Arbitration CAS 2015/A/3947 KAS Eupen v. Ibrahima Sory Camara, award of 14 November 2016

Panel: Mr François Klein (France), Sole Arbitrator

Football
Contract of employment
Interpretation of the contract regarding its date of entry into force and the salaries due accordingly
Determination of the salaries due considering the rules applicable to the seizeable portion of the remuneration
Determination of the remuneration due under an "attestation" in net amount

1. **A contract might express the parties' will at the time of its signature i.e. that the contract effectively started before the player started to work for his employer/club. Therefore, the remuneration agreed upon between the parties in the contract are due by the club to the player from the starting date of the contract.**

2. **The salaries due to a player as per a contract might be affected by a State court order taken in accordance with the applicable provisions of a national judicial Code providing that only a portion of the remuneration is seizeable. Accordingly, the club has to pay to the player the portion of the remuneration which is not seizeable and which is guaranteed to the player.**

3. **In the absence of any reference made in a document entitled *"Attestation"* establishing an amount of remuneration payable to the player as to whether the amount should be considered as net or gross, the player could have in good faith thought that such amount was to be considered as a net amount and the player's good faith should be preserved. Furthermore, in practice, it is not unusual for a bonus to be expressed for its net amount.**

I. PARTIES

1. KAS Eupen (the "Appellant" or "KAS Eupen") is a football club with its registered office in Eupen, Belgium. KAS Eupen is registered with the Union Royale Belge des Sociétés de Football – Association ("URBSFA"), which in turn is affiliated to the Fédération Internationale de Football Association (the "FIFA").

2. Ibrahima Sory Camara (the "Respondent" or "Mr Camara") is a Guinean professional football player.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration procedure. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. The Respondent entered into an employment contract with the French Club Le Mans Union Club 72 ("MUC 72") on 1 July 2006. At the beginning of the 2010/2011 season, MUC 72 indicated to the Respondent that he would no longer play with the main team and that he should either find another club or play with the reserve team. The Respondent refused the offer of MUC 72 to play with the reserve team.

5. After some unsuccessful attempts to play with other clubs and following the aggression by the Respondent of another player and of a member of the staff, the Respondent was dismissed by MUC 72 for gross misconduct by registered letter with acknowledgement of receipt dated 14 August 2010.

6. On the same date, the Appellant and the Respondent concluded an employment contract (the "Contract") valid from 1 July 2010 until 30 June 2011. According to articles 11 and 13 of the Contract, the Appellant undertook to provide the Respondent with a gross monthly salary of EUR 5,700 payable at the latest on the 7th working day of the subsequent month.

7. On 16 August 2010, the Appellant issued a document named *"Attestation"*, by means of which it undertook to pay the Respondent an amount of EUR 65,000 for the 2010/2011 season, payable as follows:

   - EUR 20,000 due on 30 November 2010;
   - EUR 25,000 due on 31 March 2011;
   - EUR 20,000 due on 30 July 2011.

8. On 21 April 2011, KAS Eupen was notified a court order to seize Mr Camara's remuneration issued upon request of the collector of direct taxes of Herve, Belgium, as a result of the demand for assistance of the relevant French authorities in relation to Mr Camara's tax debts to the French fiscal government for the years 2009 and 2010 amounting to EUR 181,566.47.

B. Proceedings before the FIFA Dispute Resolution Chamber

9. On 24 February 2011, the Respondent lodged a complaint with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellant, claiming the payment of EUR 103,547.86 corresponding to outstanding payments under the Contract and the *"Attestation"*, broken down as follows:

- EUR 5,000 as full salary for July 2010, plus interest as from 8 August 2010;
- EUR 5,000 as full salary for August 2010, plus interest as from 8 September 2010;
- EUR 1,979.36 as partial salary for September 2010, plus interest as from 8 October 2010;
- EUR 1,880.85 as partial salary for October 2010, plus interest as from 8 November 2010;
- EUR 20,000 as the full instalment due on 30 November 2010, as per the *"Attestation"*, plus interest as from 1 December 2010;
- EUR 1,335.84 as partial salary for November 2010, plus interest as from 8 December 2010;
- EUR 1,988.65 as partial salary for December 2010, plus interest as from 8 January 2011;
- EUR 2,471.39 as partial salary for January 2011, plus interest as from 8 February 2011;
- EUR 2,471.38 as partial salary for February 2011, plus interest as from 8 March 2011;
- EUR 25,000 as the full instalment due on 31 March 2011, as per the *"Attestation"*, plus interest as from 1 April 2011;
- EUR 2,471.39 as partial salary for March 2011, plus interest as from 8 April 2011;
- EUR 4,476.10 as partial salary for April 2011, plus interest as from 8 May 2011;
- EUR 4,472.90 as partial salary for May 2011, plus interest as from 8 June 2011;
- EUR 5,000 as full salary for June 2011, plus interest as from 8 July 2011;
- EUR 20,000 as the full instalment due on 30 July 2011, as per the *"Attestation"*, plus interest as from 31 July 2011.

10. On 28 August 2014, the FIFA DRC partially accepted Mr Camara's claim on the following grounds:

- The Contract has entered into force on 1 July 2010, and not on 1 September 2010 as argued by KAS Eupen, as long as *"the validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure in connection with the international transfer of a player, which are the sole responsibility of a club and on which a player as no influence, or the issuance of a work permit"*. Accordingly, on the basis of the average net monthly salary paid to Mr Camara between October 2010 and April 2011, that is EUR 2,915, the total amount of EUR 5,830 is due to Mr Camara as outstanding remuneration for July and August 2010 with an interest rate of 5% p.a. as from each due date applying to this amount.
- *"For the months of September 2010 to March 2011, the [FIFA DRC] deemed that [KAS Eupen] provided consistent and sufficient evidence of the payment of [Mr Camara]'s remuneration as per the employment contract, as evidenced by the relevant payment statements provided to FIFA. Thus the [FIFA DRC] concluded that [Mr Camara]'s request for outstanding remuneration as per the contract for the months of September 2010 to March 2011 could not be upheld"*.
- *"As to the payment due to* [Mr Camara] *after 21 April 2011 as per the employment contract, the [FIFA DRC] once again asserted that they are affected by the court order of 21 April 2011, in*

accordance with the previous considerations. However, the [FIFA DRC] *stated that, as per the same court order, the payment of EUR 1,300 per month should be guaranteed to [Mr Camara]. In this respect, the* [FIFA DRC]*, noted that for the period from April to June 2011, the total amount of EUR 3,900 should have been paid to* [Mr Camara]. *However, as per the payment statements provided, only the amount of EUR 1,578.10 was effectively paid. Therefore, the* [FIFA DRC] *concluded that the amount of EUR 2,321.90 still had to be paid by* [Kas Eupen] *to* [Mr Camara] *for the aforementioned period. An interest rate of 5% p.a. as from each due date should apply to this amount, as requested by* [Mr Camara].

- *"Subsequently, the* [FIFA DRC] *went on to establish the amounts due to* [Mr Camara] *as per the "Attestation" until 21 April 2011, which should be considered as net, as previously established. In the absence of relevant proof of payment provided by* [Kas Eupen]*, the* [FIFA DRC] *could establish that the total amount of EUR 45,000 was to be paid by* [Kas Eupen] *to* [Mr Camara], *corresponding to the instalments due on 30 November 2010 and on 31 March 2011, in full. An interest rate of 5% p.a. as from each due date should apply to this amount, as requested by* [Mr Camara].
- As to the amounts due to [Mr Camara] as per the *"Attestation"* after 21 April 2011, namely the instalments of EUR 20,000 payable on 30 July 2011, the [FIFA DRC] noted that, due to the monthly limit of EUR 1,300 established by the court order of 21 April 2011, said amount would exceed the limit. Thus, [Mr Camara]'s request in this respect cannot be upheld.

11. As a result, on 28 August 2014, the FIFA DRC rendered its decision (the "Appealed Decision") as follows:

"1. The claim of [Mr Camara]*, is admissible.*

2. The claim of [Mr Camara]*, is partially accepted.*

3. [Kas Eupen] *is ordered to pay to* [Mr Camara]*, within 30 days as from the date of notification of this decision, the amount of EUR 53,151.90 plus 5% interest p.a. until the date of effective payment, as follows:*

a. 5% p.a as of 8 August 2010 over the amount of EUR 2,915;

b. 5% p.a as of 8 September 2010 over the amount of EUR 2,915;

c. 5% p.a as of 8 May 2011 over the amount of EUR 773.90;

d. 5% p.a as of 8 June 2011 over the amount of EUR 773.90;

e. 5% p.a as of 8 July 2011 over the amount of EUR 773.90;

f. 5% p.a as of 1 December 2010 over the amount of EUR 20,000;

g. 5% p.a as of 1 April 2011 over the amount of EUR 25,000;

4. Any further claims of [Mr Camara] *are rejected.*

5. In the event that the amounts due to [Mr Camara] plus interest are not paid by [Kas Eupen] *within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

6. [Mr Camara] *is directed to inform* [Kas Eupen] *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".*

12. On 3 February 2015, the grounds of the Appealed Decision were notified to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 24 February 2015, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (the "CAS"), in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code").

14. On 4 March 2014, and in accordance with Article R55 para. 3 of the CAS Code, the Respondent requested that the time limit for the filing of his answer be fixed after the payment by the Appellant of its share of the advance of costs in accordance with Article R64.2 of the CAS Code.

15. On 13 March 2015, pursuant to Article R29 of the CAS Code, the President of the CAS Appeals Arbitration Division issued an Order on Language and ruled that English shall be the language of the arbitral proceedings before CAS.

16. On 16 March 2015, the Appellant filed its appeal brief, in accordance with Article R51 para. 1 of the CAS Code.

17. On 20 April 2015, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs. As a consequence, a deadline of twenty days was granted to the Respondent to file his answer.

18. On 22 April 2015, the Respondent filed its answer.

19. The Respondent disagreed on the proposal of the CAS Court Office that, in view of the low amount in dispute, the arbitral procedure be submitted to a Sole Arbitrator and requested that a three-arbitrator panel be appointed while the Appellant agreed to such proposal. As a consequence of the parties' disagreement, the question of the number of arbitrators was submitted to the President of the CAS Appeals Arbitration Division.

20. On 23 April 2015, pursuant to Articles R50 para. 1 and R54 para. 1 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the present matter shall be referred to a Sole Arbitrator and that the arbitral tribunal to decide the present matter was constituted by:

- Sole Arbitrator: Mr François Klein, Attorney-at-Law, Paris, France.

21. After having disagreed on the need for a hearing, both parties finally agreed that the Sole Arbitrator shall render an arbitral award solely based on the parties' written submissions.

22. On 6 May 2015, upon request of the Appellant, and in accordance with Article R56 para. 1 of the CAS Code, the parties were granted a second round of written submissions by the Sole Arbitrator. The Appellant was granted a time-limit of twenty days to file his reply. The Respondent was granted a similar deadline upon receipt of the Appellant's reply to file his rejoinder.

23. On 20 May 2015, in accordance with Article R56 para. 1 of the CAS Code, the Appellant filed his reply and the translations requested by the Sole arbitrator.

24. On 1 June 2015, in accordance with Article R56 of the CAS Code, the Respondent filed his rejoinder.

25. On 29 June 2015, in accordance with Article R56 para. 1 of the CAS Code, the Sole Arbitrator requested the parties to supplement their presentations on various aspects. The parties were granted a ten days' time limit to file their additional briefs.

26. On 29 June 2015, in accordance with Article R56 para. 1 of the CAS Code, the Respondent filed his additional brief.

27. On 8 July 2015 in accordance with Article R44.3 of the CAS Code, the Appellant filed his additional brief.

28. On 23 and, respectively, 27 July 2015, both parties returned duly signed copies of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

29. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all the written submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.

A. Appellant's submissions

30. The Appellant's submissions, in essence, may be summarised as follows:

31. With regard to the salaries of the Respondent for July and August 2010, the Appellant argues that these salaries are not due to the Respondent since the employment contract between the Respondent and his former employer, the football club Le Mans Union Club 72, was terminated as of 16 August 2010. Moreover, the International Transfer Certificate of the Respondent has been issued by FIFA on 18 August 2010 and the Respondent has not worked for the Appellant during July and August 2010.

    As a matter of fact, the Respondent's previous lawyer, Me Laurent Denis, in his letter dated 24 August 2011 to the Appellant, did not request the payment of the salaries of his client for July

and August 2010 but only requested half of the Respondent's salary for the month of August 2010.

32. With regard the amount of EUR 65,000 due to the Respondent as per the *"Attestation"*, the Appellant argues that:

- this amount was paid by the Appellant in May 2011 directly to the collector of direct taxes of Herve (Belgium) (after deduction of the sum of EUR 34,000 in accordance with the Belgian tax regulations) through the bailiff following the notification to the Appellant of the court order to seize the Respondent's remuneration within the limit of EUR 181,566.47;
- this amount is a gross amount as stipulated in Article 10 of the Contract; As a matter of fact, Me Laurent Denis, in his letter to the Appellant dated 24 August 2011, had also considered that the amount due to the Respondent as per the *"Attestation"* was a gross amount;
- the seizure procedure has no retroactive effect since the tax debt of the Respondent toward the French tax authorities was constituted prior to the seizure procedure; the Respondent acted in bad faith as he did not mention his debt toward the French tax authorities at the time of signing his employment contract;
- the Respondent suffered no prejudice from the late payment of part of the amount due as per the *"Attestation"* by the Appellant since in any event he was required by law to pay its tax debt to the French tax authorities before implementation by said authorities of the seizure procedure;
- the Respondent does not demonstrate the prejudice suffered or the causal link between the alleged fault of the Appellant and such prejudice.

33. With regard to the payment of the Respondent's salaries and indemnities from 21 April 2011, the Appellant argues that:

- the amounts due for April, May and June 2011, the holiday pay due in May 2011 and the double holiday pay due in June 2011 were paid directly to the collector of direct taxes of Herve (Belgium) through the bailiff for the same reasons as set out above;
- the Respondent wrongly claims that its salaries are not seizable for the part exceeding EUR 1,300 per month.
- As of 21 April 2011, all amounts due to the Respondent under the Contract or the *"Attestation"* were transferred by the Appellant to the bank account of the bailiff in accordance with the instructions set out in the court order. It is therefore not surprising that these amounts have not been transferred to the bank account of the Respondent. In addition, some of the amounts due the Respondent have been transferred to an account opened by Me Laurent Denis to receive funds on behalf of his client, on the instructions of the latter, this funds having then to be returned by Me Laurent Denis to his client. If Me Laurent Denis did not make such transfers, it is not within the responsibility of the Appellant.

34. On 8 July 2015, as mentioned in section III above, the Appellant filed an additional brief at the request of the Sole Arbitrator. In this submission, the Appellant submits that the legal provision applicable to determine the seizable portion of the Respondent's salaries is Article 1409 of the Belgian Judicial Code.

35. In consideration of the above, the Appellant requests that the Appealed Decision be set aside and that all claims by the Respondent be dismissed.

B. Respondent's submissions

36. Mr Camara's submissions, in essence, may be summarised as follows:

37. With respect to the salaries due to the Respondent for July and August 2010, Article 2 of the Contract provides that the Contract started on 1 July 2010. The provisions of the Contract in this respect are clear and unambiguous and are the expression of the parties' agreement. In any case, the provisions of the Contract shall be interpreted to the detriment of its author, in this case, the Appellant as the employer, in accordance with the rule *"in dubio contra stipulatorem"*, and in favour of the employee in accordance with the rule *"in dubio pro operario"* and thus it shall be retained that the Contract entered into force on 1 July 2010.

38. With respect to the amounts due to the Respondent as per the *"Attestation"*, the Respondent argues that, in the absence of any evidence to the contrary, the amount due as per the *"Attestation"* shall be considered as a net amount.

39. The Respondent further considers that the first and second instalments due as per the *"Attestation"* were due before the issuance of the court order and therefore should have been fully paid to the Respondent.

40. The Respondent concurs with the FIFA DRC that he is not entitled to claim the third instalment of EUR 20,000 due as per the *"Attestation"* since this amount would exceed the monthly limit of EUR 1,300 per month established by the court order of 21 April 2011, provided that he is fully paid the minimum monthly remuneration of EUR 1,300 per month for the period from April to June 2011, that is an amount of EUR 3,900.

41. With respect to the salaries and indemnities due to the Respondent from 21 April 2011, the Respondent concurs with the FIFA DRC that only the amount of EUR 1,578.10 was paid by the Appellant in relation to his salaries and amount due as per the *"Attestation"* and that, as a result, the amount of EUR 2,321.90 remain due by the Appellant.

42. The Respondent underlines that the Appellant made two payments on 27 March and, respectively, 15 May 2012 of EUR 20,000 and EUR 13,000 to a bank account, which references do not correspond to those of the Respondent's bank account. The Appellant does not demonstrates that these bank accounts correspond to the bank account of the bailiff or of the French tax authorities. The Respondent also contests the payments made to the bank account of Me Laurent Denis without his authorization.

43. The Respondent considers that the bank statements produced by the Appellant before CAS (Exhibit 15) shall be declared inadmissible since said bank statements were not adduced to FIFA.

44. On 29 June 2015, as mentioned in section III above, the Respondent filed an additional brief at the request of the Sole Arbitrator. In this submission, the Respondent considers that the rules and regulations applicable to determine the attachable portion of the Respondent's salaries are articles 323a and 323b of the Swiss Code of Obligations and the court order which terms are subject to Belgian law, since the FIFA Regulations on the Status and Transfer of Players do not contain legal provisions in this respect.

45. In consideration of the above, the Respondent requests that the Appealed Decision be upheld with respect to:

- the salaries due to the Respondent for July and August 2010; the Appellant's new arguments raised before CAS in this respect as well as new evidences provided by the Appellant (exhibits 8, 9, 11 and 16) shall be rejected by the Sole Arbitrator in accordance with Article R57 para. 3 the CAS Code.
- the amounts due to the Respondent as per the *"Attestation"*.
- the salaries and indemnities due to the Respondent from 21 April 2011.

V. JURISDICTION

46. The jurisdiction of CAS, which is not disputed, derives from article 67 para. 1 of the FIFA Statutes (2014 edition) as it provides 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.

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

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

VI. ADMISSIBILITY

49. The appeal was filed within the 21 days set forth by article 67 para. 1 of the FIFA Statutes and article R49 of the CAS Code. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

50. It follows that the appeal is therefore admissible, which is also not disputed.

VII. APPLICABLE LAW

51. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, 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".

52. The Sole Arbitrator notes that article 66 para. 2 of the FIFA Statutes provides 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".

53. KAS Eupen submits that *"The contract between KAS EUPEN and the player CAMARA is subject to Belgian law of 03.07.1998 on employment contracts"* and that *"article R58 expressly provides that it is decided according to the law whose application is deemed appropriate by the arbitral tribunal. In this case, it concerns a Belgian employment contract, with a Belgian football club, so that Belgian employment contract law, moreover, Belgian law applies".*

54. Mr Camara argues that:

- *"the rules and regulations of FIFA shall apply, primarily, and Swiss Law shall apply, subsidiarily";*
- *"when the rules and regulations of FIFA are to be applied primarily and Swiss law, complementarily, there is no place for the application of the rules of another national law, except in the case where these rules would have to be considered as mandatory according to the law of the seat of arbitration, i.e. Swiss law in cases involving FIFA Regulations and submitted to FIFA Statutes (cf. CAS 2009/A/1956, par. 8.2.3 with references);*
- *"In the present case, the Appellant does not submit that the rules allegedly in force in Belgium are of a mandatory nature according to Swiss law […]".*

55. In accordance with Article R58 of the CAS Code and Article 66 para. 2 of the FIFA Statutes, the Sole Arbitrator will decide the present dispute, with respect to procedural aspects, primarily in accordance with the FIFA regulations and, subsidiarily, Swiss law should the need arise to fill a possible gap in the regulations of FIFA.

56. However, in accordance with Article R58 of the CAS Code, the Sole Arbitrator will necessarily apply Belgian law with respect to the Contract and the question of the seizable portion of the Respondent's remuneration since he must rely on the court order of 21 April 2011, itself subject to Belgian law.

VIII. MERITS

57. The main issues to be resolved are the following: (i) whether the Respondent is entitled to salaries for July and August 2010 which implies to address the issue of the date of entry into

force of the Contract, (ii) whether some salaries remain due to the Respondent after 21 April 2011 under the Contract considering the rules applicable to the seizable portion of the remuneration as per the court order and (iii) whether some amounts remain due to the Respondent under the "*Attestation*" and whether the amount stipulated in the "*Attestation"* are to be considered as gross or net [emphasis added by the Sole Arbitrator].

A. The salaries due for July and August 2010 as per the Contract

58. Article 2 of the Contract provides that the Contract is valid as of 1 July 2010 until 30 June 2011. The terms of the Contract in this respect are very clear and unambiguous.

59. The Contract, drafted by the Appellant, was signed by both parties on 14 August 2010. At that time, the Appellant could not ignore that the Respondent has not worked for KAS Eupen, if this was indeed the reality. Nonetheless, on this specific date, the Appellant signed the Contract which was back dated to 1 July 2010.

60. Therefore, the Sole Arbitrator finds that the Contract expresses the parties' will at the time of its signature and that the Contract effectively started on 1 July 2010. Therefore, the Sole Arbitrator concludes that the remuneration agreed upon between the parties in Article 11 of the Contract for July and August 2010 are due by the Appellant to the Respondent.

61. The Sole Arbitrator then concludes that the amount due by the Appellant to the Respondent for July and August 2010 as calculated by the FIFA DRC in the Appealed Decision, *i.e.* **EUR 5,830** (EUR 2,915 x 2) shall be confirmed as well as the interest of 5% p.a. applicable from each due date since none of the parties disputed such calculation and interest rate.

B. The salaries due from 21 April 2011 as per the Contract

62. The Sole Arbitrator finds that the salaries due to the Respondent as per the Contract from 21 April 2011 are affected by the court order of the same date.

63. The provisions of the court order in accordance with the provisions of article 1409 of the Belgian Judicial Code determines the seizable portion of the remuneration as follows:

- 20% in excess of EUR 1,003 up to EUR 1,077 per month = maximum EUR 14,80;
- 30 % in excess of EUR 1,077 up to EUR 1,188 per month = maximum EUR 33,80;
- 40% in excess of EUR 1,188 up to EUR 1,300 per month = maximum EUR 44,80;
- The total remuneration in excess of EUR 1,300 per month.

Therefore, the portion of the remuneration which may be seized up to an income of EUR 1,300 per month is 14,80 + 33,30 + 44,80 = EUR 92.90. The portion of the remuneration in excess of EUR 1,300 per month may be fully seized.

64. Therefore, according to the above mentioned provisions, the payment of minimum EUR 1,207.10 (1,300 – 92.90) per month should be guaranteed to the Respondent.

65. In this respect, the Sole Arbitrator notes that for the period from April to June 2011, the total amount of EUR 3,621.30 (1,207.10 x 3) should have been paid to the Respondent.

66. The Sole Arbitrator then notes that the pay slips provided by the Appellant for the period April to June 2011 mention an account of EUR 680 and a net salary of EUR 527.10 per month which is in total EUR 1,207.10 per month in accordance with the provisions of the court order and of the Belgian Judicial Code as mentioned above.

67. However, the Sole Arbitrator notes that, as per the payment statements provided by the Appellant, only the amount of EUR 1,690.23 was effectively paid to the Respondent, respectively EUR 523.90 in April 2011, EUR 527.10 in May 2011 and EUR 639.23 in June 2011. The Sole Arbitrator further notes that the Appellant does not provide the Sole Arbitrator with a proof of payment (bank statements, receipts, etc.) to the Respondent of the account of EUR 680 per month for the considered period.

68. Therefore, the Sole Arbitrator concludes that, despite the fact that the Respondent's pay slips mention the payment of an account of EUR 680 per month, these amount were not effectively paid to the Respondent. The Sole Arbitrator infers from this finding that the rounded amount of **EUR 1,931** (3,621 – 1,690) still has to be paid by the Appellant to the Respondent for the aforementioned period.

69. An interest rate of 5% *p.a* as from each due date, as determined by the FIFA DRC and which is not disputed by the parties, shall apply to this amount.

C. The sums due as per the *"Attestation"*

70. First and foremost, and in view of the parties' divergent positions, the Sole Arbitrator notes that the *"Attestation"* establishes an amount of remuneration payable to the Respondent of EUR 65,000 without making any reference as to whether such amount should be considered as net or gross.

71. The Sole Arbitrator then notes that Article 11 of the Contract expressly refers to the Respondent's salary and indemnities as being gross amounts.

72. The Sole Arbitrator considers that the Appellant, which is the author of the *"Attestation"*, should have mentioned that the amount due per the *"Attestation"* was to be considered as gross as he did with respect to the salaries of the Respondent in the Contract. The Sole Arbitrator concurs with the FIFA DRC that the Respondent, in the absence of any reference made in the *"Attestation"* as to whether the amount should be considered as net or gross, could have in good faith thought that such amount was to be considered as a net amount and that the Respondent's good faith should be preserved [emphasis added by the Sole Arbitrator].

73. The Sole Arbitrator further considers that, in practice, it is not unusual for a bonus to be expressed for its net amount.

74. Therefore, the Sole Arbitrator concludes, as the FIFA DRC, that the amount stipulated in the *"Attestation"* is to be considered as a net amount.

75. Having established the foregoing, the Sole Arbitrator focuses on the payments due as per the *"Attestation"*.

76. The Sole Arbitrator finds that, as per the allegations of the parties, the pay slips and the bank statements provided by the Appellant, it is obvious that the latter failed to pay in a timely manner the instalments of EUR 20,000 and EUR 25,000 due to the Respondent on 30 November 2010 and, respectively, 31 March 2011. It is also obvious that the Appellant failed to pay the attachable part, as defined in section B paragraph 64 above, of the instalment of EUR 20,000 due to the Respondent on 30 July 2011. In this respect, the Sole Arbitrator notes that the pay slip corresponding to the payment of the amounts due as per the *"Attestation"* was established for the period from 1 May to 31 May 2011.

77. According to the bank statements provided by the Appellant, four (4) payments were made by the Appellant to the account of the Belgian tax authorities on the basis of the court order: respectively EUR 1,989.65 on 8 June 2011, EUR 2,221.45 on 15 June 2011, EUR 20,000 on 27 March 2012 and EUR 13,946 on 15 May 2012, which is in total EUR 38,157.10. The Sole Arbitrator notes that the Appellant made these payments particularly late.

78. According to the explanations as well as bank statement provided by the Appellant, these payments correspond to the following seized amounts:

- EUR 1,969.65: salary of April 2011;
- EUR 1,991.03: salary of May 2011;
- EUR 1,993.14: salary of June 2011;
- EUR 1,075.31: holiday pay;
- EUR 1,464.75: double final holiday pay;
- EUR 30,227.77: total net amount due per the *"Attestation"*.

Which is in total EUR 38,741.65.

The Appellant explains that the difference between the amount seized (EUR 38,741.65) and the amount effectively paid to the Belgian tax office (EUR 38,157.10), *i.e* EUR 584,55, corresponds to the fees of the bailiff for the wage garnishment.

79. As established above, the amounts due per the *"Attestation"* are to be considered as net amounts. Therefore, the Appellant shall pay to the Respondent the difference between the amount due per the *"Attestation"* (EUR 65,000) and the amount already paid after 21 April 2011 on the basis of the court order with respect to the *"Attestation"* (EUR 30,227.77).

80. The Sole Arbitrator concludes that the rounded amount of **EUR 34,773** (65,000 – 30,227) remains due to the Respondent as per the *"Attestation"*.

81. For the purpose of the calculation and determination of the starting date of the interest due on the above mentioned amount, it is necessary to distinguish between the amounts due by the Appellant as per the *"Attestation"* before 21 April 2011 and after 21 April 2011, date of the court order.

a) The sums due before 21 April 2011 as per the *"Attestation"*

82. The Sole Arbitrator finds that the amount paid after 21 April 2011 by the Appellant to the Belgian tax authorities on the basis of the court order with respect to the *"Attestation"* (*i.e.* EUR 30,227.77) should be primarily deducted from the attachable part of the third instalment due on 30 July 2011. In accordance with the findings of section B paragraph 64 above, and as a result of the court order, the attachable part of the third instalment of EUR 20,000 is EUR 18,793 (20,000 – 1,207.10). The Sole Arbitrator then finds that the remaining amount of EUR 11,434 (30,227-18,793) that was paid by the Appellant to the Belgian tax authorities on the basis of the court order should be deducted from the two instalments due on 30 November 2010 (EUR 20,000) and, respectively, 31 March 2011 (EUR 25,000).

83. As a result, the Sole Arbitrator concludes that the amount of EUR 33,566 ((20,000 + 25,000) – 11,434) remains due to the Respondent with respect to the first and second instalments due on 30 November 2010 and, respectively, 31 March 2011.

84. The interest rate of 5% *p.a,* as determined by the FIFA DRC and which is not disputed by the parties, shall apply to this amount.

85. In order to determine the starting date of the interest due, the Sole Arbitrator notes that the payment made by the Appellant per the *"Attestation"* for an amount of EUR 11,434 cannot be allocated to the payment due on 30 November 2010 or to the payment due on 30 March 2011. Therefore, the Sole Arbitrator decides that this amount shall be departed in proportion to each instalment. In this respect, the following calculation shall be used:

- 11,434 x 20,000 / 45,000 = EUR 5,082 for the first instalment due on 30 November 2010;
- 11,434 x 25,000 / 45,000 = EUR 6,352 for the second instalment due on 30 March 2011.

86. For the calculation of the interest due, it is necessary to distinguish the amount paid for each instalment and the amount remaining due. Thus, for the instalment due on 30 November 2010, *i.e.* EUR 20,000, the amount due to the Respondent after payment made by the Appellant to the Belgian tax office as referred to in paragraph 85 above is: 20,000 – 5,082 = EUR 14,918. In the same way, for the instalment due on 30 March 2011, *i.e* EUR 25,000, the amount due after payment by the Appellant to the Belgian tax office as referred to in paragraph 85 above is: 25,000 – 6,352 = EUR 18,648.

87. The Sole Arbitrator then finds that from 21 April 2011, due to the court order, the Appellant was not able to pay any amount to the Respondent. Therefore, the Sole Arbitrator finds that, with respect to interest due, it is necessary to distinguish the period before 21 April 2011 and

the period after 21 April 2011. He finally concludes that the interest rate shall apply in the following way:

For the first instalment as per the *"Attestation"*:

- 5% *p.a.* as from 1 December 2010 to 21 April 2011 over the amount of EUR 20,000;
- 5% *p.a.* as from 22 April 2011 until the date of effective payment over the amount of EUR 14,918;

For the second instalment as per the *"Attestation"*:

- 5% *p.a.* as from 1 April 2011 to 21 April 2011 over the amount of EUR 25,000;
- 5% *p.a.* as from 22 April 2011 until the date of effective payment over the amount of EUR 18,648.

88. As to the Appellant's breach constituted by the default of payment in a timely manner of amounts due under a contract, the Sole Arbitrator does not identify a specific damage of the Respondent that would not be covered by the allocation of interest on the amount due. Moreover, the Sole Arbitrator notes that the Respondent has not made any claim on the ground of the damage suffered as a result of late payment by the Appellant. However, the Sole Arbitrator shall take this factor into account when ruling on the contribution of the parties to legal fees and expenses incurred in connection with these arbitration proceedings.

b) The sums due after 21 April 2011 as per the *"Attestation"*

89. As established in section B paragraph 64 above, and as a result of the court order dated 21 April 2011, the payment of EUR 1,207.10 per month out of the EUR 20,000 due per the *"Attestation"* on 30 July 2011 should be guaranteed to the Respondent.

90. Therefore, the Sole Arbitrator concludes that the rounded amount of EUR 1,207 is due to the Respondent corresponding to the third instalment due on 30 July 2011 per the *"Attestation"*.

91. The interest rate of 5% *p.a* as from the due date, as determined by the FIFA DRC and which is not disputed by the parties, shall apply to this amount.

D. Conclusion

92. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator concludes that the Appellant shall pay to the Respondent the total amount of 5,830 + 1,931 + 34,773 = **EUR 42,534**.

An interest rate of 5% *p.a.* shall apply to this amount, until the date of effective payment save with respect to paragraphs f. and h. below, which shall be calculated as follows:

a. 5% p.a. as of 8 August 2010 over the amount of EUR 2,915;

b. 5% p.a. as of 8 September 2010 over the amount of EUR 2,915;

c. 5% p.a. as of 8 May 2011 over the amount of EUR 683.20;

d. 5% p.a. as of 8 June 2011 over the amount of EUR 680;

e. 5% p.a. as of 8 July 2011 over the amount of EUR 567.87;

f. 5% p.a. as from 1 December 2010 to 21 April 2011 over the amount of EUR 20,000;

g. 5% p.a. as from 22 April 2011 over the amount of EUR 14,918;

h. 5% p.a. as from 1 April 2011 to 21 April 2011 over the amount of EUR 25,000;

i. 5% p.a. as from 22 April 2011 over the amount of EUR 18,648;

j. 5% p.a. as of 1 August 2011 over the amount of EUR 1,207.

93. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 February 2015 by KAS Eupen against the Decision issued on 28 August 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

2. The Decision issued on 28 August 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially set aside.

3. The Appellant shall pay to the Respondent the total amount EUR 42,534.

4. The Appellant shall pay an interest rate of 5% *p.a.* on this amount, until the date of effective payment save with respect to paragraphs f. and h. below, which shall be calculated as follows:

   a. 5% p.a. as of 8 August 2010 over the amount of EUR 2,915;
   b. 5% p.a. as of 8 September 2010 over the amount of EUR 2,915;
   c. 5% p.a. as of 8 May 2011 over the amount of EUR 683.20;
   d. 5% p.a. as of 8 June 2011 over the amount of EUR 680;
   e. 5% p.a. as of 8 July 2011 over the amount of EUR 567.87;
   f. 5% p.a. as from 1 December 2010 to 21 April 2011 over the amount of EUR 20,000;
   g. 5% p.a. as from 22 April 2011 over the amount of EUR 14,918;
   h. 5% p.a. as from 1 April 2011 to 21 April 2011 over the amount of EUR 25,000;

i. 5% p.a. as from 22 April 2011 over the amount of EUR 18,648;
j. 5% p.a. as of 1 August 2011 over the amount of EUR 1,207.

5. (…).

6. (…).

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