Arbitration CAS 2014/A/3754 Metallurg Donetsk FC v. Fédération Internationale de Football Association (FIFA) & Marin Aničić, award of 28 June 2016

Panel: Mr Fabio Iudica (Italy), President; Mr José Juan Pintó (Spain); Mr Manfred Nan (The Netherlands)

Football
Termination of the employment contract without just cause during the protected period
Scope of the CAS panel's review
Principle of legality and predictability of sanctions
Sporting sanctions for a club in breach of contract during the protected period
Sporting sanction as an additional sanction

1. **Article R57 of the CAS Code confers the CAS the full power to review the facts and the law of the case. Nonetheless, a CAS panel is bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the panel to decide all claims submitted by the parties and, at the same time, prevents the panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita*.**

2. **The imposition of a disciplinary sanction requires a violation of existing laws and or bylaws and a legal basis imposing the relevant sanction. The "principle of legality" requires that the offences and sanctions must be clearly and previously defined by law. In other words, sports organizations cannot impose a sanction without a proper legal or regulatory basis and such sanction must also be predictable.**

3. **Although the clear wording of article 17 par. 4 of the FIFA Regulations on the Status and Transfer of Players (RSTP) suggests that the competent body has a duty to impose sporting sanctions whenever a club is found in breach of contract during the protected period, there is a well-established and consistent practice of the FIFA DRC, which is also acknowledged by CAS jurisprudence, in the sense of adopting a more flexible application of the relevant provision which gives the deciding authority the discretion to renounce the application of sporting sanctions, even if the breach is committed during the protected period, in view of particular and specific circumstances, on a case-by-case basis. However, whenever the wording of a provision is clear, one needs clear and strong arguments to deviate from it. Therefore, only particular circumstances would justify refraining from the application of sporting sanctions under article 17 par. 4 RSTP.**

4. **The sporting sanction is contemplated in the regulations not as alternative to the economical compensation but as an additional sanction to the economical compensation.**

I. INTRODUCTION

1. This appeal is brought by Metallurg Donetsk FC, against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (hereinafter also referred to as "FIFA DRC") on 25 April 2014 regarding an employment-related dispute against Mr. Marin Aničić.

II. THE PARTIES

2. Metallurg Donetsk FC (hereinafter also referred to as the "Club" or the "Appellant") is a professional football club based in Donetsk, Ukraine, competing in the football premier league in Ukraine, affiliated with the Ukrainian Football Federation which in turn is affiliated with the Fédération Internationale de Football Association.

3. The Fédération Internationale de Football Association (hereinafter also referred to as "FIFA" or the "First Respondent") is the governing body of football worldwide, exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players affiliated to it.

4. Mr Marin Aničić is a Bosnian professional football player, born on 17 august 1989 (hereinafter also referred to as the "Player" or the "Second Respondent").

III. THE CHALLENGED DECISION

5. The challenged decision is the decision rendered by the FIFA DRC on 25 April 2014, on the claim filed by the Player against the Club regarding an employment-related dispute arisen between the Appellant and the Second Respondent (hereinafter also referred to as the "Appealed Decision").

IV. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, on the file of the proceedings before the FIFA DRC and on the relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

7. After the Player's transfer from HŠK Zrinjski under the transfer agreement signed between HŠK Zrinjski and the Appellant, the Player and the Club signed an employment contract on 15 June 2010, valid as of 1 July 2010 until 30 June 2013 (hereinafter referred to as the "Employment Contract").

8. According to article 4.1 of the Employment Contract, *"For execution of the duties, provided by the present Contract, the Football player is paid the wages, which consists:*

- *official salary of the Football player in accordance to the manning table of the football team in Ukrainian hrivnas".*

9. In addition, the Player was entitled to receive from the Club *"different payments, premiums, fringe benefits and other remunerations"*, depending on the results of his professional activity.

10. Under articles 2.1, 2.2 and 2.3 of the agreement about Disciplinary Sanctions and Bonuses signed on the same date between the Club and the Player (hereinafter referred to as the "Agreement"), the Club undertook to pay the Player the following annual salaries:

- EUR 60,000 for the period starting on 1 July 2010 until 30 June 2011;
- EUR 84,000 for the period starting on 1 July 2011 until 30 June 2012;
- EUR 120,000 for the period starting on 1 July 2012 until 30 June 2013.

11. By a fax letter to the President of HŠK Zrinjski, dated 13 July 2010, the Appellant's General Director requested the Player's former club to sign a cancellation proposal, reading as follows:

"To our regret, according to the previous medical examinations of Marin Anicic and according to his game characteristics the Player does not satisfy the game scheme of FC Metallurg. Besides, according to the conclusions of medical service of our Club the health state of Marin Anicic does not allow the Player to stand all the physical activity in training process. In view of abovementioned facts we hope on your understanding of the present situation and kindly ask you to consider the interests of the Player and of the clubs and to sign the agreement dated 03 of July 2010 which was sent to you earlier".

12. The relevant cancellation proposal, which was apparently signed by the Club only, envisaged the agreement between the Club, the Player and HŠK Zrinjski on the cancellation of the Player's transfer from HŠK Zrinjski to the Club, of the Employment Contract and of the Agreement (hereinafter also referred to as the "Cancellation Proposal").

13. According to the Cancellation Proposal, the Club undertook to pay compensation to the Player in the amount of EUR 5,000 and to HŠK Zrinjski in the amount of EUR 20,000 as consideration for the cancellation of the relevant agreements, while the Player and HŠK Zrinjski would accept said compensation as a full and final settlement and would renounce any other possible claims towards the Club in relation to the cancellation of the relevant agreements.

14. Neither the Player nor HŠK Zrinjski signed the Cancellation Proposal.

15. On 1 December 2010, the Player signed a new employment agreement with his former club, HŠK Zrinjski, valid until 31 January 2014, according to which he was to receive the annual amount of Bosnian Mark (BAM or KM) 25,000 payable as follows:

- *"first instalment in amount of 12,500 KM immediately after signing of the contract, and the second instalment in the amount of 12,500 KM on completion of autumn part of the 2011/12 competitive*

season. In order to be entitled to the second instalment, the player must regularly participate in all club trainings, preparations and competitions and play at least 70% official (championship and CUP matches) out of the total number of planned matches for that time period".

- *"Financial and all other conditions for the remaining period of Contract duration are identical to the conditions for the first year of duration".*

16. On 7 November 2011, the Player lodged a claim against the Club in front of FIFA alleging that he was expelled during the team's training sessions soon after the signing of the Employment Contract, without any justification thereof and requesting that it be established that the Club terminated the Employment Contract without just cause and that he be awarded the total amount of EUR 264,000 as compensation for breach of contract by the Club, corresponding to the total remuneration for the entire duration of the Employment Contract.

17. Notwithstanding FIFA's invitation to do so, the Club failed to submit its position in reply to the Player's claim.

18. On 25 April 2014, the FIFA DRC rendered the Appealed Decision by which the Player's claim was partially upheld and the Club was ordered to pay to the Player the total amount of EUR 80,000 as compensation for breach of contract, within 30 days of notification of the same decision, plus 5% interest in case of late payment until the date of effective payment. Moreover, the Club was banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the said decision.

19. The grounds of the Appealed Decision were served by fax to the Parties on 2 September 2014.

V. SUMMARY OF THE APPEALED DECISION

20. The grounds of the Appealed Decision can be summarized as follows.

- The FIFA DRC firstly considered that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (hereinafter referred to as the "FIFA Regulations") and considering that the Player's claim was lodged on 7 November 2011, the 2010 edition of said Regulations is applicable to the present dispute.

- According to the Player, the Club expelled him from training shortly after the Employment Contract had been signed.

- From the documentation presented by the Player, it resulted that the Club had proposed the Player's former club to enter into a trilateral cancellation agreement with the purpose to cancel the effects of the Player's transfer agreement as well as of the Employment Contract and of the Agreement.

- It also emerged from the Club's correspondence addressed to the Player's former club on 13 July 2010, which was produced by the Player, that the Club wished to cancel the relevant contracts due to the Player's alleged unsatisfactory health and physical conditions.

- In addition, the Club failed to present its response to the Player's claim during the FIFA proceedings, in spite of having been invited to do so.

- Therefore, the FIFA DRC considered that the Club renounced its right of defence, thus, accepting the Player's allegations and, as a consequence, the chamber took a decision on the basis of the documents and submissions presented by the Player.

- In this context, it was found that the Club, shortly after having entered into the Employment Contract, was no longer interested in the Player's services, due to his alleged unsatisfactory state of health and, therefore, the Employment Contract and the Agreement were not executed at the Club's fault, although they were fully valid and enforceable.

- With reference to the content of the Club's fax letter dated 13 July 2010, the FIFA DRC emphasized that, on the basis of article 18 par. 4 of the FIFA Regulations and FIFA jurisprudence, a club wishing to employ a player, has the responsibility to carry out all relevant medical examination "prior" to entering into an employment contract with a player.

- In addition, an injury or health condition of a player can be no valid reason to terminate an employment contract.

- Therefore, the FIFA DRC concluded that the Club was liable for the breach of the Employment Contract and the Agreement and, as a consequence, it shall be obliged to pay compensation in conformity with article 17 par. 1 of the FIFA Regulations.

- In this respect, in the absence of a compensation clause in the Employment Contract, the chamber proceeded with the calculation of the monies payable to the Player under the terms of the Employment Contract and the Agreement and considered that the Player would have received a total remuneration of EUR 264,000, had the relevant agreements been executed for the entire duration until natural expiry.

- Taking into account the said amount of EUR 264,000 as the basis for the calculation of the final amount of compensation, and in accordance with the Player's general duty to mitigate his damages, the chamber further considered that the Player signed an employment agreement with HŠK Zrinjski valid until 31 January 2014 under which he was to receive remuneration to the approximate amount of EUR 32,000 for the period between 1 December 2010 and 30 June 2013. Therefore the chamber decided that the amount of EUR 32,000 shall be deducted from the amount of EUR 264,000.

- In addition thereto, the chamber observed that the fact that the execution of the Employment Contract actually never started, was an element to be taken into consideration in determining the amount of compensation.

- As a result, the chamber decided to award the Player with an amount of EUR 80,000 as compensation for breach of contract, plus interest at the rate of 5% per annum.

- Moreover, considering that the breach by the Club, consisting in the failure to execute the contractual terms shortly after the signature of the relevant contracts, occurred during the protected period, the FIFA DRC also decided that the Club shall be sanctioned with a ban on registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the Appealed Decision.

VI. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 22 September 2014, the Club filed an appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against FIFA and the Player with respect to the Appealed Decision by submitting a statement of appeal in accordance with articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2013 (hereinafter referred to as the "CAS Code"). In its statement of appeal, the Appellant chose English as the language of the present arbitration. The Appellant also requested that the First Respondent be invited to produce a complete copy of the file of the FIFA DRC proceedings and that the deadline to file the appeal brief be extended for at least 10 days after the receipt of such document.

22. Together with its statement of appeal, the Club filed an application for the stay of the execution of the Appealed Decision in relation to the disciplinary sanction imposed by the FIFA DRC regarding the ban on registration of players.

23. By fax letter dated 2 October 2014, the CAS Court Office informed the Parties that the President of the Appeal Arbitration Division had decided to reject the Appellant's request to extend its deadline for filing the appeal brief.

24. On 3 October 2014, the Club filed its appeal brief according to article R51 of the CAS Code.

25. On 6 October 2014, the First and the Second Respondent jointly nominated Mr Manfred Nan, attorney-at-law in Arnhem, The Netherlands, as arbitrator in the present proceedings.

26. By fax letter dated 6 October 2014, the First Respondent informed the CAS Court Office that it had no objections to the Appellant's request to stay the execution of the Appealed Decision. On the same date, FIFA also requested the CAS Court Office that its deadline for the filing of its answer be set after the payment of the advance of costs by the Appellant pursuant to the provision of par. 3 of article R55 of the CAS Code. On 8 October 2014, the CAS Court Office informed the Parties that such request had been granted.

27. On 15 October 2014, the President of the CAS Appeals Arbitration Division decided to stay the execution of the Appealed Decision to the extent that it bans the Appellant from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods.

28. On 27 October 2014, the Second Respondent requested the CAS Court Office a five-day extension of his deadline for filing his answer.

29. On 28 October 2014, the CAS Court Office informed the Parties that the Player's request for an extension had been granted.

30. The Player filed his answer on 31 October 2014.

31. On 4 November 2014, the Appellant nominated Mr José Juan Pintó, attorney-at-law in Barcelona, Spain, as arbitrator.

32. On 7 November 2014, the Player filed a petition for challenge against Mr José Juan Pintó pursuant to article R34 of the CAS Code, based on Mr Pintó having been nominated four times by the counsel for the Appellant during the last two years.

33. By a decision rendered on 21 December 2015, after the filing of the respective observations of the Club, the challenged arbitrator and Mr Manfred Nan on the Second Respondent's petition for challenge, and after the filing of the Second Respondent's further comments, the ICAS Board, in the absence of any other factual element which could give rise to doubts as to Mr Pintó's independence or impartiality, rejected the Player's petition for challenge.

34. On 28 December 2015, the CAS Court Office informed the Parties that the Appellant had paid its share of advance of costs in the present arbitration proceedings and that, in accordance with article R55 of the CAS Code, the First Respondent was granted a deadline of 20 days as of receipt of the relevant communication to file its answer.

35. By fax letter on the same date, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

President:	Mr Fabio Iudica, attorney-at-law in Milan, Italy
Arbitrators:	Mr José Juan Pintó, attorney-at-law in Barcelona, Spain
	Mr Manfred Nan, attorney-at-law in Arnhem, the Netherlands.

36. The First Respondent filed its answer on 18 January 2016.

37. On 20 January and on 26 January 2016, respectively, the Appellant and the First Respondent informed the CAS Court Office that they preferred an award based solely on the Parties' written submissions.

38. By fax letter of the CAS Court Office on 2 February 2016, the Parties were invited to file all documents from the FIFA proceedings on which they intended to rely. Moreover, the Second

Respondent was granted an ultimate deadline until 8 February 2016 to express his preference whether to hold a hearing or not in the present proceedings.

39. On 4 February 2016, the Appellant requested the CAS Court Office that the First Respondent be invited to provide a complete copy of the file of the FIFA proceedings, since the Club could not have access to its relevant documents due to the war situation in Ukraine at that time.

40. By fax letter to the Parties on 5 February 2016, the CAS Court Office invited FIFA to provide a complete copy of the file concerning the proceedings at the outcome of which the Appealed Decision was rendered.

41. On 11 February 2016, FIFA submitted a copy of the relevant file of the DRC proceedings.

42. On 18 February 2016, the Second Respondent informed the CAS Court Office that he did not consider a hearing to be necessary in the present arbitration proceedings.

43. By letter of 14 March 2016, the CAS Court Office informed the Parties of the Panel's decision not to hold a hearing.

44. By fax letter dated 24 March 2016, the CAS Court Office forwarded the Order of Procedure to the Parties.

45. The Order of Procedure was returned duly signed to the CAS Court Office by the Parties on 31 March 2016.

46. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS over the present dispute and that their right to be heard has been respected.

VII. SUBMISSIONS OF THE PARTIES

47. The following outline is a summary of the main positions of the Appellant and the Respondents which the Panel considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Appellant and the Respondents, even if no explicit reference has been made in what follows. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

48. The Appellant made a number of submissions in its statement of appeal and in its appeal brief which can be summarized as follows.

49. According to the Club, the Player was submitted to some standard medical tests before the signing of the Employment Contract, but more extensive tests performed after the Player's registration with the Club, revealed that the Player's health conditions were absolutely unsatisfactory.

50. As a consequence, on 3 July 2010, just two weeks after the conclusion of the Employment Contract, the Club decided to offer the Player an amicable termination in order to allow him to find another club and offering compensation to him and to his former club in the amount of EUR 5,000 and 20,000, respectively.

51. Since transfer windows in Bosnia and Herzegovina ends every 1st of August, the Club maintains that the Player had enough time to find a new club after termination of the Employment Contract.

52. Moreover, the offer of EUR 5,000 as compensation for early termination corresponds to approximately 60% of the value of the new employment contract signed by the Player with HŠK Zrinjski on 1 December 2010 and, therefore, it is acceptable and fair since compensation for breach of contract cannot lead to unjustified enrichment of one of the parties.

53. In view of the foregoing, the Club objects that the imposition of the ban on registration of new players decided by the FIFA DRC is disproportionate and excessive in the present case, also taking into consideration that according to article 17 par. 4 of the FIFA Regulations, the imposition of disciplinary sanctions in case of breach of contract is not mandatory, even if the breach is committed during the "protected period".

54. In fact, consistent with CAS jurisprudence and FIFA practice, under the provision of article 17 par. 4 of the FIFA Regulations, sporting sanctions shall be imposed on a case-by-case basis and not as a result of an automatic application.

55. In essence, the Club contends that the CAS shall set aside the Appealed Decision insofar as it imposed the sporting sanction on the Club for the following reasons:

- the execution of the Employment Contract never started;
- the Club offered the Player compensation corresponding to almost 6 months salary under his new employment contract with HŠK Zrinjski;
- the Club also offered compensation to HŠK Zrinjski corresponding to almost 2 years of the Player's salaries with the club,
- the Club proposed the early termination only two weeks after the signing of the Employment Contract;
- the compensation granted to the Player by the Appealed Decision is enough punishment for the Club;

- finally, the FIFA DRC was not obliged to impose disciplinary sanctions to the Club under the FIFA Regulations.

56. In its appeal brief, the Appellant submitted the following requests for relief:

1. *"Accept this Appeal Brief against the decision rendered by FIFA on 25 April 2014;*

2. *Adopt an award to set aside the decision appealed;*

3. *Upheld the Appeal presented and in virtue of the arguments that will be presented decide to cancel the sporting sanctions imposed on the Club;*

4. *Condemn the Respondents to the payment of the whole CAS administration costs and Panel fees;*

5. *Fix a sum to be paid by the Respondents to the Club in order to cover its defence fees and costs in the amount of CHF 15,000".*

B. First Respondent's Submissions and Requests for Relief

58. The position of FIFA is set forth in its answer and can be summarized as follows.

59. First of all, FIFA emphasizes that the Appellant has not presented any objections whatsoever to the FIFA DRC's main finding in the Appealed Decision according to which the Club is responsible for terminating the Employment Contract without just cause in the protected period.

60. As a consequence, on the one hand, the Club accepts its responsibility for breach of contract together with the obligation to pay the amount of EUR 80,000 awarded by the Appealed Decision to the Player as compensation and, on the other hand, the amount of compensation cannot anymore be revised by the CAS (*ne ultra petita*).

61. Therefore, the scope of the present arbitration proceedings is limited to the issue whether the imposition of sporting sanctions on the Club by the FIFA DRC is justified or not.

62. According to FIFA's well-established jurisprudence, the Appealed Decision correctly corroborated the principle that a player's physical or medical condition cannot constitute a just cause for a club to terminate an employment contract in the sense of article 17 par. 3 of the FIFA Regulations.

63. In fact, pursuant to article 18 par. 4 of the FIFA Regulations, a club wishing to employ a player has to exercise due diligence and carry out all relevant medical examinations prior to entering into an employment contract with said player.

64. In addition, the Club admitted having terminated the Employment Contract without just cause.

65. In view of the above, the FIFA DRC correctly concluded that the Club was responsible for breach of contract, and that such behaviour implies the application of article 17 of the FIFA Regulations, with respect to the payment of compensation to the Player as well as the potential imposition of sporting sanction, since the breach occurred during the protected period.

66. The imposition of sporting sanctions on the Appellant is justified since the Club showed a complete negligence and carelessness towards the Player and a total disrespect of the Employment Contract and the FIFA Regulations which is also confirmed by the fact that the Club failed to reply to the Player's claim in front of the FIFA DRC.

67. The Appellant's argument to the contrary are unfounded and in contrast with the regulatory basis and the well-established jurisprudence of the FIFA DRC and the CAS on the application of sporting sanctions within the framework of the FIFA Regulations.

68. With regard to the Appellant's argument that sporting sanctions shall not be imposed automatically, FIFA underlines that although the wording or article 17 par. 4 of the FIFA Regulations suggests that in the case of termination of an employment contract without just cause during the protected period, sporting sanctions "shall", in principle, be imposed on the party in breach, the well-established jurisprudence of the FIFA DRC is in favour of a more flexible application, in the sense that the imposition of disciplinary sanction would be left to the free discretion of the deciding authority, depending on the specific circumstances of the individual case.

69. Therefore, FIFA basically agrees with the Appellant when it stated that the FIFA DRC *"was not obliged"* to impose sporting sanctions on the Club.

70. On the other hand, FIFA maintains that the FIFA DRC had the "power" to impose sporting sanctions according to article 17 par. 4 of the FIFA Regulations, and rightly decided to impose them on the Club, in view of the specific circumstances of the present matter.

71. Moreover, the Club failed to prove the existence of *"clear and strong argument*s*"* which can lead to the annulment of the sporting sanctions imposed by the Appealed Decision, despite having the burden to do so, in line with the long-standing and established jurisprudence of the CAS.

72. Furthermore, the unilateral termination by the Club without just cause directly caused the unemployment of the Player for a period of six months, which is a significant amount of time.

73. Neither the fact that the Employment Contract was never executed, nor the fact that the FIFA DRC reduced the amount of compensation requested by the Player to EUR 80,000 can be valid reasons for avoiding the application of sporting sanctions.

74. In addition, the amount offered by the Club to the Player as compensation for the early termination of the Employment Contract should not be assessed in comparison to the value of the new contract signed by the Player with HŠK Zrinjski, but rather to the value of the Employment Contract and, in any case, such offer is absolutely irrelevant in order to prove that the sporting sanctions imposed on the Club are allegedly neither reasonable nor justified.

75. In its answer, the First Respondent submitted the following requests for relief:

"In the light of all the above considerations, we request for the present appeal against the challenged decision of the Dispute Resolution Chamber dated 25 April 2014 to be rejected and the relevant decision to be confirmed in its entirety. All costs related to the present procedure as well as the legal expenses of the first Respondent shall be borne by the Appellant".

C. Second Respondent's Submissions and Requests for Relief

76. The position of the Second Respondent is set forth in its answer and can be summarized as follows.

77. Although the Player was severely damaged by the Appealed Decision since the amount of compensation was extremely low and unreasonable, and although he took no advantage of the imposition of sporting sanctions on the Club, he could not file an appeal before the CAS since he could not afford the advance of costs of the proceedings.

78. With regard to the facts of the case, the Player argues that at the time of the signing of the Employment Contract, he was invited by the Club to join the pre-season preparations of the team in Austria and that, upon his arrival, he was submitted to a thorough medical examination after which the Employment Contract was signed.

79. Therefore, the Appellant's argument that the medical tests were not performed before the signing and that the Player was not fit for the professional activity is not correct.

80. Moreover, the Appellant's contentions that the Player did not satisfy the Club's requirements are insulting as well as unfounded as confirmed by a publication of the Club's website on 17 June 2010, and therefore the decision by the Club to terminate the Employment Contract was unexpected and arbitrary.

81. Due to the unjustified and brutal behaviour of the Club, the Player suffered from psychological problems after termination of the Employment Contract and his football career was not compromised only thanks to his former club HŠK Zrinjski which offered him the opportunity to sign a new contract on 1 December 2010 and earn a living.

82. In this context, the Appellant's offer of EUR 5,000 as compensation for the unilateral termination of the Employment Contract is meaningless and insulting.

83. The Club's behaviour is contrary to the fundamental provisions of the FIFA Regulations with regard to the maintenance of the contractual stability and respect of contractual obligations and, particularly, it violates articles 13, 17 and 18 par. 4 of the said Regulations, besides the fact that the Club even failed to answer to FIFA's invitation to reply to the Player's claim, which confirms its complete carelessness and indifference.

84. Notwithstanding the seriousness of the Club's violations, the FIFA DRC awarded the Player with the minor amount of EUR 80,000 despite the request of EUR 264,000 which was fair and proportionate in consideration of all the circumstances of the present matter.

85. In view of the foregoing, the Player requested that the present appeal be rejected and that he be awarded an appropriate contribution towards the expenses incurred in the present arbitration proceedings.

VIII. CAS JURISDICTION

86. The jurisdiction of CAS shall be examined in the light of article R47 of the CAS Code, which reads as follows: *"An Appeal against the 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"*.

87. The Appellant relies on article 67, par. 1 of the FIFA Statutes which reads as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

88. The jurisdiction of the CAS is not contested by the Respondents and was confirmed by the signature of the Order of Procedure. Accordingly, the Panel is satisfied that it has jurisdiction to hear the present case.

89. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and/or refer the case back to the previous instance.

IX. ADMISSIBILITY OF THE APPEAL

90. Article R49 of the CAS 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"*.

91. More specifically, the Panel notes that article 67 para 1 of the FIFA Statutes determines as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

92. The Panel notes that the FIFA DRC rendered the Appealed Decision on 25 April 2014 and that the grounds of the Appealed Decision were notified to the Parties on 2 September 2014. Considering that the Appellant filed its statement of appeal on 22 September 2014, i.e. within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was filed timely and is therefore admissible.

X. APPLICABLE LAW

93. 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".

94. Article 66 para 2 of the FIFA Statutes so provides:

"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".

95. The Panel observes that according to consistent CAS case law *"by accepting the jurisdiction of the CAS as established in the FIFA statutes, the parties accept that, pursuant to the above quoted Articles R58 of the CAS Code and 66 para. 2 of FIFA Statutes, CAS panels decide the dispute in accordance with the rules and regulations of FIFA, with additional application of Swiss law on a subsidiary basis"* (see CAS 2014/A/3690).

96. Moreover, both the Appellant and the Respondents make reference to the FIFA Regulations as the rules governing the present dispute.

97. In consideration of the above and pursuant to article R58 of the CAS Code, the Panel holds that the present dispute shall be decided according to the FIFA Regulations as a first choice, with Swiss law applying subsidiarily.

98. With regard to the applicability *ratione temporis* of the relevant FIFA Regulations, the Panel holds that the present case is governed by the 2010 edition, given that the Player lodged his claim with FIFA on 7 November 2011.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

99. With regard to the scope of review of the present proceedings, the Panel preliminarily notes that the Club in its Appeal Brief explicitly *"considers that the Appealed decision shall be set aside in the sense of cancelling the sporting sanctions imposed on the Appellant",* which position is confirmed in its requests for relief. As such, the Club has challenged the Appealed Decision only to the extent that it imposes sporting sanctions to the Club, as a result of the breach of contract during the protected period.

100. In this respect, in the "Preliminary remarks" of its answer, FIFA observes that the Appellant has not presented any objections to the FIFA DRC's finding, according to which the Club is responsible for termination of the Employment Contract without just cause during the protected period, nor has the Club challenged the Appealed Decision with regard to its obligation to pay compensation to the Player in the amount of EUR 80,000.

101. Moreover, despite the Second Respondent's arguments that the compensation awarded by the FIFA DRC is extremely low and unreasonable, he has merely requested that the Club's appeal be rejected and the Appealed Decision be confirmed, without presenting any independent appeal against the Appealed Decision.

102. In this context, the Panel observes that, without prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita*.

103. In consideration of the above, the Panel's scope of review in the present matter relates to the issue whether the imposition of sporting sanctions to the Club is warranted and proportionate or not in regard to the violations committed by the Club.

104. First of all, the Panel notes that the imposition of a disciplinary sanction requires a violation of existing laws and or bylaws and a legal basis imposing the relevant sanction, and that the "principle of legality" requires that the offences and sanctions must be clearly and previously defined by law. In other words, sports organizations cannot impose a sanction without a proper legal or regulatory basis and such sanction must also be predictable (CAS 2014/A/3765; CAS 2011/A/2670; CAS 2008/A/1545).

105. In this respect, the Panel refers to the provision of article 17 par. 4 of the FIFA Regulations governing the consequences of terminating a contract without just cause, which reads as follows: *"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period.* […] *The club shall be banned from registering any new player, either nationally or internationally, for two registration periods"*.

106. The Panel also recalls that, according to the definitions set forth under the FIFA Regulations, the "protected period" is *"a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*.

107. As it is undisputed that the Club was in breach of the Employment Contract during the "protected period", the Panel finds that the sporting sanction was imposed on the Club on a regulatory basis and according to the "principle of legality".

108. Nonetheless, the Appellant argues that, according to the consistent practice of FIFA, sporting sanctions shall not be imposed automatically and that, considering the circumstances of the present case, the imposition of a two period ban from registration of new players is not proportionate and shall therefore be repealed.

109. As it is also reaffirmed by FIFA in its submissions in the present proceedings, although the clear wording of article 17 par. 4 of the FIFA Regulations suggests that the competent body has a duty to impose sporting sanctions whenever a club is found in breach of contract during the protected period, there is a well-established and consistent practice of the FIFA DRC, which is also acknowledged by CAS jurisprudence (CAS 2014/A/3765; CAS 2009/A/1880; CAS 2007/A/1359), in the sense of adopting a more flexible application of the relevant provision which gives the deciding authority the discretion to renounce the application of sporting sanctions, even if the breach is committed during the protected period, in view of particular and specific circumstances, on a case-by-case basis.

110. This discretion is also contemplated in the Commentary on the FIFA Regulations under article 17, which in fact provides that *"A club that breaches a contract with a player during the protected period risks being prohibited from registering new players, either domestically or internationally, for two registration periods following the contractual breach"*.

111. Therefore, the Panel is satisfied that the imposition of sporting sanctions on a club found to be in breach of contract during the protected period is not mandatory.

112. That being said, the Panel turns its attention to the specific circumstances in which the breach by the Club was committed and shares the opinion of the First Respondent that the Appellant's behaviour was particularly negligent and disrespectful towards the Player and towards its obligations deriving from the Employment Contract and the applicable FIFA Regulations.

113. Moreover, the Panel refers to the well-established CAS jurisprudence according to which, whenever the wording of a provision is clear, one needs clear and strong arguments to deviate from it (CAS 2009/A/1880; CAS 2007/A/1359) and, therefore, the Panel believes that only particular circumstances would justify refraining from the application of sporting sanctions under article 17 par. 4 of the FIFA Regulations.

114. In this respect, the Panel is of the opinion that the Club failed to provide clear and strong arguments, which would justify not imposing the sanction laid down under article 17 par. 4 of the FIFA Regulations.

115. The Panel believes that the Cancellation Proposal made by the Club to the Player for an amicable termination of the Employment Contract does not constitute a suitable argument to the said purpose, as well as the fact that the Employment Contract was never executed does not constitute any reason to not apply the sanction imposed.

116. In the opinion of the Panel the fact that the Club proposed the early termination only two weeks after the signing of the Employment Contract and a certain compensation to the Player or HŠK Zrinjski is not relevant at all.

117. The sporting sanction is contemplated in the regulations (article 17 par. 4 of the FIFA Regulations) as an additional sanction to the economical compensation; for this reason there is no sense in speculating about the possibility of considering the economical compensation

to be enough punishment. The sporting sanction is contemplated in the regulations not as alternative to the economical compensation but as an additional sanction to the economical compensation.

118. In consideration of all the above, the Panel concurs with the FIFA DRC and holds that the imposition of sporting sanctions on the Club by the Appealed Decision is warranted and proportionate and that, therefore, the Club's appeal shall be rejected.

119. As a consequence of the final findings above, the Panel shall not address any other issues and all other motions or prayers for relief are dismissed.

XII. CONCLUSION

120. Consequently, in view of all the above, the Panel rejects the appeal filed by the Club and confirms the Appealed Decision in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 September 2014 by Metallurg Donetsk FC against the decision rendered by the FIFA Dispute Resolution Chamber on 25 April 2014 is rejected.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 25 April 2014, is confirmed.

3. (…).

4. (…).

5. (…).

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