



Arbitration CAS 2015/A/3993 Patrick Leugueun Nkenda v. AEL Limasol FC, award of 14 January 2016

Panel: Mr Lars Hilliger (Denmark), President; Mr Didier Poulmaire (France); Ms Svenja Geissmar (Germany)

Football

Termination of a contract of employment without just cause

Conditions for the CAS Panel to exclude evidence based on Article R57 para. 3 of the CAS Code

Conditions for the termination of a contract of employment with just cause

Burden of proof in CAS arbitration

Validity of a grace period agreed between a player and a club

1. In accordance with R57 para. 3 of the Code, *“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered”*. The rationale of this provision is to avoid evidence submitted in an abusive way and/or retained by the parties in bad faith in order to bring it for the first time before CAS. The discretion to exclude evidence presented by the parties in accordance with R57 para. 3 of the CAS Code should not be interpreted in a way which may lead to the circumvention of the core principle of the CAS panel’s full power to review. If it has not been documented or even proven on a balance of probabilities that a party chose not to submit the evidence and legal arguments in question to the previous instance in bad faith or in an abusive way, there should be no valid reasons to exclude the evidence and/or legal arguments submitted to CAS. However, this does not imply that the CAS panel should allow the appellant to include new claims into the case which were not within the scope of the proceedings before the previous instance.
2. Article 14 of the FIFA Regulations on the Status and Transfer of Players states that a contract can be terminated by either party without consequences of any kind where there is just cause. The FIFA Commentary to Article 14 clarifies that just cause will be determined based on the merits of each case: a violation of the terms of an employment contract cannot generally justify the termination of a contract for just cause, unless such violation persists for a long time or many violations are cumulated over a certain period of time, reaching such a level that the party suffering the breach is entitled to terminate the contract unilaterally.
3. In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. The party which asserting facts to support its rights has the burden of establishing them. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if

a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.

- 4. Where a grace period is validly agreed between a player and a club it is generally not considered to be contrary to the FIFA Regulations. It is particularly important that the agreed grace period does not exceed a period which is considered acceptable in accordance with current practice before the player concerned can be certain to have just cause for termination of the contractual relationship as a result of non-payment.**

1. THE PARTIES

- 1.1 Mr Patrick Leugueun Nkenda (“the Appellant” or “the Player”) is a former professional football player of French nationality.
- 1.2 AEL Limasol FC (the “Respondent” or the “Club”) is a Cypriot football club affiliated with the Cyprus Football Association, which in turn is affiliated with FIFA.

2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 6 November 2014 (the “Decision”), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 22 June 2011, the Player and the Club signed a contract of employment (the “Contract”), valid as of the date of issuance of the Player’s ITC until 31 May 2013.
- 2.3 On 23 June 2011, the Parties signed an agreement (“the Agreement”), which according to its own wording was “*in addition to*” the Contract, also valid for the seasons 2011/2012 and 2012/2013, according to which the Player was to receive additional payment from the Club in exchange for his services as a professional football player. (The Contract and the Agreement when referred to hereinafter together shall be referred to as “the Contracts”.)
- 2.4 The Contract stated, inter alia, as follows:
 - a) *In consideration of the above the EMPLOYER shall pay the following emoluments and fringe benefits to the EMPLOYEE during the course of this employment:*
 - *For the term of this employment for the season 2011/2012, salary amounting to EURO 30 000 (Thirty Thousand EURO) payable in 10 (ten) instalments of EURO 3 000 (Three*

Thousand EURO) per month and with a grace period of 90 days, as the first instalment to be paid on the 31st of August, 2011 and the last to be paid on 31st of May 2012.

- *For the term of this employment for the season 2012/2013, salary amounting to EURO 40 000 (Forty Thousand EURO) payable in 10 (ten) installments of EURO 4000 ([Three]¹ Thousand EURO) per month and with a grace period of 90 days, as the first installment to be paid on the 31st of August, 2012 and the last to be paid on 31st of May 2013.*

If the Club undergoes to the second division, this contract is not valid and the Player must terminate his services to the team, having no further demands.

- b) *Any part of the fees payable to the Cyprus Government for the issue of the employment permit will be paid by the EMPLOYER.*

It is understood between the parties that all money paid will be tax free, meaning that the EMPLOYER is responsible to pay all relevant taxes to the various Government Authorities”.

2.5 The Agreement stated, inter alia, as follows:

“WHEREAS the parties have already signed a Contract of Employment on the day of the 22nd of June, 2011.

NOW THE PARTIES AGREE THE FOLLOWING IN ADDITION TO THE SAID CONTRACT OF EMPLOYMENT

In exchange of the services the PLAYER will offer to the CLUB, the CLUB has to pay in addition to the said contract:

- *For the season 2011/2012 salary amounting of 80 000 EURO (Eighty Thousand EURO) payable in ten (10) installments of 8 000 EURO (Eight Thousand EURO) per month and with a grace period of 90 days, as the first installment to be paid on the 31st of August, 2011 and the last to be paid the 31st of May 2012.*
- *For the season 2012/2013 salary amounting of 90 000 EURO (Ninety Thousand EURO) payable in ten (10) installments of 9 000 EURO (Nine Thousand EURO) per month and with a grace period of 90 days, as the first installment to be paid on the 31st of August, 2012 and the last to be paid the 31st of May 2013.*
- *The Player shall receive the amount of 30 000 EURO (Thirty Thousand EURO) as signing fees.*
- *The Player shall receive also at the end of June, 2012 (30/6/2012) the amount of 20 000 EURO (Twenty Thousand EURO) as signing fees for the season 2012/2013.*
- *The Player shall also receive from the Club the amount of 6 000 EURO (Six Thousand EURO) for accommodation and the amount of 5 000 EURO (Five Thousand EURO) for air tickets.*
- *The Club will provide to the Player a car.*

Any amounts payable under the Income Tax Law of the Republic of Cyprus will be paid by the CLUB.

¹ The original wording in the Contract is “Three” which the Panel considers to be a clerical typo.

Any contributions payable to the Social Insurance Legislation of the Republic of Cyprus will be paid by the CLUB”.

- 2.6 The Player joined the Club in July 2011 and started playing regularly from the beginning of the 2011/2012 season.
- 2.7 However, in January 2012, the Player suffered an Achilles tendon rupture, which kept him from playing the remaining matches of that season for the Club.
- 2.8 After the summer break, but still not injury-free, the Player resumed training for the 2012/2013 season in June 2012, but the Club refused to allow the Player to participate in the preparation for the new season.
- 2.9 By letter of 20 June 2012 to the Club, the Player complained that he was not receiving proper medical care and asked for instructions in order to be treated for his injury and to be able to resume his career with the team.
- 2.10 In July and September 2012, the Player forwarded a total of four letters to the Club, asking for medical care and requesting the payment of outstanding salaries, expenses for accommodation, car and flight tickets for the months of April, May and August 2012 as well as the signing-on fee for the 2012/2013 season.
- 2.11 On 28 September 2012, the Club paid to the Player the amount of EUR 28,075, in which connection the Player signed a receipt in the English language stating: *“Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc.”* (the “Receipt”).
- 2.12 On the same date, the Club also paid to the Player the signing-on fee for the 2012/2013 season of EUR 20,000 for which the Player signed a receipt accordingly.
- 2.13 In October 2012, the Club accepted that the Player would receive Achilles tendon surgery in Cyprus.
- 2.14 During the period from 12 June 2012 until 25 January 2013, while the Player was kept out of training due to his injury, the Player personally received 16 successive training exemptions signed by the General Manager of the Club.
- 2.15 According to one of these training exemptions dated 14 December 2012, the Player was given *“permission from the Committee not to participate in the training session of the first team, from Friday 14/12/2012 until Monday 14/1/2013. The Club (AEL LIMASOL) gives permission to the player to fly to France to take medical treatment”*.
- 2.16 By letter of 16 January 2013, the Player sent another communication to the Club, stating inter alia:
“Since the beginning of the season, I have been paid each time very late. In this way, I have sent you a lot of letters asking for my salaries.

Four letters have been sent until September 2012 for recovering my salaries. Since September 2012, you did not respect the payment of salaries as mentioned on our contractual agreements (article 2.a of the first contract/ second contract).

And today, I haven't received yet the amount of [EUR] 45,670 corresponding to:

- The rest of my August and September 2012 salaries according to my two employments agreements (EUR 1,000 × 2 = 2,000)

- My salaries of October, November and December 2012 according to my second employment contract (EUR 4,000 × 3 = 12,000)

- My salaries of October, November and December 2012 according to my first employment contract (EUR 9,000 × 3 = 27,000)

- My rent for October, November and December 2012 according to my second contract (EUR 600 × 3 = 1,800)

- My plane ticket (EUR 1,630)

- My car rent for October, November and [December] 2012 (EUR 1,240)

Consequently, I put you in residence [sic] to pay me the total amount of EUR 45,670 in a delay of 8 days.

In absence of payments within the time limit, I will submit the present case to the FIFA Dispute Resolution Chamber according to the article 22b of the FIFA Regulations and you will be responsible of the breach of contract”.

2.17 Without any response from the Club, on 25 January 2013, the Player wrote, inter alia, as follows to the Club:

“By a telecopy dated 16 January 2013, I put you in residence [sic] to pay me unpaid salaries, rents, car rents and plane tickets according to our written agreements (dated 22 and 23 June 2011)

Despite these reminders, you have never taken into account all our financial agreements and you refused to pay me.

....

Today, you have to pay me the amount of EUR 45,670 corresponding to more than 3 months of unpaid salaries, rents, car rents and plane tickets (according to the two employment contracts signed on 22 and 23 June 2011).

Consequently, I consider you responsible of the breach of contract according to articles 14 and 17 of the FIFA Regulations on Status and Transfer of Players and consider myself free of any commitment to you.

...”.

2.18 On 5 February 2013, the Player lodged a claim with FIFA against the Club, requesting payment of the total amount of EUR 113,670 as follows:

“a) EUR 2,000 as outstanding remuneration for the months of August and September 2012, based on both the Contract and the Agreement;

- a) *[sic] EUR 16,000 as outstanding remuneration for the months of October 2012 until January 2013, based on the Contract;*
- b) *EUR 36,000 as outstanding remuneration for the months of October 2012 until January 2013, based on the Agreement;*
- c) *EUR 2,400 corresponding to his accommodation expenses for the months of October 2012 until January 2013;*
- d) *EUR 1,630 for the flights tickets for his family to France and back to Cyprus;*
- e) *EUR 1,240 for the car expenses corresponding to the months of October to December 2012;*
- f) *EUR 16,000 as compensation for breach of contract corresponding to the residual value of the Contract as from February until May 2013;*
- g) *EUR 36,000 as compensation for breach of contract corresponding to the residual value of the Agreement as from February until May 2013;*
- h) *EUR 2,400 as compensation corresponding to his accommodation expenses for the months of February to May 2013”.*

The Player equally claimed interest at the rate of 5% *p.a.* on the amounts claimed as of 16 January 2013.

- 2.19 In support of his claim, the Player argued, *inter alia*, that for the months of August and September 2012, the Club had not paid him the entire salary based on the Contract and the Agreement. Furthermore, the Club had failed to pay the Player the full remuneration for the months of October 2012 until January 2013 according to the Contract and the Agreement.
- 2.20 On 10 May 2013, the Club replied to the Player’s claim and lodged a counter-claim against the Player, claiming payment of the following amounts:
 - a) EUR 8,000 corresponding to the costs of a car accident caused by the Player;
 - b) EUR 28,500 as the amount the Club would have to pay to the Inland Revenue Department of Cyprus with respect to the income of the Player for the 2011/2012 season. Furthermore, the Club requested FIFA to award any other remedy it deemed appropriate.
- 2.21 In its reply and in support of its counter-claim, the Club rejected all of the Player’s allegations and deemed the Player’s termination of the contractual relationship between the Parties on 25 January 2013 to be without just cause. The Club argued that both the Contract and the Agreement granted it a grace period of 90 days for the payment of each monthly salary instalment. Consequently, even if the Club, on 25 January 2013, owed the Player his remuneration for the months of October, November and December 2012, each of these salary payments was covered by a grace period of 90 days. Furthermore, the Club had paid the Player all outstanding amounts until September 2012, which was accepted by the Player when he signed the Receipt on the same date with the wording, “*Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc*”.

- 2.22 In his reply to the counterclaim, the Player stated that a grace period of 90 days could not be accepted. The Player further referred to Article 14 of the Regulations on the Status and Transfer of Players (the “Regulations”) and submitted that three or more outstanding monthly salaries allow a player to terminate a contract. Furthermore, the Player rejected the arguments put forward in the Club’s counter-claim.
- 2.23 The FIFA DRC, after having confirmed its competence, first of all concluded that the underlying issue of this dispute, considering the claim and the counter-claim of the Parties, was whether the contractual relationship had been unilaterally terminated with or without just cause by the Player and, therefore, which party was responsible for the early termination of the contractual relationship.
- 2.24 In view of the submissions of the Parties, the FIFA DRC firstly established that regarding the salaries for August and September 2012, the payment receipt dated 28 September 2012 and signed by the Player indicated “*Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc*”. Based on that, the FIFA DRC concluded that the salaries for the months of August and September 2012 had been fully paid to the Player by the Club.
- 2.25 The FIFA DRC then went on to analyse whether the salaries for October, November and December 2012 were due at the time the Player left the Club. In this respect, it was recalled that according to the Contract and the Agreement, the monthly instalments fell due on the 31st day of each month “*with a grace period of 90 days*”. This wording was included in the Contract and in the Agreement by mutual consent of the Parties, and its legal consequences were therefore accepted by the Player. Furthermore, the inclusion of such a stipulation in a contract regarding the payment date of remuneration is not prohibited by the FIFA Regulations.
- 2.26 Consequently, the FIFA DRC determined that the grace period for payment of salaries established in the Contract and in the Agreement, as a valid provision established by the Parties of their own free will, is applicable, and, therefore, the salaries of October, November and December 2012 were each payable on 29 January 2013 and at the end of February and March 2013, respectively. On this account, it was further concluded that the said salaries were indeed not outstanding at the time of termination on 25 January 2013 and could not be considered as a valid cause to justify the unilateral termination of the contractual relationship between the Parties by the Player.
- 2.27 Taking into consideration Article 17 paragraph 1 of the Regulations, the FIFA DRC then decided that the Player was not entitled to receive any compensation for breach of contract from the Club.
- 2.28 With regard to the Player’s financial claim for outstanding salaries and supplements, the FIFA DRC pointed out that the Club in its defence did not dispute that the salaries had not been paid as of October 2012. Furthermore, it was recalled that it was undisputed that the Player had left Cyprus in November 2012. In view of the above and in accordance with the general legal principle of *pacta sunt servanda*, the FIFA DRC held that the Club must fulfil its contractual obligations towards the Player for the period from October until November 2012, and therefore

the Club was to be held liable to pay to the Player the amount of EUR 26,000, corresponding to the monthly salaries, as well as the amount of EUR 520, corresponding to the monthly accommodation payments.

2.29 Furthermore, the FIFA DRC recalled that the Club had lodged a counterclaim against the Player. In this respect, it was held that the counter-claim regarding an alleged car accident was not employment-related, which is why this counter-claim was rejected. As regards the second counter-claim regarding certain tax issues, the FIFA DRC established that it was not competent to deal with tax issues, and this counter-claim was consequently rejected as well.

2.30 On 6 November 2014, the FIFA DRC rendered the Decision and decided, *in particular*, that:

“1. The claim of the (Appellant), Patrick Leugueun Nkenda, is partially accepted.

2. The counterclaim of the (Respondent), AEL Limasol FC, is rejected.

3. The (Respondent) has to pay to the (Appellant) within 30 days as from the date of notification of this decision, the amount of EUR 26,520 plus 5% interest p.a. until the date of effective payment as follows:

a) 5% p.a. as of 16 January 2013 on the amount of EUR 520;

b) 5% p.a. as of 1 February 2013 on the amount of EUR 13,000;

c) 5% p.a. as of 1 March 2013 on the amount of EUR 13,000

4.

5. Any further claim lodged by the (Appellant) is rejected.

6.

...”.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 18 March 2015, the Appellant filed in the French language a “*Déclaration D’Appel*” against the Decision rendered by the FIFA DRC on 26 February 2015.

3.2 On 24 March 2015, the Respondent objected to the procedure being conducted in the French language.

3.3 By Order on Language of 30 March 2015, the President of the Appeals Arbitration Division decided that the language of these proceedings should be English. Furthermore, the Appellant was granted a deadline of 10 days from the receipt of the Order on Language to file his Appeal Brief in the English language, which deadline was later extended until 13 April 2015.

3.4 On 13 April 2015, the Appellant filed his Appeal Brief.

- 3.5 On 6 May 2015, the Respondent filed its Answer.
- 3.6 By letter dated 13 May 2015, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-law in Copenhagen, Denmark (President of the Panel), Mr Didier Poulmaire, Attorney-at-law in Paris, France (nominated by the Appellant), and Ms Svenja Geissmar, General Counsel in London, United Kingdom (nominated *in lieu* of the Respondent).
- 3.7 By letter of 21 May 2015, the Parties were informed that the Panel had decided to proceed with a second round of written submissions and that the Panel had decided to hold a hearing in this matter.
- 3.8 On 4 June 2015, the Appellant filed his Reply, and on 10 July 2015, the Respondent filed its Rejoinder.
- 3.9 The Parties both signed and returned the Order of Procedure.

4. HEARING

- 4.1 A hearing was held on 4 September 2015 at the CAS Headquarters in Lausanne, Switzerland.
- 4.2 The Parties confirmed that they did not have any objections to the constitution of the Panel.
- 4.3 The following people attended the hearing and were, after being duly invited by the President of the Panel to tell the truth subject to the sanctions of perjury, heard by the Panel and the Parties:
 - For the Appellant: The Appellant himself, Mr Patrick Leugueun N’Kenda, Mr Christophe Bertrand (attorney-at-law) and Mrs Sabrina Denuallut Leugueun N’Kenda (wife of the Appellant).
 - For the Respondent: Mr Lysandros Lysandrou (attorney-at-law), Mr Christiforos Florou (attorney-at-law) and Mrs Myria Georgiou (translator). Furthermore, Mr Michalis Kaukalias (general manager of the Club 2011-2013) was heard by video conference during the hearing.
- 4.4 The Parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties’ final submissions, the Panel closed the hearing and reserved its final award. The Panel listened carefully and took into account in its subsequent deliberation all the evidence and arguments presented by the Parties although they have not all been expressly summarised in the present Award. Upon closure, the Parties expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

- 5.1 Article R47 of the Code of Sports-related Arbitration (the “CAS Code”) states as follows: *“An appeal against the decision of a federation, association or sports-related body may be filed with the 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 the said sports-related body”*.
- 5.2 With respect to the Decision, the jurisdiction of CAS derives from Article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of CAS, which was furthermore confirmed by the Parties signing of the Order of Procedure.
- 5.3 The Decision with its grounds was notified to the Appellant on 26 February 2015, and the Appellant’s Statement of Appeal was lodged on 18 March 2015, *i.e.* within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
- 5.4 It follows that CAS has jurisdiction to decide on this Appeal and that the Appeal is admissible.
- 5.5 In its Statement of Defence, the Respondent noted that the Appellant before CAS had included and mentioned new arguments and witnesses/exhibits, which were not a part of the procedure before the FIFA DRC. The Appellant submitted 55 exhibits before CAS, however, during the FIFA DRC procedures, the Appellant only submitted 12 exhibits. Furthermore, the Appellant’s Exhibit 55 before CAS was only submitted in the French language.
- 5.6 The Respondent further noted that since the Panel was invited to review the Decision by the FIFA DRC, any consideration of new arguments and evidence of the Appellant which were not provided before the FIFA DRC would mean that the Panel would be ignoring the validity of the FIFA Committee’s decisions.
- 5.7 According to R57 para. 3 of the CAS Code *“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply”*.
- 5.8 The Respondent submitted that all the evidence presented before CAS by the Appellant was available to the Appellant and/or could have been discovered by him before the Decision was rendered. Therefore, the Respondent objected to the admissibility of any new evidence and arguments that the Appellant now relied on before CAS for the first time. Moreover, the Appellant’s Exhibit 55 should be disregarded since it is in the French language and is not accompanied by a translation.
- 5.9 The Appellant demanded that the request to reject the admissibility of his new evidence and arguments be dismissed since the submission of new arguments and filing of additional exhibits

was only caused by the unfounded and unexpected assessment of the case by the FIFA DRC, which necessitated the submission of additional documentation before CAS.

- 5.10 Furthermore, it is important to note that, according to R57 para. 3 of the CAS Code, the Panel has a discretionary option, not an obligation, to exclude such evidence presented by a party.
- 5.11 The Appellant submitted that since, in the absence of a hearing before the FIFA DRC, the Appellant was unable to dispute elements which he did not think had to be debated, the submission of new evidence and arguments before CAS should not be deemed inadmissible (in particular, bearing in mind the indisputable nature of the evidence and arguments in question).
- 5.12 First of all, the Panel notes that Article R57 para. 1 of the CAS Code gives the Panel full power to review the facts and the law and to issue a *de novo* decision superseding, entirely or partially, the decision appealed against.
- 5.13 This means that the Panel, within certain limits, is allowed to admit, inter alia, new evidence and new legal arguments.
- 5.14 However, also in accordance with R57 para. 3 of the Code, *“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered”*.
- 5.15 The rationale of this provision (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, p. 520) is to avoid evidence submitted in an abusive way and/or retained by the parties in bad faith in order to bring it for the first time before CAS.
- 5.16 The Panel finds that the discretion to exclude evidence presented by the parties in accordance with R57 para. 3 of the CAS Code should not be interpreted in a way which may lead to the circumvention of the core principle of the Panel’s full power to review.
- 5.17 Since it has not been documented or even proven on a balance of probabilities, to the satisfaction of the Panel, that the Appellant chose not to submit the evidence and legal arguments in question to the FIFA DRC in bad faith or in an abusive way, the Panel finds no valid reason to exclude the evidence and/or legal arguments submitted by the Appellant to CAS.
- 5.18 However, this does not imply that the Panel allows the Appellant to include new claims into the case which were not within the scope of the proceedings before the FIFA DRC.
- 5.19 With regard to the Appellant’s Exhibit 55, which was submitted in French only, the Panel notes that, in accordance with R29 para. 3 of the CAS Code, evidence on which a party intends to rely must be translated into the language of the proceedings.
- 5.20 The Panel further notes that it is not up to the Panel to decide on behalf of either party which evidence it should rely on. Since the Appellant submitted Exhibit 55 in the French language

without providing at the time of submission a translation into English, the Panel finds that Exhibit 55 must be disregarded.

6. APPLICABLE LAW

- 6.1 Article 66 para. 2 of the FIFA Statutes states as follows: *“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”*.
- 6.2 Article R58 of the CAS Code states as follows: *“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
- 6.3 According to the Contract *“Any dispute in respect of the contract shall be governed by the FIFA and/or CFA regulations applicable and in force and the Cyprus law”*. However, in their submissions, the Parties agreed that the applicable law in this case is the regulations of FIFA, and, additionally, Swiss law.
- 6.4 However, the Appellant further submitted that for the sake of legal certainty and predictability within the world of sports, the Panel may also take into account all applicable national and international law rules, therefore also those derived from the European Union legislation and international law, including in particular French law.
- 6.5 The Respondent on its side rejected the applicability of any other law and especially French law since such alleged applicability was not mentioned at any time in the procedure before the FIFA DRC. Furthermore, the Respondent submitted that it is clear according to the Contract that the only possible additional law applicable to this case would be Cypriot law as agreed in the Contract.
- 6.6 Based on the above, the Panel notes that the Parties expressly agreed to the application of the various regulations of FIFA and, subsidiarily, to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.
- 6.7 Since the Appellant’s claim was lodged with FIFA on 5 February 2013, the Panel agrees with the FIFA DRC that the 2012 edition of the Regulations is applicable to the present matter.

7. THE PARTIES’ REQUESTS FOR RELIEF AND POSITIONS

- 7.1 The following outline of the Parties’ requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has

carefully considered all the submissions and evidence filed by the Parties with CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 The Appellant

7.2.1 In his Statement of Appeal of 13 April 2015, the Appellant requested the following from CAS:

- “- to find that the AEL LIMASSOL FC failed to fulfil its contractual obligations;*
- to find that Mr. Patrick LEUGUEUN NKENDA fully performed the employment contract and the addendum thereto from 22 June 2011 to 25 January 2013;*
- to dismiss all applications, actions, claims and arguments by the AEL LIMASSOL FC.*

Consequently,

- to quash the decision handed down by the FIFA Dispute Resolution Chamber on 6 November 2014 and notified on 26 February 2015*

And in a new decision, replacing the said decision,

- to state and rule that the AEL LIMASSOL FC unilaterally and without just cause, terminated the employment contract and addendum entered into with Mr. Patrick LEUGUEUN NKENDA.*

- to order the AEL LIMASSOL FC to pay Mr. Patrick LEUGUEUN NKENDA the net sum of EUR 130,640.00 (one hundred and thirty thousand, six hundred and forty euros) as compensation, broken down as follows:*

- *EUR 2,000 as salary arrears for the months of August and September 2012;*
- *EUR 64,640 as salaries and salary supplements from the months from October 2012 to January 2013;*
- *EUR 65,000 as salaries still owed up to expiry of his employment contract.*

- to order the AEL LIMASSOL FC to pay additional compensation to Mr. Patrick LEUGUEUN NKENDA equal to the sum of EUR 68,928.00 (sixty-nine thousand euros) [sic] for financial and moral damage.*

- to state and rule that AEL LIMASSOL FC shall be ordered to pay the costs that Mr. Patrick LEUGUEUN NKENDA incurred for the proceedings both before the FIFA and before the CAS.*

- to state that the sums owed by AEL LIMASSOL FC shall be increased by 5% interest as from the filing of the application at the FIFA Dispute Resolution Chamber on 5 February 2013 ”.*

7.2.2 In support of his requests for relief, the Appellant submitted as follows:

- a) As documented before CAS, due to his injury, the Player personally received 16 training exemptions between 12 June 2012 and 21 January 2013, all signed by the Player and the Club’s General Manager.
- b) The FIFA DRC was incorrect in finding in its Decision that the Player definitively had left the Club in November 2012.

- c) The Player left for France on 15 December 2012 until 14 January 2013. However, this trip was authorised in writing by the Club in order for the Player to obtain medical treatment.
- d) The Player only definitively left Cyprus on 6 February 2013 following his letter to the Club of 25 January 2013, in which the Player informed the Club that he considered the latter responsible for the breach of contract according to Articles 14 and 17 of the Regulations and that he considered himself free of any commitments towards the Club.
- e) It is not disputed that on 28 September 2012, the Club paid to the Player the signing-on fee for the 2012/2013 season of EUR 20,000, for which the Player signed a receipt accordingly.
- f) Furthermore, it is undisputed that the Player received payment of EUR 28,075 from the Club on 28 September 2012.
- g) However, the Appellant should have received the amount of EUR 30,075 as follows:
August salary: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
September salary: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
Air tickets: EUR 2,015
August and September car rent: EUR 1,200
Car rental: EUR 860.
- h) It is correct that the Player, when receiving the amount of EUR 28,075 from the Club on 28 September 2012, signed a receipt with the wording "*Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc*". However, this receipt can only be considered a payment receipt and does not imply that the Player agreed to no longer challenge the arrears still owed to him after having received the said amount.
- i) Based on that, it is clear that the remaining salary arrears due on 31 August and 30 September 2012, *i.e.* the amount of EUR 2,000 has never been paid by the Club.
- j) Furthermore, the Player should have been paid the amount of EUR 63,640 in monthly remunerations and supplements as follows:
31 October 2012: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
30 November 2012: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
31 December 2012: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
31 January 2013: EUR 4,000 (Contract) + EUR 9,000 (Agreement)
Air transportation costs 2012/2013: EUR 5,000
Rent: EUR 6,000

Car rent: EUR 640.

- k) It is undisputed that the Club never paid these amounts to the Player.
- l) Regardless of the Panel's decision regarding the "grace period", the Club is liable to pay the said amount to the Player as outstanding payments.
- m) According to the Contracts and the Regulations, in case of violation of the terms and conditions of the Contract, the innocent party has the right to terminate the Contracts with just cause and to claim damages.
- n) In accordance with the Commentary to the Regulations (Article 14), a player who does not receive his salary *"for such a long period of time (over 3 months)"* is authorised to end his employment contract, since not receiving the salary necessarily compromises the position and existence of the player concerned.
- o) In the Decision, the FIFA DRC concluded that the "grace period" for payment of salaries established in the Contract and in the Agreement was a valid provision established by the Parties of their own free will, and the salaries of October, November and December 2012 were therefore payable on 29 January 2013 and at the end of February and March 2013, respectively. On this account, it was further concluded that the said salaries were indeed not outstanding at the time of termination on 25 January 2013 and cannot be considered as a valid cause to justify the unilateral termination of the contractual relationship between the Parties by the Player.
- p) This conclusion is not correct.
- q) First of all, the "grace period", in accordance with the wording of the relevant provisions of the Contract and the Agreement, applies only to the first monthly payment of the Player's salary.
- r) At no time did the Player suspect that the "grace period" would be applied to other payments than the first monthly payment of the Player's salary, and furthermore, the Player would not have entered into the Contract and the Agreement on these terms.
- s) Furthermore, every employee with an employment contract is entitled to expect that the employer undertakes to remunerate the employee on a monthly arrears basis.
- t) By agreeing that the due date of the first payment was set for 31 August 2012, the Club had already authorised a payment time frame of one month since the Player's obligations started from 1 July 2012.

- u) If a general “grace period” of 90 additional days is accepted, the consequences for the Player would be excessive since the Player would then be obliged to wait up to four months before being able to collect his first salary.
- v) Worse still, if the said “grace period” was accepted, the Player would only find himself in the position of being able to complain about the non-payment of the salaries at the end of January of the season in progress, *i.e.* from 1 February 2013 or on the first day of the eighth month after the commencement of the performance of his employment contract.
- w) Such a long period (two and a half times the maximum time authorised by FIFA) is not only contrary to international sporting regulations, but also to the rules of French law – public order, Swiss law, Cypriot law and European law and international law applicable to this particular case.
- x) Based on this, the Panel must reject the application of the “grace period”.
- y) By failing to pay these amounts to the Player in accordance with the Contract and the Agreement, the Club failed to fulfil its contractual obligations and was consequently liable for the breach of contract which caused the Player to terminate the contractual relationship with just cause.
- z) Having terminated the contractual relationship between the Parties with just cause due to the Club’s failure to fulfil its contractual obligations, the Player is entitled to claim compensation from the club for breach of contract without just cause in accordance with Articles 14 and 17 of the Regulations.
- aa) The Player did not find any other employment up to the end of the original contract period, *i.e.* 30 June 2013, and the Player is therefore entitled to request payment of all the Player’s remuneration from the date of termination until 30 June 2013, *i.e.* 5 x EUR 13,000, a total amount of EUR 65,000.
- bb) Furthermore, the compensation payable to the Player should also take into consideration the objective criteria and the specificity of football.
- cc) The Player still suffers severe after-effects due to the absence of appropriate medical care following his injury in January 2012 and is thus no longer capable of playing at a high level.
- dd) As such, the Player was only able to find employment as a federal player at the start of the 2013/2014 season with a club competing in the France Amateur Championship, which has reduced his monthly salary from EUR 13,000 to EUR 1,512.

- ee) On these grounds, the Player also claims payment by the Club of EUR 68,928 as additional compensation by way of financial and moral damages.

7.3 The Respondent

7.3.1 In its Statement of Defence of 5 May 2015 and in its Reply to the Appellant's Statement of 10 July 2015, the Respondent requested the following from the Panel:

- 1) To dismiss the appeal of the Appellant in front of CAS;
- 2) To dismiss all the arguments, actions and claims by the Appellant; and
- 3) To order the Appellant to pay the costs the Respondent had incurred for the procedure in front of CAS.

7.3.2 In support of its requests for relief, the Respondent submitted as follows:

- a) On 28 September 2012, the Club paid to the Player the amount of EUR 28,075 covering all the outstanding amounts regarding salaries, rents, car, etc. until 30 September 2012.
- b) When receiving this amount, the Player signed a receipt in the English language recognising that the payment was made in "*Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc*".
- c) The Player also signed receipts like this one when receiving previous payments from the Club.
- d) The Player never complained about the alleged missing payments of the August and September salaries when terminating the contractual relationship between the Parties in order to claim unreasonable compensation from the Club.
- e) Furthermore, the Player failed to prove that the paid amount of EUR 28,075 represented something other than the settlement of the salaries for the months of August and September 2012.
- f) As such, the Player had received payment in full and final settlement of any outstanding amount until 30 September 2012, for which reason the Panel should reject the Player's claim regarding the alleged partially outstanding amount regarding the August and September salaries.
- g) With regard to payment of salaries and salary supplements for the months of October 2012 to January 2013, the Club had never refused to pay the Player the amounts outstanding as of October 2012 within the deadline of the "grace period" of 90 days as provided by the Contract and the Agreement.

- h) However, the fact that the Player left Cyprus on November 2012 was undisputed by the Player during the procedure before the FIFA DRC, and any further arguments which are submitted by the Player before CAS are rejected as inadmissible by the Club.
- i) Based on these circumstances, the decision of the FIFA DRC in the Decision regarding payment of salaries etc. as of October 2012 is fair and reasonable.
- j) The same goes for the decision by the FIFA DRC regarding the termination of the contractual relationship by the Player on 25 January 2013, which was without just cause.
- k) It was provided by the Contract and the Agreement, respectively, that the monthly instalments were due on the 31st day of each month with a grace period of 90 days.
- l) Therefore, it was mutually agreed between the Parties that the monthly payments would be made on the last day of each consecutive month with a grace period of 90 days within which payment would still be timely.
- m) The grace period was included in the said Contracts by mutual consent of the Parties according to the principle of contractual freedom, and the Contracts with their legal and binding consequences had therefore been accepted by the Appellant.
- n) The Appellant was fully aware of the existence of the grace period since he signed both the Contract and the Agreement.
- o) The grace period was applicable to all the monthly installments.
- p) Furthermore, the Appellant was used to being paid in this manner for a long time without complaint.
- q) According to CAS jurisprudence *“if the Appellant did not at the time consider the belated payments to be a significant breach then this fact cannot on its own later constitute a valid reason for the termination of the Contract. Instead the Appellant’s silence must be considered to be acceptance of the Respondent’s conduct, which would make it appear to be bad faith to justify termination of the Contract by reference to the belated payments”*.
- r) The Appellant terminated the contractual relationship between the Parties by letter of 25 January 2015, at which time none of the salaries for the months of October, November and December 2012 was outstanding, since all of them were payable on the last day of the respective month with a grace period of 90 days.
- s) In any case, in the said letter the Appellant never specified his alleged claim.

- t) According to Swiss case law, whether there is just cause for termination of a contract depends on the overall circumstances of the case. However, a just cause exists whenever the terminating party cannot in good faith be expected to continue the employment relationship.
- u) Therefore, only a serious breach of a party's obligation under an employment agreement may justify the immediate termination of a contract.
- v) Considering the facts of this case, there was never any valid reason indicating that the termination of the contractual relationship by the Appellant was with just cause.
- w) The Appellant was aware of the grace period of 90 days, he was aware that the monthly instalments were payable at the end of each month, and he had accepted and agreed to the said clause of both the Contract and the Agreement.
- x) Therefore, the Appellant's termination of the Parties' contractual relationship was without just cause, and the Appellant is consequently not entitled to receive any compensation from the Respondent.

8. DISCUSSION ON THE MERITS

8.1 Initially, the Panel notes that it is undisputed by the Parties that on 22 June and 23 June 2011, the Parties signed the Contract and the Agreement, respectively, valid as of the date of issuance of the Player's ITC until 31 May 2013.

8.2 Both the Contract and the Agreement contain the following wording concerning the due date:

"For the season 2011/2012 salary amounting of ... EURO (... EURO) payable in ten (10) installments of ... EURO (... EURO) per month and with a grace period of 90 days, as the first installment to be paid on the 31st of August, 2011 and the last to be paid the 31st of May 2012.

For the season 2012/2013 salary amounting of ... EURO (... EURO) payable in ten (10) installments of ... EURO (... EURO) per month and with a grace period of 90 days, as the first installment to be paid on the 31st of August, 2012 and the last to be paid the 31st of May 2013".

8.3 Furthermore, it is undisputed that the monthly salary for the 2012/2013 season (August – May) to be paid by the Respondent to the Appellant in accordance with the Contract and the Agreement totals EUR 13,000 with addition of agreed supplements.

8.4 It is also undisputed during the proceedings that on 28 September 2012, the Respondent paid to the Appellant the amount of EUR 28,075, in which connection the Appellant signed a receipt in the English language stating: *"Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc"*.

- 8.5 The Parties disagree, however, over whether this payment was actually made in full and final settlement of any claims between the Parties as of 30 September 2012 or whether the Appellant may rightfully claim payment of an additional amount of EUR 2,000 for the period until that date.
- 8.6 Finally, the Parties agree that the Appellant, by letter of 25 January 2013, unilaterally terminated the contractual relationship between the Parties, *inter alia* stating as follows: “*Consequently, I consider you responsible of the breach of contract according to articles 14 and 17 of the FIFA Regulations on Status and Transfer of Players and consider myself free of any commitment to you*”.
- 8.7 However, the Parties disagree over whether or not this termination was with or without just cause and over which Party was responsible for the early termination of the contractual relationship between them.

Thus, the main issues to be resolved by the Panel are:

- a) Did the Appellant terminate the contractual relationship between the Parties with or without just cause?
 - b) Regardless of the answer to a), what amount is the Appellant entitled to receive from the Respondent as outstanding salaries etc. in accordance with the Contract and the Agreement?
 - c) In the event that a) is answered in the affirmative, is the Appellant entitled to receive compensation from the Respondent and, if so, in what amount?
- a. Did the Appellant terminate the contractual relationship between the Parties with or without just cause?**

- 8.8 Article 14 of the Regulations states 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”.

- 8.9 The Panel notes in this connection that the dispute at hand solely relates to the Respondent’s alleged breach of its payment obligation under the Contract and the Agreement.

- 8.10 The Commentary to Article 14 clarifies, *inter alia*:

“The definition of just cause and whether just cause exists shall be established in accordance with the merits of each case. In fact, behavior that is a 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 can reach such a level that the party suffering the breach is entitled to terminate the contract unilaterally. The following examples explain the application of this norm.

Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club in default, the club does not settle the amount due. The player notifies the club that he will terminate the

employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned”.

- 8.11 The Panel notes that, as mentioned above, it is undisputed that on 28 September 2012, the Respondent paid to the Appellant the amount of EUR 28,075, in which connection the Appellant signed a receipt in the English language stating: *“Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc”*. Furthermore, it is undisputed that on 25 January 2013, when the Appellant unilaterally terminated the contractual relationship between the Parties, the Respondent had not yet paid the salaries etc. for the months of October, November and December 2012 to the Appellant.
- 8.12 Given the absence of disagreement between the Parties over the extent of payments actually received by the Appellant from the Respondent, the Panel finds that it is for the Appellant to discharge the burden of proof to establish that the Respondent committed a breach of their contractual relationship of such a material nature that the Appellant was entitled to terminate their contractual relationship unilaterally with just cause.
- 8.13 In so doing, the Panel adheres to the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
- 8.14 The Appellant starts by arguing that, at the time when he terminated his contractual relationship, an amount of EUR 2,000 concerning the salaries for August and September 2012, respectively, was – and still is – due and outstanding to the Appellant. The Appellant does not deny having received from the Respondent the amount of EUR 28,075 on 28 September 2012, and he also acknowledges and admits that he has signed the Receipt. However, the Appellant contends that the Receipt is only a payment receipt and does not imply that the Appellant agreed to no longer challenge the arrears still owed to him.
- 8.15 In reply to this, the Respondent argues that the said payment was made in full and final settlement of any claims between the Parties until 30 September 2012 – except for the outstanding signing bonus for the 2012/2013 season, which was indisputably also paid on the same day – which indeed is clearly evident from the Receipt signed by the Appellant.
- 8.16 The Panel first notes that the English text of the original Receipt reads as follows:

“Full settlement of any amount due until 30/9/12. Salary of August and September, airtickets, rents, car etc”.

- 8.17 The Appellant signed this Receipt voluntarily, and the Appellant has further explained during the hearing that he only signed the Receipt after having consulted his attorney by phone about the transfer of the amount in question.
- 8.18 Questioned directly by the Panel during the hearing, the Respondent stated that the amount had been derived from negotiations between the Parties, but neither the Appellant nor the Respondent was capable of explaining how the paid amount of EUR 28,075 had been arrived at, which is why no actual grounds existed for concluding that the alleged amount still due and outstanding, as claimed by the Appellant, would be EUR 1,000 concerning the salaries for August and September 2012, respectively.
- 8.19 The Panel initially finds that an interpretation of the wording of the Receipt leads to the view that the Parties agreed that, at the time of payment of EUR 28,075 from the Respondent to the Appellant, payment had been made in full and final settlement of any claims between the Parties until 30 September 2012, and the Panel further notes that the Appellant, in a like manner, had signed similar receipts for other payments from the Respondent to the Appellant.
- 8.20 The Panel subsequently notes that the Appellant apparently did not notify the Respondent of the alleged outstanding amount until 16 January 2013, *i.e.* immediately prior to the termination by the Appellant of the Parties' contractual relationship.
- 8.21 Against this background, the Panel finds no grounds for concluding other than that the payment of EUR 28,075 on 28 September 2012 from the Respondent to the Appellant must be considered to have been made in full and final settlement of any claims between the Parties until 30 September 2012, and the Panel therefore finds that the Appellant is not entitled to receive the additional claimed amount of EUR 2,000.
- 8.22 In this context, the Panel further notes that this claimed amount of EUR 2,000 consequently cannot be deemed to have been outstanding between the Parties on 25 January 2013, *i.e.* at the time of the termination of the contractual relationship.
- 8.23 It is then up to the Panel to decide whether the failure by the Respondent to pay the salaries etc. for the months of October, November and December 2012 to the Appellant constitutes a sufficient material breach of contract such that the Appellant was entitled to terminate the contractual relationship with just cause.
- 8.24 The Appellant argues in this connection, *inter alia*, that the monthly salaries fell due for payment on the last banking day of each month, which would mean that the salary for, say, October 2012 fell due for payment on 31 October 2012. The grace period specified in the Contract and the Agreement was intended, both according to its wording and as understood by the Parties (submits the Appellant), to be applicable to the first monthly payment only, *i.e.* the monthly salary for August. At no time did the Appellant suspect that a grace period of 90 days would apply to all monthly salaries, and the Appellant would never have signed the Contracts if this had been the case. Moreover, the Appellant submits that a grace period of 90 days applicable to all monthly salaries would be contrary to the rules of French law – public order, Swiss law,

Cypriot law and European law and international law as applied to this particular case. The Appellant concludes that as the Panel must thus reject the grace period, at the time when the Appellant terminated the contractual relationship, on 25 January 2013, the Respondent owed to the Appellant the salaries etc. for October, November and December 2012, of which the salary for October 2012 had been due and outstanding for nearly three months.

- 8.25 On the other hand, the Respondent argues, *inter alia*, that the grace period of 90 days agreed between the Parties is applicable to all monthly salaries payable by the Respondent. At the time of termination of the contractual relationship by the Appellant, none of the salaries for the months of October, November and December 2012 was outstanding since all of them were payable on the last day of the respective month but a grace period of 90 days applied to each payment. Thus, the Respondent argues the unilateral termination of the contractual relationship between the Parties by the Appellant was without just cause.
- 8.26 The Panel notes initially that the Appellant has submitted that, in connection with the signing of the Contract and the Agreement, he was accompanied by his agent. Moreover, prior to signing, the Appellant had read through both the Agreement and the Contract, both of which were drafted in English. Earlier in his career, the Appellant had repeatedly negotiated and concluded employment contracts with other clubs, and it appears that the Appellant signed both Contracts voluntarily and of his own free will.
- 8.27 Given these circumstances, the Panel concludes initially that there are no grounds for assuming that the Parties, prior to signing the Contracts, had not been informed of their contents, and the Panel finds no grounds for assuming other than that the Parties validly entered into both the Contract and the Agreement, for which reason the terms and conditions of the Contracts, *prima facie*, must be deemed to be valid between the Parties.
- 8.28 The Parties disagree, however, over whether the grace period stipulated in both the Contracts see para. 8.2 above, must be deemed, according to its contents, to be applicable to the first monthly salary only, *i.e.* the monthly salary for August 2012, or whether it must be applied to all monthly salaries during the contractual period.
- 8.29 Based on, *inter alia*, the submissions by the Parties to the Panel concerning the interpretation of the wording about the grace period, the Panel has analysed the contents of the Contract and the Agreement with a view to establishing the meaning and effect of the grace period specified.
- 8.30 The Panel notes in this context, *inter alia*, that the grace period is specifically mentioned twice in each of the Contract and the Agreement for the 2011/2012 season and the 2012/2013 season, respectively.
- 8.31 Furthermore, in the opinion of the Panel, nothing in the wording of the provisions concerned seems to indicate decisively that the grace period was intended to be applicable to the first of the monthly salaries only, and the Panel notes that the Respondent, during the 2011/2012 season, repeatedly paid the monthly salaries to the Appellant, even at a delay of up to more than 2½ months beyond the agreed due date.

- 8.32 The Panel adheres to the view that both the Contract and the Agreement specify a monthly due date, to which a number of formal legal effects are linked notwithstanding the provisions regarding the grace period.
- 8.33 Based on the Panel's analysis, the Panel takes the view that the provisions should be understood to mean that the monthly salaries for the months of August to May for the 2011/2012 and 2012/2013 seasons, *prima facie*, fall due for payment on the last day of each month, but that the Respondent, in accordance with the agreed grace period, is entitled to wait up to 90 days to pay the amount in question, within which period the Appellant is not entitled to seek remedies for breach as a result of non-payment.
- 8.34 The Panel emphasises, however, that it does not, by implication, take the view that a player, in case of continued non-payment after the expiry of a similar grace period, would have to wait another three months before the contractual relationship could be terminated with just cause in accordance with the Regulations.
- 8.35 On the contrary, the Panel considers that the commencement date for determining how long a club has been in breach of the contract for non-payment will still be the original due date when the club in question fails to pay the outstanding amount within an agreed grace period. Furthermore, and in case of continued non-payment after the expiry of a grace period, interest may be calculated as from the original monthly due date on the last day of the month in which a monthly payment fell due.
- 8.36 Where a grace period is validly agreed between a player and a club it is generally not considered to be contrary to the Regulations. In this context, the Panel attaches particular importance to the agreed grace period not exceeding a period which is considered acceptable in accordance with current practice before the player concerned can be certain to have just cause for termination of the contractual relationship as a result of non-payment.
- 8.37 The Panel also emphasises that it, by accepting the expressly agreed grace period, has not precluded the possibility that the Appellant, for other reasons, could have had just cause to terminate his contract of employment. The Panel thus emphasises that, in order to determine whether in any circumstances just cause exists to terminate a contractual relationship, it must still be crucial whether the relevant party in good faith, can be expected to continue the employment relationship.
- 8.38 Given the Panel's finding that the grace period was lawfully entered into and is applicable, in order to determine whether the Appellant terminated the contractual relationship with or without just cause, it is therefore crucial whether the Respondent, on 25 January 2013, had committed a breach of a sufficiently material nature by allegedly failing to meet certain of its payment obligations to the Appellant.
- 8.39 As already mentioned in par 8.21 above, as of 30 September 2012, no outstanding claim for unpaid salaries and any other payments under the Contracts existed any longer between the

Parties for the preceding period, whereas the Respondent had still not paid the Appellant's monthly salaries for October, November and December 2012 on 25 January 2013. The Panel notes in this connection that the Respondent's payments to the Appellant throughout the preceding contract period had apparently been made later than the monthly due date.

8.40 However, as the Panel finds, and as stated above, that the grace period of 90 days agreed between the Parties is applicable, the Appellant would not be entitled to terminate the contractual relationship until after the expiry of this period, which, as far as the October salary is concerned, would not have been until after 29 January 2013.

8.41 In other words, the Panel therefore finds that the failure by the Respondent to pay to the Appellant the monthly salaries for October, November and December 2012 would not in itself, on 25 January 2013, have constituted just cause for the Appellant to terminate the contractual relationship unilaterally.

8.42 The Panel further notes that the Appellant has argued that the amount payable to the Appellant by the Respondent for rent, car rent and air tickets for October, November and December was still due and outstanding on 25 January 2013. 8.43. Notwithstanding that the Panel finds that the grace period, according to the wording of the Contracts concluded between the Parties, should not be applied correspondingly to non-payments for rent, car rent and air tickets according to the Contracts, the Panel finds that the failure to make punctual payment of these amounts does not in itself imply that the Appellant had just cause to terminate the Contracts with the Respondent. In considering whether the Appellant had just cause to terminate the Contracts due to the failure to make punctual payments of these amounts the Panel lends weight to the size of these payments, among other factors.

8.43 As the Appellant has not argued that any just cause existed for the termination of the contractual relationship other than the non-payment of salaries and other due payments, the Panel concludes that the Appellant had no just cause to terminate the contractual relationship between the Parties.

b. Regardless of the answer to a), what amount is the Appellant entitled to receive from the Respondent as outstanding salaries etc. in accordance with the Contract and the Agreement?

8.44 The Panel notes initially that the Respondent has indisputably failed to pay the Appellant's monthly salaries for the months of October, November and December 2012 and for the month of January 2013 until the Appellant's termination of the contractual relationship on 25 January 2013.

8.45 Before the FIFA DRC, the Appellant claimed payment of EUR 52,000 as unpaid salaries for the months of October 2012 until January 2013 with addition of EUR 5,270 for rent, car rent and air tickets for the same months in accordance with the Contract and the Agreement.

- 8.46 Before the CAS, the Appellant has, *inter alia*, claimed payment of EUR 52,000 as unpaid salaries for the months of October 2012 until January 2013 with addition of EUR 12,640 for rent, car rent and air tickets for the same months in accordance with the Contract and the Agreement.
- 8.47 In the Decision, the FIFA DRC found that it was undisputed that the Appellant left Cyprus in November 2012, for which reason the Respondent was solely held liable to pay the Appellant's salaries for October and November 2012, and the FIFA DRC found insufficient evidence to prove that the Respondent should be ordered to pay to the Appellant an amount in excess of EUR 520, corresponding to one month of accommodation.
- 8.48 During the proceedings before the CAS, the Appellant has argued that he only left Cyprus temporarily in November 2012 with a view to receiving treatment for his injury in France, but that he subsequently returned to Cyprus in January 2013 with a view to resuming training with the Respondent.
- 8.49 The Panel finds that sufficient evidence has been produced to prove that the Appellant only left Cyprus temporarily in November 2012 with a view to receiving treatment for his injury in France, and the Panel likewise finds that evidence has been given to prove that the Appellant's absence from the Respondent had in each individual case been approved in writing by the Respondent in advance.
- 8.50 Likewise, the Panel finds that the Appellant has produced sufficient documentation of the expenses which he incurred for rent, car rent and air tickets in accordance with the terms and conditions of the Agreement.
- 8.51 In view of the above and in accordance with the general legal principle of *pacta sunt servanda*, the Panel finds that the Respondent must fulfil its contractual obligations towards the Appellant from October 2012 until 25 January 2013.
- 8.52 Therefore, the Respondent is to be held liable to pay to the Appellant the amount of EUR 49,483, corresponding to the monthly salaries for the months of October through December 2012 and 25 days of the month of January 2013.
- 8.53 Furthermore, in respect of salary supplements such as rent, car rental and air tickets, the Respondent must pay to the Appellant the amount of EUR 5,270 as claimed before the FIFA DRC, in which connection the Panel points out that the Panel cannot go beyond the amount claimed before the FIFA DRC.
- 8.54 With regard to the Appellant's request for interest, the Panel finds that the Appellant is entitled to receive interest at the rate of 5% *p.a.* on the full amount of EUR 54,753 as from the date of filing his claim before the FIFA DRC, 5 February 2013, until the date of effective payment.

c. In the event that a) is answered in the affirmative, is the Appellant entitled to receive compensation from the Respondent and, if applicable, in what amount?

8.55 As the Appellant had no just cause to terminate the contractual relationship, the Appellant is not entitled to receive compensation from the Respondent as a result of such termination.

9. SUMMARY

9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the Appellant terminated the Parties' contractual relationship without just cause.

9.2 However, the Appellant is entitled to receive from the Respondent payment of the amount of EUR 54,753 as outstanding remuneration and supplement for the 2012-2013 season from October 2012 until the time of the termination of the Contracts.

9.3 The Appeal filed against the Decision is therefore partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 18 March 2015 by Mr Patrick Leugueun Nkenda against the decision rendered by the FIFA Dispute Resolution Chamber on 6 November 2014 is partially upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 6 November 2014 is partially set aside and replaced by this arbitral award.
3. AEL Limasol FC shall pay to Mr Patrick Leugueun Nkenda an amount of EUR 54,753 plus interest at 5% p.a. on said amount as from 5 February 2013.
4. (...).
5. (...).
6. All further and other requests for relief are dismissed.