Arbitration CAS 2015/A/3946 ZAO FC Lokomotiv v. Leonid Stanislavovich Kuchuk & Football Union of Russia (FUR), award of 28 January 2016

Panel: Mr Bernhard Welten (Switzerland), President; Mr Dirk-Reiner Martens (Germany); Mr Efraim Barak (Israel)

Football
Compensation for early termination of coach's employment contract without just cause
Liquidated damages clauses

According to well-established CAS jurisprudence an explicit agreement of the parties to a contract on a certain sum to be paid in case of breach of contract does not need to be reduced by any of the amounts that the party entitled to receive such compensation has earned after the termination of an employment contract. Specifically, in case an employment contract contains a typical clause for liquidated damages – *i.e.* clearly stating how the compensation shall be calculated – the amount stated in the respective clause has to be paid as liquidated damages in the sense that no reduction will be made even if the party entitled to the damages had started a new employment on a date prior to the end of its original employment contract.

I. THE PARTIES

1. ZAO FC Lokomotiv (the "Club" or "Appellant") is a football club with its registered office in Moscow, Russia. It is affiliated to Football Union of Russia and plays in the Russian Premier League, the highest professional league in Russian Football and the country's primary football competition.

2. Mr. Leonid Stanislavovich Kuchuk (the "Coach" or "First Respondent") is a Belorussian citizen and a professional football coach, born on 27 August 1959. He is the former head coach of the Appellant's first team and currently coaches the Russian Football Club FC Kuban Krasnodar.

3. Football Union of Russia (the "Second Respondent" or "FUR") is Russian football's governing body. The FUR itself is affiliated to Fédération Internationale de Football Association ("FIFA"), world football's governing body.

II. FACTUAL BACKGROUND

A. Facts

4. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the submissions of the Parties, the exhibits produced and the declarations of the witnesses. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 18 June 2013, the Appellant signed an employment contract (the "Employment Contract") with the First Respondent for a fixed period from 18 June 2013 until 30 June 2015. In accordance with Clause 1.1. of the Employment Contract, the Coach was hired by the Club to work as Head Coach of the Appellant's first football team.

6. In the Coach's first season 2013/14, the first team of the Appellant performed well and finished the Russian Premier League in third place. In the second year, from 3 August to 13 September 2014, the team played 9 official matches, of which it only won 2 games. The team dropped out of UEFA's Europa League at the play-off stage and was, after the 7th round of the Russian championship, ranked in the 9th place.

7. On 26 June and 11 July 2014, the Appellant's first team travelled twice to Walchsee, Austria for the two pre-season training camps. The start in the Coach's second season 2014/15 began with two wins, two draws and two losses, including the UEFA Europe League play-off against Apollon Limassol FC on 28 August 2014.

8. On 31 August 2014, the Appellant's first team lost against FC Zenit in the Russian Premier League, based on which the President of the Appellant requested the Coach to produce a written report describing the reasons of the team's failures and a performance improvement plan. This report was handed over by the Coach on 8 September 2014.

9. On 13 September 2014, the Appellant's team drew at home against FC Mordovia Saransk in the Russian Premier League.

10. On 15 September 2014 at 10:30 a.m., the President of the Appellant cancelled the first team's training scheduled by the Coach and met with the Coach before addressing the players of the first team.

11. On 16 September 2014, the President of the Appellant arranged for one of the Club's longest-serving coaches, Mr. Igor Cherevchenko, to lead the training of the first team at 11:00 am, the time when the President of the Appellant had scheduled a meeting with the Coach. In this meeting, the lawyers of the Club and the Coach discussed the Appellant's proposal for termination of the Employment Contract by mutual consent.

12. Still on 16 September 2014, at around 16:00, the Coach arrived at the training ground in order

to direct the afternoon's training of the first team. However, he was denied access to the training ground by a security guard. Thereafter, the Coach submitted two default letters to the Appellant and requested to receive written instructions regarding his future work for the Club (as he was now replaced as head coach by Mr. Cherevchenko).

13. On 17 September 2014, the President of the Appellant met with the members of the First Respondent's coaching staff and agreed with them to mutually terminate their employment agreements. Further, on the Appellant's website an interview of the President was published, stating *inter alia*: *"… the contract with Kuchuk can be cancelled only by agreement of the parties and the lawyers are working on it now"*. The Coach deduced from all these facts that he has been suspended from work as he was not allowed to enter the Appellant's premises and moreover, based on a second article on the Appellant's official website where it was stated that *"Mr. Kuchuk, the Head Coach of FC Lokomotiv, is suspended from work"*.

14. On 18 September 2014, another announcement on the Appellant's website provided as follows: *"… in this regard the Board of Directors took the decision to agree with the suggestion of the President of the Club Olga Yurievna Smorodskaya that it is advisable to terminate the employment contract with Head Coach L.S. Kuchuk. Senior coach of the team Igor Cherevchenko has been appointed the Acting Head Coach"*. Later that day, the Appellant announced the mutual termination of the Employment Contracts with all assistant coaches.

15. In the following days several letters went back and forth between the Appellant and the First Respondent.

16. On 19 September 2014, the Appellant wrote to the Coach that *"… Therefore, the duties of the Head Coach have now been temporarily transferred to the coach I.G. Cherevchenko. For the avoidance of doubt we would like to emphasize that I.G. Cherevchenko is not a new Head Coach of the team; he temporarily performs the duties of the Head Coach …"*.

17. On 22 September 2014, the Appellant's President and the Coach met together with their lawyers to negotiate a mutual termination agreement. The offer made by the Appellant was rejected by the Coach on 23 September 2014.

18. On 26 September 2014, the First Respondent submitted a claim against the Appellant to the FUR Dispute Resolution Chamber ("DRC").

19. On 2 October 2014, the Appellant wrote to the First Respondent that *"… This is to inform you that the Club regards your actions as termination of the employment contract on your initiative and your unwillingness to continue training of the team. Therefore, the Club makes the decision to employ a new Head Coach and considers the employment contract terminated by you unilaterally"*.

20. On 4 October 2014, the Appellant published on its official website the appointment of Miodrag Bozovic as the acting head coach of the Appellant's first team.

21. On 8 October 2014, the Appellant took the decision to dismiss the Coach for a single gross violation of the Employment Contract, namely his failure to attend training and to perform the

duties required of him under the agreement on 4 October 2014. The Appellant wrote to the First Respondent: *"… we do hereby notify you that the Employment Contract unnumbered dated June 18, 2013 between you and the Club has been terminated and you have been dismissed on October 08, 2014".*

B. Proceedings before the FUR Dispute Resolution Chamber ("DRC") and Players' Status Committee ("PSC")

22. On 26 September 2014, the Coach filed a claim in front of the DRC requesting the following: *"(i) acknowledge absence of material breach of the Employment Contract dated June 18, 2013 on the part of L.S. Kuchuk; (ii) acknowledge material breach of the Employment Contract dated June 18, 2013 on the part of ZAO FC Lokomotiv; (iii) acknowledge L.S. Kuchuk's right to receive compensation in connection with material breach of the Employment Contract to be calculated based on the monthly remuneration payable to him under the Employment Contract multiplied by the number of months remaining until June 30, 2016; (iv) acknowledge the fact of the Employment Contract having been unilaterally dissolved by ZAO FC Lokomotiv without valid reasons".*

23. On 16 October 2014, the DRC decided, *inter alia*, the following:

    1. *To allow the application of the coach L.S. Kuckuk against ZAO FC Lokomotiv (Moscow) in part.*

    2. *To acknowledge the fact of the Employment Contract dated June 18, 2013 having been unilaterally dissolved by ZAO FC Lokomotiv (Moscow) without reasonable grounds.*

    3. *To compel ZAO FC Lokomotiv (Moscow) to pay the coach L.S. Kuchuk compensation for unilateral dissolution of the employment contract without reasonable grounds for the period from October 09, 2014 to June 30, 2015 calculated in accordance with Clause 8.2 of the Employment Contract dated June 18, 2013 within two (2) months following the effective date of this decision.*

    […].

24. On 7 November 2014, the Appellant filed an appeal against the decision of the DRC with the Players' Status Committee of FUR.

25. On 5 December 2014, the PSC decided (the "Decision" or the "Appealed Decision") that the Employment Contract was terminated by the Appellant without reasonable excuse and in absence of misconduct on behalf of the First Respondent and it issued the following decision:

    1. *To dismiss the appeal of ZAO FC Lokomotiv (Moscow) against Decision No. 166-14 of the Chamber dated October 16, 2014.*

    2. *To restate Decision No. 166-14 of the Chamber dated October 16, 2014 by amending clause 3 of the said as follows:*

        "To oblige ZAO FC Lokomotiv (Moscow) to pay compensation for unilateral termination of the Employment Contract without reasonable excuse to Coach Leonid Kuchuk in the amount of one million eight hundred forty-one thousand five hundred and ninety-seven Euro (EUR 1,841,597) at the exchange rate of the Central Bank of the Russian Federation as of the date of payment within two (2)

months after the effective date of the decision".

3. *To oblige ZAO FC Lokomotiv (Moscow) to pay the fee for handling its appeal by the Committee to the FUR in the amount of thirty thousand rubbles (RUB 30,000) within thirty (30) calendar days in accordance with Article 31 of the FUR Dispute Resolution Regulations.*

4. *This decision becomes effective as stipulated by Article 63 of the FUR Dispute Resolution Regulations.*

5. *Based on Article 47 of the Charter of the Russian National Public Organisation Football Union of Russia, this decision may be challenged with the Court of Arbitration for Sport in Lausanne in accordance with the Code of the Court of Arbitration for Sport.*

26. The Decision was sent to the Parties on 5 December 2014. The grounds of the Decision were then sent to the Parties on 6 February 2015.

27. The reasoning of the Decision can be briefly summarized as follows:

- First, starting form 16 September 2014, the First Respondent ceased to directly train the Appellant's first team which is not disputed by any party, however, interpreted differently in a legal sense. After taking into account the submitted evidences, the PSC concluded that the First Respondent was actually suspended from his duties as the Appellant's head coach starting from 16 September 2014 and he was not allowed to perform his duties until his formal dismissal on 8 October 2014. The Committee therefore concluded that the Appellant unilaterally, without the First Respondent's consent, suspended the latter from his work and such suspension was considered unlawful.
- The Employment Contract was terminated by the Appellant without reasonable excuse and in absence of misconduct by the First Respondent.
- The PSC referred to Article 9 para. 2 of the FUR Regulations on the Status and Transfer of Football Players, according to which in a case of an early termination of an employment contract by a professional football club in absence of misconduct of a professional football player, such football player has the right to compensation for such termination in the amount stipulated by the employment contract. The same compensation shall be paid to the coach of a football team participating in professional football tournaments.
- In the case at hand, the amount of compensation and the calculation procedure are stipulated by clause 8.2 of the Employment Contract. The DRC therefore correctly applied the compensation provision agreed upon between the parties of the Employment Contract. According to the aforementioned clause 8.2 such compensation shall be equal to the monthly remuneration of the Coach multiplied by the number of months remaining till the expiration of the initial contractual term which gives a total of EUR 1,841,597 due to the Coach.
- Regarding the alleged reduction of the amount, because the First Respondent's entry into a new employment contract with another football club, i.e. FC Kuban Krasnodar on 17 November 2014, the compensation calculation algorithm as stipulated by the Employment Contract is clear and does not provide for any external circumstances,

including receipt of remuneration from another club after the termination of the Employment Contract. Therefore, the Parties shall be governed by their written agreements, reflected in clause 8.2 in the Employment Contract and, thus, there are no reasons for any reduction of the amount of compensation payable to the First Respondent.

III. PROCEEDINGS BEFORE THE CAS

28. On 27 February 2015, the Appellant filed its Statement of Appeal against the First and the Second Respondent regarding the Decision pursuant to Article R47 *et seq*. of the Code of Sports-related Arbitration (the "Code"). In its Statement of Appeal, the Appellant nominated Mr. Dirk-Reiner Martens as arbitrator.

29. On 5 March 2015, the CAS Court Office, based upon an agreement of the Parties, granted the Appellant a 14-day extension of time to file its Appeal Brief.

30. On 6 March 2015, the First Respondent nominated Mr. Manfred Nan as arbitrator.

31. On 23 March 2015, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.

32. On 15 May 2015, the First Respondent filed his Answer pursuant to Article R55 of the Code.

33. On 18 May 2015, the CAS Court Office acknowledged receipt of the First Respondent's Answer and informed that it did not receive any answer or communication from the Second Respondent.

34. On 11 June 2015, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel was constituted as follows: Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland as President; Mr. Dirk-Reiner Martens, attorney-at-law in Munich, Germany and Mr. Efraim Barak, attorney-at-law in Tel Aviv, Israel as Arbitrators.

35. By letter of 15 June 2015, the Appellant requested that the Panel, according to Article R44 para. 3 of the Code, order the First Respondent to produce a copy of the contract between the First Respondent and FC Kuban Krasnodar as the First Respondent forgot to address this point in his Answer and if the Panel would uphold the Decision, the compensation awarded by the PSC should be reduced by the amount earned by the First Respondent under the contract with FC Kuban Krasnodar.

36. On 18 June 2015, the First Respondent replied that such contract was confidential and in his view irrelevant to the merits of the present dispute.

37. On 24 June 2015, the Panel directed the First Respondent to file such employment agreement with the Panel only and further decided that subject to any further decisions of the Panel and/or agreement between the Parties, this employment agreement would remain with the Panel on an *in camera* basis.

38. On 30 June 2015, the CAS Court Office acknowledged receipt of the First Respondent's letter of 29 June 2015, including a copy of the employment contract with FC Kuban Krasnodar.

39. On 21 August 2015, the Panel decided the following with respect to the Appellant's request for the production of documents by the First Respondent:

- such request in relation to communications between the First Respondent and the Ghana Football Association was denied as the First Respondent had addressed this issue in his Answer and had filed a confirmation by the Ghana Football Association of 24 September 2014 that no contact existed;
- in relation to the communications between the First Respondent and journalists the Appellant had failed to demonstrate that such documents were likely to exist and moreover, would be relevant, in accordance with Article R44.3 of the Code. Therefore, the Appellant was granted a deadline of 5 days to provide such information to the Panel; and
- as per the Parties' agreement two CAS awards and a FIFA decision would be admitted to the file.

40. On 2 September 2015, the Panel decided – after having received the Parties' submissions – to deny the Appellant's request that the First Respondent disclose his communications with various journalists as the Appellant failed to establish the relevance of such communications in relation to the alleged wrongful suspension and/or dismissal of the First Respondent.

41. On 15 September 2015 and 17 September 2015, the First Respondent and the Appellant, respectively, signed the Order of Procedure.

42. On 5 October 2015, the Panel confirmed that the contract between the First Respondent and FC Kuban Krasnodar would remain with the Panel on an *in camera* basis for the time being and during the hearing the Panel would decide if the contract or parts of it shall be disclosed to the Appellant.

43. On that same day, the Appellant withdrew its appeal regarding the First Respondent's liability to pay compensation to the Appellant; however, the Appellant's appeal as to the amount to be paid as compensation to the First Respondent was maintained.

44. On 7 October 2015, a hearing was held in Lausanne, Switzerland. The Appellant was represented by Mr. Stephen Sampson and Mr. Lloyd Thomas, as well as Prof. Nikolay Peshin as an expert. The First Respondent was personally present and assisted by Mr. Mikhail Prokopets, Mr. Yury Zaitsev and Mr. Georgi Gradev. The Second Respondent did not participate in the proceedings.

45. At the inception of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. Upon conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

46. As an initial matter, the Panel notes that the Parties made extensive submissions relating to the initially disputed question of whether the Employment Contract was terminated by the First Respondent with or without just cause and in consequence, whether the First Respondent is liable to pay a financial compensation to the Appellant. Due to the fact that the Appellant, in its letter dated 5 October 2015, withdrew its appeal made against the findings of the PSC on liability, the Panel will only examine the issue of quantum, *i.e.* the amount of compensation due from the Appellant to the First Respondent, if any. Hence, the Panel will only take into consideration the submissions made by the Parties relating to this issue.

A. Appellant's Submissions and Requests for Relief

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

- The PSC erred in deciding that the Club was liable to pay the First Respondent a compensation of EUR 1,841,597 as the First Respondent was solely entitled to compensation based on his salary and not on the additional incentive payments set out in the Employment Contract which means the total compensation should not be more than EUR 920,798.
- In view of the First Respondent's new employment with FC Kuban Krasnodar, the compensation due to the First Respondent should be no more than EUR 135,829.23 - this sum representing the salary (and excluding incentive payments) in accordance with the Employment Contract for the time period from 9 October until 17 November 2014, i.e. when the First Respondent took up employment with FC Kuban Krasnodar.
- Clause 8.2 of the Employment Contract does only foresee the salary as the relevant remuneration, without the additional incentive payment.
- Russian Civil Law, in particular Article 333 of the Civil Code, entitles the Panel to reduce an obviously disproportionate amount as there is unjustified profit for the First Respondent as he only suffered a loss of the salary for the period from 9 October to 17 October 2014, the date at which he secured employment with FC Kuban Krasnodar. As he had not suffered any loss beyond that period, he is unable to prove such further loss and he is therefore not entitled to any further compensation.

48. In its prayers for relief, the Appellant requests as follows:

(a) A declaration that:

(i) This present appeal against the Challenged Decision is upheld;

(ii) The Challenged Decision is annulled and set aside;

(iii) If necessary, the DRC Decision is annulled and set aside;

(iv) [The Employment Contract was unilaterally terminated by the First Respondent without cause]; (withdrawn with letter of 5 October 2015);

(v) The Appellant shall not be liable to pay any compensation to the First Respondent;

(b) An order that:

(i) [The First Respondent shall pay the Appellant compensation for his breach of Employment Contract without just cause in a sum to be assessed or, in the alternative, as set out in the Employment Contract]; (withdrawn with letter of 5 October 2015) *or*

(ii) In the alternative, the compensation payable to the First Respondent should be no more than EUR 135,829.23, such sum representing the salary (and excluding incentive payments) payable to the First Respondent under the Employment Contract between 9 October 2014 and 17 November 2014; or

(iii) In the alternative, the compensation payable to the First Respondent should be no more than EUR 271,658.46, such sum representing the salary and the incentive payments payable to the First Respondent under the Employment Contract between 9 October 2014 and 17 November 2014; or

(iv) In the alternative, the compensation payable to the First Respondent should be no more than EUR 920,798.48 such sum representing the salary (and excluding incentive payments) payable to the First Respondent between 9 October 2014 and 30 June 2015;

(v) No interest shall be payable on any of the sums awarded; and

(c) Further order that:

(i) The First Respondent shall reimburse the Appellant for all costs incurred by the Appellant in respect of the procedures before the DRC and the PSC; and

(ii) The First Respondent shall be liable for all the costs of this arbitration; or

(iii) In the alternative, the Respondents shall be jointly and severally liable for all the costs of the arbitration; and

(iv) The First Respondent shall be liable for all of the Appellant's costs incurred in relation to this arbitration, including but not limited to legal fees, disbursements and any and all fees payable to the CAS; or

(v) In the alternative, the Respondents shall be jointly and severally liable for all of the Appellant's costs incurred in relation to this arbitration, including but not limited to legal fees, disbursements and any and all fees payable to the CAS.

B. First Respondent's Submissions and Request for Relief

49. The First Respondent's submissions as to the compensation for breach of contract, in essence, may be summarized as follows:

- The only reason the Appellant gave for termination on 8 October 2014 was that the Coach allegedly was absent without permission in excess of 4 hours as he failed to attend training on Saturday, 4 October 2014. As the Coach was not allowed on the Appellant's training ground outside of training sessions in accordance with clauses 3.7 and 8.7 of the Employment Contract, such reasoning cannot be used against the Coach. Further, the Appellant terminated all contracts with the Coach's assistant coaches by mutual consent on 17 September 2014 and on the same day its official website provided that the Coach

"is suspended from work". On 4 October 2014 at 17.13 (i.e. during the training held at 16.00), the Appellant announced on its official website the appointment of Mr. Miodora Bozovic as the new Head Coach. Consequently, the Appellant had no just cause to terminate the contract with the First Respondent.

- The FUR Regulations acknowledge the freedom of the parties (also recognized in Russian law) to define in advance the amount of compensation to be paid in the event of breach of contract. Based on the liquidated damages clause stipulated in the Employment Contract, the Coach is entitled to receive from the Club compensation for breach of contract based on his *"Remuneration"* (which term is clearly defined in the Contract) for the remainder of the contract. According to well-established CAS jurisprudence, such clause is *per se* proportionate. As the Parties did not contractually agree on a reduction of the liquidated damages, the compensation for breach of contract stipulated in the Employment Contract cannot and should not be adjusted by the Panel.
- Article 8.2 of the Employment Contract does not include any predetermined amount of compensation. Instead, it clearly provides for a determinable amount of compensation which corresponds to the remaining value of the Employment Contract. Article 6 of the Employment Contract, headed "Remuneration of Labour", states that a "position salary" and an "additional incentive" payment are due at the end of each month. Therefore, the "additional incentive" payment is clearly included in the "Remuneration" mentioned in Article 8.2 of the Employment Contract.
- Regarding the First Respondent's new employment with FC Kuban Krasnodar, such employment is completely irrelevant, as the Parties did not contractually agree on a reduction of the agreed lump sum of compensation. A liquidated damages clause is agreed to avoid the need for a party to prove any loss and damage suffered as a result of a breach.

50. In his prayers for relief, the First Respondent requests as follows:

1) To decline jurisdiction to rule on ZAO FC Lokomotiv's prayer aiming to annul and set aside the DRC decision and the claim for compensation for breach of contract against Mr. Kuchuk;

2) To dismiss all claims of ZAO FC Lokomotiv in their entirety to the extent they are admissible and concern Mr. Kuchuk;

3) To order ZAO FC Lokomotiv to bear all costs incurred with the present procedure;

4) To order ZAO FC Lokomotiv to pay Mr. Kuchuk a contribution towards his legal and other costs, in the amount of EUR 40,000.

V. JURISDICTION

51. Article R47 of the CAS Code provides as follows:

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

52. Article 46 para. 1 of the FUR Statutes states (in translation submitted by the Appellant and not contested by the First Respondent) the following:

> *FUR, its members, as well as leagues, clubs, players, officials, match agents and players' agents, other football entities and persons recognising these Articles of Association, shall not submit any dispute to the state courts for consideration unless otherwise prescribed by the laws of the Russian Federation, and unless for specific cases in these Articles of Association and in the Regulations of FIFA and UEFA. Any difference shall be transferred to the jurisdiction of FIFA, UEFA or FUR. The Russian Arbitration Court specified in the respective Article hereof or CAS shall be regarded as the final judicial instance for the purposes of consideration of such disputes.*

53. Article 47 para. 1 of the FUR Statutes states (in translation submitted by the Appellant and not contested by the First Respondent) as follows:

> *In accordance with certain provisions of the Statutes of FIFA and UEFA and Articles of Association of FUR, any appeal against final and binding decisions of FIFA, UEFA and FUR may be heard by CAS* ….

54. Article 53 of the FUR Dispute Resolution Regulations, as cited above, states that decisions of the DRC may be appealed to the PSC and that the PSC is the last instance within FUR in the sense of Article R47 of the Code.

55. Based on the aforementioned articles, CAS has jurisdiction to decide the matter at hand. In signing the Order of Procedures, the Parties further have explicitly confirmed the CAS jurisdiction.

56. The First Respondent asserts in his Answer that with regard to the Appellant's request aiming to annul and set aside the DRC decision, there is no regulatory basis for an appeal to CAS and therefore CAS does not have jurisdiction to rule on the Appellant's request regarding the annulment of the DRC decision.

57. Article 53 para. 1 of the FUR Dispute Resolution Regulations clearly states that the DRC decisions may only be appealed to the PSC and therefore within FUR. It is therefore obvious, that such DRC Decision cannot be considered as a last and final FUR decision in the sense of Article R47 of the Code. Therefore, the Panel is of the opinion, that CAS has no jurisdiction regarding the Appellant's request to annul and set aside the DRC Decision (*see* no. 157 (a) (iii) of the Appeal Brief) and such request is therefore rejected.

58. The Panel is of the opinion that otherwise, the CAS has jurisdiction in this matter.

VI. ADMISSIBILITY

59. Article 53 of the FUR Dispute Resolution Regulations states (in translation submitted by the Appellant and not contested by the First Respondent) that:

> 1. *The Chamber's decision (decision of DRC) may be appealed against only to the Committee (PSC) within*

5 business days from receipt of the decision in full.

2. *The Committee's decision (decision of PSC) may be appealed against only to the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days from receipt of the decision in full.*

60. The Challenged Decision was rendered by the PSC on 5 December 2014. The grounds of the Decision were, according to the assertions made by the Appellant, delivered to the Appellant and the First Respondent by e-mail on 6 February 2015. The Statement of Appeal was then filed by the Appellant on 27 February 2015, thus within the 21-day deadline set by Article 53 of the FUR Dispute Resolution Regulations. The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office Fees. Furthermore, the admissibility was not contested by the First Respondent in his Answer dated 15 May 2015.

61. Therefore, it follows that the Appeal is admissible.

VII. APPLICABLE LAW

62. Article R58 of the Code provides the following:

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

63. Articles 10.2, 10.7 and 10.8 of the Employment Agreement state:

10.2 In case of any dispute between the Parties, it shall be subject to resolution through direct negotiation. If the Parties fail to resolve the dispute, it shall be subject to resolution in accordance with the FUR Regulations for Status and Transfer of Football Players or, if applicable, the FIFA Regulations for Status and Transfer of Players.

10.7 In any other matters not covered by this Contract, the Parties shall be governed by relevant provisions of applicable Russian law as well as documents of the Club, FIFA, UEFA, FUR and RFPL.

10.8 The Parties hereby agree that in case of any disputes Russian law shall be the only applicable law, except where the dispute relates to the compliance with clauses 1.5, 2.1.35, 2.1.36, 2.1.37 or 2.1.38 of the Contract. In case of any disputes related to the compliance with clauses 1.5, 2.1.35, 2.1.36, 2.1.37 or 2.1.38 of the Contract, the only applicable law shall be Swiss law.

64. The Appellant states in his Appeal Brief that based on Article 10.8 of the Employment Agreement, Russian law should be applicable. During the hearing, the Appellant mentioned that the applicable law in the case at hand shall be Russian law and not Swiss law. As the FUR Regulations do not provide for a solution in relation to the compensation due and any possible reduction based on Article 10.8 of the Employment Contract, the Appellant is of the opinion that Russian law shall apply as Article 10.2 of the Employment Agreement is mainly considered a dispute resolution clause.

65. Based on the above mentioned articles of the Employment Agreement as well as the oral explanations given by the Appellant during the hearing, the Panel is of the opinion that the Parties agree that the FUR Regulations apply on a principle basis, and Russian law shall be applicable in subsidiary.

VIII. MERITS

66. As noted above, the Panel reiterates that based on the Appellant's letter of 5 October 2015, it is no longer disputed that the Employment Contract was unilaterally and terminated without just cause by the Appellant on 8 October 2014. Therefore, the Panel has only to decide the compensation to be paid by the Appellant to the First Respondent for this breach of contract, if any.

67. Article 8.2 of the Employment Contract states:

> *In case this Contract is terminated by the Club for any reason other than as specified in items 5, 6, 7, 11 of Part 1, Article 81 of the Russian Labour Code as well as in case of early termination by the agreement of the Parties (except for the case mentioned above in clause 8.1), the Club shall pay a compensation to the Coach calculated on the basis of the monthly Remuneration payable to the Coach multiplied by the number of months left until the expiry of the initial term of the Contract (i.e. to June 30, 2015, and in case of extension of the Contract, to the end of the extended term of the Contract), unless the Parties have agreed a different compensation. A similar compensation shall be paid by the Club to the Coach in case of early termination of this Contract by the Coach due to a material breach by the Club of this Contract, namely:*
>
> - *in case of existence of undisputed outstanding amounts payable by the Club to the Coach exceeding a three month's Remuneration of the Coach;*
> - *in case the Coach is unlawfully transferred to another job (including by changing the employment functions of the Coach) where the Coach has given a notice of violation of his rights to the Club and the Club has not remedied the violation within 14 days of receipt of the notice;*
> - *in case the Coach is illegally suspended from work where the Coach has given a notice of violation of his right to work and the Club has not remedied the violation within 14 days of receipt of the notice.*

68. Article 9 para. 2 of the FUR Regulations on Status and Moves (Transfer) of Football Players (2011) submitted by the First Respondent states, *inter alia*, the following:

> *Should the Employment Agreement be early terminated by the professional football club, in the absence of culpable actions (inaction) of the professional football player, this professional football player shall be entitled to receive compensation for such termination in the amount established by the Employment Agreement.*
>
> *If the extent of compensation is not established by the Employment Agreement, it shall be determined by the Dispute Resolution Chamber and may not be less than three (3) average monthly salaries of the professional football player, unless the remaining validity period of the Employment Agreement is less than three (3) months.*
>
> *In this case, the Dispute Resolution Chamber shall consider the following criteria:*

1) remaining validity period of the Employment Agreement with the former professional football club;

2) salary and other payments owed to the professional football player under the Employment Agreement with the former and new (if any) professional football clubs;

3) costs incurred by the professional football player when moving (being transferred) to the former and new (if any) professional football clubs;

4) whether the termination of the Employment Agreement fell on the protected period;

5) other objective criteria.

The similar compensation shall be paid to the coach of football team – participant in competitions among professional football clubs – should the Employment Agreement be early terminated by the professional football club, in the absence of culpable actions (inaction) of the coach.

69. Article 9 para. 2 of the FUR Regulations on Status and Moves (Transfer) of Football Players (2011) clearly states that a professional coach – such as the First Respondent – shall receive compensation in case his employment contract is terminated early by the professional football club in the absence of culpable actions (inaction) of the coach. Furthermore, it states that only in case such compensation is not established in the employment agreement, the points listed above shall be considered. The Panel notes that in the case at hand, the Parties agreed on such a specific clause (see Article 8.2) in the Employment Contract. Therefore, this specific clause is to be applied.

70. The Panel is of the opinion that Article 8.2 of the Employment Contract is a typical clause for liquidated damages. It clearly states how the compensation shall be calculated: monthly remuneration multiplied by the number of months left until the expiry of the initial term of the contract. Therefore, the Panel decides that the First Respondent is entitled to a compensation for the time period from 9 October 2014 (1st day after the termination) until 30 June 2015 (end of the contract) which is a total of 8 months and 23 days.

71. The Appellant asserts that the compensation due to the First Respondent is no more than EUR 135,829.23, representing the salary and excluding incentive payments in accordance with the Employment Contract for the period of 9 October until 17 November 2014, when the First Respondent started his new employment with FC Kuban Krasnodar. As the First Respondent received a salary from FC Kuban Krasnodar starting on 17 November 2014, he only suffered a loss in the limited period of 9 October 2014 to 16 November 2014. Hence, as the First Respondent has not suffered loss beyond that period, he is not entitled to any further compensation.

72. As the Panel already stated before, it considers Article 8.2 of the Employment Contract to be a liquidated damages clause. Therefore, the amount stated in Article 8.2 of the Employment Agreement has to be paid as liquidated damages in the sense that no reduction will be made even if the First Respondent started a new employment on 18 November 2014 with FC Kuban Krasnodar. In this sense, the contract of FC Kuban Krasnodar is of no interest in the matter at hand. Nevertheless, the Panel informed the Parties during the hearing about the payments received by the Coach under this contract.

73. Regarding the word "Remuneration" mentioned in Article 8.2 of the Employment Contract, the Panel is looking at the definition in Article 6 of the Employment Contract which states:

> *6.1 During the period of the Coach's work at the Club the Club shall pay Remuneration to the Coach.*
>
> *6.2 During the period from the date mentioned above in clause 1.2 to June 30, 2015, a Remuneration in accordance with clause 6.1 shall be payable to the Coach in the amount of:*
>
> - *eighty-one thousand four hundred and twenty euros (EUR 81,420) per month (before personal income tax) as positon salary;*
> - *eighty-one thousand four hundred and twenty euros (EUR 81,420) per month (before personal income tax) as additional incentive payable to the Coach subject to proper performance by the Coach of his duties under the Contract, provided always that the Coach has no disciplinary penalties.*
>
> *6.3 If based on the results of the 2013-2014 sports season the Team headed by the Coach wins the right to participate in the UEFA Champions League or the UEFA Europa League, from July 01, 2014 the Coach's Remuneration under clause 6.1 will amount to:*
>
> - *one hundred and five thousand three hundred and sixty-five euros (EUR 105,365) per month (before personal income tax) as position salary;*
> - *one hundred and five thousand three hundred and sixty-five euros (EUR 105,365) per month (before personal income tax) as additional incentive payable to the Coach subject to proper performance by the Coach of his duties under the Contract, provided always that the Coach has no disciplinary penalties.*

74. In examining the provisions in the Employment Contract, the Panel is of the opinion that the word "Remuneration" is clearly defined as being the monthly salary plus the monthly additional incentive payment. Therefore, the monthly remuneration due to the First Respondent based on Article 8.2 of the Employment Contract is EUR 210'730.

75. The Panel, therefore, confirms the calculation made by the PSC, according to which the total amount of compensation due to the First Respondent amounts to EUR 1,841,597, corresponding to the monthly remuneration of EUR 210,730 multiplied by 8.745 which is the number of months for the time period of 9 October 2014 to 30 June 2015.

76. The Appellant further asserts that the Panel has the duty to reduce the amount of compensation as it is disproportionate and an unreasonable income for the First Respondent. Prof. Peshin explained as expert witness that based on Article 333 of the Russian Civil Code, compensation has to be reduced in case it is obviously disproportionate to the consequences of the breach of the contract.

77. The Panel notes that in the case at hand, the breach of contract by the Appellant is no longer contested and it is therefore a fact. As foreseen in the FUR Regulations, the Parties explicitly agreed in the Employment Contract that in case of early termination without just cause the Appellant has to pay the "Remuneration" based on the liquidated damages clause of Article 6 of the Employment Contract. This compensation calculated in accordance with the Employment Contract is not obviously disproportionate, it corresponds to the "Remuneration"

the First Respondent would have received until the end of the Employment Contract. Even Russian law, as explained by the expert witness Prof. Peshin, does not foresee any reduction of such a compensation unless it is obviously disproportionate. The Panel is further confirmed in its opinion by the well-established CAS jurisprudence, according to which an explicit agreement of the parties on a certain sum to be paid, does not need to be reduced by any of the amounts that the party entitled to receive such compensation has earned after the termination of an employment contract (*see* CAS 2012/A/2910, para.77; CAS 2014/A/3640, para. 9.16). In a case where a contractual clause provided for a determinable amount of compensation payable by the party in breach of the contract, corresponding to the remaining value of the contract, the Panel explicitly stated that there was no reason to deduct any of the amounts that were earned elsewhere by the party entitled to the compensation (*see* CAS 2012/A/2775, para. 132).

78. The Panel is of the opinion that the wording of the Employment Contract is clear and does not leave space for interpretation; therefore, the amounts earned by the First Respondent under a new contract – in this case FC Kuban Krasnodar – shall not be deducted from the amount of compensation expressly provided for under Article 8.2 of the Employment Contract.

The Panel, therefore, comes to the conclusion that the calculation of the compensation due to the First Respondent made by the PSC was correct. It therefore confirms the Appealed Decision. Hence, all claims brought forward by the Appellant are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed by ZAO FC Lokomotiv against Mr. Leonid Stanislavovich Kuchuk and the Football Union of Russia concerning the Decision of Russian Football Union's Players' Status Committee dated 5 December 2014 is dismissed.

2. The Decision of the Russian Football Union's Players' Status Committee dated 5 December 2014 is confirmed.

(…)

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