Arbitration CAS 2015/A/3904 Changchun Yatai FC v. Jorge Samuel Caballero, award of 16 November 2015

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football
Termination of a contract of employment between a player and a club
Timeliness of the appeal
Scope of the appeal
Inadmissibility of requests for relief exceeding previous requests for relief
Identification of the author of the termination
Burden of proof regarding just cause to terminate the contract
Compensation for damages according to art. 17 RSTP

1. **A club which was granted a new deadline by FIFA to request the grounds of the appealed decision - which it did within the deadline provided by article 15 of the FIFA Procedural Rules - and which subsequently challenged the appealed decision with CAS within the deadline of 21 days set out in article 67(1) of the FIFA Statutes complied with the requirements to challenge the appealed decision with CAS. Therefore the appeal is admissible.**

2. **The fact that FIFA's conduct in respect of a club's right to ask for the grounds of the appealed decision is questionable, even more so since FIFA changed its initial stance in this respect, does not necessarily imply that a player's rights were violated by the change in FIFA's course of action. In any event, the player's objection in this respect is directed towards FIFA; in case FIFA is not a party in the proceedings, this issue therefore falls outside the scope of the litigation. In any case, a party is not entitled to try and cure his failure to challenge FIFA's decision on time by challenging it in an indirect way within its arguments in the answer to the appeal lodged by another party.**

3. **Pursuant to Articles R56 of the CAS Code and absent any specific and exceptional circumstances, the requests for relief as set out in a second round of written submissions are inadmissible insofar these requests exceed the requests as set out in the Statement of Appeal or the Appeal Brief. Moreover, as CAS jurisprudence on Article R57 of the CAS Code stipulates that in reviewing a case in full (i.e. the *de novo* power of review), a CAS panel may not go beyond the scope of the original dispute and is limited to the issues that could be heard by the body rendering the challenged decision and could thus arise thereof, requests for relief are also inadmissible insofar they exceed the requests for relief filed before the body that rendered the challenged decision.**

4. **The mere proposal of a club to mutually terminate an employment contract cannot be considered as a unilateral termination of the employment contract simply due to the**

fact that the player did not accept such offer. However, an employment contract can be terminated by the lodging of a claim against a club with the FIFA DRC by a player.

5. **A club's failure to pay a player his salaries for a term of 10 months and the existence of a notice of default served by the player on the club is sufficient evidence to rule that the player has just cause to terminate the employment contract, unless the club can prove that it had a good reason for not having paid the player's salaries. In this respect, it can be expected from a club to give clear directions to a player as to what is expected from him regarding his contractual obligations in particular regarding the medical policy applicable. Absent any direction of the club in this respect, a player cannot be reproached for having left the country without authorisation from the club for medical reasons and the club is not entitled to stop paying the player's salary. Likewise, absent any evidence that the player did not want to resume his duties with the club and that negatives consequences were incurred from the fact that the player attended trials with other clubs, the club is not entitled to discontinue the payment of the player's salary.**

6. **According to the Commentary to the FIFA Regulations on the Status and Transfer of Players (art. 14 (5) & (6)) and to CAS jurisprudence, a player is in principle entitled to compensation because of a club's breach of its contractual obligations. In the absence of any contractual provision determining the financial consequences of a unilateral breach of contract, the consequences are set out in article 17(1) RSTP. The principle of "positive interest" shall be applied in this respect. In this regard, the player's objective damages should be assessed before applying the panel's discretion in adjusting this total amount of objective damages. Therefore, the salaries that would normally have been paid to the player should the employment contract have been duly complied with may be taken into account in awarding compensation to the player. Since the player did not receive these amounts due to the club's breach of its contractual obligations, these amounts can therefore be considered as damages. These amounts should not be reduced if the damages have not been mitigated.**

I. THE PARTIES

1. Changchun Yatai Football Club (hereinafter: the "Appellant" or the "Club") is a football club with its registered headquarters in Changchun, People's Republic of China. The Club is affiliated to the Chinese Football Association (hereinafter: the "CFA"), which in turn is a member of the *Fédération Internationale de Football Association* (hereinafter: "FIFA").

2. Mr Jorge Samuel Caballero (hereinafter: the "Respondent" or the "Player") is a former professional football player of Honduran nationality.

II. FACTUAL BACKGROUND

3. As a preliminary remark, the Sole Arbitrator would like to point out that the written submissions of both parties in this procedure lack a description of the facts involving the dispute with the level of detail that could reasonably be expected, or is at least common, in proceedings before the Court of Arbitration for Sport (hereinafter the "CAS").

4. For that reason, and in spite of the fact that both parties indicated that they did not consider a hearing necessary, still the Sole Arbitrator decided to give them an opportunity to reconsider their position in respect of a hearing after having received the complete case file of the proceedings before the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC"), after requesting the Club to answer a specific list of questions and after granting both parties the right to submit a second round of written submissions. However, both parties decided to adhere to their initial opinion and informed the CAS Court Office that they did not deem it necessary to hold a hearing in this case.

5. In this context, where necessary, the Sole Arbitrator exceptionally resorted in the present award not only to the parties' submissions before the CAS, but also to submissions of the parties in the proceedings before the FIFA DRC leading up to the decision that is currently being challenged in the present appeals arbitration proceedings, as well as to the decision passed by the FIFA DRC on 20 August 2014 (hereinafter: the "Appealed Decision"), all in line with Article R57 of the Code of Sports-related Arbitration (edition 2013) (hereinafter: the "CAS Code").

6. Below is therefore a summary of the main facts and allegations set out in the parties' written submissions before FIFA and CAS and in the Appealed Decision. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Even though the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence presented by the parties, he refers in this award only to the submissions and evidence deemed necessary to explain the reasoning.

7. On 1 November 2009, the Club and the Player entered into a *"Foreign Football Player Employment Contract"* (hereinafter: the "Employment Contract"). The Employment Contract was valid as from the date of signing until the end of the 2011 season in China, *i.e.* until 3 November 2011[1].

8. The Employment Contract contains, *inter alia*, the following provisions[2]:

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[1] The Sole Arbitrator took note that the Employment Contract was due to expire at the end of the 2011 season, which according to article 19 of the Employment Contract ("*The validity of contract is from 1 November 2009 to the end of 2011 season (year)*") should coincide with the end of the calendar year 2011. However, since the Club maintains that the Employment Contract expired on 2 November 2011 and the Player did not object to the date of 3 November 2011 mentioned in the Appealed Decision, the Sole Arbitrator decided to adhere to the date specified in the Appealed Decision, *i.e.* 3 November 2011.

[2] Even though containing quite confusing wording and several clerical mistakes, the clauses deemed relevant are herein quoted *verbatim* for the sake of reference by the Sole Arbitrator.

"Article 5: [The Player] must keep himself in top physical condition in order to compete to his maximum ability and refrain from any action that may be unfavorable to [the Club]. According to this principle, [the Player] must:

[…]

2. In the event of injury or illness during the duration of the contract, [the Player] shall accept treatment as demanded by [the Club]. [The Player] must be prepared to notify [the Club] of his state Health at any time. If [the Player] no activity take the treatment from the team doctor, In case of violation, [the Club] have rights to punish [the Player] by penalties one months salary, [the Player] should not claim on the appeal of any kind or demand the compensation.

[…]

Article 7: Salary and bonuses.

Salary:

i. While the [Club] and [the Player] signed the contract, [the Club] will pay to [the Player] 50.000USD as singing [sic] fee, and [the Club] will pay to [the Player] the per month salary after 12days in the next month is 25,000USD (after taxes).

[…]

2. Medical expenses shall be provided for [the Player] with the exception of Hospital registration, Doctor's House calls, Dentures, Teeth Cleaning, Glasses, Hospital meals, and non-Medical tonics.

[…]

4. If [the Player] is injured or taken ill in the course of the training or during a match, [the Club] shall be responsible for all medical expenses on the condition that [the Player's] physical situation is not suitable for training or matches, which is proved by the appointed doctor. In first two months [the Player] takes the salaries as stipulated of the contract, [the Player] takes the 60% salary in the third month, takes the 20% sally [sic] from the fourth month till the expiry of the contract. If [the Player] is proved to be able to participate in training or matches and refuse to work in the meanwhile, [the Player] will not gain his agreed salary from [the Club] until the end of the contract period, [the Club] has the rights to unilateral terminate the contract with [the Player], [the Player] has no right to lodge an appeal or ask for compensation. [The Player] will compensate 100,000USD to [the Club]".

[…]

Article 16: If [the Player] break the regulations and rules of club seriously or disturb the normal training or break the discipline make a great influence on the match was punishment and other things of the club by go out or go back. [The Club] has the rights to unilateral terminate the contract with [the Player], [the Club] will not honor [the Player's] any liability, [the Player] has no right to lodge an appeal or ask for compensation, if [the Club] terminate the contract with [the Player] on the above-mentioned reason, [the Player] will pay transfer fee or any other relative fee, [the Player] will pay 50,000 USD to [the Club] as a penalty.

1. Be absent from training or matches without the permission by the club, over 24 hours (including the 24th hour) shall pay penalty fine $5000, over 48 hours shall pay penalty fine $10,000, over 72 hours shall pay penalty fine $20,000.

2. *Come back late from holidays or on business without the permission by the club, in three days shall pay penalty fine $5000 per day, over 3 days shall pay penalty fine $10,000 per day. If [the Player] don't come back to team on time (without consent of [the Club]), [the Club] have right to punish 5000 USD per day. [The Club] has the rights to unilateral terminate the contract with [the Player], [the Club] will not honor [the Player's] any liability. [The Player] has no right to lodge an appeal or ask for compensation. Besides [the Player] will be fined 5000 USD per day, meanwhile [the Player] will pay 100,000 USD to [the Club] as penalty also.*
3. *If all the above mentioned behaviors result in the absence from the matches, [the Player] shall pay another penalty fine $20,000. [The Club] has the rights to deduct all the above mentioned fines from [the Player's] salary".*

9. In the beginning of July 2010, the Player suffered a knee injury of certain gravity, which required surgery.

10. On 6 July 2010, the Player underwent surgery related to his injury in his home country Honduras.

11. Since August 2010, the Club failed to pay the Player his salaries in accordance with the Employment Contract.

12. On 25 October 2010, the Player returned to China.

13. On 1 January 2011, the Club allegedly sent a document to the Player, both in English and in Chinese, with the request to sign it. The English text of this document determines the following:

"Agreement

Party A: [the Club]

Party B: [the Player]

i. *Because of the* [Player's] *private reason,* [the Player] *applies to* [the Club] *to terminate the <Employment Contract>,* [the Club] *agrees to terminate the <Employment Contract> with* [the Player] *after friendly negotiation between two parties.*
ii. *Both two parties agreed to terminate the <Employment Contract>. After signed this agreement by two parties,* [the Player] *has no rights to claim any damages to* [the Club].
iii. *This agreement has become effective after both two parties' signature. Then* [the Player] *has rights to transfer to any other football club for playing football free.*

Party A: [the Club] *Party B:* [the Player]

2011 1 1".

14. On 20 November 2010, the Player travelled to Honduras again.

15. On 15 January 2011, the Player returned to China.

16. On an unspecified date in January 2011, the Player was requested by the Club to leave his apartment in Changchun, People's Republic of China.

17. In February and March 2011, the Player participated in trials with two other Chinese clubs, Gui zhou F.C. and Ghang zhou F.C.

18. On 13 April 2011, the former legal counsel of the Player addressed a communication to the Club, both in English and in Chinese, together with two medical reports about his knee injury and requesting the Club to comply with its payment obligations. This letter remained unanswered by the Club. The English text of the communication reads as follows:

"As you are aware, I represent Mr. Samuel Caballero. To date your organization has refused to honor the terms of my client's contract with your club. Attached you shall find recent physicals from Samuel's National Team Physician as well as a physician from Beijing. Both physicals have unconditionally cleared him to play this season. This is a final demand that Mr. Caballero be immediately activated to play and that your club compensate him fully for the entire value of the contract and the full unpaid amount for the previous team season.

If you fail or refuse to do so in accordance with the terms of his contract, we will immediately file a grievanæ with FIFA to compel your organization to honor the terms of your agreement".

19. On 1 August 2011, the Player signed an employment contract with the Honduran football club Club Deportivo Necaxa, valid for the 2011/12 football season. This employment contract was however ultimately not registered since the CFA refused to issue the Player's International Transfer Certificate (hereinafter: the "ITC").

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

20. On 7 June 2011, the Player lodged a claim against the Club before the FIFA DRC for breach of contract without just cause by the Club, which claim was amended on 23 June 2011, finally claiming an amount of USD 375,000 plus bonuses.

21. On 3 October 2011, the Club submitted its answer to the Player's claim, as well as a counterclaim, claiming USD 58,000 as amounts paid in excess to the Player in 2010 and USD 170,000 as compensation for breach of contract.

22. On 20 August 2014, the FIFA DRC issued the Appealed Decision, with the following operative part:

"1. The claim of the [Player] is partially accepted.

2. The counterclaim of the [Club] is rejected.

*3. The [Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of USD 100,000.*

*4. The [Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, compensation for breach of contract amounting to USD 275,000.*

5. *In the event that the amounts due to the [Player] in accordance with the above-mentioned points 2. and 3. are not paid by the [Club] within the stated time limits, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

6. *Any further claim lodged by the [Player] is rejected.*

7. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".*

23. On 3 September 2014, FIFA sent the operative part of the Appealed Decision to the parties. Not being able to transmit it directly to the Club, FIFA requested the assistance of CFA, highlighting that in case it did not receive a copy of the relevant notification within 4 days *"it* [would] *be considered that the relevant decision* [had] *been communicated properly to the ultimate addressee (…) within the said timeframe".*

24. On 15 September 2014, the Club informed FIFA that it did not receive a complete copy of FIFA's letter dated 3 September 2014 and that it did not receive the decision itself. The Club requested FIFA to resend it.

25. On 19 September 2014, also the CFA informed FIFA not to have received the decision and that the fax dated 3 September 2014 was incomplete.

26. On 22 September 2014, FIFA answered both the Club and the CFA, emphasizing that it would exceptionally resend the Appealed Decision but that such communication did not *"replace the proper notification of the findings of the decision which was formally executed on 3 September 2014 (cf. copy of positive fax report enclosed)".*

27. On 24 September 2014, the Club confirmed to have received a copy of the operative part of the Appealed Decision and indicated to disagree with it. With this letter, the Club asked the *"FIFA dispute resolution chamber to make reasonable explanation according to the decision".*

28. On 29 September 2014, FIFA informed the Club that it understood its request for a *"reasonable explanation"* as a request for the grounds of the Appealed Decision. However, FIFA informed the Club that this request was submitted after the 10-day deadline stipulated in article 15(1) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the "FIFA Procedural Rules") since the operative part of the Appealed Decision was already communicated to the Club on 3 September 2014 and that it was therefore not in a position to provide the Club with the motivated decision.

29. On 30 September 2014, the Club insisted in its request to FIFA to *"provide the grounds (reasonable explanation according to the decision)".*

30. On 7 October 2014, FIFA reiterated the content of its previous letter, confirming that it was not in a position to issue the grounds of the Appealed Decision.

31. On 9 October 2014, the CFA reiterated to FIFA that it had not received a copy of the operative part of the Appealed Decision on 3 September 2014.

32. On 17 October 2014, FIFA again refused to issue the grounds of the Appealed Decision.

33. On 22 October 2014, the Club once again requested the grounds of the Appealed Decision.

34. On 23 October 2014, FIFA again refused to issue the grounds of the Appealed Decision and that disciplinary proceedings were to be opened if the Club would fail to comply with the Appealed Decision within the applicable deadlines.

35. On 27 October 2014, the Club again requested the grounds of the Appealed Decision.

36. On 30 October 2014, the Club informed FIFA that it had appealed its decision to refuse issuing the grounds of the Appealed Decision with CAS.

37. On 4 November 2014, the CFA informed FIFA that it did not send a copy of the operative part of the Appealed Decision to the Club on 3 September 2014.

38. On 6 November 2014, FIFA issued a *"formal notification"* of the operative part of the Appealed Decision and granted the parties a 10-day deadline to request the grounds of the decision.

39. On 7 November 2014, the Club requested the grounds of the Appealed Decision.

40. On 12 November 2014, the Player objected to the issuance of the grounds of the Appealed Decision and stated that he reserved *"all his rights and legal actions to declare the inadmissibility"* of any possible appeal of the Club to the CAS.

41. On 14 January 2014, the grounds of the Appealed Decision were duly communicated to the parties, determining, *inter alia*, the following:

> *"- The Chamber took note that the [Player], on the one hand, maintains that the employment contract was breached by the [Club] by failing to pay him his salary after he suffered an injury in July 2010. The [Club], on the other hand, rejects such claim asserting that the [Player] had in fact breached the contract, by travelling to Honduras to undergo surgery without informing it and by failing to resume his training subsequently.*
>
> *- Having established the aforementioned, the Chamber deemed that the underlying issue in this dispute, considering the claim and counterclaim respectively lodged by the parties, was to determine when the contractual relationship had been terminated and which party should be responsible for the early termination of the latter. […]*
>
> *- [T]he Chamber noted that it is uncontested that the [Player] left China to undergo surgery in July 2010. The DRC further observed that according to the [Player's] passport, the latter returned to China as from 25 October 2010 until 20 November 2011. In addition, the members of the Chamber took note that the [Player's] visa was due to expire on 24 January 2011. In continuation, the Chamber noted that the [Club] never contested the [Player's] assertions that in January 2011, it offered him to mutually terminate the contract and requested him to leave his apartment.*

- *In light of the foregoing, and considering the content of art. 12 par. 3 of the Procedural Rules together with the date of expiry of the visa and the proposal made by the [Club] on 1 January 2011, the members of the Chamber concluded that the contractual relationship came to an end on 1 January 2011.*
- *The Chamber then turned its attention to the question of which party was to be held liable for the early termination of the contractual relationship. In order to do so, the Chamber first of all pointed out that the [Club] did not contest the argument of the [Player] regarding the non-payment of salaries as of July 2010. In continuation, the DRC took note that the [Club] justifies the non-payment by arguing that, for the 2010 season, it paid a total amount of USD 175,000 to the [Player] while the amount that was actually due was USD 113,000, in consideration of the [Player's] number of appearances and the fact that his annual salary was of USD 300,000. Therefore, the [Club] considers that there is no outstanding amount insofar as the [Player] received an amount of USD 58,000 in excess of his due remuneration.*
- *In this respect and bearing in mind art. 12 par. 3 of the Procedural Rules, in accordance with which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the Chamber was eager to point out that the [Club] had failed to present documentation in support of its position. In particular, the members of the Chamber observed that the [Club] was not able to corroborate the number of appearances of the [Player] and neither the amounts that were paid to him. As a consequence, the Chamber considered that the [Club] had not presented any evidence proving that the [Player] was not entitled to the amounts he had already received and came to the conclusion that, at the time of the termination, i.e. 1 January 2011, the salaries for August, September, October and November 2010 were outstanding.*
- *Furthermore, the Chamber underlined that the [Club] had not provided any documentation which would prove that the lack of payment of the [Player's] salaries, was justified by any other reason than the latter's injury.*
- *In addition, the members of the Chamber established that the [Club] had no longer been interested in the [Player's] services by sending him the proposal of mutual termination in January 2011 and by having previously offered a buyout settlement in November 2010, the latter allegation equally having remained uncontested by the [Club].*
- *On account of all the above circumstances, and considering that the [Club] had repeatedly been in breach of its contractual obligations towards the [Player] together with the reasons thereof, the Chamber concurred that the [Club] had de facto terminated the contract without just cause on 1 January 2011".*
- As to the outstanding salaries, the FIFA DRC concluded *"in accordance with the principle of pacta sunt servanda and taking into account the fact that the employment contract was considered terminated as of 1 January 2011 and the documentary evidence provided by the parties, the Chamber decided that the [Club] is liable to pay the [Player] the amount of USD 100,000 as outstanding remuneration corresponding to the salaries relating to August, September, October and November 2010".*
- As to the compensation for breach of contract, the FIFA DRC determined that *"no compensation clause was included in the employment contract at the basis of the matter at stake".*
- *"Bearing in mind the foregoing as well as the claim of the [Player], the Chamber proceeded with the calculation of the monies payable to the [Player] under the terms of the employment contract until 3 November 2011, taking into account that the [Player's] remuneration until November 2010 is induded in the calculation of the outstanding remuneration. Consequently, the Chamber concluded that the amount*

of USD 275,000, i.e. remuneration as from December 2010 until the end of the 2011 season, serves as the basis for the determination of the amount of compensation for breach of contract.

- *[…] The Chamber noted that according to the documentation contained in the TMS, he signed an employment contract with Club Deportivo Necaxa, on 1 August 2011; however the registration process was never completed. The DRC also observed that the [Player] subsequently entered into an employment contract with Club Deportes Savio F.C. on 17 July 2012, i.e. after the original date of expiry of the contract with the [Club]. Thus, the player had apparently not been able to mitigate damages. In this context, the Chamber declared that there is no remuneration to be taken into account in order to mitigate the amount of compensation for breach of contract.*
- *In this respect and bearing in mind all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the [Club] must pay the amount of USD 275,000 to the [Player], which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

42. On 2 February 2015, the Club lodged a Statement of Appeal with the CAS in accordance with Article R48 of the CAS Code, challenging the Appealed Decision. This document did not contain any specific requests for relief.

43. On 5 February 2015, the Club informed the CAS Court Office of its preference for a sole arbitrator to be appointed.

44. On 9 February 2015, the Club informed the CAS Court Office that its Statement of Appeal was to be considered as its Appeal Brief.

45. On 13 February 2015, the Player informed the CAS Court Office of his disagreement to the appointment of a sole arbitrator.

46. Also on 13 February 2015, the CAS Court Office informed the parties that the President of the Appeals Arbitration Division, or her Deputy, would decide on the matter of the number of arbitrators.

47. Also on 13 February 2015, the Player requested CAS to request FIFA to produce a copy of the complete case file related to the matter at hand and, in the meantime, to suspend the term to file his Answer, since counsel for the Player did not represent the Player in the proceedings before FIFA and, since then, had never been granted access to the case file by FIFA.

48. Also on 13 February 2013, the CAS Court Office suspended the Player's time limit to file his Answer and informed the parties that the Player's request for production of evidence was referred to the President of the Appeals Arbitration Division.

49. On 16 February 2015, following consultation with the President of the Appeals Arbitration Division, the CAS Court Office informed the parties that only a Panel, once constituted, may

order the production of the file of the first instance. As a consequence, the Player was granted a new time limit to file his Answer and that, should the Panel request the file from FIFA, it may grant the parties a second round of written submissions.

50. On 18 February 2015, the Player informed the CAS Court Office that he did not intend to pay his share of the advance of costs.

51. On 19 February 2015, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

52. On 20 February 2015, the CAS Court Office informed the parties that the President of the Appeals Arbitration Division decided to submit the case to a Panel composed of a sole arbitrator.

53. On 18 March 2015, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the matter was constituted by:

- Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as Sole Arbitrator

54. On 11 April 2015, the Player filed his Answer in accordance with Article R55 of the CAS Code. In his Answer, the Player requested the Sole Arbitrator to allow for a second round of written submissions upon receipt of the complete case file of FIFA. The Player submitted the following requests for relief:

"1. Firstly, we request this honorable Court to declare the inadmissibility of the appeal due to the preclusion of the time limit of the present appeal procedure.

2. Secondly, we request this honorable Court to reject the Changchun Yatai FC's appeal of FIFA's decision of 20 august 2014.

3. We request this honorable Court to confirm FIFA's decision of 20 August 2014.

4. We request this honorable Court to order the Appellant to bear all costs incurred with these proceedings including administrative costs and arbitration fees.

5. We request this honorable Court to order the Appellant to cover the Respondent's legal expenses and fees related to these proceedings estimated in the amount of CHF 37,500 CHF".

55. On 17 and 22 April 2015 respectively, the Player and the Club informed the CAS Court Office that they did not consider it necessary for a hearing to be held.

56. On 28 April 2015, the CAS Court Office informed the parties that the Sole Arbitrator had decided to request FIFA to produce the file on which the decision under appeal is based and to grant the parties a second round of written submissions.

57. On 19 May 2015, upon the request of the Sole Arbitrator, pursuant to Article R57 of the CAS Code, FIFA provided CAS with a copy of its file related to the present matter.

58. On 22 May 2015, the Club was granted a deadline to submit any further comments or arguments it deemed necessary as a result of the communication of the FIFA file and the content of the Player's Answer. Furthermore, the Club was advised that even if it did not deem necessary to file a second submission, it should complete its Statement of Appeal / Appeal Brief in order to fully comply with Article R48 and R51 of the CAS Code. In particular, the Club was requested to:

- Clearly specify the name of the Respondent or Respondents;
- Clearly specify its requests for relief;
- Provide a copy of the statutes or regulations or the specific agreement providing for an appeal to CAS; and
- Comply in full with Article R51 of the CAS Code.

59. On 9 June 2015, the Club filed its second written submission. In this submission, the Club submitted the following requests for relief:

"1. We claim that the CAS ignore the decision that issued by FIFA on 22nd September. 2014, and based on the fact and to make a fair and impartial arbitration.

2. the player seriously breach the art 9par.4 and art16par1 and art16.par2 of the "Employment Contrat for Foreign Player" (hereinafter: Employment Contract) signed between the player and Changchun Yatai FC. in view of the fact of the player serious breach of contract, according to relevant provisions of the .par.4 annexe1 in regulations on the status and transfer of player that issued by FIFA in 2012 edition, which state that: "In all cases, the party in breach shall pay compensation". We claim that the player should to pay no less than USD 300,000 for compensation of the player breach of contract and fines to the club and according to the art 16 of the "Employment Contract" we claim that the player should to pay the USD 700,000 for compensation of the transfer fee of the J Samuel Caballero to the club.

3. due to the player serious breach of contract, the player had brought the serious influence to Changchun Yatai FC in the Chinese professional league, and our club have to spend large amount of the money to re-transfer the foreign player. We claim that the player should to pay the USD 2,000,000 for compensation to the club.

4. On 28 January 2015, we provided the file of the application for arbitration to the CAS, which containing two stamped documentary evidence provide by the Chinese Football Association (hereinafter: CFA) affiliated's Guizhou FC and Guangzhou FC, one of the documentary evidence was signature by Mr. Shubin Li (Mr. Shubin Li is a famous professional coach in China) who is the coach of Guangzhou Fuli FC professional team to prove that the player was unauthorized leave without any permission from Changchun Yatai FC and the player had breached the contract, trial in Guangzhou Fuli FC. And we also attached a lot of relative news reports from China's network media and newspaper media, a lot of evidence to prove the player serious breached of contract, and without any permission from the club to go to other clubs to take a trial, its enough to prove that the player's behavior violated of the professional ethics, and then, the fact that the player has never come back to Changchun Yatai FC. Changchun Yatai FC has the right to pursue financial liability to the player, and the player has no reason to ask any compensation from the club.

5. the player was provided the forgery fraud fabricated evidence file to the FIFA, which contains that forged Changchun Yatai football club official documents, and made two falsification medical reports and etc.(please see the annexe3,4,5 of part 2 of the appeal reason and basis of the application for arbitration to the CAS dated on 28 January 2015,and supplementary documents dated on February 2 2015), it can be prove that the player has made falsification in the procedure to the DRC of the FIFA and his testimony is inconsistent, he has no moral integrity, the player intended to escape from Changchun Yatai to pursue him responsibility. His behavior should be condemned and punished by the CAS".

60. On 25 June 2015, the Player filed his second written submission. In this submission the Player partially amended his requests for relief as follows:

"1. Firstly, we request this honorable Court to declare the inadmissibility of the appeal due to the non-fulfillment of the requirements demanded by the Sole Arbitrator in the letter sent to the Appellant on 22 May 2015 or alternatively due to the preclusion of the time limit to file the Statement of Appeal.

2. Subsidiary, we request this honorable Court to reject the Changchun Yatai FC's appeal of FIFA's decision of 20 august 2014 and confirm FIFA's decision of 20 August 2014.

3. In any case, we request this honorable Court to order the Appellant to bear all costs incurred with these proceedings including administrative costs and arbitration fees.

4. In any case, we request this honorable Court to order the Appellant to cover the Respondent's legal expenses and fees related to these proceedings estimated in the amount of CHF 37,500 CHF".

61. On 7 and 18 August 2015 respectively, the Player and the Club confirmed that, also after the second round of written submissions, they did not deem it necessary for a hearing to be held.

62. On 24 August 2015, the CAS Court Office informed the parties that the Sole Arbitrator had decided not to hold a hearing.

63. On 11 and 15 September 2015 respectively, the Player and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming that their right to be heard had been respected.

64. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

65. The Club's submissions, in essence, may be summarised as follows:

- The Club submits that the Player committed a serious breach of the Employment Contract, *because "[i]n the 2010 season of the Chinese super league, the player was almost 35 years old, his injury often relapse, cannot participate in the systematic training and competition. Based on the player actual situation, [the Club] promptly contacted the local professional medical institutions, as well as Beijing sports rehabilitation conter and other medical institution for his Treatment, but the player does*

not obey the arrangement of the club, on the early of the July 2010, the player was Unauthorized leave without the explain the situation and not to submit any written application and without any permission from the club, his behaviour has seriously violated of the art 5 par.2 of the "Employment Contract" moreover, He should be immediately return to my club and participate in training and competition when he recovered, but At the beginning of 2011,he has not returned and unauthorized training in the CFA affialiated club Gui zhou FC and Guang zhou FC. The player behaviour violated of the professional ethics and the player behaviour has seriously violated of the art 9 par.4 of the "Employment Contract" that: if the player is proved by the team doctor to be able to participate in training or match and refuse to work in the period, the club has the rights to unilateral terminate the contract with the player, the player has no right to lodge an appeal or ask for compensation. The player will compensate USD 100,000 to the club, additionally, The player behaviour also violated of the management system of Changchun Yatai FC. The Changchun Yatai FC shall not bear any financial compensation for breach of contract, but the player was unauthorized training in other club, For all the above reasons, the player should bear the liability pay to USD 100,000 for breach of contract to Changchun Yatai FC".

- The Club also claims compensation from the Player for the following reasons:
  - With reference to article 16(1) of the Employment Contract, *"the player unauthorized leave the club over 72 hours which upper limit of th maximum penalty under the "Employment Contract", the player should pay for fine USD20,000 to our club".*
  - With reference to article 16(2) of the Employment Contract, *"if the player was unauthorized leave has not returned, the player should pay to the club USD5,000 per day unconditionally for penalty and pay USD100,000 for compensation for breach of contract* […]*".*
  - With reference to article 16(3) of the Employment Contract, *"due to the player serious breach of the contract, the player has seriously affected the Changchun Yatai team's match arrangement and competition results, according to the "Employment Contract", the player should be pay for surcharge to the club USD20,000, in addition, due to the player leaved, Changchun Yatai FC have to spending large amount of the money to re-transfer other foreign player. The player has caused a great financial loss to Changchun Yatai FC. The player also should be compensate to the club of the financial loss of the player for the player's breach of the contract.".*
  - Because of the two trials with the Chinese clubs Guang zhou Fuli FC and Gui zhou Zhicheng, *"and the player through the media of china declared that his body is in the good health, without any injuries. In view of the above, its enough to prove that the player's behavior violated of the professional ethics and behavior violated of the art 17 of the "Employment contract", Changchun Yatai has no reason to pay any liability to the player, on the other hand, based on his serious breach of the "Employment Contract". we do have the right to pursue financial liability of the player,"*
- The Club furthermore maintains that several documents provided by the Player in the proceedings before the FIFA DRC were forged. The Club submits that the offer to mutually terminate the Employment Contract dated 1 January 2011 is false, the medical reports drawn up by the physician of the national representative team of Honduras could not have drawn up by this person *"[j]udging from the time"*. Furthermore, the Club avers that the Beijing international rescue centre is *"not a Professional medical institutions for the sports injuries"*.

- The Club argues that the Player stated that he did not sign a contract with another club after his employment relationship with the Club ended. The Club however argues that the Player signed a contract with the Honduran clubs Club Deportivo Necaxa and Club Deportes Savio FC and that this shows the bad faith of the Player.
- The Club submits that the Player was asked to leave his apartment in January 2011 only for renovation purposes.
- The Club does not agree with the Appealed Decision that the employment relationship with the Club finished on 1 January 2011, submitting that *"from individual countries as Honduran, who hold business visa or tourism visa issued by china, if the visa period will expired, such as the need to extend the stay time and need passport holders come in person to the relevant departments. From the player statements and his alleged evidence, it can be prove on April 2011, he is still in china, and also can prove that the player can apply visa extension, therefore cannot prove the passport deadline to 24 January, our club consider that cannot be used as the evidence that Changchun Yatai FC intention to terminate "Employment Contract" with the player"*.

66. The Player's submissions, in essence, may be summarised as follows:

- Preliminarily, the Player maintains that the Club's appeal is inadmissible due to:
  - The failure of the Club to comply with Article R48 of the CAS Code, since it (i) did not clearly specify its requests for relief; (ii) introduced different financial claims raising the total amount claimed from USD 300,000 in the Statement of Appeal to USD 3,000,000 in the second written submission; and (iii) failed to provide a copy of the provisions of statutes or regulations or the specific agreement providing for an appeal to CAS.
  - The expiry of the time limit for the Club to challenge the Appealed Decision. In this regard, the Player submits that the findings of the Appealed Decision were communicated to the Club – via CFA – on 3 September 2014 and that the Club failed to request the grounds, which would secure it the right to appeal, within the 10-day deadline prescribed in article 15 of the FIFA Procedural Rules. The Player furthermore argues that FIFA rejected the Club's requests twice, but on 6 November 2014 unlawfully decided to reconsider its previous position and proceed with the *"formal* [re]*communication"* of the findings of the Appealed Decision to the Club, granting it a new deadline to request the relevant grounds. The Player avers in this sense that between 17 October and 6 November 2014 neither the Club nor the CFA presented any material evidence that could allow FIFA to change its first conclusion. As a consequence thereof, the Player claims that FIFA violated the FIFA Procedural Rules and shall thus render the present appeal inadmissible.
- On the merits, the Player firstly points out that neither the validity of the Employment Contract nor its compliance (by both parties) until July 2010 is disputed in the case.
- In continuation, the Player alleges that the Club does not dispute having ceased to pay his salary after the Player got injured. In this respect, Player deems that the Club violated article 18(4) of the 2010 edition of FIFA Regulations on the Status and Transfer of Players

(hereinafter: the "FIFA Regulations"), since *"[t]he validity of a contract may not be made subject to a successful medical examination"*.

- In addition, the Player sustains that all reasons presented by the Club to justify the lack of payment are *post facto* allegations, built only after the Player had lodged a claim before FIFA and that these allegations are not supported by any evidence whatsoever. In particular, according to the Player there was (were):
  - *"No communications to the Player dated on the time the Club alleges"*;
  - *"No evidences regarding the unauthorized leave presumably committed"*;
  - *"No records, notifications or requirements about the 'serious breach of contract' purportedly committed by the player"*; and
  - No proof of the payments the Club claims to have made in favour of the Player.
- The Player further stresses that the allegation of forgery was raised for the first time before the CAS, after FIFA considered the Club's offer to mutually terminate the employment relationship as one of the reasons to establish that the Club terminated the Employment Contract without just cause on 1 January 2011. Even if that was not the case, the Player understands that, in any event, it would have been impossible for him to forge a document *"two years before the dispute"*.
- In view of all the above, the Player ultimately refers to the content of the Appealed Decision, affirming that the Club had repeatedly violated its contractual duties towards the Player and terminated the Employment Contract without just cause on 1 January 2011.

VI. JURISDICTION

67. The jurisdiction of CAS derives from article 67(1) of the FIFA Statutes (edition 2014) 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.

68. In his written submissions, the Player refers to a defense on lack of jurisdiction of CAS by alleging that the Club failed to comply with the deadline to request the grounds of the Appealed Decision and consequently to lodge its appeal. Materially considered however, the Sole Arbitrator finds that such argument concerns the admissibility of the appeal and not the lack of jurisdiction and he will therefore deal with this issue in the following section of this award.

69. The jurisdiction of CAS is further confirmed by the Order of Procedure, duly signed by both parties.

70. It follows that CAS has jurisdiction to adjudicate the present dispute.

VII. ADMISSIBILITY

A. The Timeliness of the Appeal

71. The Player maintains that the Club failed to comply with the deadline prescribed in article 15 of the FIFA Procedural Rules to request the grounds of the Appealed Decision, a fact that would allegedly render the present appeal inadmissible.

72. In this respect, the Sole Arbitrator starts his analysis by taking note of the lengthy exchange of correspondence between FIFA, the CFA and the Club in the period between 16 September and 6 November 2014.

73. On 6 November 2014, FIFA finally decided to reconsider its initial position and proceeded with the *"formal communication"* of the operative part of the Appealed Decision, expressly granting the Club a new deadline to request the grounds of the Appealed Decision.

74. The Sole Arbitrator notes that based on this *"formal communication"*, the Club was entitled to request FIFA for the grounds of the Appealed Decision, which it did within the relevant deadline.

75. The Sole Arbitrator further observes that the Club subsequently challenged the Appealed Decision with CAS within the deadline of 21 days set out in article 67(1) of the FIFA Statutes.

76. The Sole Arbitrator finds that the Club complied with the requirements to challenge the Appealed Decision with CAS and that the appeal is therefore in principle admissible.

77. However, the Player is apparently of the view that his rights were violated by the change in FIFA's course of action.

78. Indeed, the Sole Arbitrator finds FIFA's conduct in respect of the Club's right to ask for the grounds of the Appealed decision questionable, even more so since the Appealed Decision communicated to the parties on 6 November 2014 does not explain what led FIFA to change its initial stance in this respect. Nevertheless, the Sole Arbitrator finds that this objection of the Player is directed towards FIFA, whereas FIFA is not a party in the present proceedings. This issue therefore falls outside the scope of the present litigation. Furthermore, the letter of FIFA of 6 November 2014 is a decision that could have been appealed. Should the Player have desired to challenge FIFA's decision to proceed with a second formal communication, it should have lodged an independent appeal against such decision and name FIFA as a respondent within the time limits under the CAS Code that started to run at the moment when that decision was communicated to the Player. The Player however failed to do so. As a consequence, the player is not entitled to try and cure his failure to challenge FIFA's decision on time by challenging it in an indirect way within his arguments in the Answer to the appeal lodged by the Club.

79. In light of the above, the Sole Arbitrator concludes that the present appeal was lodged within the 21 day time limit set in article 67(1) of the FIFA Statutes.

B. The Club's compliance with Article R48 of the CAS Code

80. The Player further argues that the appeal shall be declared inadmissible since the Club:

- Significantly modified and increased its financial claims in the second round of written submissions as compared to the financial claims in the Statement of Appeal / Appeal Brief and the counterclaim filed before FIFA;
- Did not clearly specify its requests for relief; and
- Failed to provide a copy of the provisions of statutes or regulations or the specific agreement providing for an appeal to CAS and to specify the name of the respondent.

81. As to the first argument, the Sole Arbitrator notes that the Club significantly increased its financial claims in its second written submission in comparison with the Statement of Appeal / Appeal Brief and also in comparison with its financial claims in the counterclaim lodged before FIFA.

82. The Sole Arbitrator observes that Article R56 of the CAS Code determines the following:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

83. Although the Sole Arbitrator allowed the parties a second round of written submissions, the parties were not allowed to supplement or amend their requests or their argument.

84. In view of the fact that the Player objects to the Club's increased financial claim and in the absence of any exceptional circumstances being put forward by the Club justifying the sudden increase of its financial claim, the Sole Arbitrator finds that the Club's requests for relief as set out in its second written submission are inadmissible insofar these requests exceed the requests as set out in the Statement of Appeal / Appeal Brief.

85. Moreover, CAS jurisprudence on Article R57 of the CAS Code stipulates that in reviewing a case in full (*i.e.* the *de novo* power of review), a Panel may not go beyond the scope of the original dispute and is limited to the issues that could be heard by the body rendering the challenged decision and could thus arise thereof (CAS 2007/A/1396 & 1402).

86. Therefore, the Sole Arbitrator finds that, to the extent that the amounts contained in the Club's requests for relief in its Statement of Appeal / Appeal Brief exceed the requests for relief of the Club before FIFA, these must be deemed inadmissible, unless specific and exceptional circumstances are present (as explained in CAS 2007/A/1396 & 1402) or if these claims could not have been anticipated for at the time. As such, since the Club failed to put forward any justification as to why its financial claims before CAS exceed its financial claims before FIFA, the Sole Arbitrator finds that, following the counterclaim submitted by the Club in the

proceedings before the FIFA DRC, the Club's financial claims shall be limited to the financial claims lodged before FIFA in its counterclaim, *i.e.* USD 228,000.

87. Furthermore, regarding the Player's second argument, although the financial claims of the Club are not clearly specified in the form of requests for relief in the Statement of Appeal / Appeal Brief, the Sole Arbitrator finds the object of the appeal to be sufficiently clear in the sense that it requests CAS to set aside the Appealed Decision and to render a new decision determining that the Player breached the Employment Contract and that the Player should pay damages to the Club. Furthermore, the mere fact that the Club was ordered by the Sole Arbitrator to clearly specify its request for relief does not lead to the inadmissibility of the appeal in case the requests for relief would not have been sufficiently clear, even after the second round of written submission.

88. As to the Player's third argument, the Sole Arbitrator finds that, in the specific context of an appeal against a decision of the FIFA DRC, which is a recurrent practice in CAS proceedings, holding an appeal inadmissible for the sole reason that an appellant failed to specify the name of the respondent and to provide a copy of article 67(1) of the FIFA Statutes would amount to a form of exaggerated formalism, particularly since the Player does not dispute the jurisdiction of CAS on the basis of this provision and because there is no doubt that the respondent is Mr Jorge Samuel Caballero. Here again, a clear distinction should be made between a legitimate request or order addressed to the parties by the Sole Arbitrator for the sake of clarity and the consequences of a failure to fully comply with such order and the admissibility of an appeal.

89. Consequently, the appeal is deemed admissible, however, the requests for relief of the Club are deemed inadmissible insofar these exceed the requests for relief in the counterclaim filed by the Club before FIFA.

VIII. APPLICABLE LAW

90. Article R58 of the CAS Code reads 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

91. The Club took no position regarding the law or regulations applicable to the merits of the present dispute. The Player in turn concurred with the Appealed Decision, affirming that the FIFA Regulations (edition 2010), should apply.

92. The Sole Arbitrator observes that article 27 of the Employment Contract determines the following:

"This Contract shall be governed by the published and publicly available laws and regulations of the PRC. The parties shall strive to resolve any dispute arising out of or in relation to this contract through friendly negotiation.

If the dispute remains unresolved through friendly negotiation, each party may submit the dispute to the China Football Association and FIFA for arbitration. The arbitral award shall be final and binding upon the parties".

93. The Sole Arbitrator finds that, since both parties elected to submit their dispute to FIFA by means of a claim and a counterclaim and since the competence of FIFA remained undisputed, the parties impliedly elected for the FIFA Regulations to be applied to resolve the dispute.

94. The Sole Arbitrator observes that article 66(2) of the FIFA Statutes determines 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".

95. As such, the Sole Arbitrator shall primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA.

IX. MERITS

A. The Main Issues

96. As a result of the above, the main issues to be resolved by the Sole Arbitrator are:

a) When was the Employment Contract terminated and by whom?

b) Was there just cause for the unilateral termination of the Employment Contract?

c) Is any outstanding salary payable?

d) What is the amount of compensation due to the innocent party?

97. Before answering the questions above and having in mind that in spite of the opportunities given by the Sole Arbitrator to the parties to reconsider their positions on the necessity of holding a hearing, both parties requested the appeal to be decided based on the written submissions only and considering the fact that the written submission of both parties were drafted in a way that left many factual issues unclear and insufficiently explained, the Sole Arbitrator deems it relevant to devote a few considerations to the issue of the burden of proof.

98. The burden of proof has already been widely examined by other CAS panels as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based.

(…)

It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based" (CAS 2007/A/1380, with further references to CAS 2004/A/730 and CAS 2005/A/968).

99. Notably, a party's burden of proof is discharged upon satisfaction of two cumulative requirements: the (i) "burden of production of evidence" and the (ii) "burden of persuasion".

100. That means that a party must, therefore:

"[P]rovide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the [party]. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (CAS 2007/A/1380).

101. Considering the above, the Sole Arbitrator finds it obvious that the primary burden to prove its claims and allegations rests with the Club. However, in the present case the Sole Arbitrator finds that the Club bears an elevated burden in view of the serious allegations that the Player committed fraud and forgery.

102. The Sole Arbitrator finds it apparent that the Club expressed these serious allegations by simply stating that the documents provided by the Player (*i.e.* the Club's letter dated 1 January 2011 and the medical reports produced by the Player in the proceedings before the FIFA DRC) are forged, without submitting any corroborating evidence in the form of witnesses, experts or otherwise in this respect. The Sole Arbitrator finds it also incomprehensible that the Club asserts that *"based on A lot of evidence and facts can be prove that that the player was lying"*, but did not submit any such evidence and thus did not enable the Sole Arbitrator to verify its allegations.

a) When was the Employment Contract terminated and by whom?

103. The Sole Arbitrator observes that it is not in dispute between the parties that the Employment Contract was duly complied with by both the Player and the Club until July 2010.

104. It is further undisputed that the Player travelled to Honduras and underwent a knee surgery on 6 July 2010 and that the Club stopped paying the Player his monthly salaries as of August 2010.

105. The Sole Arbitrator observes that neither the Club, nor the Player explicitly terminated the Employment Contract at any time.

106. The Sole Arbitrator observes that the FIFA DRC considered that the Employment Contract was terminated by the Club on 1 January 2011 due to the fact that the Club had sent the Player a letter on this date suggesting the mutual termination of the Employment Contract to the Player. The Sole Arbitrator however observes that the Player never accepted the Club's suggestion. Furthermore, the Club argues that it never sent such letter to the Player and that the letter was forged.

107. The Sole Arbitrator does not accept the allegation that the Club's letter to the Player dated 1 January 2011 is forged, in the absence of any evidence, or at least an attempt to produce evidence in this respect. The mere argument of the Club that the template of this letter is different from the template normally used by the Club is not deemed sufficient to establish such a severe factual accusation.

108. In any event, the Sole Arbitrator observes that it is undisputed that the Player never accepted the Club's proposal to terminate the Employment Contract mutually.

109. The Sole Arbitrator finds that the mere proposal of the Club to mutually terminate the Employment Contract cannot be considered as a unilateral termination of the Employment Contract simply due to the fact that the Player did not accept such offer. The Sole Arbitrator therefore does not agree with the Appealed Decision insofar it is determined that the Employment Contract was terminated on 1 January 2011.

110. The Sole Arbitrator feels himself comforted in this respect by the fact that counsel for the Player put the Club in default of payment by letter dated 13 April 2011 and urged the Club to make sure that the Player would *"be immediately activated to play"* for the Club. This letter remained unanswered by the Club. If the Club would have maintained the position that the Employment Contract was not valid any more at that time, it was to be expected from the Club that it would have informed the Player accordingly. Since this was not done by the Club, the Sole Arbitrator finds it evident that in mid-April 2011 both parties still considered the Employment Contract to be valid and in force.

111. The Sole Arbitrator finds that it must be concluded from the above sequence of events that the Employment Contract was therefore terminated only on 7 June 2011 due to the fact that the Player lodged a claim against the Club with the FIFA DRC on this date.

112. Consequently, contrary to the findings of the FIFA DRC in the Appealed Decision, the Sole Arbitrator finds that the Employment Contract wat terminated unilaterally by the Player on 7 June 2011.

b) Was there just cause for the unilateral termination of the Employment Contract?

113. Having determined that the Employment Contract was unilaterally terminated by the Player on 7 June 2011, the Sole Arbitrator finds that the next issue to be considered is whether the Player had just cause to terminate the Employment Contract unilaterally.

114. In this respect, the Sole Arbitrator observes that article 14 of the FIFA Regulations determines as follows:

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

115. The Sole Arbitrator observes that the Commentary to the FIFA Regulations provides guidance as to when a contract is terminated with just cause:

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

116. In this regard, the Sole Arbitrator notes that in CAS 2006/A/1180, a CAS panel stated the following:

"[A] prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship".

117. With this legal framework in mind, the Sole Arbitrator observes that both parties put forward several arguments that in one way or another allegedly justify the premature termination of the Employment Contract.

118. In view of the above finding that the Player terminated the Employment Contract and the considerations regarding the burden of proof set out *supra*, the Sole Arbitrator finds that the burden of proof to establish that the Employment Contract was unilaterally terminated by the Player was met by the Club, and thus the burden shifts to the Player, who carries the burden to establish that he had just cause to terminate the Employment Contract on 7 June 2011.

119. The Sole Arbitrator observes that the main arguments advanced by the Player to justify the unilateral termination of the Employment Contract are that the Club failed to pay him his salaries as from August 2010 and that the Club asked the Player to leave his apartment on an unspecified date in January 2011.

120. The Sole Arbitrator observes that the Club does not dispute not having paid the Player his salaries as from August 2010.

121. The Sole Arbitrator finds that the Club's failure to pay the Player his salaries for such a long term (*i.e.* for 10 months) and that the Player put the Club in default on 13 April 2011, is sufficient evidence to rule that the Player had just cause to terminate the Employment Contract, unless the Club would prove that it had a good reason for not having paid the Player's salaries. As such, the Sole Arbitrator finds that the Player, in principle, satisfied his primary burden of proof

and that the burden of proof shifts to the Club to try and establish that the Club had a good and legally valid reason for not having paid the Player's salaries.

122. The Sole Arbitrator observes that the Club maintains that it was not required to pay the Player's salaries because the Player allegedly left the country to undergo surgery in Honduras without being authorised to do so by the Club. Also, the Club alleges that the Player attended trials with other Chinese football clubs during the term of the Employment Contract without being authorised to do so by the Club.

123. Again reverting to the principle of the burden of proof, the Sole Arbitrator finds that the burden of proof to establish these facts lies with the Club.

124. Firstly, with regard to the return of the Player to Honduras, the Sole Arbitrator observes that in principle, in accordance with article 5(2) and 9(2) of the Employment Contract, the Player had the obligation to accept medical treatment as demanded by (and at the expense of) the Club and to make himself available to provide information on his physical condition at any time.

125. In this respect, the Sole Arbitrator however observes that there is no evidence at his disposal suggesting that the Club ever gave the Player any instructions as to how, when and where it would expect him to undergo medical treatment, while it remained undisputed that the Player was in need of medical treatment.

126. Admittedly, there is also no evidence on file suggesting that the Player requested the Club to make sure that he would receive the required medical treatment.

127. However, the Sole Arbitrator finds that it could be expected from the Club to give clear directions to the Player as to what was expected from him. There is also no evidence establishing, or even indicating, that the Club did not agree that the Player would leave to Honduras to receive medical treatment and that the Club asked or ordered the Player to stay in China or to return to China in order to be treated. Simply discontinuing the payment of the Player's salary, while not instructing the Player what to do or even instructing the Player to return to China immediately as soon as it learned that the Player left to his home country, was not the course of action that could be expected from a good employer and a respectable football club. The Sole Arbitrator infers that, in the absence of any evidence as to what the Club expected the Player to do, the Club agreed and accepted that the Player would go to Honduras for medical treatment. The Player cannot be reproached by the Club for having left the country without authorisation from the Club and it did not entitle the Club to simply stop paying the Player's salary.

128. In continuation, contrary to the Club's allegation that the Player abandoned the Club, the Sole Arbitrator observes that the case file of FIFA contains copies of pages from the Player's passport with entry stamps issued by the Chinese immigration services dated 25 October 2010 and 15 January 2011. Although the Sole Arbitrator is of the opinion that this does not ascertain that the Player resumed training with the Club's squad, it does show that the Player at least returned to China in October 2010 and at the beginning of the 2011 season.

129. Furthermore, since the Club asked the Player to leave his apartment in January 2011, the Club was apparently in contact with the Player upon his return to China. However, there is no evidence on file demonstrating that the Club undertook any action to urge the Player to resume his duties with the Club nor that the Player refused to so if indeed asked to resume his duties.

130. As a consequence of the above, and in the absence of any evidence to the contrary, the Sole Arbitrator finds that the Player left to Honduras without any reaction from the Club which leads to the conclusion that the Club either *a priori* approved it or accepted it once the Player left the Club. The Player returned to China in October 2010 and there is no evidence that he did not want to resume his duties and finally there are evidences that the club was in contact with the Player after his return to China. All these facts establish the conclusion that the Club was not entitled to discontinue the payment of the Player's salary.

131. As to the trials attended by the Player with other Chinese football clubs, the Sole Arbitrator observes that the Player was formally still employed by the Club when he attended these trials in February and March 2011. However, the Sole Arbitrator observes that there is no evidence on file indicating that the Club wanted the Player to resume his duties with the Club at the time. To the contrary, the Club had already offered the Player to terminate the Employment Contract by mutual agreement in January 2011, which indicates that the Club was no longer interested in the services of the Player at the time.

132. Against this background, the Sole Arbitrator finds that the Club cannot reproach the Player retrospectively for having attended trials with other Chinese football clubs without being authorised to do so by the Club.

133. In any event, the Player did not participate in any official matches for these clubs and finally no employment relationship was established between the Player and Gui zhou F.C. or Ghang zhou F.C. As such, the Sole Arbitrator finds that the Club did not establish that it incurred any negative consequences from the Player having attended these trials and that it would therefore be justified to stop paying the Player's salary.

134. Even if it were assumed that the Club could impose fines on the Player for being absent from the Club without authorisation based on the Employment Contract, the Sole Arbitrator observes that no disciplinary proceedings were initiated against the Player and no such fines were imposed, but that the Club simply stopped paying salary to the Player. As such, the provisions in the Employment Contract determining that fines could be imposed on the Player are not relevant for the matter at hand as they do not release the Club of its duty to comply with its payment obligations towards the Player.

135. Consequently, the Sole Arbitrator finds that the arguments invoked by the Club do not justify the Club's failure to pay the Player's salary and concludes that the Player could not be reasonably *"expected to continue the employment relationship"* with the Club and thus the Player terminated the Employment Contract with just cause on 7 June 2011, upon lodging a claim against the Club with the FIFA DRC.

c) Is any outstanding salary payable?

136. Since it is not in dispute between the parties that the Club stopped paying the Player's salary as from August 2010 and because it has now been determined that the employment relationship between the Player and the Club ended on 7 June 2011, the Sole Arbitrator considers that the Player is entitled to 10 months of outstanding salary under the Employment Contract (*i.e.* from August 2010 until and including May 2011).

137. As the Player was entitled to receive USD 25,000 net per month under the Employment Contract, the Sole Arbitrator finds that the Player is entitled to receive USD 250,000 net (USD 25,000 x 10) from the Club as outstanding salaries.

d) What is the amount of compensation due to the innocent party?

138. The Sole Arbitrator observes that article 14 of the FIFA Regulations reads as follows:

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

139. Since it has been determined that the Player terminated the Employment Contract with just cause on 7 June 2011, no compensation is payable by the Player to the Club. As such, any requests for relief of the Club in this respect are dismissed.

140. Although it has been established *supra* that the Player had just cause to terminate the Employment Contract with the Club, article 14 of the FIFA Regulations does not specifically determine that the Player is entitled to any compensation for breach of contract by the Club.

141. The Sole Arbitrator, however, is satisfied that the Player is in principle entitled to compensation because of the Club's breach of its contractual obligations pursuant to the Employment Contract. In this respect, the Sole Arbitrator makes reference to the Commentary to the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Commentary"). According to Article 14 (5), (6) of the FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*. Hence, although it was the Player who terminated the Employment Contract, the Club was at the origin of the termination by breaching its contractual obligations and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. The same approach has previously been adopted by the panel in CAS 2012/A/3033 (see CAS 2012/A/3033, §72).

142. The Sole Arbitrator observes that in the absence of any contractual provision determining the financial consequences of a unilateral breach of contract, the consequences thereof are set out in article 17(1) of the FIFA Regulations:

> *"The following provisions apply if a contract is terminated without just cause:*

1. 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 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".

143. The Sole Arbitrator takes due note of previous CAS jurisprudence establishing that the purpose of article 17 of the FIFA Regulations is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, §80, with further references to: CAS 2005/A/876, p. 17*: "[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, §90; CAS 2007/A/1359, §92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, §6.37).

144. In respect of the calculation of compensation in accordance with article 17 of the FIFA Regulations and the application of the principle of "positive interest", the Sole Arbitrator follows the framework as set out by a previous CAS panel as follows:

"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.

As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).

The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including

the specificity of sport, as foreseen in art. 17 FIFA Regulations" (CAS 2008/A/1519-1520, at §85 et seq.).

145. The Sole Arbitrator finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Sole Arbitrator will proceed to assess the Player's objective damages, before applying his discretion in adjusting this total amount of objective damages.

146. In this regard, the Sole Arbitrator recalls that the Employment Contract provided for a monthly salary in the amount of USD 25,000 net and was valid until 3 November 2011.

147. Since the salaries of August 2010 until and including May 2011 have already been awarded as outstanding salaries, the Sole Arbitrator finds that the salaries that would normally have been paid to the Player should the Employment Contract have been duly complied with (*i.e.* the salaries of June 2011 until and including October 2011) may be taken into account in awarding compensation to the Player. Since the Player did not receive these amounts due to the Club's breach of its contractual obligations under the Employment Contract, these amounts can therefore be considered as damages.

148. As the Player was entitled to receive USD 25,000 net per month under the Employment Contract, the Sole Arbitrator finds that the Player is in principle entitled to receive USD 125,000 net (USD 25,000 x 5) from the Club as compensation for breach of contract.

149. As to the Club's argument that the Player was employed by the Honduran football club Club Deportivo Necaxa as from 1 August 2011, the Sole Arbitrator observes that, as was also determined by the FIFA DRC in the Appealed Decision, the Player indeed concluded an employment contract with this club but that the Player was finally never registered for this club. As such, the Player never received any salary from Club Deportivo Necaxa.

150. The Sole Arbitrator finds that the mere conclusion of the employment contract with Club Deportivo Necaxa, the registration of which however did not materialise, did not reduce the damages of the Player and that the conclusion of this employment contract is therefore irrelevant in determining the amount of compensation for breach of contract to be paid to the Player by the Club.

151. Since the Club did not put forward any additional specific arguments as to why the sums awarded by the FIFA DRC in the Appealed Decision should be reduced and because the Sole Arbitrator does not consider these amounts to be disproportionate, the Sole Arbitrator finds that the Club shall indeed pay the amount of USD 125,000 net to the Player as compensation for breaching the Employment Contract.

152. Although the Player initially requested a higher amount of compensation in the proceedings before the FIFA DRC, the Sole Arbitrator will not continue to examine other possible damages based on the other criteria specified in article 17 of the FIFA Regulations since the Sole Arbitrator is prevented from awarding a higher amount of compensation as was awarded in the

Appealed Decision since the Player did not lodge an independent appeal against the Appealed Decision with CAS. Determining otherwise would constitute a ruling *ultra petita*.

153. Finally, since the total amount awarded by the FIFA DRC in the Appealed Decision (*i.e.* USD 375,000 (USD 100,000 + USD 275,000)) and in the present appeal arbitration proceedings before CAS (*i.e.* USD 375,000 (USD 250,000 + USD 125,000)) is the same despite the different proportioning and since the Appealed Decision determines that interest at a rate of 5% *per annum* on both amounts is also payable as from the same date, the Sole Arbitrator finds that Appealed Decision shall be confirmed.

B. Conclusion

154. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made by the parties, the Sole Arbitrator finds that:

a. The Employment Contract was unilaterally terminated by the Player on 7 June 2011.

b. The Player had just cause to unilaterally terminate the Employment Contract.

c. The Player is entitled to receive USD 250,000 net (USD 25,000 x 10) from the Club as outstanding salaries.

d. The Player is entitled to receive USD 125,000 net (USD 25,000 x 5) from the Club as compensation for breach of contract.

155. Any further motions or prayers for relief shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal lodged on 2 February 2015 by Changchun Yatai Football Club against the decision passed on 20 August 2014 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

2. The decision passed on 20 August 2014 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

(…)

5. All further motions or prayers for relief are hereby dismissed.