Arbitration CAS 2014/A/3679 FC Dacia Chisinau v. Goran Stankovski, award of 27 February 2015

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Daniel Visoiu (Romania); Mr Michael Gerlinger (Germany)

Football
Contract of employment between a club and a player
Unilateral termination of contract with just cause
Compensation for damages

1. **The non-payment of salary for a period of two consecutive months and the conduct of a club that separated a player from the team and imposed his return to the club to undertake an individual training regime not properly monitored or supervised, together with the refusal to address the player's notices and the adding of his name to the transfer list are, in combination, sufficient breaches that justify the unilateral termination of contract with just cause by the player.**

2. **A player is entitled to the salaries he would have received under the contract of employment had the club complied with its contractual obligations. More precisely, a player unable to find alternative employment until after the expiry dates of the contract, is entitled to receive the remaining salaries under the contract as compensation for breach of contract with interest at the rate of 5% p.a.**

I. PARTIES

1. FC Dacia Chisinau (hereinafter the "Club" or the "Appellant") is a Moldovan professional football club, with its registered office in Chisinau, Moldova, which is affiliated to the Moldovan Football Federation (Federația Moldovenească de Fotbal) which in turn is affiliated with the Fédération Internationale de Football Association ('FIFA').

2. Goran Stankovski (hereinafter the "Player" or the "Respondent") is a Macedonian Football Player, born on 20 November 1976.

II. FACTUAL BACKGROUND

A. Background Facts

3. The elements set out below are a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced and at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While 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.

4. On 19 August 2010, the Club and the Player entered into a fixed term contract of employment (the "Contract"), valid from the date of signature until 1 July 2012. The Contract was signed by the Respondent personally and on behalf of the Appellant by its Executive Director, V.M. Grosu.

5. The material obligations under the Contract are set out as follows:

Respondent's obligations:

"3.1 The player is obliged:

a) playing for the 'Club' all his strengths and sport skills to use for progress of the club and achieving highest results;

b) According to the opinion of the main couch(-es) [sic] *to participate in all measures implemented by the 'Club' as preparations for games and matches: learning-training process, understanding of the game, gatherings, meetings etc".*

Appellant's obligations:

"4.1 The Club is obliged:

a) to pay to the 'Player' a) the earned salary in amount of […] lei per month until 15th day of each month (in cash);

b) …

c) …

d) by taking into account the interests of the 'Player', to undertake all the activities in order to provide continuation of the sport professional activity of the football player, at the territory of the Republic, as well as in foreign football clubs;

e) to provide qualified specialist for organisation of the playing and training process;

f) to provide playing and training areas and accommodation rooms;

g) to provide for the 'Player' sport equipment for implementation of the playing and training process;

h) to insure progress of the player according to his possibilities;

i) …

j) …

12.1 The 'Club' and the 'Player' undertake responsibility for obligatory observance of their obligations under this contract.

12.2 Non-fulfilment or partial fulfilment of its obligations by the 'Club' under this contract, causes premature termination of the contract with complete payment of the agreed assets to the 'Player'.

12.3 Non-fulfilment or partial fulfilment of its obligations by the 'Player' under this contract, causes premature termination of the contract with complete compensation towards the 'Club' of the caused losses and expenses in relation to its content and provision of the training process.

12.4 This contract may be terminated prematurely only by mutual consent of the parties, and also in complianæ with paragraph 112 and 113.

. . .

12.6 All disputes and misunderstandings arising in the period of validity of this contract are to be resolved by negotiations of the both parties.

12.7 In case of not reaching an agreement in relation to the disputable issues between the parties, they are to be resolved according to the laws of the Republic of Moldova.

. . .

12.9 In case of reduction of the sport skill as a result of negligent conduct to the training process and to the game, the 'Club' is entitled to pay to the player lower salary".

6. On the same date, the Parties entered into a second private agreement entitled "Protocole" (the "Protocole") valid from the date of signature until 1 July 2012. The Protocole was signed by the Respondent personally and on behalf of the Appellant by its Executive Director, Vitalie Grosu.

7. The material obligations under the Protocole are set out as follows:

Section One – CONDITIONS OF THE AGREEMENT,

This agreement begins 19 August 2010 and ends 01 July 2012

SEASONS: 2010-2011, 2011-2012

Salary per month: […] US DOLLARS

Section Three – GENERAL PROVISION

3.1 The parties estate [sic], each one, for all the legal ends [sic] under the penalties of law that are entitled to execute this instrument, being bound by all the provisions and conditions hereon set forth.

3.2 This instrument shall be governed and construed according to FIFA's - Federation Internationale de Football Associtation [sic] which is competent to settle any dispute that might arise from it.

8. At or about the end of September 2010, the Respondent sustained a muscle injury which precluded his participation in training and matches for a period of ten (10) days with the Appellant, after which he returned to the squad, but in his first match, he sustained further injury which precluded his participation in matches or training for the rest of that year.

9. On 16 December 2010, the President of the Appellant agreed that the Respondent could travel to Macedonia for the Christmas holiday period and then return to Moldova on 9 January 2011. The Respondent's return to Moldova was delayed until 12 January 2011, due to the cancellation of his flight caused by bad weather in Skopje.

10. On or about 15 January 2011, the Appellant's squad, including the Respondent, travelled to Antalya, Turkey, for pre-season training.

11. On 19 January 2011, the Respondent was allegedly summarily ordered by representatives of the Appellant to leave Antalya and to return to Moldova, having been informed that the owner of the Appellant and its team coach had decided to release him from the team, but required that he first sign a document confirming that the club had fulfilled all obligations towards him and that it was the Respondent's wish to end his contract with the Appellant.

12. The Respondent indicated that he was not prepared to sign any such document which was against his wishes and contractual rights and further maintained that he wished to remain under contract with the club until its expiration on 1 July 2012.

13. The Respondent persisted in his refusal to sign any such document and was informed that he would no longer be permitted access to the Appellant's premises, but that he would commence an individual training programme on 22 January at alternative premises. The Panel observed pursuant to the submitted video evidence that the individual training program included, among others, the following exercises: jogging, short half-sprints, jumping jacks and one-foot jumping exercises in wintery/snowy conditions, with only the Player present, that is without any of his teammates or football coaches, and without any balls or other standard football equipment. The Appellant paid for the Respondent to be accommodated at a local hotel on the night he returned to Moldova, but thereafter he was obliged to discharge the accommodation costs at his own expense.

14. On 21 January 2011, the Respondent wrote by email to the Appellant asking that it comply with the terms of the Contract and the Protocole to enable him to fulfil his training obligations and also requested that it fulfil the financial obligations under the contracts. No response to that letter was apparently sent by the Appellant to the Respondent.

15. On 24 January 2011, on behalf of the Respondent, The Football Federation of Macedonia sought the urgent assistance of the FIFA Players' Status Department to intervene against the Appellant to protect the physical safety of Respondent and to effect the release of the Player from his contractual obligations with the Appellant to enable him to pursue his professional career with another club outside Moldova.

16. By letter dated 1 February 2011, addressed to the President of the Appellant, the Respondent reiterated his wish to remain in the employment of the Appellant until 1st July 2012 and confirmed that he was not prepared to sign any document contrary to his rights or interests. The Respondent further made clear that if the Appellant wished to release him from his contracts it must: *"cover all financial conditions towards me according to the contracts until 1st July 2012"*.

17. In the same letter, the Respondent outlined further allegations of intimidation and physical violence directed towards him by representatives of the Appellant to induce him to sign the document requesting his release from the contracts. The Respondent also made clear that: *"In this moment I'm in Moldova accommodated in the Hotel in Chisinau on my own costs, without possibility to take training sessions on the club training facilities, without any contact with the club, even I have still contrat with you. Also I must note that you force me to have training sessions on the empty stadium covered with snow, with one coach, without equipment, water, balls and without organized transport to the stadium and back to the hotel, without presence of the team doctor on the training sessions and already two weeks I have training sessions as an athlete and not as a football player, but I assure you that in order to exercise my rights, I will endure such harassment by you…. Moreover you owe me two salaries for December 2010 and January 2011 – total amount of […] USD, according to our Protocole - private contract and you leave me to stay with amount of […] EUR per month, to cover my accommodations, transport and food costs in Moldova…. I kindly ask you to pay me urgently those two salaries in total amount of […] USD, as I can pay all my costs until 4th February 2011 or I will be forced to leave Moldova to return home to Macedonia and to rich* [sic] *my rights through the FIFA bodies"*.

18. By letter dated 5 February 2011, Mr. Vitalie Grosu, Executive Director, responded on behalf of the Appellant to the Respondent's letter of 1 February 2011 in the following terms:

"Referring to your letter dating from the 01.02.2011 we inform you the following:

1. *On the 19.08.2010 you have signed a labor contract which is valid until the 01.01.2012 and registered at FA of Moldova on 26.08.2010 (copy attached). We do not know about the existence of any other contract.*

2. *According to the contract mentioned above, the club does not have the obligation to provide you with accommodation and alimentation during the contract period.*

3. *None of the club employees had ever physically attacked you in order to obtain your signature on any documents. We consider your affirmation as aberrant.*

4. *All the financial obligations (salary) towards you were met and the salary was transferred to your credit card.*

5. *Your trainings are not held on an empty stadium, but on the running tracks of the Dinamo stadium in Chisinau with a personal coach according to a personal program that is set by the physical coach of the Club. This decision was taken by the technical staff of the club as your physical condition needed to be improved.*

6. *We inform you that you are included in the Club transfer list and this fact does not mean that we do not wish to collaborate. We are ready to cooperate until the end of the contract period signed on the 19.08.2010 and registered at the FA of Moldova on the 26.08.2010. We assure you that we will honor all the contract provisions and the financial aspects as well".*

19. On 7 February 2011, the Football Federation of Macedonia, on behalf of the Respondent, filed a formal request with the 'FIFA Players Status Department', claiming: … *"fulfillment of all financial conditions noted in both contracts between Goran Stankovski and FC Dacia Chisinau until the end of the contracts 1st of July 2012 according Article 13 from the FIFA Regulations on the Status and Transfer of Players – which from financial point of view means that FC Dacia Chisinau need to pay to the Player:*

- ***19 salaries*** *- from December 2010 until 30 June 2012 x […] USD*

  TOTAL *= […] USD*

- ***18 salaries*** *- from January 2011 until 30 June 2012 x […] lei ([…] EUR)*

  TOTAL *= […] EUR*

As we can clearly see that this is right example for mobbing by the club towards the football player we also ***CLAIM FOR TERMINATING A CONTRACT WITH JUST CAUSE*** *according the Article 14 from the FIFA Regulations on the Status and Transfer of Players which means;*

- *We URGENTLY request from FIFA responsible bodies to terminate the contracts between the player Goran Stankovski and FC Dacia Chisinau – Moldova and to give the chance to the player to continue with his professional football career in another club, as he can continue to take care of his family".*

20. On 8 February 2011 the Respondent left Moldova and did not return.

21. On 9 February 2011 Mr Grosu on behalf of the Appellant wrote to the Moldovan Football Federation informing it that the Respondent had *"left the club for an unknown destination on the 8th of February 2011 without the permission of the Management or Technical Staff. It is not the first time when Goran Stankowski has obviously violated labour contract stipulations. He was late for 5 days for the team reunion programmed on the 8th of January 2011; moreover, without permission from neither the Club Management nor the Technical Staff, he has left the club during the training camp in Turkey. For these violations the player has received the reprimand".*

22. On 24 June 2014 the parties were notified by FIFA of the decision of the Dispute Resolution Chamber made on 28 March 2014 ('the Challenged Decision') as follows:

> 1 *The Claim of the Claimant Goran Stankovski, is accepted.*
>
> 2 *The Respondent, FC Dacia Chisinau, has to pay to the claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD […] and MDL […].*
>
> 3 *The Respondent has to pay to the Claimant within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD […] and MDL […].*
>
> 4 *In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2 and 3, are not paid by the respondent within the stated time limits interest at the rate of 5%p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> 5 *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 15 July 2014, the Appellant filed an appeal against the Decision of the FIFA Dispute Resolution Chamber dated 28 March 2014 with the CAS and nominated Mr Daniel Visoiu, Attorney-at-law, Bucharest, Romania, as arbitrator.

24. On 24 July 2014, the Appellant filed its Appeal Brief with the CAS Court Office.

25. On 9 August 2014, the Respondent nominated Dr Michael Gerlinger, Attorney-at-law, Munich, Germany, as arbitrator.

26. On 11 August 2014, the Appellant contacted the CAS Court Office indicating its wish to initiate mediation proceedings and indicated that it would not object to the matter being determined by a single arbitrator.

27. On 12 August 2014 the Respondent made clear that he preferred that the matter be determined by a panel of three arbitrators and declined the suggestion that the matter be referred to mediation.

28. On 14 August 2014, the CAS Court Office notified the parties that the President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a panel of three arbitrators.

29. On 18 August 2014, the Respondent filed his Answer with the CAS Court Office.

30. On 19 August 2014, the CAS Court Office invited the parties to inform the court by 26 August 2014 whether they wished the matter to be referred to a hearing and in the absence of response from either party, informed the parties that in accordance article R57 of the Code that it will in any event be for the Panel to decide whether to hold a hearing

31. On 21 August 2014, the Respondent indicated that he did not wish the matter to be referred to a hearing. However on 26 August 2014, the Appellant requested that the issues be determined at a hearing.

32. On 5 September 2014, in order to reduce the costs of the appeal the Appellant again requested that the matter be determined by a sole arbitrator and further sought that the Respondent contribute equally to the advance of costs. By letter dated 11 August 2014, the Respondent declined both requests.

33. On 26 September 2014 the CAS Court office informed the parties of the decision of the President of the CAS Appeals Arbitration Division to maintain his decision, notified on 14 August 2014, to submit the procedure to a Panel of three arbitrators.

34. On 8 October 2014, FIFA renounced its right to intervene in the present arbitration proceedings pursuant to articles R41.3 and R54 of the Code.

35. On 9 October 2014, the Appellant made representations of financial difficulty to the CAS Court Office and sought additional time to pay the advance of costs. On 13 October 2014, it reiterated its request, that in order to save costs, the matter be determined by a sole arbitrator and requested a further extension of time in which to pay the advance of costs and/or sought a reduction in the advance of costs.

36. On 13 October 2014, the CAS Court Office informed the parties that the Appellant's letters of 9 and 13 October 2014 had been transmitted to the Secretary General and to the CAS Finance Director and that the deadline imposed for payment by the Appellant of the advance of costs was suspended until further notice.

37. On 1 December 2014, the CAS Court Office notified the parties of the constitution of the Panel as follows:

President:	Mr Stuart C. McInnes, Solicitor, London, England
Arbitrators:	Mr Daniel Visiou, Attorney-at-law, Bucharest, Romania
	Dr Michael Gerlinger, Attorney-at-law, Munich, Germany

38. On 11 December 2014, the Parties were informed that a hearing would be held on 16 January 2015 in Lausanne, Switzerland.

39. On 23 December 2014, the Respondent appointed Mr Georgi Gradev of Gradev Sports EOOD in Sofia, Bulgaria, to represent him at the hearing.

40. On 5 and 6 January 2015 the Respondent and Appellant respectively signed the Order of Procedure.

41. On 5 and 6 January 2015, the Respondent submitted for the consideration of the Panel a number of decisions of the Dispute Resolution Chamber of FIFA and of the CAS and published legal literature on which reliance was to be placed at the hearing.

42. On 13 January 2015 the Appellant submitted pursuant to Art R56 of the Code, for consideration of the Panel a number of additional documents and witness statements of Mr Vitalie Grosu, Mr Viaceslav Carandasov and Mr Nodar Ramazashvili which it wished to rely upon at the hearing.

43. The CAS Court Office made clear in a letter, dated 14 January 2015, that unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorised to supplement or amend their requests or their argument, nor produce new exhibits, nor to specify further evidence on which they intend to rely after submission of the appeal brief and of the answer.

44. On 16 January 2015 a hearing was held at the CAS Court Headquarters in Lausanne Switzerland ('the Hearing').

IV. HEARING

45. The following persons attended the Hearing:

- For the Appellant: Mr Ruslan Kmit, Vice-President FC Dacia Chisinau
  Mr Sergiu Bujac, Deputy Director FC Dacia Chisinau
  Ms Oxana Kirilova (Interpreter)

- For the Respondent: Mr Georgi Gradev, Gradev Sports Limited
  Mr Iarko Ignjatovski (Interpreter)

46. The Respondent also attended the hearing and was questioned by the Parties' representatives and by the Panel.

47. As a preliminary issue, the Panel considered the admissibility of the decisions of the FIFA Dispute Resolution Chamber and the CAS and other legal literature submitted by the Respondent and the additional witness statements and evidence submitted by the Appellant.

48. The Appellant objected to the admission of the documents submitted by the Respondent and, with the exception of two letters dated respectively 21 and 22 July 2011, the Respondent objected to the admission of the witness statements and other documents submitted by the Appellant.

49. With regard to the decisions and legal literature submitted by the Respondent, the Panel concluded that such decisions had no impact on the understanding of the case and were also freely accessible to the Appellant and to the Panel from the date of commencement of the Appeal and that having regard to the decision in CAS 2006/A/1192, concluded that no question

arose as to the application of article R56 of the Code which would justify excluding the documents.

50. In considering whether to admit the additional evidence and documents submitted by the Appellant, but, noting that the Respondent did not object to the admission of the two letters dated 21 and 22 July 2011, the President of the Panel formed the view that no exceptional circumstances existed justifying the late submission of the other evidence and documents by the Appellant and ordered that they be excluded from the file. The letters dated 21 and 22 July 2011 were admitted to the file and were accorded the designation 'Attachments numbers 40 and 41' respectively to the Appeal Brief.

51. The Parties explicitly agreed at the end of the Hearing that they had no objection to the constitution of the Panel and that their right to be heard and to be treated equally in the arbitration had been fully observed.

V. SUBMISSIONS OF THE PARTIES

52. 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 follows.

A. FC Dacia Chisinau

53. The Appellant's submissions, in essence, may be summarized as follows:

1. That as at 8 February 2011, there was outstanding salary due to the Respondent in the sum of […] USD in respect of the month of December 2010 only, but that there were no further sums outstanding as at 8 February 2011 as:

   i. pursuant to Art 4.1 of the Contract, salary is earned on the final day of each calendar month but payable in arrear on the 15th calendar day of the following month and that the liability to pay salary for January 2011 had not yet arisen.

   ii. in the absence of any other provision, the liability to make payment under the Protocole, followed the payment provisions of the Contract and that payment accordingly fell due on the 15th calendar day of the following month, thus the liability to pay salary for January 2011 had not yet arisen.

   iii. liability to pay further salary, under both the Contract and Protocole, was extinguished by the Respondent's unilateral breach of contract on 8 February 2011.

   iv. the Respondent unilaterally breached the Contract and the FIFA DRC erred in its findings made in para II.26 of the Challenged Decision that arrears of three wage payments existed as at 8 February 2011.

v. the Appellant could in any event make no further payment of salary to the Respondent as he closed his bank account in Moldova on 8 February 2011 when he permanently left the country and provided no forwarding address or contact details enabling any further payment to be made.

2. That pursuant to the FIFA Regulations on the Status and Transfer of Players a delay of less than three month's payment of wages did not justify termination of an employment contract by the Respondent with just cause.

3. That the Respondent was in breach of article 3.1 of the Contract and article 9 part 2 of the Labour Code of Moldova by returning late to Moldova on 13 January 2011, four (4) days after the due date of return on 9 January 2011 without authority or explanation and failed to provide evidence that the Skopje airport was closed due to inclement weather.

4. After being informed by the Appellant's technical staff that his level of fitness was unsatisfactory, the Respondent left the training camp in Antalaya of his own free will and demanded to meet the management of the Appellant in Chisinau to resolve the conflict, thereby committing further breaches of the Contract and of the Labour Code of Moldova. The Appellant is not responsible for the Respondent's separation from the team.

5. On returning to Chisinau the Player, in further breach of contract, refused to acknowledge and/or confirm, by signature of a document, the personal training programme arranged for him. The Appellant maintained a record of his absences from training and was reprimanded accordingly.

6. The FIFA DRC erred in its finding that the player had been excluded from training sessions. The player was provided individual training in Chisinau under the supervision of a club coach

7. The inclusion of the Respondent on the transfer list did not evidence the Appellant's wish to terminate the services of the Respondent but was made in an attempt by the Appellant to resolve the dispute between the Parties.

8. The Appellant paid for the Respondent's accommodation and food after his return to Chisinau from Antalya and the Respondent is put to strict proof that he personally discharged such costs. The Appellant also discharged the Respondent's daily transport costs from his hotel to the training ground.

9. The FIFA DRC erred in failing to acknowledge that the Respondent violated the Contract by leaving Moldova on 8 February 2011, without authority which justified the Appellant terminating the Contract, although it merely elected to issue a reprimand to him.

54. The Appellant's requests for relief are as follows:

1. To accept for consideration the Statement of Appeal

2. To satisfy the appeal

3. To cancel partially the decision, in particular p.3 of the decision of the FIFA Dispute Resolution Chamber from 28 March 2014 in the case of Goran Stankovski against FC "Dacia" Chisinau, Moldova regarding payment of the amount of […] USD and […] MDL.

4. To issue the new decision in the case, thus rejecting the claim of Goran Stankovski, relatively the recovery of compensation from FC "Dacia" Chisinau for termination of contract in amount of […] USD and […] MDL.

5. To recover from Goran Stankovski the costs, incurred by FC "Dacia" Chisinau, Moldova related to consideration of this appeal.

B. Goran Stankovski

55. The Respondent's submissions, in essence, may be summarized as follows:

1. The scope of the appeal is limited to challenge of paragraph 3 of the Decision of the FIFA DRC only. The Appellant does not challenge paragraph 2. The merits of the dispute, the subject of the appeal, should be determined according to the applicable regulations of FIFA and subsidiarily Swiss law.

2. The Appellant's assertion, evidenced by its letter of 5 February 2011, that it recognised only the Contract dated 19 August 2010, but had no knowledge of the Protocole, is evidence of bad faith.

3. The payment terms in the Contract and Protocole are unclear and egregious and should be interpreted according to principles established in existing CAS jurisprudence. The Salary under the Contract fell due at the end of each month, but was payable on the 15th day of the then current calendar month. In the absence of payment provisions, the salary pursuant to the Protocole was payable pursuant to the principle under article 323 para. 1 of the Swiss Code of Obligations on the final day of each month.

4. In accordance with established FIFA and CAS jurisprudence, the Respondent sent two default letters to the Appellant on 21 January 2011 and 7 February 2011 in addition to the letter sent on the Respondent's behalf by the Macedonian Football Federation on 24 January 2011, which were not acted upon by the Appellant. The Appellant's contention that all payments of salary were made up to date prior to 8 February 2011 is incorrect. No payment of salary under the Contract, ([…] Lei), was made in January 2011 and no payments of salary under the Protocole, (USD […]), was made in December 2010 or January 2011. Such breaches therefore justified the Respondent's termination of the Contract and Protocole with just cause.

5. The Respondent alleges that in the course of 19 January 2011 he was subject to persistent intimidation and physical violence and abuse by representatives of Appellant, that his hotel accommodation in Antalya was cancelled with immediate effect and that he was

issued with an air ticket to return to Moldova to attend a meeting with the owner of the Appellant.

6. On 20 January 2011, the Player returned to Moldova and was taken to the offices of the Appellant and allegedly further intimidated by representatives of the Appellant and subject to repeated requests that he sign a document confirming that it was his wish to terminate his contract with the Appellant and that he would make no claims against the Appellant.

7. The exclusion of the Respondent from training with the squad in Antalya and the imposition of an independent training programme in unbearable conditions on his return to Chisinau, breached the Respondent's personality and employments rights and therefore justified the Respondent's termination.

8. That the payment of the hotel bill in Chisinau on the night of 20 January 2011 by the Appellant and the provision of a personal trainer and organised training programme in Chisinau after 22 January 2011 is evidence that he did not leave the training camp in Antalya of his own volition.

9. The Appellant's inclusion of the Respondent on the club transfer list is evidence of its wish to terminate Respondent's relationship with the Appellant.

10. The Respondent was compelled to return to Macedonia on 8 February 2011 because he was intimidated and physically threatened by Representatives of the Appellant.

11. That the evidence annexed to the Statement of Appeal (exhibits 12-35) is fabricated for the purposes of the appeal.

56. The Respondent's requests for relief are as follows:

1. To fully CONFIRM the decision of the Dispute resolution Chamber from 28 March 2014.

2. To ask the Appellant to cover all costs related this appeal and all costs that I incurred during the whole procedure of this case.

VI. ADMISSIBILITY

57. Article R49 of the Code provides as follows:

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

58. The Decision was notified to the parties on 24 June 2014 and the Appellant filed its statement of appeal on 15 July 2014, *i.e.* within the deadline of 21 calendar days after receipt of the reasoned decision as set by article 67 para. 1 of the FIFA Statutes.

59. In view of the above, it follows that the appeal is admissible.

VII. JURISDICTION

60. Article R47 of the Code provides as follows:

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

61. The jurisdiction of CAS, which is not disputed by the Parties, derives from article 67 para. 1 of the FIFA Statutes and article 24 para. 2 of the Regulations on the Status and Transfer of Players (Edition 2012), which determines that a decision of FIFA maybe appealed to the Court of Arbitration for Sport in Lausanne within 21 calendar days of receipt of the reasoned decision.

62. It follows that the CAS has jurisdiction to decide on the appeal against the decision of the FIFA DRC dated 28 March 2014. Under article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision, partially or entirely, superceding the appealed decision.

VIII. APPLICABLE LAW

63. Article R58 of the Code provides as follows:

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

64. The Contract dated 19 August 2010 provides in paragraph 12.7 that:

"In case of not reaching an agreement in relation to the disputable issues between the parties, they are to be resolved according to the laws of the Republic of Moldova".

65. The Protocole dated 19 August 2010 provides in paragraph 3.1 that:

This instrument shall be governed and construed according to FIFA's - Federation International de Football Associtation [sic], which is competent to settle any dispute that might arise from it.

66. In its Appeal Brief, the Appellant did not address the issue of the applicable law and made no submissions at the hearing. In his Answer, the Respondent did not address the issue of the applicable law but made submissions at the hearing that in accordance with article R58 of the Code, the Panel shall decide the dispute according to the applicable regulations of FIFA and subsidiarily Swiss law.

67. Article 66 para. 2 of the FIFA Statutes provides that:

"The provisions of the CAS code of Sports-related Arbitration shall apply to proceedings. CAS shall primarily apply the various Regulations of FIFA and additionally Swiss law".

68. The Panel therefore decided that the various FIFA Regulations and subsidiarily Swiss law, shall be applied to determine this dispute. As the present matter was submitted to FIFA on 7 February 2011, the 2010 version of the FIFA Regulations on the Status and Transfer of Players are applicable. Those regulations shall apply primarily, together with the other applicable rules of FIFA and additionally Swiss law.

IX. MERITS

69. The following sections refer to the substance of the Parties' allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments and evidence on the record, whether or not expressly referred to in what follows.

70. It is not disputed by the Parties that they entered into a fixed term Employment Contract (the "Contract"), dated 19 August 2010 expressed to be valid from that date until 1 July 2012, and a second agreement, the Protocole, which was also entered into on 19 August 2010 also valid until 1 July 2012. It is also not disputed that the respective agreements were terminated on 8 February 2011 by the Respondent, although it is disputed whether the termination was made with or without 'just cause'.

71. In determining whether or not 'just cause' existed, the Panel will consider the following submissions and allegations made by the Parties.

A. The Terms of Payment under the Contract and Protocole

72. The Appellant maintains that payment of salary under the Contract was due and payable in arrear on the 15th day of the following calendar month. The Appellant further maintains that payment of salary under the Protocole followed the terms of payment under the Contract. The Respondent maintains that payment of salary under the Contract was due payable on or before the 15th day of the then current month, but that in the absence of express payment terms, payment of salary under the Protocole was due and payable on the final day of each calendar month.

73. The first issue to be determined by the Panel is, the due date of payment of the salaries under the respective agreements and whether the salaries were in arrear on 8 February 2011.

74. The payment provisions in clause 4.1 (a) of the translation of the Contract, exhibited to the Answer, provide that the Club is obliged, *"to pay to the Player …the earned salary in amount of (three thousands* […] *Lei per month until the 15th day of each month (in cash)"*. This translation was not challenged by the Parties and although the provision is unclear in its drafting, the Panel understands the wording to mean that the salary of […] Lei, payable by the Appellant to the Respondent, was earned on a monthly basis, that is, by the end of each calendar month, but payable in arrear on or before the 15th day of the following calendar month.

75. The payment provision under Section One of the Protocole, exhibited to the Appeal Brief, is simply expressed as *"Salary per month: 10,000 US Dollars"*. In the absence of any provision to the contrary, the Panel applies a literal construction of the clause to mean that the salary payable by the Appellant to the Respondent was earned on a monthly basis and payable on the final day of each calendar month. The Panel rejects the Appellant's submission that the payment terms under the Protocole follow those in the Contract.

76. The Panel notes that it was admitted at the hearing, by the Appellant, that payment of the salary of USD […] under the Protocole, for the month of December 2010, was outstanding as at the date of termination on 8 February 2011, but that it was averred at that payment of the salary under both the Contract and Protocole for the month of January 2011 was outstanding. The Panel further observes however, that in its appeal the Appellant does not challenge paragraph 2 of the decision of the FIFA Dispute Resolution Chamber and as such considers this issue *"res judicata"*.

77. The Panel therefore concludes that as at 8 February 2011 there was outstanding salary due to the Respondent from the Appellant of […] Lei under the Contract and USD […] under the Protocole.

B. The Conduct of the Parties

78. The second issue to be determined by the Panel is whether the behaviour of the Appellant was sufficient to justify the Respondent terminating the agreements.

79. It is not disputed by the Parties that following the end of the 2010 holiday season, the Respondent's return to Chisinau from Skopje was delayed by four days. The agreed due date of return was 8 January 2011, however the Respondent maintains that owing to bad weather his return flight was delayed until 12 January 2012. The Appellant contends that such delay in returning, constituted conduct justifying the issue of a reprimand, which it alleges was issued to the Respondent prior to the departure of the team to Antalya for winter training. The Respondent denies that such reprimand was issued.

80. The Panel prefers the explanation provided by the Respondent and does not consider the Respondent's failure to return to Chisinau before 12 January 2011 to be a material breach of

the Player's obligations in the Contract and makes no finding that the alleged reprimand was actually issued.

81. It is not disputed that the Respondent travelled to Antalya to participate with the team in pre-season training, nor is it disputed that he returned to Chisinau from Antalya on 20 January 2011. The circumstances of his return are however disputed by the Parties. The Appellant maintains that the Respondent's level of fitness justified the imposition of an individual training programme, but that this was not accepted by the Respondent. It is unclear whether it was ever the Appellant's intention that the Respondent undertake this individual programme in Antalya, however, it maintains that the Respondent insisted that he return to Chisinau to discuss his future with the club with the President of the Appellant. The Respondent maintains that he was subject to intimidation and physical abuse by representatives of the Appellant, who sought to coerce him into signing a document agreeing to the termination of his employment, without recourse against the Appellant and that he was compelled to return to Chisinau when his hotel accommodation in Antalya was cancelled by the Appellant.

82. The Panel is unable to make any finding that the Respondent was subjected to intimidation or physical abuse as alleged, but accepts his evidence, that he returned to Chisinau on 20 January 2011, on the instruction of the Appellant and at its expense. The Panel also accepts that the Respondent was accommodated in a local hotel for one night only, at the Appellant's expense but that thereafter he discharged the cost of his hotel accommodation and subsidence from 21 January until 8 February 2011.

83. The Panel also accepts that following a meeting with representatives of the Appellant, the Respondent commenced an individual training programme, in Chisinau, on or about 22 January 2011. The Panel has paid due regard to the videographic evidence adduced by the Respondent, evidencing the nature of the individual training programme imposed upon him and concludes that it was an inappropriate regime for a footballer, which was neither properly monitored or supervised and that accordingly the Appellant had for a significant period of time repeatedly been in breach of its respective obligations in Clauses 4.1 (e) and (g) of the Contract under which it was obliged to *"provide qualified specialist for organisation of the playing and training process"* and *"to provide for the 'Player' sport equipment for implementation of the playing and training process"*.

84. Furthermore the Panel notes that the Respondent gave two written warnings to the Appellant, respectively on 21 January 2011 and 1 February 2011 intimating his wish to remain employed by the Appellant until the expiration of the Contract and Protocole and that on the 24 January 2011 the Macedonian Football Federation intervened with the Appellant on the Respondent's behalf. The Panel accepts such communications as notice of the Respondent's intention to terminate his agreements unless the Appellant complied with and fulfilled its obligations under the Contract and Protocole. The Panel finds that no attempt was made by the Appellant to respond to the letters and to address the Respondent's complaints.

85. Paragraph 12.2 of the Contract provides that *"Non-fulfilment or partial fulfilment of its obligations by the 'Club' under this contract, causes premature termination of the contract with complete payment of the Agreed assets to the Player"*. Having regard to the established jurisprudence of CAS, the Panel acknowledges that early termination cannot be based on every breach of obligation and that the

breach of contract must have a certain seriousness in order to justify "just cause", (CAS 2006/A/1180). The question is whether this threshold was crossed by the non-payment of salaries by the Appellant and/or other reasons.

86. The Panel concludes that the of non-payment of salary for a period of two consecutive months and the conduct of the Appellant, in separating the Respondent from the team and imposing his return to Chisinau, to undertake an individual training regime which was not properly monitored or supervised, together with the refusal to address the Respondent's notices and adding his name to the transfer list are, in combination, sufficient breaches of contract on the part of the Appellant to justify the Respondent terminating with just cause on 8 February 2011. The Panel therefore upholds the Decision of the FIFA DRC.

87. As such, the Respondent is entitled to the salaries he would have received under the Contract and Protocole had the Appellant complied with its contractual obligations. The Panel observes that the FIFA DRC in the Challenged Decision determined that *"FC Dacia Chisinau, has to pay to the Claimant, within 30 days, as from the date of notification of this decision, outstanding remuneration in the amount of USD* […] *and MDL* […]*"*. The Panel notes that this award was not challenged by the Appellant in its appeal to CAS and, as such, concludes that this issue is *"res judicata"*.

88. The Panel also accepts that the Respondent was unable to find alternative employment until after 1 July 2012, the expiry dates of the Contract and Protocole, and considers that that the Player is entitled to receive the remaining salaries under both agreements as compensation from the Respondent and accordingly upholds the Decision of the FIFA DRC.

89. Consequently the Panel finds that the Challenged Decision must be confirmed in full.

X. CONCLUSION

90. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that:

    a) On 8 February 2011, the Respondent unilaterally terminated the Contract and Protocole with just cause.

    b) The Respondent is entitled to a global amount of USD […] and MDL […] as outstanding salaries and compensation for breach of contract with interest at the rate of 5% *p.a.* from 24 July 2014.

91. Any further claims or requests for relief shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Dacia Chisinau on 15 July 2014 against the decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 28 March 2014 is dismissed.

2. The decision issued on 28 March 2014 by the Dispute Resolution Chamber of the Fédération International de Football Association is confirmed.

(…)

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