Arbitration CAS 2014/A/3822 FC Dacia SRL v. Rohan Ricketts, award of 29 December 2016

Panel: Mr Sofoklis Pilavios (Greece), Sole Arbitrator

Football
Contract of employment between a player and a club
Burden of proof regarding the validity of a second contract amending a first contract
Termination of the employment relationship with just cause by the player
Financial consequences resulting from the termination

1. **In accordance with the principle of the burden of proof, it is up to the party invoking arguments to justify the non-payment in an employment relationship to establish the existence of the facts founding such arguments. In this respect, despite the existence of several elements in the factual background surrounding the employment relationship between a player and a club that seem to be in sheer contradiction with the club's position that only a first contract was proposed to the player and eventually signed between the parties, it can be considered in light of the clear conclusion of a forensic expert report that the club has discharged its burden of proof in establishing that only the first contract was signed by its representative and that only its terms are binding between the parties. Hence, the player cannot invoke the terms of a second contract against the club as the latter was not signed by the player's representative but by an unknown person.**

2. **The definition of "just cause", as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances. Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. The judging body determines at its discretion whether there is just cause. In this respect, a player has objective reasons to believe that a club has no intention to perform its side of the employment agreement if he has been excluded from the team. Against this background there is no reason for the player to give a warning prior to his resignation if the player has no motive to believe that the club's decision to substitute him was not final.**

3. **Absent any specification in a contract regarding the amount of compensation payable in the event of premature termination due to a breach of the club's obligations, the criterion of article 17(1) RSTP shall be taken into account. In this regard, article 17(1) does not give priority to the consideration of the "law of the country concerned". The CAS has held that this is merely a factor to consider while retaining discretion to determine what weight (if any) to afford it. In addition, the "specificity of sport"**

criterion is to be used to verify that the solution reached is just and fair. Lastly, in view of the "objective criteria" it is important to underline that the list of article 17(1) is not exhaustive and that the broad scope of criteria indicated tends to ensure that a fair amount of compensation is awarded to the prejudiced party. In other words, the particularities of each claim for compensation still need to be examined to establish the compensation amount.

I. PARTIES

1. F.C. Dacia S.R.L. (the "Club" or the "Appellant") is a football club playing in the top division of the Moldovan football league system, with seat in Kishinev, Moldova. F.C. Dacia is affiliated to the Moldovan Football Federation, which is, in turn, a member of the Fédération Internationale de Football Association (FIFA).

2. Rohan Ricketts (the "Player" or the "Respondent") is a British professional football player.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 1 June 2010, the Player authorised Leonid Shatan, FIFA Player's Agent (the "Agent") to represent him for the purposes of securing a contract with the Club.

5. On 23 July 2010, the Club and the Player concluded an employment contract for the period from 23 July 2010 until 20 June 2013 (the "First Contract"). The Contract *inter alia* provides as follows (in the translation provided by the Club):

> *"**4. The obligations of the Club***
>
> *4.1. The Club undertakes:*
>
> *a to pay to the "Player" a) the salary in the amount of 2500 MDL per month, until 15th of each month*
>
> *[…]*
>
> ***12. Additional provisions***
>
> *12.1. The "Club" and the "Player" undertake to rigorously comply with their obligations under this agreement.*

12.2. The failure to comply, or the partial fulfilment by the "Club" of its obligations under this agreement, brings about the early termination of the agreement, by payment of entitlements to the Player.

12.3. The failure to comply, or the partial fulfilment by the "Player" of his obligations under this agreement, brings about the early termination of the agreement, with the full compensation of the expenses and costs related to his supply and insurance of the training process incurred by the "Club".

[…]".

6. On the same 23 July 2010, the Player claims that he entered into an additional contract with the Club, which was valid from 24 July 2010 until 20 June 2013, with a club option for an additional year (the "Second Contract"). The Club challenges the validity of the Second Contract by arguing that the signature of its representative was falsified. The Second Contract provides inter alia the following (in the bilingual version that was submitted by the Player to the FIFA DRC):

*"**3. The obligations of the Club***

3.1 The Club undertakes

a To pay to the player 5000 USD bonus.

b to pay to the "Player" a) the salary in the amount of 6545 USD per month, for 11 months annually, until 15th of each month (in cash)

[…]

11. Additional provisions

11.1. The "Club" and the "Player" undertake to rigorously comply with their obligations under this agreement.

11.2. The failure to comply, or the partial fulfilment by the "Club" of its obligations under this agreement, brings about the early termination of the agreement, by payment of entitlements to the Player.

11.3. The failure to comply, or the partial fulfilment by the "Player" of his obligations under this agreement, brings about the early termination of the agreement, with the full compensation of the expenses and costs related to his supply and insurance of the training process incurred by the "Club".

Rent expenses […]".

7. There is disagreement between the parties as to the facts relevant to the contractual dispute at issue here. The Sole Arbitrator will refer to such disputed matters explaining what the position of each party is, whenever possible.

8. On 24 July 2010, the Club paid to the Player USD 5,000, the nature of which is disputed between the parties. Whereas the Club claims that the payment was an advance of the Player's salary under the First Contract, which was requested by the Player itself, the Player submits that said amount corresponded to the bonus under article 3.1 lit. a of the Second Contract.

9. On 28 July 2010, the Player returned to England to obtain certain documents, which were necessary for issuing a working visa in Moldova and, in August 2010, he arrived in Chisinau to join the Club.

10. On 1 October 2010, the Player wrote a letter to the Club complaining that he has not received any of his salary payments yet and setting a deadline for payment to the Club until 7 October 2010.

11. On 25 October 2010, the Player wrote a second letter to the Club along the same lines and set a deadline for the payment of outstanding salaries until 30 October 2010.

12. On the same 25 October 2010, the Player submits that he was informed in person by the Club's Sporting Director that the Club had terminated their employment relationship and that he would receive his outstanding salaries, as well as a flight ticket to any destination he would like. After that the Player was not allowed to train with the Club and on 31 October 2010 he was asked to leave the hotel where he was staying.

13. On 3 November 2010, the Player sent a third letter to the Club stating *inter alia*: *"… I am now three months without a salary and have not heard anything from the club about sorting out this serious situation. I have no other choice but to terminate the player contract between myself and FC DACIA by just cause with immediate effect"*.

14. On 5 November 2010, the Player left Moldova using a flight ticket that was paid by the Club.

B. Proceedings before the FIFA Dispute Resolution Chamber

15. On 7 February 2011, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (the "FIFA DRC") against the Club, requesting (following an amendment to his initial claim) payment of (i) MDL 90,000, corresponding to remuneration under the First Contract (MDL 2,500 x 36 months), (ii) USD 215,985, corresponding to remuneration under the Second Contract (USD 6,545 x 33 months), (iii) EUR 5,400 corresponding to rent expenses for 3 years under the Second Contract (EUR 150 x 36 months), minus the amount of USD 26,009.20, corresponding to the salary he received from his subsequent clubs, SV Wilhelmshaven and Shamrock Rovers, *i.e.* EUR 6,850 and 12,750 respectively. Alternatively, and in the event he would not be entitled to compensation for the third year of the Contracts, the Player requested the payment of remuneration in accordance with the First and the Second Contract for the two first years of their term. Finally, the Player requested that sporting sanctions be imposed on the Club and that it be ordered to pay all procedural costs and legal fees incurred by the Player.

16. The Club, by way of its response claims that the Second Contract is forged and only the First Contract is valid and in force between the parties, which was also the only contract that was registered with the Moldovan Football Federation. This finding is supported by a report produced by CEXIN, a Moldovan institution of independent experts. Moreover, the Club submits that it paid to the Player the amount of USD 5,000 as an advance of his salary under the First Contract, upon the Player's own request in order to cover the medical expenses of

his father's treatment, and that it never received the default letters or the termination letter allegedly sent by the Player. Based on the above, the Club also lodged a counterclaim with the FIFA DRC against the Player on the basis of breach of the Player's obligations under the First Contract, requesting that FIFA: (a) impose sporting sanctions on the Player until 20 June 2013, (b) order the Player to reimburse all costs incurred by the Club with respect to the employment relationship in the amount of EUR 686 and USD 7,130 and to pay compensation to the Club for moral damage in the amount of USD 100,000.

17. The German football club SV Wilhelmshaven e.V. was also admitted into the proceedings before the FIFA DRC as "Intervening Party".

18. The Player contested the aforementioned arguments and submissions of the Club, by arguing in particular that it is common practice of the Club to sign two different employment contracts with its players and that his father was never ill and in need of medical treatment. The Player further submitted that had the parties actually signed only the First Contract, his weekly salary would have been only GBP 31.37, which is an amount less than half of the unemployment allowance paid in England.

19. On 30 July 2014, the FIFA DRC rendered its decision (the "Appealed Decision"), by which it partially upheld the Player's claim. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant/Counter-Respondent, Rohan Ricketts, is partially accepted.

2. The Respondent/Counter-Claimant, FC Dacia Chisinau, is ordered to pay to the Claimant/Counter-Respondent outstanding remuneration in the amount of MDL 7,500 and USD 19,635, plus 5% interest p.a. as from 7 February 2011 until the date of effective payment, ***within 30 days*** *as from the date of notification of this decision.*

3. The Respondent/Counter-Claimant is ordered to pay to the Claimant/Counter-Respondent compensation in the amount of USD 93,000, plus 5% interest p.a. as from 7 February 2011 until the date of effective payment, ***within 30 days*** *as from the date of notification of this decision.*

4, In the event that the amounts due to the Claimant/Counter-Respondent in accordance with the above-mentioned numbers 2. and 3., plus interest, are not paid by the Respondent/Counter-Claimant within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claims lodged by the Claimant/Counter-Respondent are rejected.

6. The counterclaim of the Respondent/Counter-Claimant is rejected.

[…]".

20. On 24 October 2014, FIFA communicated to the parties the grounds of the Appealed Decision, following a request of the Club, *inter alia*, determining the following:

"8. […] [T]he Chamber deemed that the underlying issue in this dispute, considering the claim of the Claimant/Counter-Respondent and the allegations and counterclaim of the Respondent/Counter-

Claimant, was to determine whether the employment relationship had been unilaterally terminated with or without just cause by one of the parties, and which party was responsible for the early termination of the contractual relationship in question. The DRC also underlined that, subsequently, if it were found that the employment relationship had been breached by one of the parties without just cause, it would be necessary to determine the consequences for the party that caused the unjust breach of the relevant employment relationship.

[…]

10. *At this stage, the DRC considered it appropriate to remark that, as a general rule, FIFA's deciding bodies are not competent to decide upon matters of criminal law, such as the ones of alleged falsified signature or document, and that such affairs fall into the jurisdiction of the competent national criminal authority.*

11. *In continuation, the DRC recalled that, according to art. 12 par. 6 of the Procedural Rules, all documentation remitted shall be considered with free discretion and, therefore, the Chamber focused its attention on the second contract as well as on the other documents containing the signature of the representative of the Respondent/Counter-Claimant provided by the parties in the context of the present dispute. In this regard, the DRC pointed out that the original version of the second contract was provided by the Claimant/Counter-Respondent.*

12. *After a thorough analysis of the aforementioned documents, in particular, comparing the relevant signatures of the representative of the Respondent/Counter-Claimant and the stamp of the Respondent/Counter-Claimant in the various documents provided in the present affair, the Chamber had no other option but to conclude that, for a layman, the signatures and stamp on such documents appear to be the same.*

13. *In addition, the Chamber observed that, according to the parties and to FAM, an amount of USD 5,000 was paid to the Claimant/Counter-Respondent at the beginning of his contract. In spite of the parties' disagreement as to what the aforementioned amount corresponded to –the Claimant/Counter-Respondent argues that it is the amount set forth in art. 3.1a) of the second contract (cf. Point 1.7 above); whereas the Respondent/Counter-Claimant sustains that it is only an advance of salaries as per the first contract-, it is a fact that the payment of such exact amount is established in the second contract and does not appear to correspond to an advance of the Claimant/Counter-Respondent's salaries as per the first contract since it would correspond to an advance of more than two years of remuneration. Therefore, it had to consider the second contract also as a legal basis in the present dispute.*

14. *Subsequently, the Chamber observed that, since the parties did not dispute the fact that the Claimant/Counter-Respondent left Moldova on 5 November 2010 (cf. point II.5. above), the employment relationship between the parties was to be considered as terminated by the Claimant/Counter-Respondent on such date.*

15. *Having established the contractual basis of the present dispute, as well as the fact that the contractual relationship between the parties had been terminated by the Claimant/Counter-Respondent on 5 November 2010, the Chamber went on to analyse whether this termination had been with or without just cause.*

[…]

20. In view of the receipt for USD 5,000 signed by the Claimant/Counter-Respondent and submitted by both parties, the DRC established that the Respondent/Counter-Claimant fulfilled its obligation as per art. 3.1a) of the second contract (cf. point 1.7. above).

[…]

22. However, the DRC observed that the Respondent/Counter-Claimant failed to prove that it paid to the Claimant/Counter-Respondent the relevant salaries under the first contract and the second contract, amounting to a total of MDL 7,500 and USD 19,635.

23. Consequently, and considering that the Respondent/Counter-Claimant had repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant/Counter-Respondent, the Chamber decided that the Claimant/Counter-Respondent had just cause to terminate the first contract and the second contract and that, as a result, the Respondent/Counter-Claimant is to be held liable for the early termination of such employment relationship with just cause by the Claimant/Counter-Respondent.

24. In continuation, prior to establishing the consequences of the breach of the first contract and the second contract without just cause by the Respondent/Counter-Claimant in accordance with art. 17 par. 1 of the Regulations, the Chamber held that it had to address the issue of any unpaid remuneration.

25. At this point, the DRC recalled that the Claimant/Counter-Respondent was entitled to 11 monthly salaries of USD 6,545 plus MDL 2,500, as well as to a 12th monthly salary of only MDL 2,500, per year and that the Respondent/Counter-Claimant had not given any valid explanation or justification for the non-payment of the relevant salaries under the first contract and the second contract as referred to in point II.22 above.

26. Based on the foregoing, the DRC stressed that the Respondent/Counter-Claimant must fulfil its obligations as per the first contract and the second contract in accordance with the general legal principle of pacta sunt servanda. Consequently, the Chamber decided that the Respondent/Counter-Claimant is liable to pay to the Claimant/Counter-Respondent the remuneration that was outstanding at the time of the early termination of the aforesaid contracts, i.e. the amount of MDL 7,500 and USD 19,635, corresponding to monthly salaries for three months as per both contracts.

[…]

29. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant/Counter-Respondent is entitled to receive compensation from the Respondent/Counter-Claimant for the termination of the first contract and the second contract without just cause, in addition to the aforementioned amounts of MDL 7,500 and USD 19,635, on the basis of both contracts.

[…]

31. In application of the relevant provision, the Chamber held that it, first of all, had to clarify as to whether the first contract and the second contract contain a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. The members of the Chamber recalled that, according to art. 12.2 of the first contract and art. 11.2 of the second contract, "the failure to comply, or the partial fulfilment by the Club of its obligations under this agreement, brings about the early termination of the agreement, by payment of entitlements to the Player".

32. The members of the Chamber agreed that this clause is not clear and, in case it refers to entitlements of the Claimant/Counter-Respondent up to the date of termination of the employment relationship, it would be to the benefit of the Respondent/Counter-Claimant only and, therefore, it cannot be taken into consideration in the determination of the amount of compensation.

33. As a consequence, the members of the Chamber determined that such amount of compensation payable by the Respondent/Counter-Claimant to the Claimant/Counter-Respondent had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said article provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of payable compensation. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.

34. In order to estimate the amount of compensation due to the Claimant in the present case, the members of the Chamber first turned their attention to the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, which criterion was considered by the Chamber to be essential. The members of the Chamber deemed it important to highlight that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and the new contract, if any, in the calculation of the amount of compensation.

35. In accordance with the first contract, which was to run until 20 June 2013, the Claimant/Counter-Respondent was to receive remuneration amounting to MDL 80,000 after the breach of contract, corresponding to 32 monthly salaries under such contract.

36. Likewise, in accordance with the second contract, which was to run also until 20 June 2013, the Claimant/Counter-Respondent was to receive remuneration amounting to USD 196,350 after the breach of contract, corresponding to 30 monthly salaries under such contract.

37. At this point, the members of the Chamber emphasised that a validity clause like art. 1.2. of the second contract, which provides "for a period of 2+1 year (season) to club options", is to the benefit of the Respondent/Counter-Claimant only and, therefore, it cannot be taken into consideration, especially in view of the fact that the parties expressly set forth the validity of such contract from 24 July 2010 until 20 June 2013 (cf. 1.6. above).

38. Furthermore, the Claimant/Counter-Respondent was to receive EUR 4,800, corresponding to 32 monthly payments for rent expenses from November 2010 until June 2013.

39. Consequently, the Chamber concluded that the amount of USD 208,000 serves as the basis for the final determination of the amount of compensation for breach of contract in accordance with the first contract and the second contract (cf. points I.2 and I.7 above).

40. In continuation, the Chamber verified as to whether the Claimant had signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of the first contract and the second contract in connection with the player's general obligation to mitigate his damages.

41. The Chamber recalled that the Claimant signed five employment contracts with five different clubs, including the Intervening Party, from 31 January 2011 until 20 June 2013, in accordance with which the Claimant was to receive a total remuneration of approximately USD 115,000.

[…]

43. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Claimant/Counter-Respondent's general obligation to mitigate his damage, the Chamber decided to partially accept the Claimant/Counter-Respondent's claim and that the Respondent/Counter-Claimant must pay the amount of USD 93,000 as compensation for breach of the first contract and the second contract in the case at hand.

[…]

46. In conclusion, the Dispute Resolution Chamber decided that the Respondent/Counter-Claimant has to pay MDL 7,500 and USD 19,635 to the Claimant/Counter-Respondent relating to outstanding remuneration as well as USD 93,000 as compensation for the unjustified breach of the first contract and the second contract by the Respondent/Counter-Claimant.

[…]".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 14 November 2014, the Appellant submitted a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") to the Court of Arbitration for Sport (the "CAS"), challenging the Appealed Decision. The statement of appeal was directed against the Respondent and against the German football club SV Wilhelmshaven e.V.

22. With its statement of appeal, the Appellant also requested that its appeal be submitted to a Sole Arbitrator in accordance with Article R50 of the Code.

23. On 24 November 2014, the Appellant withdrew its appeal against the German football club SV Wilhelmshaven e.V.

24. On 25 November 2014, the Respondent objected to SV Wilhelmshaven e.V. being withdrawn from this arbitration.

25. On 5 December 2014, the CAS Court Office informed the parties that in view of the fact that the Appellant maintains SV Wilhelmshaven e.V. out of the present arbitral proceedings, the latter cannot be considered as Respondent in the present arbitration.

26. On 12 December 2014, the Appellant filed its appeal brief requesting from the CAS that:

"I. The appeal is upheld.

II. The decision issued on 30 July 2014 by the FIFA Dispute Resolution Chamber is set aside.

Ruling de novo

III. Rohan Ricketts terminated the employment contract with FC Dacia without just cause and as a result thereof is condemned to pay to FC Dacia the amount of EUR 77,590 (SEVENTY SEVEN THOUSAND FIVE HUNDRED NINETY EUROS) as compensation.

IV. In addition, interest at a rate of 5% per year shall accrue on the amount of compensation under point III. from 5 November 2010 until its entire effective payment.

Ruling de novo, on a subsidiary basis only in the event that the CAS holds that the Player had a just cause to terminate the employment relationship with FC Dacia

IV. (sic) FC Dacia is not condemned to pay any compensation to Rohan Ricketts.

V. Alternatively, FC Dacia is condemned to pay as compensation to Rohan Ricketts an amount to be determined at the discretion of the Panel which shall highly reduce the excessive, disproportionate and/or incorrectly determined amount of compensation awarded to Rohan Ricketts in the FIFA Dispute Resolution Chamber decision of 30 July 2014.

In any and all the above-mentioned cases

VI. Rohan Ricketts shall bear all the costs of this arbitration.

VII. Rohan Ricketts shall compensate FC Dacia for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel".

27. The Appellant also requested in its appeal brief that the CAS appoint an independent forensic expert to analyse the signature of the Appellant's representative in the Second Contract and that the Respondent be ordered to produce his employment contracts with Shamrock Rovers, Exeter City FC and Dempo SC, which were signed after the termination of the employment relationship between the parties.

28. On 22 December 2014, the Respondent informed the CAS Court Office that he agreed with the appointment of a Sole Arbitrator in this matter.

29. On 23 December 2015, the CAS Court Office informed the parties that a Sole Arbitrator was appointed in this matter.

30. On 30 January 2015, the CAS Court Office informed the parties that Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece, had been appointed as Sole Arbitrator in this matter.

31. On 2 March 2015, the Respondent filed its answer in accordance with Article R55 para. 1 of the Code requesting the CAS to rule that:

"9.1.1 The appeal is dismissed.

9.1.2 The Appealed Decision issued on 30 July 2014 by the FIFA DRC is upheld.

9.1.3 The Club shall bear all the costs of the arbitration.

9.1.4 The Club shall compensate the Player for his legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Sole Arbitrator.

9.1.5 SV Wilhelmshaven be joined to the proceedings.

9.2 Or, in the alternative:

9.2.1 The appeal is partially allowed.

9.2.2 That the Sole Arbitrator awards the Player compensation, as determined by the Sole Arbitrator, due to the termination of the contractual relationship.

9.2.3 In addition, interest at a rate of 5% p.a. to accrue on the amount of compensation.

9.2.4 The Club shall bear all the costs of the arbitration.

9.2.5 That the Club shall compensate the Player for his legal and other costs incurred in connection with the arbitration, in an amount to be determined at the discretion of the Sole Arbitrator.

9.2.6 SV Wilhelmshaven be joined to the proceedings".

32. The Respondent further included in his answer several requests for evidentiary measures. In particular, the Respondent requested that (i) the Sole Arbitrator and, if necessary, an independent expert, analyse the signature of the representative of the Appellant and its stamp placed in the Second Contract by comparing it with the First Contract and other employment contracts signed by the Appellant for other players, in order to determine whether they have been falsified or not, (ii) SV Wilhelmshaven e.V. be joined as a party to this proceedings, in order for the Respondent to be able, in the event of a successful outcome, to enforce the CAS decision against SV Wilhelmshaven e.V. as well, (iii) the witnesses be allowed to provide evidence by video or telephone conference during the hearing, (iv) the Sole Arbitrator order the Club to produce all correspondence between the Agent and the Club, any other agreement it concluded with the player Michael Babatunde, as well as any agreement between the Agent and the Club with respect to the Respondent, and (v) the alleged witness statements and collective letter by players submitted by the Appellant be either ruled as inadmissible or not considered as significant.

33. On 3 March 2015, the Respondent, within the additional time limit granted to him by the CAS Court Office to file his answer, submitted a witness statement by Mr Eric Sackey.

34. On 3 March 2015, the CAS Court Office invited the parties to inform the CAS whether they prefer a hearing to be held in this matter.

35. On 10 March 2015, the Appellant informed the CAS Court Office that it prefers that a hearing is held in this matter. The Appellant also requested that Respondent's Exhibit 22 (a CAS award in the matter CAS 2014/A/3679 which was not yet made public and was at that time under appeal at the Swiss Federal Tribunal) be removed from the file and ignored in the present case.

36. On the same 10 March 2015, the Respondent informed the CAS Court Office that he does not wish that a hearing be held in this matter and the Sole Arbitrator can render his award on the basis of the parties' written submissions only.

37. On 11 March 2015, the Respondent contested the Appellant's request with regard to his Exhibit 22 being stricken from the file of the case.

38. On 23 June 2015, the CAS Court Office informed the parties that the Sole Arbitrator had decided to appoint a forensics expert in order to analyse the disputed signature of the representative of the Appellant in the Second Contract.

39. On 1 July 2015, the Respondent informed the CAS Court Office that the parties were having discussions in an attempt to settle the matter and requested that the appointment of the forensics expert be suspended.

40. On 16 July 2016, the Respondent informed the CAS Court Office that the parties were unable to reach an amicable settlement and that the forensics expert should be appointed.

41. On 24 July 2015, the Appellant filed with CAS a request that the Respondent be ordered to pay the amount of CHF 3,000 as a guarantee that it will be possible for the Appellant to be reimbursed in the future for the payment of the Appellant's share of costs related to the expertise (request for security for costs).

42. On 28 July 2015, the Respondent requested the dismissal of the Appellant's request for security for costs on the basis that it is not appropriate for the defending party in a legal dispute to pay security for costs.

43. On 4 August 2015, FIFA services sent the original of the Second Contract to the CAS Court Office in order to be sent to and examined by the forensics expert.

44. On 13 November 2015, the Sole Arbitrator issued a procedural order on the Appellant's request for security for costs, its operative part providing that:

"1. The Request for Security for Costs filed by F.C. Dacia on 24 July 2015 in the matter CAS 2014/A/3822 F.C. Dacia v. Rohan Ricketts is dismissed.

2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".

45. On 9 February 2016, the CAS Court Office informed the parties that Dr Raymond Marquis of the department of criminal sciences of the Lausanne University was appointed as an independent forensics expert and was asked by the Sole Arbitrator to answer the following two questions: *"1. Are the signatures appearing under the name of Mr Vitalie Grosu, Executive Director of FC Dacia, contained in para. 12 of the document with the title "Individual Employment Agreement" dated 23 July 2010, executed by Mr Vitalie Grosu? 2. Can it be determined whether the signatures appearing under the name of Mr Vitaly Grosu, Executive Director of FC Dacia, and Mr Rohan Ricketts, contained in para. 12 of the document with the title "Individual Employment Agreement" dated 23 July 2010, are executed by the same person?"*

46. On 14 March 2016, Dr. Raymond Marquis submitted his expert report on the issue of the disputed signature of the representative of the Appellant in the Second Contract. In his expert report, Dr. Marquis concluded that:

"1. The findings strongly support the proposition that the signatures in the name of Mr Vitalie GROSU appearing on the document with the title "Individual Employment Agreement" dated 23 July 2010 were simulated by an unknown writer, rather than the proposition that these signatures were written by Mr Vitalie GROSU.

2. No, it is not possible to determine whether the signatures appearing under the name of Mr Vitalie GROSU, Executive Director of FC Dacia, and Mr Rohan RICKETTS, contained in para 12. of the document with the title "Individual Employment Agreement" dated 23 July 2010, are executed by the same person".

47. On 18 March 2016, the CAS Court Office invited the parties to submit their respective positions on the expert report.

48. On 21 April 2016, the CAS Court Office invited the parties anew to inform the CAS whether they prefer a hearing to be held in this matter.

49. On 25 April 2016, the Respondent wrote to the CAS requesting a second round of written submissions *in lieu* of a hearing in this matter.

50. On 2 May 2016, the Appellant wrote to the CAS that it does not consider a hearing or a second round of submissions necessary. However, it would consent to a second round of written submissions *in lieu* of a hearing, provided that the Respondent requests that no questions be answered by the forensics expert, that all the witness statements filed shall be deemed as confirmed by the respective witnesses and that the Appellant will have the possibility to file short closing submissions after the Respondent's second written submission (while the Respondent would have the last floor with a short closing submission).

51. On 6 May 2016, the Respondent accepted the Appellant's proposal of 2 May 2016.

52. In light of the parties' agreement, the Sole Arbitrator decided to sanction the aforementioned proposal of the parties and not to hold a hearing in this matter as he deems himself sufficiently well-informed to decide this matter based solely on the parties' submissions, without a hearing, according to Article R57 of the Code. Consequently, on 18 May 2016 he invited the parties (the Respondent followed by the Appellant) to file a second round of submissions, while the Respondent would close the written submissions with a short rebuttal in the end.

53. On 1 June 2016, the Respondent submitted his second submission requesting that the Sole Arbitrator confirm the Appealed Decision in light of the Appellant's established history of offering dual contracts and of the failure of the expertise report to address a number of questions.

54. On 17 June 2016, the Appellant submitted its second submission requesting from the Sole Arbitrator to consider that the expertise report finally denied the validity of the Second Contract, contrary to the Respondent's arguments and allegations.

55. On 22 June 2016, the Respondent objected to the contents of the Appellant's second submission, to the extent that he considers that said submission exceeded the original agreement between the parties, namely to limit the second round of submissions to commenting on the expert report produced by Dr Marquis. Consequently, the Respondent requested that the Sole Arbitrator ignore at least certain passages of the Appellant's second submission, while at the same time suspending the time limit granted to the Appellant to file his last closing submission.

56. On 23 June 2016, the Appellant requested that the Respondent's objection be rejected.

57. On 13 July 2016, the CAS Court Office informed the parties that the Sole Arbitrator has decided to admit the Appellant's second submissions in their entirety and set a time limit for the Respondent to file his closing submissions.

58. On 22 July 2016, the Respondent submitted his closing submissions rejecting all the arguments put forward by the Appellant, providing a conversation with Mr Erick Sackey, former player of the Appellant who claimed that he had never signed any witness statement such as the one provided by the Appellant in this arbitration, and pointing out the similarities of this matter with the matter of Mr Stankovski against the same Appellant decided by CAS in the case CAS 2014/A/3679.

59. On 28 July 2016, the Appellant wrote to the CAS Court Office requesting that the conversation with Mr Erick Sackey submitted by the Respondent on 22 July 2016 as new exhibit 33 be disregarded as a conversation which allegedly occurred between two unidentified parties. The Appellant also invoked as grounds for its request that the fact that the parties agreed in the matter at hand to replace the hearing by another round of submissions does not allow them to produce new documentation, the document at hand bears no date and it originates from an unknown source.

IV. SUBMISSIONS OF THE PARTIES

60. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

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

- On 23 July 2010, the Appellant concluded with the Respondent one standard employment contract which was valid until 20 June 2013 and provided for a monthly salary of MDL 2,500. The subsequent payment of USD 5,000 made by the Appellant to the Respondent does not correspond to a payment under the Second Contract (the validity of which is disputed by the Appellant) but it was made in good faith following a request from the Respondent for an advance payment to cover the expenses of his father's medical treatment in the UK.

- The Appellant submits that the employment agreement concluded between the parties (*i.e.* the First Contract) was regarded by the Respondent as an investment for the development of his future football career. That is the reason why the salary was set at such a low amount.
- The Appellant submits that it was not satisfied with the Respondent's conduct both during training and in his life outside the pitch and that the Respondent's answer to the complaints made by the Appellant to that regard was that he was unable to concentrate on his football activities due to his father's illness. Subsequently, when the Respondent decided to return temporarily to England, the Appellant supported this decision and paid the Respondent's flight ticket to London.
- In spite of the fact that the Appellant informed the Respondent that he was expected back on 8 January 2011, when the team would assume training after the end of the winter break, the Respondent did not return in Moldova and the Appellant was unable to make contact with him. The Appellant was surprised to find out that the latter had apparently joined the German club SV Wilhelmshaven e.V. The Appellant tried to prevent the Moldovan Football Federation from issuing the requested ITC for the Respondent's transfer to SV Wilhelmshaven e.V. The Appellant also contests having received any default or termination letters sent by the Respondent over this period of time.
- In a report ordered by the Appellant and executed by the Centre of Independent Analysis (CEXIN) in Moldova, in order to be submitted to the FIFA DRC, it was established that the signature of the Appellant's representative Mr Vitaly Grosu, contained in the Second Contract, was forged. Furthermore, the Respondent failed to provide sufficient evidence that the Appellant offered to the former a contract with the financial arrangements as provided under the Second Contract. Lastly, after leaving Moldova, the Respondent was willing to sign with SV Wilhelmshaven e.V. in Germany for an equally low salary, when compared to the monthly income *per capita* in each respective country. At any case, the Second Contract was never registered with the Moldovan Football Federation. As a result, the Appealed Decision erred in finding that the Second Contract was valid and enforceable between the parties.
- The Appellant submits that the Respondent had no just cause to terminate the employment agreement as no remuneration at all was outstanding at the time the Respondent left Moldova. The Appellant made the advance payment of USD 5,000 to the Respondent on 24 July 2010 and also continued to pay the Respondent's monthly salaries in cash for the months that followed. Moreover, the Agent confirms that he gave to the Respondent another USD 5,000 from the agent fee he received from the Appellant. The Appellant further provides witness statements of some of the Respondent's former teammates claiming that the Respondent had devised a plot to gain "easy money" from the Appellant. In view of the above, the Appellant concludes that the Respondent had no just cause to terminate the employment relationship with the Appellant.
- Therefore, the Respondent owes the Appellant compensation consisting of the value of the Respondent's new contract with SV Wilhelmshaven e.V. minus the value of the

contract with the Appellant, the replacement costs incurred by the Appellant in order to hire a replacement to cover the Respondent's position for the remainder of the 2010/2011 season, the advance payment of USD 5,000 and a compensation of EUR 9,000 on the legal grounds of the specificity of sport, *i.e.* a total of EUR 77,590.

- In the alternative, should the Second Contract be considered valid and binding and the Appellant be ordered to compensate the Respondent for the early termination, the CAS needs to take into account that the Second Contract was concluded for a maximum duration of two and not three years, as it contained a club option for the third year, and that the sum of the agreed upon housing allowance for the remainder of the contractual term cannot be awarded to the Respondent as additional compensation, as it is no salary but is intended to cover actual expenses which were not incurred in this matter. The Appellant also claims that the CAS should take into consideration the former conduct and non-professional attitude of the Respondent during his stay with the Appellant, as it is evidenced in the witness statements of the Respondent's teammates it submits. Finally, the replacement costs incurred by the Appellant must be deducted from the compensation due to the Respondent, whereas the calculation needs to be adjusted by taking into account the salary that the Respondent intentionally failed to earn after the end of the employment relationship at issue.
- In its second submission, the Appellant underlines that the Expertise Report ordered by CAS determined that the Second Contract contains a forged signature of its representative and, therefore, it is inexistent. Consequently, the Appellant has indeed met its burden of proof to demonstrate that the Second Contract is not valid and binding between the parties.

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

- The communication between the Respondent and his Agent Mr Leonard Shatan is proof that the Respondent's wish was a monthly salary of around USD 7,000. The Agent further confirms in a witness statement that he and a Club's representative concluded an agreement via skype providing that the Respondent would receive a monthly salary of USD 6,545 plus a signing fee of USD 5,000. The Respondent would not have signed with the Appellant for the amounts stated in the First Contract and the Appellant has not corroborated its allegation that the Respondent's only wish was to play in Moldova as an investment for his further career and regardless of his salaries.
- When the Respondent asked why he had to sign two different contracts, both the Appellant's representatives and the Agent told him that this was normal practice in Moldova. The next day, the Respondent received the amount of USD 5,000 as a signing on fee in accordance with the Second Contract and after that he returned to England to obtain a criminal record report, which was necessary to issue a working visa in Moldova.
- After the Respondent's participation in the first official match, which was a 0-0 draw, he was informed together with all his teammates that they would not be paid as a result of poor performance. In spite of the fact that the Respondent took part in four official matches during August and in all training sessions, he was informed by his agent that

the Appellant had requested that he trains with the junior squad and that he finds another club as he was not as good as they initially thought.

- In a meeting between the Respondent and the Appellant's president that took part in September, the former was informed that his performances were disappointing and he was asked to sign a new contract with a lower salary or, otherwise, he would not receive anything. Subsequently, and since he had not received any payment yet, the Respondent posted a complaint letter to the Appellant on 1 October 2010 and also handed it over personally to the Appellant's president. On 25 October 2010 the Respondent wrote a second complaint letter to the Appellant setting them a deadline to execute the outstanding payments to him. The Respondent was then informed that he was no longer wanted and was asked to leave the country. After that, he was no longer allowed to train with the team and a few days later he was forced to leave his hotel room. The Respondent personally handed over a termination letter to the Appellant's sporting director on 3 November 2010 and two days after he left Moldova with a flight ticket that was booked by the Appellant.
- It makes no sense to claim that the Respondent was able to draft the Second Contract in Russian language, procure a forged signature on behalf of the Appellant's representative and use the Appellant's official stamp. On the contrary, the practice of entering into dual contract is common in Eastern Europe and in particular in the Appellant itself, as evidenced by the contracts of some of the Respondent's teammates.
- The Respondent never requested an advance payment of USD 5,000 as his father was not ill at that time and, in any case, any medical expenses would be covered by the National Health Service in England. Moreover, an advance of USD 5,000 would amount to two times the Respondent's annual payment, which makes no sense. The Respondent received from the Appellant only the USD 5,000 signing on fee and some nominal amounts as good performance bonuses in the amounts of USD 200 and USD 80 and no salaries in accordance with the terms of the First and the Second Contract. As a result, after three months without having received any salary, the Respondent decided to terminate the employment relationship, with just cause upon the basis of settled FIFA DRC jurisprudence.
- The burden of proof in this case lies with the Appellant, as it is the party contesting the Appealed Decision.
- The Respondent submits that no explanations were requested by him and that he never excused himself to the Appellant that he was unable to concentrate on his football activities because his father was ill. The Appellant has not produced any correspondence sent to the Respondent or any disciplinary records or minutes of meetings in relation to his work ethic or attitude. Furthermore, the Appellant made no contact at all with the Respondent after he left in November and there is no evidence that he requested the Respondent to return on 8 January 2011. The Appellant had exercised the same unreasonable treatment of its players in the case of Mr Stankovski, as evidenced in the relevant CAS award in case CAS 2014/A/3679.
- As far as the ambiguity regarding the term of the Second Contract is concerned, it is submitted that clause 1.3 clearly provides that it is valid until 20.06.2013, that at the

same time the First Contract is clear to set its term until 20 June 2013 and that any ambiguity should be construed/interpreted against the party which drafted the Second Contract, *i.e.* the Appellant.

- The Respondent is unable to verify that the submitted report was provided by an independent expert. Moreover, its result is not definitive as the Appellant alleges, because the expert who delivered the report could not examine the original document, as explained therein. Moreover, the practice of FIFA bodies with regard to the alleged falsification of a signature is to presume its authenticity, unless there is a final and binding decision of a competent criminal court establishing the falsification or when the circumstances of the alleged forgery are blatant enough to persuade them that the document is forged.
- The Appellant did not discharge its burden of proof that Mr Babatunde was hired as a direct replacement for the Respondent. At any case, no replacement costs are relevant in the calculation of the compensation in the matter at hand.
- The Respondent had just cause to terminate the employment relationship and he should be compensated by the Appellant. The Appealed Decision deducted a higher amount for mitigation than it should have done. The Respondent further denies that he intentionally failed or refused to earn monies after the termination with the Appellant, as he sought and obtained the best deals possible for the longest duration until June 2013.
- The CAS should either dismiss the witness statements submitted by the Appellant as they were not submitted before FIFA, or not attach any significant weight on them as the witnesses are employees of the Appellant.
- In its second and closing submissions, the Respondent argues that the Expertise Report ordered by CAS still does not establish that the Appellant has met its burden of proof to demonstrate the forgery of the Second Contract. The conclusion of the Report with respect to the stamp of the Appellant on the document of the Second Contract being an original, does not explain how the official stamp of the Appellant was placed on the Second Contract, which remains for the Appellant to explain. Further than that, the real and genuine will of both parties was to conclude both contracts, as this was the content of the parties' negotiations from the very beginning.

V. JURISDICTION

63. The jurisdiction of CAS, which is not disputed, derives from article 67 par. 1 of the FIFA Statutes as it determines that *"[a]ppeals 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"* and Article R47 of the CAS Code.

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

VI. ADMISSIBILITY

65. The appeal was filed within the 21 days set by article 67 par. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

66. It follows that the appeal is admissible.

VII. APPLICABLE LAW

67. Article R58 of the Code (2013 edition) provides as follows:

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

68. The Sole Arbitrator notes that Article 66 par. 2 of the FIFA Statutes (2010 edition) stipulates the following:

"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

69. The Sole Arbitrator observes that both the First and the Second Contract contain provisions on the law and regulations governing the employment relationship and its dissolutions, stating that *"the unilateral dissolution of the agreement can only take act according to FIFA/UEAF/MFF regulations"* (article 1.1 of the First Contract) and *"The Club and the Player shall comply with the Statute, rules and decisions of FIFA, UEFA, as well as MFF, which shall be an integral part of the agreement"* (article 7.2 of the Second Contract)

70. Since the parties elected to submit their dispute to the FIFA DRC and since it remained undisputed in their submissions that the present matter is to be resolved on the basis of the regulations of FIFA, including Article 66 par. 2 of the FIFA Statutes, the Sole Arbitrator will, subject to the primacy of the applicable regulations of FIFA, subsidiarily apply Swiss law in case of a lacuna.

71. Consequently, the Sole Arbitrator will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, apply Swiss law in case of a possible gap in the FIFA Regulations.

72. The case at hand was submitted to the DRC on 7 February 2011, hence after 1 October 2010, which is the date when the Regulations for Status and Transfer of Players (2010 edition, hereinafter referred to as the "FIFA Regulations") came into force. These are the editions of the rules and regulations under which the case shall be assessed.

VIII. MERITS

73. According to Article R57 par. 1 of the Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As repeatedly stated in the CAS jurisprudence, by reference to this provision the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits (see CAS 2007/A/1394).

74. In accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof and, in the matter at hand, it is up to the party invoking arguments to justify the non-payment to establish the existence of the facts founding such arguments (see IBARROLA J., *La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond*, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sports, Berne 2007, p. 252; see also, *ex multis*, CAS 2009/A/1810 & 1811).

75. In light of the facts and the circumstances of the case, and considering that the existence and/or validity of the Second Contract is in principle disputed between the parties, the Sole Arbitrator shall firstly examine whether the Second Contract is valid and binding between the parties. Secondly, the Sole Arbitrator shall examine whether the Appellant established that the Respondent terminated the employment relationship without just cause and, thirdly, shall deal with the financial consequences resulting from the termination of the employment relationship.

A. The issue of the validity of the Second Contract

76. The Respondent argues that on 23 July 2010 he signed a second contract with the Appellant, which was presented to him together with the first contract, as both the Appellant's representatives and the Agent assured him that this was normal practice in Moldova. The Second Contract provided that he would receive USD 5,000 as a signing on fee and USD 6,545 as monthly salary for the term of the contract.

77. The Appellant disputes the validity of the Second Contract by claiming that it only became aware of its existence when the Respondent submitted it during the FIFA proceedings and that, according to an expert report ordered by the Appellant in Moldova, the signature of Mr Grosu who signed it representing the Appellant, is a forgery.

78. In this context, the Sole Arbitrator has decided to grant the Appellant's request and to appoint an independent forensic expert to examine the validity of Mr Grosu's disputed signature on the original Second Contract document which was requested from the FIFA services. The expert was invited to answer the following two questions: *"1. Are the signatures appearing under the name of Mr Vitalie Grosu, Executive Director of FC Dacia, contained in para. 12 of the document with the title "Individual Employment Agreement" dated 23 July 2010, executed by Mr Vitalie Grosu? 2. Can*

it be determined whether the signatures appearing under the name of Mr Vitaly Grosu, Executive Director of FC Dacia, and Mr Rohan Ricketts, contained in para. 12 of the document with the title "Individual Employment Agreement" dated 23 July 2010, are executed by the same person?"

79. Dr Raymond Marquis of the department of criminal sciences of the Lausanne University (Switzerland) was appointed as an independent expert and submitted his expertise report in the matter (ref. nr. PFS 16.0046) to the CAS Court Office on 14 March 2016. In his report, Dr Raymond Marquis was able to examine the original document of the Second Contract which was provided by FIFA and to compare the disputed signature with several reference signatures of Mr Grosu which were taken from his identity card and other documents provided by the Appellant (employment contracts and other club documents).

80. Following an examination of the disputed signature on the one hand and the reference specimens on the other hand, Dr Marquis found *"some similarities and many differences"* and also found that *"most of the features of the questioned signatures fall outside the variation range observed among the reference specimens"*. Dr Marquis hence concluded that:

"[t]he findings are much more probable if it is true that the signatures in the names of Mr Vitalie GROSU appearing on the document with the title "Individual Employment Agreement" dated 23 July 2010 were simulated by an unknown writer, than if these signatures were written by Mr Vitalie GROSU.

In other words, the findings strongly support the proposition that the signatures in the name of Mr Vitalie GROSU appearing on the document with the title "Individual Employment Agreement" dated 23 July 2010 were simulated by an unknown writer, rather than the proposition that these signatures were written by Mr Vitalie GROSU.

It is not possible to determine whether the signatures appearing under the name of Mr Vitalie GROSU, Executive Director of FC Dacia, and Mr Rohan RICKETTS, contained in para. 12 of the document with the title "Individual Employment Agreement" dated 23 July 2010, are executed by the same person" (emphasis added).

81. The Sole Arbitrator notes that there are several elements in the factual background of this matter that seem to be in sheer contradiction with the Appellant's position that only the First Contract was proposed to the Respondent and eventually signed between the parties. For instance, the Appellant does not dispute having signed two employment contracts with other players on other occasions. Secondly, the Appellant's submission that the USD 5,000 it paid to the Respondent on 24 July 2010 was an advance of the latter's salary under the First Contract seems implausible, considering that said amount corresponds to salary for 30 months, *i.e.* a period covering 83% of the term of the First Contract. Further than that, the Appellant provides with no evidence of such request on the part of the Respondent, whereas at the same time the Appellant submits that – in spite of the advanced payment – it continued to make payments to the Respondent in cash in the first months of their employment relationship and until its termination (which is albeit disputed by the Respondent) giving the sole explanation that such practice is "usual" in Moldova.

82. However, in light of the clear conclusion of Dr Marquis' expert report, the Sole Arbitrator finds that the Appellant has discharged its burden of proof in establishing the facts and arguments alleged by it in its appeal brief, namely that only the First Contract was signed by its representative and its terms are binding between the parties.

83. Hence, the Sole Arbitrator concludes that the Respondent cannot invoke the terms of the Second Contract against the Appellant as the latter was not signed by the Appellant's representative but by an unknown person. As a result, the Sole Arbitrator shall not take into account in the following sections of the arbitral award and in determining its decision on the parties' requests, all arguments of the parties that relate to the Second Contract.

B. Did the Appellant establish that the Respondent terminated the agreement without just cause?

84. Having established the contractual basis of the dispute, the Sole Arbitrator shall analyse whether the termination made by the Respondent had been with or without just cause.

85. The Respondent justifies the termination of the employment relationship by claiming that the Appellant was not fulfilling his contractual obligations under the First Contract, invoking in principle the non-payment of his salaries. As it has been previously determined that the Second Contract is not valid between the parties, the Sole Arbitrator finds that the Appellant has paid to the Respondent USD 5,000 as advanced salaries. As a result the Sole Arbitrator cannot admit the Respondent's justification of the termination on financial grounds.

86. However, the Respondent provides several other grounds to justify the termination of the employment relationship with the Appellant on his part:

(i) there were occasions when representatives of the Appellant warned him that he would not be paid as a result of poor performance (on 7 August 2010) or requested that he sign a reduced contract in order to start making payments to him (September 2010);

(ii) the last time the Respondent was fielded was in a friendly match of the Appellant that took place on 3 October 2010;

(iii) on 25 October 2010 during a meeting held at the Respondent's hotel room with the presence of another teammate who was translating, the Appellant's sporting director informed the Respondent that his services were no longer required and that he was to leave the country immediately;

(iv) after 25 October 2010, the Respondent was no longer allowed to train with his teammates, possibly as a consequence of his refusal to agree to a reduced salary, and on 31 October 2010 he was forced to leave his hotel room, which was paid by the Appellant;

(v) on 5 November 2010, the Respondent left Moldova in a flight to London which was paid by the Appellant.

87. The general provisions on contractual stability of the applicable FIFA Regulations on the Status and Transfer of Players (2010 edition) stipulate the following:

"Article 13. A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Article 14. Terminating a contract with just cause. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

88. However, the FIFA Regulations do not define what constitutes a "just cause". Therefore, in line with well-established CAS case-law, the Sole Arbitrator examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2008/A/1518 par. 59).

89. Article 337 of the Swiss Code of Obligations ("Swiss CO") provides in this respect that

"1. Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give his reasons in writing at the other party's request.

2. In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice".

90. According to the relevant case-law of the Swiss Federal Tribunal ("SFT"), the definition of "just cause", as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (ATF 127 III 153 1.a). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. The judging body determines at its discretion whether there is just cause (Article 337(3) Swiss CO).

91. In the context of the present case and considering that (i) the Respondent was hired to play with the Appellant's team with the status of a professional (article 2.1 of the First Contract), (ii) the Appellant was obviously not content with the Respondent's performance and such discontent was expressed not only verbally (at least on two occasions, *i.e.* on 7 August 2010, in September 2010 and on 25 October 2010 as described above), but also by taking measures against the Respondent such as forbidding him to train with his teammates and eventually forcing him to abandon his hotel room, and (iii) the Appellant paid for the Respondent's return flight ticket to London, the Sole Arbitrator holds that the Respondent had objective reasons to believe that the Appellant had no intention to perform its side of the employment agreement. His exclusion from the team could have seriously prejudiced his career development, as it deprived him completely of the chance to put his talent in evidence and to increase accordingly his market value. Bearing in mind the Appellant's criticism and attitude towards the Respondent, the Sole Arbitrator finds that the latter could not reasonably be expected to carry on the employment relationship. For the same reasons, the Sole Arbitrator does not see any more lenient measures, which could have been taken by the Respondent in order to resolve the situation and to maintain the contractual relationship. In particular and

under the specific circumstances of the case, the Sole Arbitrator sees no reason for the Respondent to give a warning prior to his resignation as such a notification would have been of no use. As a matter of fact, the Respondent had no motive to believe that the Appellant's decision to substitute him was not final (see *ad hoc* CAS 2014/A/3643).

92. On the basis of the above considerations, the Sole Arbitrator finds that the Respondent terminated unilaterally the employment relationship with the Appellant with just cause and in a timely fashion.

C. The financial consequences resulting from the termination of the employment relationship

93. Having established that the Respondent terminated the contract with just cause due to breach of the Appellant, the Sole Arbitrator will now deal with the issue of financial consequences derived from such termination.

94. The matter of the financial consequences of the early termination of the employment relationship with just cause is governed by article 17(1) of the applicable FIFA Regulations on the Status and Transfer of Players, which states *inter alia* that: *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

95. In this respect, article 12.2 of the First Contract provides that:

"The failure to comply, or the partial fulfilment by the "Club" of its obligations under this agreement, brings about the early termination of the agreement, by payment of entitlements to the Player".

96. The Sole Arbitrator notes that the aforementioned provision of the First Contract does not specify the amount of compensation ("entitlements") payable in the event of premature termination due to a breach of the Appellant's obligations, therefore he must turn to the criteria contained in article 17(1) of the FIFA Regulations.

97. Article 17 of the FIFA Regulations is a unique provision aimed to protect the principle of contractual stability in employment relations between players and clubs. It is a compromise between the principle of contractual stability and freedom of movement and has produced a large corpus of FIFA and CAS case-law since its conception in 2001.

98. Article 17(1) does not give priority to the consideration of the "law of the country concerned". The CAS has held that this is merely a factor to consider while retaining discretion to determine what weight (if any) to afford it (CAS 2007/A/1298 & 1299 & 1300). In addition, the "specificity of sport" criterion is to be used to *"verify that the solution reached is just and fair*

(…) and reaching therefore a decision which can be regarded as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football" (CAS 2007/A/1358). Lastly, in view of the "objective criteria" it is important to underline that the list of article 17(1) is not exhaustive and that the broad scope of criteria indicated tends to ensure that a fair amount of compensation is awarded to the prejudiced party. It is explicitly stated that the other objective criteria will include *"in particular"* the criteria mentioned therein. In other words, the particularities of each claim for compensation still need to be examined to establish the compensation amount. Each request for compensation on breach of contract has to be assessed on a case-by-case basis, leaving the deciding body the facility to decide *ex aequo et bono* where appropriate (DE WEGER, F., *The Jurisprudence of the FIFA Dispute Resolution Chamber*, The Hague 2016, p. 283).

99. However, in light of the particular circumstances of this case, the Sole Arbitrator notes that the criteria established in article 17(1) are not the sole criteria to be taken into consideration. Other relevant criteria, on a case-by-case basis, may be found (see *ad hoc* the recent award CAS 2014/A/3852).

100. In this particular case, the Sole Arbitrator takes into account the following issues:

(i) the Appellant advanced salaries in the amount of USD 5,000 to the Respondent, covering approximately 83% of the entire term of the contractual relationship;

(ii) the explicit wording of article 12.2 of the First Contract agreed between the parties providing for the player's right to receive "entitlements" in the event of a contract termination due to a breach by the club;

(iii) the Respondent's obligation to mitigate his damages and the amount of salaries earned by him from subsequent contracts with other football clubs as submitted in his answer (USD 104,061);

(iv) the conduct of both parties as demonstrated in the relevant sections of this award.

101. As a consequence of the above, considering the fact that the employment relationship was terminated a mere 5 months into the first season of its three-year term, the value of the Respondent's new contracts, the outstanding salaries not paid to the Respondent by the Appellant and the salary costs that the Appellant saved, the Sole Arbitrator holds that the Respondent is entitled to retain the amount of USD 5,000 already paid to him by the Appellant as a fair compensation under Article 17(1) of the FIFA Regulations.

102. Any further claims or requests for relief by the parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by F.C. Dacia S.R.L. on 14 November 2014 against the decision issued on 30 July 2014 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The decision issued on 30 July 2014 by the FIFA Dispute Resolution Chamber is set aside and replaced by the following award.

3. Rohan Rickets is entitled to retain the amount of USD 5,000 paid to him by F.C. Dacia S.R.L. on 24 July 2010 as a fair compensation under Article 17(1) of the FIFA Regulations.

4. (…).

5. (…).

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