 27. On 10 June 2014, Otelul requested an extension for the payment of the advance of arbitration costs until the end of July 2014. Otelul explained that it could not afford the advance of costs until it had received its share of the first instalment of the TV monies which would be paid at the end of July 2014.
 28. On 10 June 2014, the CAS Court Office notified Otelul that its request for an extension had been forwarded to the CAS Secretary General and to the CAS Finance Director for their consideration. The letter confirmed that the time limit for Otelul to pay its share of the advance of costs was suspended until further notice.
 29. On 26 June 2014, the CAS Court Office confirmed that Otelul had been granted a deadline of 28 July 2014 to pay the advance of costs.
 30. On 30 June 2014, Otelul provided proof of payment of the advance of costs and confirmed that it had also paid the advance of costs for the Player.
 31. On 3 July 2014, the CAS Court Office acknowledged receipt of Otelul’s letter of 30 June 2014 and confirmed that the time limit for the Player and FIFA to file their answers was running.

Therefore, the Player and FIFA, pursuant to Article R55 of the CAS Code, were invited to file their answers.

32. On 4 July 2014, the CAS Court Office informed the parties that, pursuant to Article R54 of the CAS Code, Mark A. Hovell, solicitor from Manchester, England, had been appointed as the Sole Arbitrator in this matter.

33. On 29 July 2014, the Player filed his Answer, in accordance with Article R55 of the CAS Code, with the following request for relief:

“the rejection of the appeal demand formulated by the Romanian club F.C. Otelul Galati S.A. against the DRC of FIFA Decision of October 13th 2013 as unfounded and ascertain that the DRC of FIFA decision is well-founded and legal”.

34. On 4 August 2014, FIFA filed its Answer, in accordance with Article R55 of the CAS Code, with the following requests for relief:

- “1. To reject the present appeal against the decision of the Dispute Resolution Chamber (hereafter also: the DRC) dated 4 October 2013 and to confirm the relevant decision in its entirety.*
- 2. To order the Appellant to cover all the costs incurred with the present procedure.*
- 3. To order the Appellant to bear all legal expenses of the second Respondent related to the procedure at hand”.*

35. On 5 August 2014, the CAS Court Office acknowledged receipt of the Player’s and FIFA’s respective Answers. Further, the parties were invited to confirm, by 12 August 2014, whether they wished for a hearing to be held or for an award to be issued based solely on the parties’ written submissions.

36. On 7 August 2014, the Player wrote to the CAS Court Office and confirmed that he was unable to participate at a hearing. Therefore, the Player requested that the matter be dealt with by way of written submissions.

37. On 12 August 2014, Otelul, in response to the CAS Court Office letters of 5 and 11 August 2014, requested a new exchange of correspondence between the parties and confirmed that if its request was admitted, it agreed to the Sole Arbitrator issuing an award based solely on the parties’ written submissions.

38. On 4 September 2014, the CAS Court Office, on behalf of the Sole Arbitrator, requested FIFA to provide the FIFA file for the matter. Further, the latter requested Otelul to answer the following questions and/or to file the following documents:

- *“on page 10 of its appeal brief, the Appellant requested CAS ‘to stay the trial of the appeal’. The Appellant is invited to clarify this statement.*

- *on page 24 of its appeal brief, the Appellant requested that the CAS ordered the Third Respondent to communicate the complete file in which decisions no. 582 of 28 February 2012 and no. 435 of 9 March were issued. The Appellant is invited to clarify the relevancy of disclosing those files in the present matter. Should the files be transmitted to the parties, the Appellant will be responsible for their translation.*
- *In its appeal brief, the Appellant also declared that it will rely upon jurisprudence of civil state courts. The Appellant is invited to expand on what such jurisprudence is and how it's relevant/ admissible in the present matter.*
- *I finally draw the Appellant's attention on Article R31 para. 5 of the Code of Sports-related Arbitration (the "Code") pursuant to which "[...] the exhibits shall be listed and that each exhibit can be clearly identified; [...]". For the sake of good order, the Appellant is therefore requested to send a new set of listed and numbered exhibits".*

39. On 1 October 2014, Otelul notified the CAS Court Office that it had a new special administrator, Mr. Rapisca, and also responded to the questions raised by the Sole Arbitrator as follows:

"1. At point III. 1 of the Statement of Appeal, also in the Appeal Brief, we requested CAS to issue an arbitral award that suspend the settlement of the claim formulated by the player against the club, respectively the appeal, based on the provisions of Article 36 of the Romanian Insolvency Law no. 85/2006.

On page 9 and 10 of the Appeal Brief, we motivated our request addressed to CAS for suspension of the settlement of the claim formulated by the player, respectively the appeal.

Taking into consideration the fact that the Appellant, S.C. Football Club Otelul S.A. was placed under judicial administration due to the insolvency/ bankruptcy procedure, we consider, according to Article 36 from the Law no. 85/2006, that the judging of the present appeal must be suspended. The Article 36 from the Romanian insolvency law does not make a difference between judging a claim in the first instance and judging an appeal. For this reason, the present appeal must be suspended.

The words that we used on page 10 of the Appeal brief "to stay the trial of the appeal" express once again our request for suspending the judging of the present appeal.

2. For a lawful and grounded decision, we consider that CAS must have at his disposition all documents related to the case including complete case files in which Decision no. 582 of 28 February 2012 and Decision no. 435 of 9 March 2011 were issued.

DRC Decision of 4 October 2013 is violating the res judicata of the Decisions no 435 from 9 March 2011 issued by the Disciplinary Commission of the Romanian Professional Football League and no. 582 of 28 February 2012 of the PFL Dispute Resolution Chamber, because the conflict between the parties was already settled through a final and binding decision (Decision no. 582/28.02.2012) at the time when the appealed decision was issued (04.10.2013).

To provide to DRC our good faith and to shape the belief that all procedural rules have been applied and respected in the files no. 9/CD/2011 (final decision 435 of 9 March 2011) and no. 32/CSL/2012 (final decision 583 of 28 February 2012) and the principles of the defense right and equality before the law were granted to both parties, we consider it is necessary that CAS must have at his disposition this files.

Through request no. 7 from the appeal brief we asked CAS to find that the conflict between the parties was already settled through a final and binding decision (Decision no. 582/28.02.2012) at the time when the appealed decision was issued (04.10.2013) and to reject the claim of the player formulated in front of FIFA on the basis of res judicata.

For proving that our previous request is founded and that in the civil sphere there is already a decision for solving all the claims of the player Zdenko Baotic against the appellant S.C. Fotbal Club Otelul S.A., regarding the civil contract no. 24 concluded on 1 July 2009, we consider necessary that the 3rd Respondent send the complete case files no. 9/CD/2011 and 32/CSL/2012.

3. *We attached at the present address:*

- a) *Decision from 1 November 2012 issued by FIFA DRC in the case Player Pulbac Corneliu Cristian, Romania/Hercules Club de Futbol, Spain (Exhibit 1);*
- b) *Decision from 5 September 2013 issued by Appeal Commission of the Romanian Football Federation in the case file no. 85/CR/2013 – Balaur Ion v. S.C. Fotbal Club Otelul S.A. and its translation in English (Exhibit 2);*
- c) *Decision from 11 January 2013 issued by the PFL Dispute Resolution Chamber in the case file no. 245/CSL/2012 – Roman Mihai v S.C. Fotbal Club Otelul S.A. (Exhibit 3).*

The documents attached show the legal effects of Article no. 36 from the Romanian Insolvency Law and their relevancy in the present case because the appellant club is in insolvency and the continuation of judging the present case can cause irreparable bankruptcy of S.C. Fotbal Club Otelul S.A., defeating the purpose of the insolvency procedure”.

40. On 2 October 2014, the CAS Court Office acknowledged Otelul's letter of 1 October 2014 and noted that Otelul had filed documentation in Romanian language. Otelul was reminded that the language of the proceedings was English and requested to file translated documents by 9 October 2014.
41. On 6 October 2014, Otelul again provided all of the exhibits to its correspondence of 1 October 2014.
42. On 15 October 2014, the CAS Court Office acknowledged receipt of Otelul's correspondence and invited the Respondents, within twenty days of receipt of the letter, to file their rejoinders.
43. On 28 October 2014, the Player filed his rejoinder with the following comments (emphasis added by the Player):

I. In paragraph 5.2 from the Appeal Brief the Appellant sustains that the “rights and obligations for S.C. Football Club Otelul S.A., as a club and for undersigned, as a player, arose from the civil contract no. 24/01 July 2009” and are subject of the terms and conditions expressly stipulated in it. Given that **the source of all rights and obligations of the parties in the present case is the contract concluded on 1 July 2009, and not the law**, the contract governs the existence, performance and termination of the rights and obligations of the parties.

II. According with Article 17.1 of the civil contract, “The football regulations applicable to this contract are the FIFA, UEFA, RFF, PFL statutes, regulations and decision, as the case may be”. Moreover, Article 17.2 of the civil contract states that: “The Club and the player must comply with the statutes, regulations and decision of FIFA, UEFA, RFF/AJF/PFL, in this order, these being part of the present convention and which the parties, through their signature, accept as being compulsory”.

III. According with Article 66.1 of FIFA statutes (2014) “FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agent and players’ agents”. (...). “CAS shall primarily apply the various regulation of FIFA and, additionally, Swiss law”.

IV. According with Article 67.1 of FIFA Statutes, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents have the right to appeal a final decisions passed by FIFA’s legal bodies to CAS.

V. I agree that according of the Latin dictum “pacta sunt servanda” a valid contract has the force of law between the contracting parties and should be entirely respected. But in the last address filed to CAS in October 2014 the Appellant requested for staying the proceedings to CAS claiming that Romanian law prevails. According with the provisions of the civil contract concluded between the parties the regulations and statutes of FIFA, UEFA and RFF only are applicable to the contract. Even the present procedure of appeal to CAS has the legal basis of FIFA and RFF regulations and statutes and not the Romanian law. Also, the latest evidences presented by the Appellant have been submitted already to CAS once with the Appeal Brief, for which reason I consider that these do not represent new elements for the case.

For these reasons I respectfully request to reject all the demands formulated by the Appellant and dismiss the Appeal as unfounded and to maintain Decision DRC of FIFA from October 4th 2013 as being founded and legal”.

44. On 4 November 2014, FIFA filed its rejoinder with the following comments:

“... In this regard, and in relation to the Appellant’s statements concerning the principle of res judicata, we would like to refer the Sole Arbitrator to points 5. and 6. of FIFA’s answer to the Appellant’s appeal dated 4 August 2014, the contents of which we fully adhere to.

As to the Appellant’s position that the present procedure must be suspended due to the fact, that it is apparently placed “under judicial administration due to the insolvency/bankruptcy procedure”, we wish to recall that CAS has, on various occasions, decided that FIFA’s Dispute Resolution Chamber and Players’ Status Committee, as well as the DRC judge and the Single Judge of the Players’ Status Committee, are not in a position to discontinue proceedings whenever a club is put under any kind of bankruptcy proceedings. In

connection with the foregoing, we wish to recall that the present procedure merely deals with a contractual dispute in which it needs to be established whether the first Respondent terminated the contract he concluded with the Appellant with or without just cause and the consequences deriving thereof, and thus does not concern the execution of a decision rendered by any of the aforementioned decision-making bodies of FIFA.

For the sake of good order, we wish to point out that following the mentioned line adopted by CAS, FIFA has stopped its practice of sending letters with a similar content as the one enclosed by the Appellant to its letter of 1 October 2014 as "Exhibit 1". As to the other two exhibits provided by the Appellant to support its position that the present procedure shall be suspended, we emphasise that the Appellant has once again only provided decisions from the various decision-making bodies of the Romanian Football Federation, which by no means can be considered as objective evidence in the present procedure. What is more, we draw the Sole Arbitrator's attention to the fact that the Appellant once more failed to provide a copy of the "Insolvency Law no. 85/2006", i.e. the Appellant failed to provide the documentary evidence on which it seems to base its position that the current procedure shall be suspended.

In view of the above, we conclude that none of the arguments or allegations presented by the Appellant in its additional submission are valid or well-founded. As a result, we herewith confirm our requests as per our answer of 4 August 2014, and fully adhere to the position and arguments presented therein".

45. On 26 November 2014, the RPFL filed its file with the CAS in relation to the dispute.
46. On 27 November 2014, the CAS Court Office acknowledged receipt of the files sent by the RPFL and provided a copy of the file to the parties. On behalf of the Sole Arbitrator, the parties were advised that any party wishing to rely upon any part of the RPFL file should provide a translation of the relevant part within ten days of receipt of the letter, that the Sole Arbitrator deemed him sufficiently well informed and therefore would issue an arbitral award based solely on the parties' written submissions and that the Sole Arbitrator had rejected Otelul's request to suspend the present proceedings whilst it was involved in an insolvency procedure.
47. On 2 December 2014, FIFA acknowledged receipt of the CAS Court Office letter dated 27 November 2014 enclosing a "file" submitted by the RPFL. FIFA objected to the admission of the correspondence, dated 26 November 2014, sent by the RPFL.
48. On 8 December 2014, the CAS acknowledged receipt of FIFA's letter of 2 December 2014 and confirmed that it would be notified to the other parties upon receipt of their respective comments on the RPFL file.
49. On 8 December 2014, the Player filed his comments in relation to the RPFL's submissions.
50. On 18 December 2014, Otelul wrote to the CAS Court Office again requesting the CAS to issue an arbitral award suspending the settlement of the claim until the final and enforceable decision in the case registered at the Bucharest Tribunal. Further, Otelul submitted that should the CAS reject its request for a suspension, it reiterated its request for a new exchange of correspondence between the parties as it was necessary to respond to the statements of defence filed by the Player and FIFA. Otelul enclosed a letter that it had sent to the Player directly and a statement

of claim that it had submitted to the Bucharest Tribunal, dated 17 December 2014, in respect of the dispute.

51. On 19 December 2014, the CAS Court Office acknowledged receipt of Otelul's letter of 18 December 2014 and invited the Respondents to provide their positions on Otelul's request for suspension of the procedure by 23 December 2014.
52. On 23 December 2014, the Player provided the CAS with his comments in response to the CAS Court Office letter dated 19 December 2014:

- I. First of all I wish to reaffirm my position for rejection of Appellant's request with regard to the suspension of proceeding of Appeal filed by Otelul Galati and to have a judgment of the case.*
- II. In accordance with point (c) of CAS address dated 27 November 2014 I have been informed about the decision of the Sole Arbitrator for the rejection of the trial suspension of Appellant's request. In this respect, I don't know for that reason should be brought into discussion a new application of the Appellant in respect of the same object.*
- III. In one of the last addresses received from CAS I have been informed that the Arbitral Award it should be delivered by the Sole Arbitrator until 14 December 2014, but for no reason the time limit has been extended up to 30 January 2015.*
- IV. I remind you about the fact that I am in dispute with the Appellant since October 2010 and my football career has been destroyed by the way in which I have been treated by this Romanian club. I am in dispute with Appellant for more than 4 years and still there is not exists until the present a final decision. More than that, by the last correspondence I found out that now I was summoned by Appellant to civil court in Romania.*
- V. In accordance with the terms of the contract concluded with Otelul Galati, as a professional football player, I sent a claim to the FIFA for contractual problems. The Appellant has complied with the football international sports jurisdiction (FIFA regulation) and after judgment the case at FIFA, the Appellant has made an appeal against it to the Court of Arbitration for Sport. But at present the Appellant no longer wants as the Appeal to be judged and requests to be suspending its judgment and to be judged by the Romanian court.*
- VI. Regarding the insolvency proceedings of the Appellant I want to point out the following:*
- the contract concluded between parties is a contract of employment, whereas contractual relations between the undersigned and the Appellant are employment relationships;*
 - as a football player I have the quality by the employee and the club by the employer;*
 - employees are not required to submit statements of debt instruments, as they are included automatically in the table claims of employer;*
 - employees benefit from priority to payments in the framework of the proceedings insolvency;*

- *claims born after the date initiation of the procedure, with wages and salaries due for the period after initiation of the procedure, may be paid as a matter of priority, these being in third place in the following order of priority, in accordance with the Romanian law to be invoked by the Appellant.*

My point of view is that as long as the subject of the Appeal settlement represents a conflict of work, respectively termination of the contract, the judgment of the Appeal will determine definitively and irrevocably whose fault is unilateral denunciation of the contract.

For all these reasons, with all due respect to have:

- *rejection of the application for suspension of the Appeal;*
- *judging of the Appeal;*
- *reject the Appeal filed by Otelul Galati as unfounded;*
- *maintain Decision DRC of FIFA from October 4th 2013 as justified and legal”.*

53. On 23 December 2014, FIFA acknowledged receipt of the CAS Court Office letter dated 19 December 2014 and reiterated that it did not agree for the procedure to be suspended.
54. On 24 December 2014, the CAS Court Office acknowledged receipt of the Player’s and FIFA’s letters of 23 December 2014. Further, it noted that the RPFL had not provided its position on Otelul’s request within the time limit granted. The CAS Court Office noted that the Player and FIFA both objected to Otelul’s request for the suspension of the procedure.
55. On 8 January 2015, Otelul wrote to the CAS Court Office, providing “previous practice” of FIFA in case of enforcement of a DRC/PSC decision. Otelul noted that from the responses provided by FIFA (as provided by Otelul) it was clear that a decision passed by the FIFA DRC/PSC after the date when the insolvency procedure starts cannot be enforced. As Otelul was in a similar situation, it stated that it was clear that the Appealed Decision could not be enforced by FIFA and that the appeal procedure becomes “moot”. Thus, Otelul requested the CAS to seek confirmation from FIFA in respect of the Appealed Decision. Otelul confirmed that should FIFA’s position be similar to that stated in the enclosed letters, then it had no interest in continuing with the appeal procedure. Should FIFA’s position be different, then FIFA should clarify the differences between this case and the other cases referred to.
56. On 15 January 2015, the CAS Court Office wrote to the parties, informing the parties:

“To start, a summary of the chronology, as seen by the Sole Arbitrator.

The Contract between the Player and the Club is entered into in July 2009. By October 2010, the Player is complaining that the Club is in breach by not paying him and he is looking to get FIFA’s blessing to terminate the Contract, with just cause.

By January 2011, the Player has had enough and terminates the Contract. The Player continues with FIFA’s judicial bodies for a determination, but the Club goes to the Romanian DRC. The Romanian

DRC determines in February 2012 that the Player terminated the Contract without just cause; FIFA determine in October 2013 that he has terminated the Contract with just cause.

In between, in July 2013, the Club goes into administration.

In April 2014, Mr Lucian, the administrator appeals FIFA's decision to CAS. The Player does not appeal to CAS.

Both Mr. Lucian and his successor as administrator to the Club, Mr. Rapisca, ask CAS to "suspend the Player's claim".

On 27 November 2014, the Sole Arbitrator gave his decision not to suspend the claim before CAS.

On 19 December 2014, the Club again asked CAS to suspend the Player's claim.

On that subsequent request, the Sole Arbitrator again refuses it. That said, the reason why, is that the Player has not raised any claim before the CAS, so there is nothing to suspend.

Perhaps the Club is confusing "determination" with "enforcement"? The Sole Arbitrator's role is to consider the Club's appeal against the FIFA Decision (be it on the question of jurisdiction and/or on the award of compensation). He is not being asked by the Player to enforce the FIFA Decision, so has no such request that he can suspend.

The Sole Arbitrator may confirm the FIFA decision, he could confirm part of it, he could replace it or even annul it.

Say for example he confirms it. Then the Player still has to look to enforce his decision. This is where the Sole Arbitrator assumes Article 36 of Law no. 85/2006 becomes relevant. As the Club has already noted, FIFA appear (from another case it refers to) unwilling to enforce a decision whilst a club is in administration.

The claim of the Player has been upheld by FIFA and stands at EUR 89,515. The administrator initially stated that this debt was not due as at July 2013, when the Club went into administration, but the Sole Arbitrator would assume it was a contingent debt (its existence was known at the time, it just needed determining by FIFA, putting aside the determination by the Romanian DRC), which crystallised in October 2013, when FIFA gave its decision.

The Sole Arbitrator asks whether the new administrator wouldn't then add this to the statutory list of creditors of the Club? The Player couldn't enforce it and would instead rank as a creditor along with the other creditors of the Club (perhaps with some preferential status either as a result of being an employee or under Romanian Football regulations, having some right to be settled by the successor to the Club?)

The Sole Arbitrator notes the Club now seem to recognise that this appeal before CAS is "moot". Perhaps instead of asking for something that is not before the CAS to be suspended, what the new administrator wants is to withdraw the Club's appeal and for the Sole Arbitrator to issue an award for costs (which, again, he presumes, would be an expense of the administration, to the extent that any costs are awarded against the Club?)

The Sole Arbitrator requests the parties their views on this summation and to seek clarification from the new administrator of the Club as to what it wants, before he incurs additional costs producing a determination of its appeal.

*The parties are invited to state their positions within **ten (10) days** upon receipt of the present letter”.*

57. On 23 January 2015, Otelul acknowledged receipt of the CAS Court Office letter of 15 January 2015 and confirmed that its position depended exclusively on FIFA’s position. Therefore, Otelul requested that FIFA state if it would adopt the same position as it had adopted with respect to other Romanian clubs.
58. On 23 January 2015, the Player agreed with the summary as stated by the Sole Arbitrator and stated that an award should be delivered.
59. On 26 January 2015, FIFA acknowledged receipt of the CAS Court Office letter and stated that it had “no particular remarks” in relation to the Sole Arbitrator’s summation contained in the CAS Court Office letter.
60. On 27 January 2015, the CAS Court Office acknowledge receipt of Otelul’s and the Player’s respective letters and noted that the RPFL had not responded by the deadline.
61. On 2 February 2015, the CAS Court Office wrote to the parties, on behalf of the Sole Arbitrator, requesting Otelul to confirm, by 4 February 2015, whether it wished for the Sole Arbitrator to proceed or to withdraw the Appeal.
62. On 5 February 2015, Otelul acknowledged receipt of the CAS Court Office letters of 2 and 5 February 2015 and noted that although FIFA was asked to state a clear position with respect to the enforcement of the decision, FIFA did not do so. Further, the RPFL, in its letter of the same date, also noted that FIFA had not provided its position on the question raised by Otelul. The RPFL requested FIFA to state if a decision passed by its bodies in litigations involving Romanian clubs under administration will and can be enforced, although the national law 85/2006 clearly stated for the suspension of all enforcement measures toward such legal persons. The RPFL also confirmed that the Romanian judicial sports bodies suspended all the enforcement measures towards a club once the insolvency procedure was started.
63. On 5 February 2015, the Player wrote to the CAS Court Office requesting an urgent decision and the rejection of Otelul’s Appeal.
64. On 6 February 2015, the CAS Court Office, on behalf of the Sole Arbitrator, granted FIFA a time limit until 13 February 2015 to file its observations with respect to the other parties’ letters and the enforcement of its Legal Bodies’ decision (or a CAS award) when the concerned club is involved in an insolvency procedure.
65. On 13 February 2015, FIFA acknowledged receipt of the CAS Court Office letter of 6 February 2015 and confirmed:

“We wish to inform you that we cannot comment on the possible execution or enforcement of a decision until such decision has become final and binding. In this respect, we would like to refer to the CAS award rendered by the Panel in CAS 2012/A/2754 in which the Panel decided that the FIFA Dispute Resolution Chamber is competent as long as it is asked to address the issue of the recognition of the claim and that the enforcement of the decision is a matter that needs to be addressed only afterwards.

Finally, and for the sake of completeness only, should there be a final and binding decision and a request for the enforcement of such decision from the relevant party, the FIFA Disciplinary Committee would be the competent body to deal with the matter in accordance with its procedural rules and taking into account the specific circumstances of each individual case”.

66. On 19 February 2015, the CAS Court Office, on behalf of the Sole Arbitrator, invited Otelul to confirm, within five days of receipt of the letter, whether it wished to withdraw its Appeal or wished for an arbitral award to be issued.
67. On 25 February 2015, Otelul confirmed that it maintained its Appeal against the Appealed Decision.
68. On 26 February 2015, the CAS Court Office acknowledge receipt of the Appellant’s letter and noted that the Appellant wished for an arbitral award to be issued.
69. As noted above, on 27 November 2014, the CAS Court office informed the parties that the Sole Arbitrator, in accordance with Article R57 of the CAS Code, had determined not to hold a hearing as he deemed himself to be sufficiently well informed.

IV. THE PARTIES’ SUBMISSIONS

A. Appellant’s Submissions

In summary, Otelul submitted the following in support of its Appeal:

70. Since the beginning of 2011, the Player failed to appear at training sessions and official matches of the team. Further, the Player failed to justify his absence. As a result, disciplinary proceedings were started against the Player which resulted in the board of Otelul imposing a sanction, pursuant to Article 42.6.2 of the Disciplinary Regulations, with a penalty of 25% of the value of the Contract for the 2010-2011 season (EUR 15,000).
71. According to Article 42 of the Disciplinary Regulations, Otelul filed an application with the RPFL’s Disciplinary Committee to ratify the sanctions. Subsequently, the Disciplinary Committee issued the Disciplinary Decision which confirmed the sanction on the Player. The Player was informed both of the disciplinary proceedings carried out against him and of the adoption of the Disciplinary Decision in which the Player was legally summoned and represented.

72. As the Player continued to fail to appear at training sessions and official matches, despite being asked to do so, Otelul filed a statement of claim seeking a declaration of the termination of the Contract for just cause stipulated in Article 18.10(b) of the Regulations on the Status and Transfer of Football Players (hereinafter referred to as the “National RSTP”). As over 30 days had passed since the date the Player had left the Club, the Club filed the request to declare the termination of the Contract and therefore the provisions of Article 18.10 of the National RSTP became applicable (being an absence, without justification, from the team’s training sessions and official matches for a period exceeding 30 days).
73. The Litigation Committee confirmed the statement of claim filed by Otelul and the Contract was declared terminated as a consequence of the unilateral termination without just cause by the Player.
74. In his amended statement of claim before FIFA, the Player undertook to comply with all of his duties pursuant to the Contract and did not do so.
75. Otelul raised an objection to FIFA regarding FIFA’s jurisdiction on the matter due to the existence of the jurisdiction clause in the Contract and asked FIFA to dismiss the statement of claim filed by the Player in January 2011.
76. In April 2011, Otelul confirmed and provided evidence to FIFA that it had made payment to the Player up to and including 17 January 2011, the date of termination of the Contract. It was confirmed that EUR 28,860 paid to the Player on 10 March 2011 included both the salary rights due to the Player for the final months of the contract and also EUR 9,625 representing bonuses allegedly due to the Player. In the Appealed Decision, the FIFA DRC unlawfully and unjustifiably declared its jurisdiction to settle the Player’s claims in violation of *res judicata*.
77. The Appealed Decision correctly held that from 17 January 2011, the Player failed to appear for the team and correctly established that the amount due to the Player at the time of termination of the Contract was EUR 28,375, of which Otelul had paid EUR 28,860.
78. CAS jurisprudence provides that an employment dispute with an international dimension can be settled by a body other than the FIFA DRC if the necessary requirements are met.
79. In October 2013, Otelul informed the FIFA DRC of the commencement of insolvency proceedings against the Club. Further, Otelul requested FIFA to stay the proceedings in accordance with Article 36 of law number 85/2006 on insolvency in Romania. Although a motion to stay was submitted to the FIFA DRC, it did not address this motion.
80. Any dispute between Otelul and the Player in relation to the Contract should be settled by the competent jurisdictional body in accordance with Article 16.1 of the Contract. Therefore, any disputes in connection to the improper performance or failure to perform the obligations would be settled by the RFF jurisdictional bodies, namely the National Dispute Resolution Chamber of the RFF. In accordance with Article 22 of the RSTP, when 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, FIFA does not have jurisdiction to settle an employment dispute with an international dimension between a player and club. Therefore, the jurisdiction to settle any conflict between the parties arising out of and in connection to the Contract, falls on the court with sport jurisdiction of the RFF.

81. The jurisdiction clause inserted into the Contract was set by the parties in full agreement with the National RSTP. According to Article 8 of the Agreement concluded between the RFF and the Professional Football League, disputes between Otelul and senior players are settled by the RFF or RPFL jurisdictional bodies depending on the body where the contracts concluded between the parties are registered. The Contract was registered in the records of the RPFL. The jurisdiction to settle any disputes arising between the parties in relation to the Contract, belongs to the RPFL jurisdictional bodies: the National Dispute Resolution Chamber in the first instance and the RPFL Appeal Committee for the settlement of appeals filed against decisions passed by the RPFL and National DRC in the first instance.
82. In breach of the principle of the binding effect of the Contract, the Appealed Decision disregarded the intent of the parties, expressed freely and validly in the Contract, and established its own jurisdiction to settle the case. By determining its own jurisdiction, the Appealed Decision replaced the intent of the parties and Article 19 of the Contract in which the parties expressly stipulated that in case of a dispute regarding the applicable law, the Romanian law prevails.
83. In relation to jurisdiction, the Player did not challenge the jurisdiction of the Disciplinary Committee or the Litigation Committee. In the absence of any claim filed by the Player in relation to the lack of jurisdiction, it is obvious that the jurisdiction of the National Dispute Resolution Chamber of the RPFL to settle the application for ratification was accepted and that the legal effect of Article 16.1 of the Contract was acknowledged.
84. The Player's right of action against Otelul had not arisen on the date of his statement of claim to FIFA. In accordance with the Contract, any dispute should be settled amicably and, only if such settlement proves impossible, did the parties have the right to petition the RFF/CFA jurisdictional bodies. The right of action of the Player only exists if the Player takes action to amicably settle the dispute and the actions carried out by the Player to settle the dispute must have no results.
85. The financial obligations owed by Otelul to the Player were fully complied with prior to the settlement of the claim before FIFA and prior to the Litigation Decision. Thus, the Player is unable to claim that his efforts would have yielded no results as the Club proved its good faith in its relations with the Player.
86. According to the Contract, notification of the RFF/CFA jurisdictional body shall be made pursuant to the rules of the RFF/CFA Statutes and Regulations. The notification of the bodies with jurisdiction to settle the disputes between the parties of the Contract shall be made pursuant to the National RSTP, which stipulates that players can assert just cause for unilateral termination of contracts in cases in which their salary has not been paid for a period exceeding 90 days. Before FIFA, the Player relied upon the failure to pay the salary for July, August and September 2010. In the present case, from the due date of the first payment obligation, 15

September 2010 and until the date of submission of the Player's statement of claim, there was no lapse of the 90 day time period entitling the Player to seek the unilateral termination of the Contract for just cause.

87. The Appealed Decision regarded certain issues that had already been settled by the Litigation Committee. Otelul duly notified FIFA of the Litigation Decision. The FIFA DRC cannot review and pass judgment on claims that have already been settled and render judgments contrary to decisions already passed directly violating the stability of the civil legal sphere. The Appealed Decision was passed, in breach of the jurisdiction set out in Article 22 of the RSTP by reference to the jurisdiction clause contained in the Contract. Therefore the Appealed Decision should be annulled. In the Appealed Decision, FIFA interfered with the legal issues settled by the disciplinary decision violating the *res judicata* of this decision which had become final by failure to appeal. The FIFA DRC and the Disciplinary Committee are two bodies with distinct jurisdictional powers without authority over each other. Whereas FIFA has jurisdiction to settle certain contractual disputes between clubs and players, the Disciplinary Committee has disciplinary authority over the participants in the first league national championship and may impose sanctions upon them in case of breach of the regulations. Further, the Disciplinary Committee has jurisdiction to review the legality and substantiation of the sanctions imposed by clubs upon players. The powers of the FIFA DRC did not include the power to review the decisions of national disciplinary codes.
88. The RFF Disciplinary Regulations, to which the Player agreed to subject himself, stipulate that any person dissatisfied with a decision of the Disciplinary Committee can petition the PFL Appeal Committee and subsequently the CAS. Therefore, the dispute cannot be taken to FIFA.
89. The Appealed Decision interfered with a decision passed by the Litigation Committee without involving this body in the proceedings.
90. The Player should be ordered to pay Otelul the amount of EUR 15,000 in accordance with the Disciplinary Decision.
91. The Player disregarded the principles of the binding effect of the Contract and of contractual stability in that he prematurely terminated the Contract after stating before FIFA that he would observe his contractual duties. As the Player failed to appeal the Litigation Decision, it became final and binding on the parties.
92. The FIFA DRC is not a judicial review body with the power to review the decision passed on the merits or in the appeal, by the Litigation Committee.
93. No compensation is due to the Player as the Player terminated the Contract without just cause.
94. Should the Sole Arbitrator reject the above prayers for relief, the Player has not mitigated his loss.

B. First Respondent's Submissions

In summary, the Player submitted the following in his defence:

95. In June 2010, because the Player did not agree with the reduction of the monthly salary from EUR 5,000 net to EUR 3,000 net, Otelul decided to exclude the Player from the first team and place him on the transfer list for the amount of EUR 30,000. As the Player did not find a club to transfer to, Otelul instructed him to train with the second team. In October 2010, the Player submitted a claim to FIFA regarding the non-payment by Otelul of the amount of EUR 24,625, representing outstanding salaries for July, August and September 2010, amounting to a total of EUR 15,000 net and game bonuses amounting to EUR 9,625. The Player also asked FIFA to determine that the Contract had been terminated with just cause and to also compel Otelul to pay compensation of EUR 105,000 representing due salaries to 30 June 2012. The Player also informed FIFA of the training conditions being imposed upon him.
96. In December 2010, the FIFA DRC informed the RFF that there was an international litigation between the Player and Otelul as a result of the petition submitted to FIFA in October 2010. Therefore, the RFF and Otelul acknowledged the litigation before FIFA.
97. The FIFA DRC had authority to deal with the litigation according to Article 17.1 of the Contract. Further, in accordance with Article 24.1 of the Contract, and the RSTP, the FIFA DRC has authority to hear an international dispute between a player and a club except where there is a national independent arbitration court ensuring a fair trial. The FIFA DRC requested evidence from Otelul that the national jurisdictional bodies comply with the RSTP. However, Otelul submitted no answer and has not submitted any evidence. From October 2010 until January 2011, the national jurisdictional bodies did not fulfil the requirements of the RSTP. In accordance with CAS jurisprudence (CAS 2010/A/2289), it has been established that the national jurisdictional bodies in Romania do not fulfil the minimum standard requirements for an independent arbitration court in accordance with the RSTP.
98. In January 2011, a letter was sent from the RFF to the President of the RPFL requesting a revised structure of the jurisdictional bodies based on respecting the principle of member parity.
99. In January 2011, the RPFL responded to the letter requesting the appointment of 4 members of the player association to become part of the jurisdictional body. Therefore, when the claim was submitted to FIFA and when the Contract was terminated, the national jurisdictional bodies did not constitute independent arbitration courts.
100. The Player confirmed that he had contested the proceedings before the Disciplinary Committee which it acknowledged in the Disciplinary Decision. In relation to Otelul's request for payment of a debt of EUR 15,000, the Player submitted that this claim was inadmissible and that it should be addressed before the FIFA DRC.
101. The Appealed Decision was correct in determining that, as at 17 January 2011, when the Contract was unilaterally terminated, Otelul owed the Player EUR 28,375 representing salaries for September, October, November and December 2010 and bonuses. The Player noted that

the outstanding salaries were paid on 7 January 2011, 10 March 2011 and 30 March 2011. The Player submitted that the payments were made so that Otelul could obtain a licence to compete in Liga 1 in the 2011/12 Championship.

102. The Player also questioned as to why Otelul paid the amount it did in salary when the Disciplinary Decision reduced the salary rights by 25% which Otelul wished to rely upon.
103. In conclusion the Player requested that the CAS reject the Appeal and uphold the Appealed Decision.

C. Second Respondent's Submissions

In summary, FIFA submitted the following in its defence:

104. As a general rule, the FIFA DRC is competent to deal with employment related disputes between a club and a player of an international dimension in accordance with Articles 22(b) and 24 of the RSTP, 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. This means that a dispute between the parties that has an international dimension may be referred to that national body, provided that the parties have explicitly and clearly chosen to submit such dispute to the national body by means of a respective agreement on jurisdiction. If one of the parties refers the dispute to the FIFA DRC and the counter party contests the competence of FIFA, the FIFA DRC would examine if the relevant national body is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. If the requirements are not met, the FIFA DRC would not recognise the jurisdiction of the national body. The burden of proof is on the party challenging the competence of the FIFA DRC that the national body meets the minimum procedural standards.
105. One of the essential principles contained in FIFA circular number 1010 and the National Dispute Resolution Chamber Standard Regulations (hereinafter referred to as the "NDRCS Regulations") is the principle that the National Dispute Resolution Chamber needs to respect the principle of equal representation of players and clubs.
106. In accordance with CAS jurisprudence, only if the following conditions are met can a specific employment related dispute of international dimension be settled by an organ other than the FIFA DRC: there is an independent arbitration tribunal at national level, the jurisdiction of this independent arbitration tribunal derives from a clear reference in the employment contract, and this independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.
107. In accordance with CAS jurisprudence, one of the basic conditions that needs to be met in order to establish that an organ other than the FIFA DRC can settle an employment related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant arbitration tribunal derives from a clear reference of the employment contract. Article 16.1 of the Contract does not constitute a valid and enforceable arbitration clause since it is

ambiguous. In particular, it does not refer to a specific arbitration body that would be competent to decide on a possible dispute between Otelul and the Player in relation to the Contract. Further, it was noted that the Litigation Decision was passed by the Litigation Committee who is not mentioned in Article 16.1 of the Contract. Therefore, the FIFA DRC was indeed competent to pass the Appealed Decision.

108. In relation to the Player's failure to try settle the matter amicably, FIFA submitted that this was not a viable option taking into account the facts of the case, the Disciplinary Decision and also the demotion of the Player to the second team.
109. Another basic condition that needs to be met in order to establish that another organ than the FIFA DRC can settle an employment related dispute between a club and a player of an international dimension, is that the relevant national body is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. The burden of proof is on the party contesting the jurisdiction of the FIFA DRC to prove the existence of such a body and the respect of the conditions at national level.
110. In July 2013, FIFA sent a letter to Otelul referring to Article 22 of the RSTP and invited Otelul to provide all documentary evidence that it deemed useful to prove that the employment related dispute between Otelul and the Player should be dealt with by the deciding body of the RFF. Otelul failed to respond to the letter and provide documentary evidence. Further, Otelul has not provided any evidence before CAS evidencing that the Litigation Committee complies with the principle of fair proceedings and of equal representation of players and clubs. Therefore, Otelul has not discharged its burden of proof.
111. In accordance with CAS jurisprudence, it has been recognised that the Litigation Committee did not comply with the conditions mentioned in Article 22 of the RSTP.
112. In relation to the assertion that the FIFA DRC had violated the principle of *res judicata*, FIFA explained that the question of *res judicata* is directly connected to the question of whether the Litigation Committee had competence to deal with the matter. As the Litigation Committee was not competent, the FIFA DRC did rightfully not feel bound by the Litigation Decision. If a decision is passed by a national body that was not entitled to adjudicate on a specific matter for formal reasons, that does not comply with the pre-requisites of Article 22 of the RSTP, then such decision does not have to be recognised by the FIFA DRC and the FIFA DRC is competent to pass a decision. This is confirmed in CAS jurisprudence.
113. The Player lodged his claim in front of the FIFA DRC prior to Otelul lodging its claim before the Litigation Committee. Otelul lodged the claim in front of the Litigation Committee more than one year after the Player had initiated proceedings before the FIFA DRC.
114. In relation to the Disciplinary Decision, it is undisputed by Otelul that the Player's salaries for September, October, November and December 2010 had not been paid prior to 10 March 2011. In February 2011, Otelul's coach reported the absence of the Player and Otelul imposed a fine upon the Player which was ratified in the Disciplinary Decision. The Disciplinary Committee did not have jurisdiction to review the legality and substantiation of the sanctions, as sanctions

imposed by a club itself on a player on the basis of an alleged violation of the employment contract cannot be considered as a purely disciplinary matter.

115. FIFA explained that Otelul's decision to impose such a disproportionate fine on the Player is a method used regularly by Romanian clubs in order to solve their problems of unpaid salary. FIFA referred to numerous FIFA DRC cases involving Romanian clubs. Ultimately, the FIFA DRC was unquestionably in a position to review and disregard the relevant decisions, since the FIFA DRC is the competent body for employment related disputes between a player and a club of an international dimension. The Disciplinary Committee was not competent to take any decision in relation to the contractual dispute between the Player and Otelul. It is clear that the fine imposed upon the Player was not for a disciplinary matter but an alleged contractual violation. As such, the Disciplinary Committee was not competent to ratify the decision of Otelul. It is therefore beyond doubt that the Player was not sanctioned by Otelul for a breach of the "Laws of the game" or for any other purely disciplinary matter which, normally, are of the competence of a disciplinary organ of a federation or league. Although it is agreed that a club can in principle fine a player for contractual violation, be it proportionally, contingent upon the validity of the contract itself and well documented as well as justified, it is not for a disciplinary organ to confirm such decision.
116. In response to Otelul's assertion that the Player did not challenge the jurisdiction of the Disciplinary Committee, it must be noted that the Player had already lodged a claim in front of FIFA. The Player's claim was sent to Otelul in December 2010 whereas Otelul only in February 2012 started various proceedings in Romania. Further, it appears that the Player did in fact oppose the jurisdiction of the Disciplinary Committee.
117. In relation to the substance of the Disciplinary Decision, FIFA stated that a fine corresponding to 25% of the Player's annual salary can simply not be upheld since it is manifestly disproportionate and excessive. FIFA noted that the Player did not agree to any possible sanction corresponding to 25% of his annual salary. The fine was in relation to the Player's absence, however the Player had already submitted a claim to FIFA and had just cause to terminate the Contract on 17 January 2011.
118. In relation to Otelul's request to stay the proceedings, FIFA referred to well established CAS jurisprudence which provides that a decision of a financial nature issued by a private Swiss association (FIFA) is not enforceable while under appeal (at CAS).
119. FIFA also noted that Otelul recognised that the salary of July, August, September, October, November and December 2010 were only paid in March 2011. Also, that Otelul no longer argued that the bonuses were not due to the Player. Therefore, Otelul recognised that at the time of the unilateral termination of the Contract, a substantial amount of money was outstanding for a significant period of time. Therefore, the Player had just cause to terminate the Contract and leave the Appellant on 17 January 2011.
120. In conclusion, FIFA requested that the CAS confirms the jurisdiction of the FIFA DRC and upholds the Appealed Decision.

D. Third Respondent's Submissions

The RPFL provided no answer in the matter at hand.

V. JURISDICTION OF THE CAS

121. 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”.

122. 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”.

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

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

VI. ADMISSIBILITY

125. The Appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes (2013 edition) and Article R49 of the CAS Code. The Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

126. It follows that the Appeal is admissible.

127. The Sole Arbitrator noted FIFA’s objection to the RPFL being called as a respondent in the proceedings and noted that it was not a party before the FIFA DRC, however, as its participation has no bearing on the outcome of the matter in hand, the Sole Arbitrator dismisses that objection and leaves the RPFL as the Third Respondent, in accordance with the Statement of Appeal.

128. The Sole Arbitrator also noted the request of Otelul:

“[to] suspend the settlement of the claim formulated by the player against the club, respectively the present appeal, based on the provisions of Article 36 of the Insolvency Law no. 85/2006”.

129. The Sole Arbitrator dismissed this request during the proceedings at hand, as there was in fact no claim before him by the Player, rather the Appeal of Otelul itself. The Sole Arbitrator

suspects that Otelul were seeking an order that the Player could not look to enforce the Appealed Decision before FIFA. However, firstly, the fact that the Appealed Decision had been appealed by one party would have the effect that FIFA would not enforce such a decision until it had been dealt with by the Sole Arbitrator and there was a final and binding decision. Secondly, there is a distinction between enforcing a decision (which the Sole Arbitrator agrees would fly in the face of Article 36 of Insolvency Law no. 85/2006) and reviewing or challenging a decision, which the Sole Arbitrator determines he is able to do. Such review merely ascertains the quantum of the debt (if any) between Otelul and the Player, the enforcement of any such debt is a different matter.

VII. APPLICABLE LAW

130. 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”.

131. The Sole Arbitrator 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”.

132. Otelul submitted that the substantive law was the various statutes and regulations of FIFA and that the procedural law was that of the RFF/CFA Statutes and Regulations and Romanian law. FIFA submitted that the applicable law was the various regulations of FIFA, in particular the RSTP, in accordance with the Contract. Further, the Player referred to the RSTP in his Answer.

133. The Sole Arbitrator notes that Article 17 of the Contract establishes the “Applicable Regulations” and in Article 17.1, that includes those of FIFA and both the RFF and the RPFL (as well as UEFA’s). In Article 17.2 is the obligation upon both the Player and the Club to comply with those regulations, but in a set order, being FIFA’s first and foremost.

134. The Sole Arbitrator therefore determines that the various statutes and regulations of FIFA were applicable in this matter. Further, the Sole Arbitrator 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.

VIII. MERITS OF THE APPEAL

A. The Main Issues

135. The Sole Arbitrator observed that the main issues to be resolved are:

- a. Did the FIFA DRC have jurisdiction for this dispute?
- b. If the FIFA DRC was competent, was the FIFA DRC able to ignore/disregard (a) the Litigation Decision and (b) the Disciplinary Decision?
- c. When and how was the Contract terminated?
- d. Was the Contract terminated with or without just cause?
- e. What damages are payable, and to whom, due to the termination of the Contract?

FIFA DRC's jurisdiction

136. The Sole Arbitrator noted that the dispute between the Player and Otelul is one that started in July 2010, exactly a year after the Contract was signed by those parties. Otelul apparently asked the Player to take a reduction in his contractual salary and the Player refused, expecting the terms of the Contract to be fulfilled. From that time forward, it appears that Otelul either failed to pay the Player each month or failed to pay him the full amount of his monthly salaries.
137. After a few months of non-payment, on 26 October 2010 the Player commenced a procedure before FIFA. The Player was not only claiming the unpaid salaries and bonuses, but was seeking confirmation from FIFA that Otelul had breached the Contract, which resulted in the Player terminating the Contract, with just cause. The Player was claiming compensation for the breach too.
138. In January 2011, Otelul participated in the FIFA procedure by replying. The response wasn't to object to the jurisdiction of FIFA, but was a response on the merits. Its objection on the grounds of jurisdiction only came later, in February 2011.
139. On 17 January 2011, the Player appeared to leave Romania and terminated the Contract. Prior to that, he was awaiting FIFA's confirmation that the breach of Otelul was sufficient that he could terminate. The Sole Arbitrator can only presume that the Player got fed up of waiting for this confirmation and, with more monthly salaries going unpaid, he took matters into his own hands and terminated the Contract on that day.
140. The Sole Arbitrator noted that after the Contract was apparently terminated by the Player, Otelul determined to look to invoke their own Disciplinary Regulations and to fine the Player 25% of his annual salaries for failure to turn up to training.
141. Presumably in accordance with the Regulations of either the RFF and/or the RPFL, such fine required the approval of the Disciplinary Committee. That was given on 9 March 2011.
142. Otelul then appeared to continue to participate in the ongoing FIFA proceedings, despite having raised an objection regarding jurisdiction, by informing FIFA in April 2011, that all sums that were due to the Player had now been paid.
143. The Sole Arbitrator noted that despite participating before FIFA, despite FIFA having not notified any party that its procedure had ceased and despite Otelul waiting over twelve (12)

months from when the Player physically left it, on 9 February 2012, it commenced a procedure before the Litigation Committee seeking a declaration that it could terminate the Contract. From that procedure the Litigation Committee rendered the Litigation Decision.

144. To complete the chronology, the FIFA procedure concluded and the FIFA DRC rendered the Appealed Decision, which provided the opposite outcome to the Litigation Decision.
145. The Sole Arbitrator noted that the Player, the employee, is Croatian and Otelul, the employer, is Romanian, so the dispute between them is an international employment dispute. The Sole Arbitrator noted that pursuant to Article 17 of the Contract the parties were obliged to comply with the Statutes and Regulations of FIFA (and others, but FIFA first and foremost). It is undisputed that Article 22 of the RSTP gives the FIFA DRC jurisdiction over such disputes, however there are some provisos:
 - (a) either party may chose the state courts; or
 - (b) if there is a domestic or national dispute resolution chamber that can deal with such disputes; and
 - (c) the parties have agreed to go there; and
 - (d) that dispute resolution chamber fulfils the basis requirements of FIFA;then the dispute may be dealt with nationally or domestically.
146. In the matter at hand, neither party (dealing with the Appellant and the First Respondent) has sought to argue that the dispute should have gone to the State Courts, however, despite having originally and latterly participated before FIFA, Otelul has argued that the dispute should have been dealt with domestically and did petition the Litigation Committee.
147. As such, the Sole Arbitrator would need to be satisfied that the Litigation Committee was such a chamber, that the parties had agreed to go before it and that it met the minimum standards to determine that FIFA did not have jurisdiction.
148. The Litigation Committee on the face of it is a dispute resolution chamber established by the RPFL. There was nothing put before the Sole Arbitrator to argue that it could not deal with employment related disputes, even where one of the parties was foreign.
149. However, looking at the second limb, it was clear the Player had no wish to go before the Litigation Committee. He waited until he had 3 months of unpaid salary and then took his dispute to FIFA. Indeed, when Otelul eventually took its dispute (and it should be noted the disputes were not exactly the same – the Player asked FIFA for the Contract to be terminated due to the non-payment of salaries; whereas Otelul asked the Litigation Committee for the Contract to be terminated for the absence of the Player) to the Litigation Committee, the Player did not participate. Whilst the Player had no wish to go to the Litigation Committee, the question is was he bound to go there by the Contract?
150. The Sole Arbitrator noted that Article 16.1 of the Contract states that if the parties could not settle their dispute amicably, then “... *the parties are entitled to appeal to the bodies with jurisdictional*

attributions of FRF/AJF ...”. Firstly, the Sole Arbitrator noted that there is a choice – either party can or may, not shall or must; secondly that the body must be part of the RFF or AJF, but there is no reference to the RPFL or its Litigation Committee. The Sole Arbitrator determined that the Contract did not provide for an exclusive and binding obligation on either party to take this dispute to the Litigation Committee, in lieu of the FIFA DRC.

151. For completeness, the Sole Arbitrator also reviewed the third limb. Did the Litigation Committee respect the requirements of FIFA, including those in its Circular 1010? The Sole Arbitrator noted that FIFA provided Otelul in July 2013 with the opportunity to provide evidence that the Litigation Committee did meet such requirements, but Otelul failed to respond. On the other hand, the Player submitted that at the time of his dispute being raised with FIFA, it did not. Only months later were representatives of players admitted to the panel. Further, reference was made to CAS 2010/A/2289 on that point. On balance, the Sole Arbitrator had doubts as to whether the Litigation Committee did respect the requirements of FIFA at the material time.
152. Otelul has sought to argue that FIFA should not have rendered the Appealed Decision, as this would bring the principle of *res judicata* into play. However, the Sole Arbitrator noted that whilst the parties were the same, the dispute was on different grounds (had Otelul paid all it should and was the Player absent without justification); that the Litigation Committee was aware that an employment related dispute was already with FIFA and should have refused jurisdiction; and that the Disciplinary Decision was also different from the dispute taken to FIFA by the Player. As such, the Sole Arbitrator failed to see the application of that principle in the case at hand.
153. In conclusion, the Sole Arbitrator determined that the FIFA DRC correctly took jurisdiction of the dispute brought to it by the Player.

Termination of the Contract

154. The Sole Arbitrator noted that Otelul petitioned the Litigation Committee in February 2012 requesting that the Contract be terminated, yet appears to concede that the Player left Romania in January 2011. Further, in February 2011, before the Disciplinary Committee, it seemed clear that the Player left on 17 January 2011 and never returned to play in matches or even to train.
155. The Sole Arbitrator noted that the parties determined not to have a hearing in this matter, so the parties could not be further examined on this point, so on what is before the Sole Arbitrator determined that once the Player had left the country then the leaving date, 17 January 2011, should be taken as the termination date of the Contract.

With or without just cause?

156. It is undisputed that as at 17 January 2011, Otelul owed the Player salaries and bonuses for the months of September through to December inclusive (although the Player appeared to indicate a payment was made on 7 January 2011). The Player had effectively notified Otelul of his

dissatisfaction and of his wish to terminate the Contract in November 2010, when he commenced proceedings before FIFA.

157. Otelul did not immediately correct the situation, by bringing the arrears up to date. Rather, it sought to justify a 25% deduction (which by itself would still have left significant arrears due to the Player) as it had demoted the Player to its second team. Only after the Player had taken matters into his own hands and walked out on Otelul, with further sums not being paid after the date of his petition to FIFA *i.e.* after the situation got worse for him and he had received no decision from FIFA, did Otelul in March 2011 pay the sums claimed by the Player.
158. The fact remains that at the termination date, significant sums were due to the Player by Otelul, in clear breach of the Contract. Further, Otelul continued to miss payments due to the Player, even though it knew he was seeking a declaration that the Contract could be terminated by him, with just cause. As such, when the Player did finally terminate the Contract on 17 January 2011, the Sole Arbitrator determined that he did so with just cause.

Effect of the termination?

159. Whilst there may be arguments as to whether any deductions made by Otelul were justified, the Disciplinary Decision is not under appeal here and the Player has not appealed the Appealed Decision. As such, the Sole Arbitrator cannot award more money for the breach of Contract by Otelul than has already been awarded in the Appealed Decision. The Sole Arbitrator, being satisfied that the sums paid to date by Otelul to the Player covered at least his arrears of salaries prior to the termination of the Contract and slightly reduced the sums remaining under the Contract, had it not been breached, therefore determined to uphold the Appealed Decision in full and to award the Player the sum of EUR 89,515 as compensation for breach of the Contract.

Conclusion

160. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator:
 - a. dismisses the Appeal of Otelul; and
 - b. confirms the Appealed Decision in full.
161. Any further claims or requests for relief are dismissed.
162. As a final comment, it does strike the Sole Arbitrator that this Appeal was misconceived. Otelul is a company in administration and how the Player enforces this Award (and how he would have been able to enforce the Appealed Decision, had it become final and binding) only time will tell, but the Sole Arbitrator suspects that the special administrator of Otelul will admit the sums due under this Award as a debt due in the insolvency procedure, leaving the Player to prove as a creditor in that insolvency procedure and FIFA will not enforcement the Award pursuant to the provisions of Article 36 of the Insolvency Law no. 85/2006. The situation would be the same for the Player whether seeking to enforce this CAS Award or the Appealed

Decision from the FIFA DRC. Perhaps if FIFA had been a little clearer in its correspondence on this point, the Appeal would have been withdrawn and some time and money could have been saved.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 17 April 2014 by S.C. Fotbal Club Otelul S.A. against the Decision issued on 4 October 2013 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed and that decision is confirmed in full.

(...)

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