



**Arbitration CAS 2015/A/4083 Hønefoss Ballklubb v. Heiner Mora Mora & Belén FC, award of 6 April 2016**

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr Lars Halgreen (Denmark); Mr José Juan Pintó (Spain)

*Football*

*Termination of the employment contract without just cause by the player*

*CAS jurisdiction*

*Applicable law*

*Jurisdiction of the FIFA adjudicating bodies*

*Just cause*

*Right to terminate pursuant to the contract*

*Awarding of an amount higher than that requested by a party*

*Request to impose sporting sanctions*

1. By submitting an appeal to CAS without challenging CAS' jurisdiction in their submissions and by signing the Order of Procedure, the parties conclude, at least, an ad-hoc arbitration agreement to obtain an arbitral award regarding the questions raised in the appeal. This "specific arbitration agreement" is explicitly covered by Article R47 of the CAS Code. It follows that the CAS has jurisdiction to decide the dispute.
2. Article R58 of the CAS Code recognizes the priority of the "*applicable regulations*" over the "*rules of law chosen by the parties*". It follows that the explicit choice of law made by the parties is to be considered only within the framework of Article R58 of the CAS Code and consequently affects only the subsidiarily applicable law. As to the relationship between the subsidiarily applicable Swiss law according to the applicable regulations in football-related disputes and the parties' explicit choice of another national law, Swiss law is applicable when interpreting and specifying the content of the applicable football regulations, while the other national law is applicable for matters not addressed in the applicable football regulations and therefore not regulated further.
3. A combined reading of Article 22 lit. b of the FIFA Regulations on the Status and Transfer of Players (RSTP) and Article 12 para. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber suggests that it is not for the FIFA adjudicating body to assess *ex officio* its jurisdiction or the jurisdiction of another dispute resolution body but for the party objecting to the jurisdiction of FIFA to actively point the FIFA adjudicating body to the potential jurisdiction of national labour courts or an arbitral tribunal at national level, not only by objecting to the competence of FIFA but also by providing material which would have allowed the FIFA adjudicating body to assess whether the arbitral tribunal at national level fulfilled the requirements set out by FIFA. If the party fails to do so and, on the

contrary, opts to file a counterclaim before the FIFA adjudicating body, it cannot raise the plea of lack of jurisdiction in appeal proceedings before the CAS.

4. The exclusion of a player from the team for disciplinary reasons for a period of approximately two weeks does not suffice to constitute just cause within the meaning of the RSTP for the player to terminate his contract, especially if the player has failed to notify the club of its alleged breach of contract (i.e. the exclusion of the player from the team) prior to the termination and if the player handed in a letter of apology and resumed training thereafter.
5. An employment contract providing for one month's notice normally requires the terminating party to continue to offer his or her services for one month after termination. This kind of contractual arrangement chosen by the parties based on the national federation's standard employment contract for non-amateur football players deviates from the RSTP and may also appear impractical in the context of professional football. However, it is not unlawful or in violation of the applicable rules as Articles 13 et seq. of the RSTP are not binding at a national level according to Article 1 para. 3 a) and b) of the RSTP. National football associations shall merely include appropriate means to protect contractual stability in their respective regulations.
6. If the total amount awarded to a party by a CAS panel remains lower than the total amount claimed by that party, the CAS panel is not barred under the *ne ultra petita* principle from ordering to pay a higher amount under a specific heading to that party, although the latter in its prayers for relief has merely requested the panel to uphold the first instance decision regarding this specific heading.
7. A disciplinary sanction does not concern the contractual relationships between the (direct and indirect) members of the association but it concerns the hierarchical relationships between FIFA and its (direct and indirect) members, with the consequence that the disciplinary sanctions provided by FIFA rules can be ordered by the CAS only if FIFA is summoned as a respondent. If the appellant party did not name FIFA as a respondent, a CAS panel is prevented from ordering FIFA to impose, or from overruling FIFA in imposing, disciplinary sanctions on indirect members of FIFA.

## I. THE PARTIES

1. Hønefoss Ballklubb (hereinafter referred to as "Appellant" or "Hønefoss" or the "Club") is a football club from Hønefoss, Norway. It currently plays in the third division. Hønefoss is affiliated to the Norwegian Football Federation ("NFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").
2. Heiner Mora Mora ("First Respondent" or "Player") is a football player of Costa Rican nationality. He currently plays for Club Deportivo Saprissa in Costa Rica ("Saprissa").

3. Belén FC is a football club from San Antonio, Costa Rica.

## **II. FACTUAL BACKGROUND**

### **A) The Dispute between the Parties**

4. Hønefoss challenges before the Court of Arbitration for Sport (“CAS”) a decision issued by the FIFA Dispute Resolution Chamber (“DRC”) on 19 February 2015, which ordered Hønefoss to pay to the Player outstanding remuneration in the amount of Norwegian Kroners (“NOK”) 180,000, the reimbursement of two flight tickets in the amount of USD 5,168 as well as compensation for breach of contract in the amount of NOK 1,375,850 plus interest (the “Decision”). The circumstances stated below are a summary of the main relevant facts as submitted by the Parties.
5. On 5 January 2012, Hønefoss and the Player signed an employment contract valid from 8 January 2012 until 30 November 2014 (the “Contract”). The Contract, which is based on the *NFF standard employment contract for non-amateur players – April 2008*, is supplemented by three appendices and contains the following relevant information (linguistic errors have not been corrected nor have these errors been highlighted by “sic”):

*[Hønefoss and the Player] have entered into an agreement regarding temporary employment, cf. AML (Norwegian Labour Environment Act) § 14-9, according to [...] appendixes 1, 2 and 3 attached to this contract. In addition, the club’s administrative regulations (i.e. regulations for disciplinary and travel allowance) [...] are to be acknowledged as part of this contract. The prevailing regulations are enclosed. In addition current and international transfer regulations are to be acknowledged as part of this contract. [...]*

#### ***11. End of contract***

[...]

##### ***b) Termination of contract before expiration of contract***

*The contract is non-terminable before the date of expiration. The contract may nonetheless be terminated by one of the parties if conditions as described in appendix 1 are present.*

#### ***14. Miscellaneous***

[...]

##### ***c) Dispute resolution***

*Disputes regarding any aspect of this contract must be referred to “Footballens Voldgiftsordning” (Arbitration for Norwegian Football) provided that nothing else is stated in mandatory provisions (i.e. AML), see also appendix 1.[...]*

## ***Appendix 1. Expiration/termination of contract***

### ***A. The club's right to terminate the player's employment***

*The club may terminate the player's employment with one months notification if:*

[...]

2. *The player fails to maintain the expected level of play as presupposed in this contract.*

3. *The player does not fulfil his/ hers obligations in the working-relationship, even though the player has been notified in writing of such breach by the club.*

### ***B. The club's right to dismiss the player***

*The club may dismiss the player with immediate effect if:*

1. *The player commits a material breach of his/ hers obligations according to this contract.*

[...]

### ***C. The player's right to terminate the contract***

*The player may terminate the contract with one months notification if:*

1. *The club does not fulfil their salary obligations according to this contract and the delay in payment for one term exceeds one calendar month.*

2. *The club commits a material breach of its obligations according to this contract and any such breach is continued after the player has notified the club in writing of the breach.*

### ***D. Termination of the contract according to transfer regulations***

*In addition to the abovementioned items A, B, and C, the Parties may terminate this contract pursuant to prevailing transfer regulations.*

### ***Dispute regarding the termination of contract***

*Termination of this contract according to the abovementioned items A, B, and C, fall under the scope of applications of AML's regulations.*

*Disputes regarding termination of contract according to item D above shall be brought before NFF's "Voldgiftsordning" (Arbitration for Norwegian Football).*

## ***Appendix 2.***

[...]

### ***3. Salary, bonus and other commercial contributions***

#### *Regular salary per month*

- *Gross income will be NOK 90,000 per month while playing in Tippeliga (top division).*
- *Should the club be relegated to the Adecco league (2nd highest level in Norway), the gross income will be reduced to NOK 60.000 per month.*

*Net income shall be paid via bank on the ... 15th each month in arrears. [...]*

#### *Other economical contributions*

*In addition to the remunerations as stated above, the club and the player hereby agree that the club shall cover the following costs:*

*The club pays for the immigration cost for players family, that means to flight tickets from Costa Rica to Norway,*

*one child and one grown up.*

Sign-on-fee

*The club will pay the player a sign on fee of 1.216.000 NOK.*

- *816.000 NOK will be paid 18.01.2012,*
- *400.000 NOK will be paid 10.02.2013*
- *The sign on fee is paid fully, even if the player leaves the club before the second year.*

**Appendix 3.**

**Declaration to the Norwegian Football Association**

*The Parties to this agreement hereby declare that:*

- *No other contract or understanding has been entered into either orally or in writing that alternates or affects the conditions regulated in this contract".*

6. In January 2012, the Player's girlfriend and their common child moved to Norway with the Player. After three months the visa for the girlfriend and the child expired and they had to return to Costa Rica. They did not come back to Norway after that.
7. On 31 January 2012, Hønefoss transferred an amount of NOK 25,500 to a deposit account created for the Player's lease of an apartment.
8. On 24 March 2012, the Player made his debut for Hønefoss in the first division and became a regular starter for Hønefoss thereafter.
9. From 16 May 2013 to 29 May 2013, the Player was on sick leave.
10. On 20 May 2013, the Player terminated the lease for his apartment with effect on 30 June 2013. Shortly thereafter, the Player left Norway to spend his summer vacation with his family in Costa Rica.
11. On 27 May 2013 a Norwegian newspaper quoted the Player as follows:  
*"I felt suicidal. I know many people are afraid to admit having those feelings, but the thought did cross my mind. I'm not going to play more, although they have said they may raise claims against me. My family comes first. And as long as they are not here, I don't want to be here either".*
12. On 29 May 2013, Hønefoss wrote an email to the Player granting the Player an additional two weeks of summer vacation and stating that the Player was expected to resume training on 24 June 2013 "*if the contract situation not is changed by that time*".
13. On 30 May 2013, the Chairman of Saprissa contacted the CEO of Hønefoss, suggesting a transfer of the Player from Hønefoss to Saprissa.

14. On 12 June 2013, the CEO of Hønefoss informed the Player as follows:

*"I have spoken to our investors and they want to have back some of the money they paid for you to Saprissa, and the money you have received from Hønefoss in sign on fee / you received NOK kr 400.000 in February this year. We will not ask Saprissa for money for the 6 first months if you pay back the most of the sign on fee you received in February. This is told by our agent to the President of Saprissa".*

15. On 15 June 2013, the Player's salary for May 2013 fell due without Hønefoss making payment to the Player.

16. On the same day, the Player wrote an email to the CEO of Hønefoss in which he stated:

*"What happens to the negotiation, Saprissa president told me now that you changed the decision and are charging more money for 6 months. But you told me it was for the rest of the contract!"*

17. On 16 June 2013, the Player wrote another email to the CEO of Hønefoss stating that:

*"I inform you that you will no hire me because is a lot of money for them! What will happen to my situation with Hønefoss?"*

18. On 19 June 2013, the Player wrote a further email to the CEO of Hønefoss regarding the outstanding salary payment:

*"I need to know what happens to my salary May? I did not receive money on 15 June! Is possible for you to explain what happens?"*

Hønefoss did not answer this email.

19. On 26 June 2013, two days after the date envisaged for resuming practice (cf. para. 12 above), the Player returned to Hønefoss in order to start practice with the team.

20. On the same day, the Player withdrew from the deposit account for his apartment (cf. para. 10 above) a total amount of NOK 25,788.71, i.e. NOK 25,500.00 plus interest accumulated in the amount of NOK 288.71.

21. It is disputed between the Parties what happened upon the Player's return to Hønefoss on 26 June 2013:

- The Club alleges that the Player refused to resume training.
- The Player contends that he was not allowed to train with his teammates after his return.

22. On 4 July 2013, a meeting took place between Hønefoss and the Player in which Hønefoss requested the Player to formally apologize to the club.

23. On 6 July 2013, a meeting was held between the Player and the coach in which the Player was told that he was not allowed to train with the team until he apologized for his behaviour.

24. On 9 July 2013, the Player sent the following email to Hønefoss:

*"Dear team mates. (First of all I would like to say) I am very happy to see you again. I want to let you know that I am here now to fulfil my contract and start training with you again. I hope you are able to understand my situation and what I have been going through, and I will do to be good for the well-being of the team. I am very sorry for everything that has happened, and I hope that you can, together the trainer and the club, forgive me for the way I tried to solve my family situation. Thank you very much!"*

Hønefoss' former CEO testified at the CAS hearing on 3 February 2016 that this was the apology he was waiting for.

25. On 10 July 2013, the Player resumed training with the team.
26. On 15 July 2013, the Player's salary for June 2013 fell due without Hønefoss making payment to the Player. At the same time, the Player's salary for May 2013 was still outstanding.
27. On 17 July 2013, the Player terminated the Contract with Hønefoss. In his termination letter the Player, *inter alia*, stated the following:

*"This break with employer liability is based on the contract [...] page 6 Appendix 1 [...];*

*C – The Players right to terminate the contract*

- 1. The club does not fulfil their salary obligations according to this contract and the delay in payment for one term exceeds one calendar month.*
- 2. The club commits a material breach of its obligations according to this contract and any such breach is continued after the player has notified the club in writing of the breach.*

*[...] I inform you that on June 19th 2013 I notify to the club in an email [...] the non-payment of month's salary due as of June 15 2013 with no response from Hønefoss Ballklubb.*

*As of the date of today July 17 2013 I have a due payment of two months salary without receiving my salary.*

*Therefore*

*1 – In this act and hereby covered in the contract signed between the Parties [...] I will end this contract as my right to do so in a justified manner.*

*2 – I request the payment of the unpaid wages [...]*

*Added to this, I am not agree, in any way, with the fact that I was forced to work separately about my teammates, I was hired to work in the first team of the Club, and I consider that a different treatment, as I have received so far constitutes bullying to me, and is another reason to terminate this contract".*

28. On 19 July 2013, the Player returned to Costa Rica.
29. On 18 August 2013, the Player signed a new employment contract with FC Belén.

30. At the end of the 2013 Norwegian football season, Hønefoss was relegated to the second division and is currently playing in the third division.
31. After the 2013/2014 season, the Player transferred from FC Belén to Saprissa.

**B) The Proceedings before the FIFA DRC**

32. On 19 August 2013, the Player lodged a claim against Hønefoss with the DRC, requesting payment of outstanding salaries, reimbursement of travel costs and compensation for breach of contract.
33. During the DRC proceedings, Hønefoss, without objecting to the competence of the DRC, filed a counterclaim requesting reimbursement of 50% of the Player's sign-on fee, compensation for breach of contract and reimbursement of legal costs.
34. FC Belén did not participate in the DRC proceedings, despite being invited to do so.
35. On 19 February 2015, the DRC decided as follows:
  - “1. *The claim of the Claimant/Counter-Respondent, Heiner Mora Mora, is partially accepted.*
  2. *The Respondent/Counter-Claimant, Hønefoss Ballklubb, is ordered to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of Norwegian kroners (NOK) 180,000, plus 5% interest p.a. until the date of effective payment as follows:*
    - a. *5% p.a. as of 16 June 2013 on the amount of NOK 90,000;*
    - b. *5% p.a. as of 16 July 2013 on the amount of NOK 90,000.*
  3. *The Respondent/Counter-Claimant is ordered to pay to Claimant/Counter-Respondent the reimbursement of two flight tickets in the amount of USD 5,168, plus 5% interest p.a. as from 19 August 2013 until the date of effective payment, within 30 days as from the date of notification of this decision.*
  4. *The Respondent/Counter-Claimant is ordered to pay to the Claimant/Counter-Respondent compensation for breach of contract in the amount of NOK 1,375,850 plus 5 % interest p.a. as from 19 August 2013 until the date of effective payment, within 30 days as from the date of notification.*  
[...]
  6. *Any further claims lodged by the Claimant/Counter-Respondent are rejected.*
  7. *The counterclaim of the Respondent/Counter-Claimant is rejected*

36. The Decision with grounds was notified to the Parties on 11 May 2015.
37. In the Decision, the DRC found that it was competent to deal with the Parties' dispute without explicitly addressing the dispute resolution clause contained in the Parties' Contract. The DRC established that the Player terminated the Contract with just cause based on the existence of two outstanding salary payments and after having put Hønefoss in default, in compliance with an express termination clause foreseen by the Parties in their Contract. In view of the foregoing, the DRC concluded that the Player was not only entitled to the outstanding salaries and the contractually agreed reimbursement of travel costs but also, in accordance with Article 17(1) of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), to compensation to be paid by Hønefoss.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

38. On 29 May 2015, Hønefoss filed a Statement of Appeal against the Decision with the CAS requesting that the matter be submitted to a sole arbitrator.
39. On 2 June 2015, the Player opposed to the case being dealt with by a sole arbitrator.
40. On 10 June 2015, Hønefoss submitted the appeal brief.
41. On 15 June 2015, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided, in accordance with Article R50 of the Code of Sports-related Arbitration ("CAS Code"), to submit the case to a Panel of three (3) arbitrators.
42. On 17 June 2015, FIFA renounced its right to intervene in the proceedings and pointed out that in its opinion the CAS was not competent to impose sporting sanctions upon Heiner Mora Mora, as had been requested by Hønefoss in its prayer for relief No. 5.
43. On 30 July the Player filed his answer.
44. FC Belén did not file an answer nor did it participate otherwise in these proceedings. However, FC Belén had authorized Mr Arias, counsel for the Player, to appoint Mr Pintó as arbitrator jointly for both Respondents but failed to instruct Mr Arias in further proceedings before CAS.
45. On 10 August 2015, the CAS Court Office invited the Parties to express their preference whether a hearing should be held in this matter.
46. On 12 August 2015, the Player expressed his preference for an award based solely on the written submissions of the Parties.
47. On 24 August 2015, Hønefoss equally expressed its preference for the case to be decided solely on the basis of the Parties' written submissions. Hønefoss also asked for leave to make further submissions in reply to the answer provided by the Player, and to provide written witness statements from five (5) witnesses.

48. On 27 August 2015, the Parties were informed of the constitution of the Panel as follows:
- President: Mr Dirk-Reiner Martens, Attorney-at-law in Munich, Germany
- Arbitrators: Mr Lars Halgreen, Attorney-at-law in Copenhagen, Denmark (nominated by the Appellant)  
Mr José Juan Pintó, Attorney-at-law in Barcelona, Spain (nominated jointly by the Respondents).
49. On 29 August 2015, the Player opposed Hønefoss' request to make further submissions, but, if granted, requested to be allowed to respond to the same.
50. On 16 September 2015, the Parties were informed that, in accordance with Article R56 of the CAS Code, the President of the Panel had decided for a second round of submissions. However, Hønefoss' request to file written witness statements only, i.e. without the witnesses being available to testify (e.g. by skype or conference call) or for cross-examination, was denied.
51. On 25 September 2015, a second set of submissions was filed by Hønefoss.
52. On 5 October 2015, the Player challenged Hønefoss' second set of submissions to the extent that, in the Player's view, they went far beyond what had been allowed by the Panel on 16 September 2015.
53. On 14 October 2015, the Parties were informed that the President of the Panel had dismissed the Player's objections against Hønefoss' second set of submissions.
54. On 23 October 2015, the Player filed his second set of submissions.
55. On 2 November 2015, the Parties were informed of the Panel's decision, pursuant to Article R57 of the CAS Code, to hold a hearing given the parties' disagreement on factual issues conceivably relevant to the outcome of the case.
56. On 17 November 2015, the Player submitted to the CAS a signed copy of the Order of Procedure.
57. On 1 December 2015, Hønefoss submitted a signed copy of the Order of Procedure.
58. On 3 February 2016, a hearing took place at the CAS in Lausanne. At the hearing, Mr Terjé Raastad, Chairman of the Club and Mr Oivind Röraas (by telephone conference) were heard as witnesses for the Appellant, the Respondent was heard personally via Skype.

#### **IV. SUBMISSIONS OF THE PARTIES**

59. The following section summarizes the Parties' main arguments made in support of their respective prayers for relief, both in their written submissions and during oral argument at the

CAS Hearing on 3 February 2016.

**A) The Appellant**

60. Hønefoss argues that the DRC was not competent to decide the dispute and that the Decision therefore had to be annulled. Furthermore, it claims that the Player unilaterally terminated the Contract and that the Player thus owes compensation to Hønefoss as well as a reimbursement of NOK 25,500 taken out by the Player from the deposit account. Also, Hønefoss demands that sporting sanctions be imposed on the Player. Alternatively, if the CAS found that the Player terminated the Contract with just cause, Hønefoss argues that it does not owe compensation to the Player or that the compensation should be reduced because Hønefoss was relegated to the second division.
61. With regard to the competence of the DRC, Hønefoss argues that the DRC was not competent to deal with the present dispute. The Parties had agreed in the Contract to the jurisdiction of the civil courts in Norway in accordance with the mandatory provisions of the Norwegian Working Environment Act (“AML”) or the jurisdiction of an independent football arbitral tribunal in Norway (Fotballens Voldgiftsordning). The DRC failed to take the above jurisdiction clause into account. Furthermore, according to Article 22(b) of the Regulations on the Status and Transfer of Players (“RSTP”) the DRC was not competent for employment-related disputes of an international dimension between a club and a player, if an independent arbitration tribunal has been established at national level within the framework of the respective football association. This would be the case in Norway. Hønefoss argues that it did not have to raise the plea of lack of competence of FIFA in the DRC proceedings, because the RSTP and the NFF’s regulations constitute mandatory rules that cannot be deviated from. The DRC would have to assess its own competence *ex officio*.
62. As to the Player’s termination Hønefoss is of the view that the Player did not have just cause to terminate, because (i) the Player contributed to the delay in payments of salary by stating in public that he wanted to leave the club, not resuming training on time, delaying his apology and contesting the duration of his illegal absence, which the club claims to have lasted from 24 June 2013 until 10 July 2013; (ii) the requirements for a termination with just cause under the RSTP were not met, since the amounts owed by Hønefoss were not substantial and the Player failed to properly notify the club prior to the termination, and (iii) because the requirements for a termination under Section C 1 of the Contract were not met, since according to the Contract the Player was obliged to give “one month’s notice”. According to Hønefoss “*the notice cannot be given before the delay has exceeded one calendar month, and does not vindicate the Player’s obligation to perform under his contract for one month after notice is given*”.
63. Hønefoss claims that under the provisions of the AML, an employee who “*terminates his contract by giving notice*”, is obliged to continue to perform under the employment contract for the period stipulated in that contract, or at a minimum for one month. Furthermore, the AML would provide for a compensation claim of the employee only if he/she is unlawfully terminated (Sections 15-5 and 15-7 AML). Hønefoss concludes that “*a party giving notice under the relevant provisions of Appendix 1, may not seek compensation since the contract is considered legally terminated. [...]*

*The provisions stated in Appendix 1 A-C were intended to provide the Parties with additional reasons to terminate the contract by way of giving notice, without incurring liability for compensation”.*

64. Hønefoss points out that the terms of the NFF standard employment contract for non-amateur players have been changed in the meantime, following a request from FIFA to make the standard contract compliant with the RSTP. The relevant section in the standard contract now reads:

*“6.3. The player’s right to terminate the contract*

*The Player cannot unilaterally terminate the employment unless the right to terminate the contract is stipulated in NFF or FIFA regulations. Particularly reference is made to [the RSTP] art. 13, 14 and 15, which states that player can only terminate a contract where there is just cause or sporting just cause”.*

65. As a result, the provisions in A-C of Appendix 1 of the Contract (based on the “old” NFF standard employment contract for non-amateur players) would have to be interpreted as mutually agreed grounds for termination and a termination upon pre-defined terms would not constitute a ground for compensation unless explicitly provided in the agreement.
66. Instead, according to Hønefoss the Player owes compensation to the Club because he unlawfully terminated his Contract and did not perform his obligations under the contract until the end of the notice period. For lack of other objective criteria, compensation should be based on the offer to transfer the Player to Saprissa for 75,000 USD, which was declined by Hønefoss for being too low. Also, compensation could be based on the unamortized transfer fee of USD 150,000 for the Player, which was paid by Hønefoss to the Player’s former club. Furthermore, the compensation should also encompass the NOK 25,500 taken out by the Player from the deposit account.
67. Because the Player terminated the contract in the protected period, sporting sanctions should be imposed on the Player accordingly.
68. Also, according to Article 17(4) RSTP, FC Belén should be held jointly liable regarding the compensation to be paid by the Player. Equally, sporting sanctions should be imposed on FC Belén.
69. Finally, if the Panel comes to the conclusion that Hønefoss owed compensation to the Player, the Panel should take into account that the Parties had agreed, should Hønefoss be relegated to the second division, that the Player’s salary would be reduced to NOK 60,000 per month. As a result, the compensation due to the Player should be reduced accordingly. Also, Hønefoss requests that the Player disclose all information available regarding his remuneration at FC Belén and Saprissa, including bonuses and sign-on fees.
70. In light of the above, the Appellant requests (as per the amended prayers for relief provided to the Panel on the occasion of the Hearing on 3 February) the CAS to rule as follows:

*“Firstly, on the question on issuing a preliminary ruling on the jurisdiction of the FIFA DRC;*

1. *To annul the decision of the DRC dated February 19th 2015.*

*Secondly, and provided FIFA DRC had jurisdiction to hear the case;*

2. *To find that Heiner Mora Mora unilaterally terminated the Employment Contract without valid grounds or just cause.*
3. *To order Heiner Mora Mora to compensate Hønefoss Ballklubb, at the CAS' discretion, for the fees and expenses paid and incurred by the club, plus interest at 5% according to Swiss law, from the obligation was due until the compensation is duly paid.*
4. *To order Heiner Mora Mora to compensate Hønefoss Ballklubb for the deposit of NOK 25 500, plus interest at 5 % according to Swiss law, from the obligation was due until the compensation is duly paid.*
5. *To impose mandatory sporting sanctions, according to FIFA's regulations, upon Heiner Mora Mora.*

*Thirdly;*

6. *If CAS should find that Heiner Mora Mora complied with the provisions set out in art. C par. 1, par. 2 and art. D in Appendix 1 in the Employment Contract, no compensation is due.*

*Fourthly;*

7. *If CAS should confirm the decision of the FIFA DRC, to adjust the compensation due to the relegation of Hønefoss Ballklubb to Adeccoligaen as of December 2013.*

*In relation to all requests;*

8. *To order Heiner Mora Mora to pay all costs and expenses related to the preparation and conduct of the proceedings before the DRC and CAS including, but not limited to, those of its attorneys and advisors to Hønefoss Ballklubb.*
9. *To hold Belén FC jointly and severally liable with Heiner Mora Mora for the payment of the requested amounts in 3, 4 and 8, plus interest at 5 % according to Swiss law from the obligation was due until the requested amount is duly paid".*

## **B) The Respondent**

71. The Player requests CAS to render an award as follows:
  - “1. *We request the Honorable Court to reject the APPELLANT'S requests and confirm FIFA's DRC decision of 19 February 2015.*
  2. *In any case, we request this Honorable Court, in light of the extensive unfounded and misguiding allegations presented by HBK through this procedure, to order the APPELLANT to bear all costs incurred in these proceedings.*
  3. *In any case, we request this Honorable Court to order the Appellant to cover the FIRST REPSONDENT's legal costs related to the proceedings, which by the end of these proceedings such costs*

*sustained by the RESPONDENT will amount to CHF 28,000 (Twenty eight thousand Swiss francs)".*

72. The Respondent argues that the Decision must be upheld because (i) the DRC was competent to decide the Parties' dispute; and (ii) the Player had just cause to terminate the Contract.
73. As to the competence of the DRC, the Player points out that Hønefoss "*appeared before the DRC without objecting the Chamber's jurisdiction*". The Player is of the opinion that Hønefoss tacitly agreed to submit the dispute to the DRC "*although there was an arbitration clause in the contract between the Parties which provide for arbitration before Norwegian Chamber. In such a case, the arbitration agreement contained in the contract is made ineffective in respect of the dispute at hand by the conduct of the party*".
74. Regarding the termination, the Player argues that he had just cause to terminate the employment relationship according to the terms set out in Appendix 1 Section 2 of the Contract. The Player claims to have notified Hønefoss on 19 June 2013 about the non-payment of his salary for May 2013. Hønefoss did not react to the Player's notification. According to the Player, on 17 July 2013 he had a right to terminate the Contract since also the salary for June 2013 had fallen due on 15 July 2013, without Hønefoss making any payment. The non-payment of two salaries by Hønefoss cannot be considered a minor breach.
75. Hønefoss had no right to withhold salary payments. The Player denies that he wanted to leave the club. He objects to Hønefoss' submission as evidence of newspaper articles which might suggest otherwise and denies having made the statements ascribed to him in a Norwegian newspaper on 27 May 2013 (cf. para 11 above). The Player argues that Hønefoss withheld his salary merely for the suspicion that he would not return from Costa Rica after his summer vacation (which has in fact been confirmed by the Club's Chairman during his testimony on 3 February 2016). The Player points out that there was no communication from Hønefoss notifying the Player of any alleged misbehaviour prior to his summer vacation or outlining the possibility of a disciplinary sanction, let alone withholding salary payments. Hønefoss did not even react to his notification of 19 June 2013 regarding the outstanding salary payment for May 2013.
76. The Player argues that he returned to Hønefoss on 26 June 2013, *i.e.* two days after the envisaged first training, his departure from Costa Rica having been delayed for bureaucratic complications beyond his control of which Hønefoss was fully aware. According to the Player, upon his return to Hønefoss he was not allowed to train with the team and was sent to train by himself at a local gym isolated from the team. As a result, the Player was not *illegally* absent until returning to the team on 10 July 2013. The Player contests that there were any negotiations between the Parties as to a financial sanction against the Player to be deducted from his salary.
77. Regarding the deposit of NOK 25,500, the Player argues that this has nothing to do with the present dispute.
78. In case the Panel were to come to the conclusion that the Player terminated the Contract without just cause, the Player contests the basis of Hønefoss' calculation of a potential compensation claim. He argues that the alleged offer from Saprissa in the amount of USD

75,000 was not an official offer but merely uttered in negotiation. Therefore, it could not be taken into account. Equally, any claims concerning an unamortized transfer fee for the Player or Hønefoss' claim for reimbursement of the deposit should be disregarded.

79. The Player submits that FC Belén was not involved in the termination of the Player and should not be held jointly liable.
80. Hønefoss' request to impose sporting sanctions on the Player and FC Belén should be rejected as Hønefoss did not name FIFA as a respondent in these proceedings, while only FIFA would have standing to impose the respective sanctions.

## V. JURISDICTION

81. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Article 66(1) of the FIFA Statutes in connection with Article 24(2) of the RSTP.
82. Article R47 of the CAS Code stipulates:

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

83. Articles 66(1) of the FIFA Statutes states:

*"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players' agents".*

84. Article 24(2) of the RSTP provides that:

*"[...] Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".*

85. The present appeal is directed against a final decision of a federation, the statutes and regulations of which provide for an arbitration clause in favour of the CAS. Thus, the appeal falls within the scope of Article R47 of the CAS Code.
86. Notwithstanding the above, the Panel also assessed the impact of the Appellant's argument that the DRC was not competent to deal with the Parties' dispute because they had agreed to the jurisdiction of the labour courts of Norway or a football arbitral tribunal at national level (Fotballens Voldgiftsordning). In this regard, the Panel finds that by submitting the present appeal to CAS without challenging CAS' jurisdiction in their submissions and by signing the Order of Procedure, the Parties concluded, at least, an *ad-hoc* arbitration agreement to obtain an

arbitral award regarding the questions raised in the appeal. This “specific arbitration agreement” is explicitly covered by Article R47 of the CAS Code (cf. CAS 2013/A/3278, para. 45). It follows that the CAS has jurisdiction to decide the present dispute.

## VI. ADMISSIBILITY

87. In accordance with Article 67(1) of the FIFA Statutes,

*“[a]ppeals against final decisions passed by FIFA’s legal bodies [...] shall be lodged with CAS within 21 days of notification of the decision in question”.*

88. The Decision was notified to the Appellant on 11 May 2015 and the Statement of Appeal was filed on 29 May 2015, hence within the required 21-day time-limit. As a result, the appeal is admissible.

## VII. SCOPE OF THE PANEL’S REVIEW

89. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the Decision challenged, or may annul the decision and refer the case back to the previous instance.

## VIII. APPLICABLE LAW

90. The applicable law is identified by the Panel in accordance with Article R58 of the CAS Code and Article 66(2) of the FIFA Statutes.

91. Pursuant to Article R58 of the CAS Code, the Panel is required to decide the dispute

*“[...] according to the applicable regulations and, subsidiarily, to the rules of law chosen by the Parties [...]”.*

92. Article 66(2) of the FIFA Statutes provides:

*“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”.*

93. The Panel notes that in the Contract the Parties made reference to Norwegian law, specifically to the AML, as well as to the regulations of FIFA. The relevant sections of the Contract provide the following:

*“[The Parties] have entered into an agreement regarding temporary employment, cf. AML (Norwegian Labour Environment Act) § 14-9, according to [...] appendixes 1, 2 and 3 attached to this contract. In addition, the*

*club's administrative regulations (i.e. regulations for disciplinary and travel allowance) [...] are to be acknowledged as part of this contract. The prevailing regulations are enclosed. In addition current and international transfer regulations are to be acknowledged as part of this contract. [...]*

#### **14. Miscellaneous**

[...]

##### **c) Dispute resolution**

*Disputes regarding any aspect of this contract must be referred to "Footballens Voldgiftsordning" (Arbitration for Norwegian Football) provided that nothing else is stated in mandatory provisions (i.e. AML), see also appendix 1.[...]*

#### **D. Termination of the contract according to transfer regulations**

*In addition to the abovementioned items A, B, and C, the Parties may terminate this contract pursuant to prevailing transfer regulations.*

##### **Dispute regarding the termination of contract**

*Termination of this contract according to the abovementioned items A, B, and C, fall under the scope of application of AML's regulations" (emphasis added).*

94. The Panel needs to deal with the discrepancy between the Parties' explicit choice of law in the Contract (i.e. Norwegian law and "international transfer regulations") and the Parties' implicit choice of law made by submitting this dispute to the CAS (i.e. the "applicable regulations and, subsidiarily, to the rules of law chosen by the Parties" (Article R58 of the CAS Code) and the "regulations of FIFA and, additionally, Swiss law" (Article 66(2) of the FIFA Statutes).
95. Taking into consideration previous CAS jurisprudence on this issue, the Panel relies first on Article R58 of the CAS Code which recognizes the priority of the "applicable regulations" over the "rules of law chosen by the parties" (cf. CAS 2014/A/3527, para. 57). It follows that the explicit choice of law made by the parties "is to be considered only within the framework of Article R58 of the CAS Code and consequently affects only the subsidiarily applicable law" (cf. HAAS U., Applicable law in football related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in CAS Bulletin 2015/2, p. 13). Second, turning to the applicable regulations, the Panel relies on Article 66(2) of the FIFA Statutes which provides that the "regulations of FIFA" shall apply primarily "and, additionally, Swiss law".
96. In light of the above, the Panel finds that the regulations of FIFA are primarily applicable, especially the RSTP. With regard to the question which edition of the RSTP shall apply, the Panel rules that, on the basis of Article 26(1) of the RSTP (2014 edition), the RSTP (2012 edition) are applicable because the Player brought his case before the DRC in 2013.
97. As to the relationship between the additionally applicable Swiss law and the Parties' explicit choice of Norwegian law, the Panel finds that Swiss law is applicable when interpreting and specifying the content of the RSTP, while Norwegian law is applicable for matters not addressed in the FIFA regulations and are therefore not regulated further (cf. Haas U., *ibidem* at p. 16).

## IX. MERITS

### A) The competence of the DRC

98. Based on the Appellant's prayers for relief, the Panel is asked – prior to the dealing with the substantive issues of the case – to assess whether the DRC was indeed competent to decide the Parties' dispute.
99. In this regard, the Panel takes note that the Parties had agreed in Section 14(c) of the Contract that

*"Disputes regarding any aspect of this contract must be referred to "Footballens Voldgiftsordning" (Arbitration for Norwegian Football) provided that nothing else is stated in mandatory provisions (i.e. AML), see also appendix 1. [...]"*.

100. Furthermore, Appendix 1 - *Expiration/termination of contract* – provides that

*"Disputes regarding termination of contract according to item D above shall be brought before NFF's "Voldgiftsordning" (Arbitration for Norwegian Football)".*

101. On the other hand, Article 22 of the RSTP to which the Contract refers as well ("...*the current and international transfer regulations are to be acknowledged as part of this contract...*"') provides the following:

*"22 - Competence of FIFA*

*Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear.*

*[...]*

*b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement".*

102. In light of the above, the Panel would in principle have to assess whether the "Voldgiftsordning" (Arbitration for Norwegian Football) qualifies as an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs in Norway. If so, FIFA, according to Article 22(b) of the RSTP would have been barred from deciding the present dispute.
103. However, the Panel does not have to enter into a detailed analysis as to whether the national arbitral body created in Norway fulfils the requirements demanded by FIFA, if the fact that Hønefoss did not object to the jurisdiction of FIFA before the DRC, would prevent Hønefoss from raising the plea of lack of competence in these appeal proceedings. It is undisputed between the Parties that Hønefoss had not raised FIFA's alleged lack of competence of the

DRC during the FIFA proceedings. This issue was raised for the first time in front of CAS.

104. Hønefoss deems that the DRC, when assessing its own competence, should have taken into account *ex officio* that the Parties had agreed to dispute resolution before either a Norwegian labour court or an arbitral tribunal at national level.

105. Indeed, the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("DRC Procedural Rules") provide in Article 3 that

*"The Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of arts 22 to 24 of the Regulations on the Status and Transfer of Players".*

106. However, there is no indication in the rules that the DRC would have to go beyond a mere assessment of its competence *ratione materiae et personae* as outlined in Article 22 of the RSTP. The wording "*unless an independent arbitration tribunal [...] has been established at national level*" does not dispose of the question whether it is the DRC's task to assess the jurisdiction of another dispute resolution body *ex officio* without a respective plea by one of the Parties.

107. Moreover, the Panel notes that Article 12(3) of the DRC Procedural Rules provides that

*"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".*

108. A combined reading of Article 22(b) of the RSTP ("*unless*") and Article 12(3) of the DRC Procedural Rules suggests that the Appellant was obliged to actively point the DRC to the potential jurisdiction of Norwegian labour courts or an arbitral tribunal at national level, not only by objecting to the competence of FIFA but also by providing material which would have allowed the DRC to assess whether the arbitral tribunal at national level fulfilled the requirements set out by FIFA. Because the Appellant failed to do so and, on the contrary, opted to file a counterclaim before the DRC which it now argues was not competent, it cannot raise the plea of lack of jurisdiction in these appeal proceedings.

109. To confirm this finding and because the FIFA regulations obviously do not provide for a more specific rule in this regard, the Panel turns to Swiss law. According to Swiss law, namely Article 186 para. 2 of the Swiss Private International Law Act ("PILA"), a plea of lack of jurisdiction must be raised prior to any defence on the merits. While Article 186 para. 2 PILA may not be directly applicable to internal proceedings before a Swiss sport governing body, the provision is considered an application of the general principle of good faith which applies to all fields of law, including civil procedure and arbitration (cf. MÜLLER C., Swiss Case Law in International Arbitration, 2<sup>nd</sup> revised edition, 2010, p. 197, para. 2.1). As such it has guided other CAS Panels in similar cases before.

110. Consequently, this Panel shares the assessment expressed in CAS 2012/A/2899 which rejected the view that a party which did not raise any objection to the jurisdiction of FIFA while it could have done so in the course of the first instance procedure before the Players' Status Committee,

could object to the jurisdiction of FIFA in a subsequent CAS procedure (cf. CAS 2012/A/2899, para. 55). In a similar vein, the Panel in CAS 2005/A/937 decided that a party proceeding before the FIFA Players' Status Committee without objecting to the jurisdiction of FIFA must be deemed to have waived its right to challenge such jurisdiction in an appeal proceeding before the CAS (see CAS 2005/A/937, para. 8.2.10).

111. In light of the above, the Panel finds that Hønefoss is precluded from raising the plea of lack of competence of the DRC in these appeal proceedings.

## B) The Merits of the case

112. In light of the Parties' positions and respective prayers for relief, the Panel is asked to answer the following questions:
  - a) Did the Player terminate the Contract with or without just cause in accordance with the RSTP or pursuant to the Parties' Contract?
  - b) What are the legal consequences of the Player's termination?
- a. *Did the Player terminate the Contract with or without just cause in accordance with the RSTP or pursuant to the Parties' Contract?*
113. In respect of the applicable law (cf. para. 91 et seq.), the Player's termination must be assessed first and foremost under the RSTP.
114. The relevant sections of the RSTP provide for the following:

### "Article 13 – Respect of contract"

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

### *Article 14 – Terminating a contract with just cause*

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

115. The Panel notes that the (non-binding) Commentary on the RSTP (provided by FIFA in regard to the RSTP (2005 edition)) gives the following guidance as to the interpretation of just cause:

*"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally"* (Commentary on the RSTP, Article 14, p. 39, para. 2).

(1) The late salary payment

116. With regard to late salary payments as potential just cause for the Player's termination, the Commentary on the RSTP provides the following example:

*"Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its 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 non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned (footnote 62: Under normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract)"* (Commentary on the RSTP, Article 14, p. 39, para. 3).

117. Also, relevant CAS jurisprudence on late salary payments shows that non-payment or late payment of remuneration by a club may constitute "just cause" for a player's termination. However, first, the amount paid late by the club may not be "insubstantial", and, second, the employee must have given a warning prior to his termination, i.e. he must have drawn the club's attention to the fact that its conduct is not in accordance with the contract (cf. CAS 2006/A/1141, para. 36 et seq.).
118. As a result of the above, the Panel finds that the notice given by the player on 19 June 2015 was sufficient to draw the club's attention to the non-payment of his salary for May 2013.
119. However, under the general legal framework outlined above it is rather questionable whether a salary payment which is delayed for just over one month and the delay of a second salary payment by two days (!) at the time of termination can be considered "substantial" with respect to both the delay and the amount in question.
120. The question whether the non-payment was substantial in the above sense, may be left unanswered if the Panel were to follow the Player's argument that the Parties had agreed on an explicit right for the Player to terminate the Contract with just cause in accordance with the RSTP.
121. The possibility for the Parties to define the notion of just cause under the RSTP through a contractual provision, seems to be supported by the DRC in the Decision which states that:

*"The Chamber stressed that the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case."*

*In this context, the Chamber took due note that the agreement of the parties to the contract was that "the [Player could] terminate the contract with one month notification if [Hønefoss did] not fulfil their salary obligations according to this contract and the delay in payment for one term exceeded one calendar month. [...]*

*Subsequently, the Chamber established that the period between the due date of the salary of May 2013, i.e. 15 June 2013, and the termination notice sent [...] on 17 July 2013 [...] exceeds one calendar month, and, therefore the [Player] complied with Clause C of appendix 1 of the contract [...], which sets forth just cause for*

*the [Player] to terminate the contract*" (emphasis added).

122. In contrast, Hønefoss has argued that the Parties' agreement in Appendix 1 of the Contract regarding the grounds for termination did not contain a definition of just cause within the meaning of the RSTP (ultimately leading to a compensation claim against the other party) but that the Parties referred to a right to ordinarily terminate the Contract observing a certain notice period (without entitling the terminating party to compensation).
123. In order to determine which of the Parties' arguments to follow the Panel considers again at the wording of the Contract in Appendix 1. It states the following:

***A. The club's right to terminate the player's employment***

*The club may terminate the player's employment with one months notification if: [...]*

***B. The club's right to dismiss the player***

*The club may dismiss the player with immediate effect if:*

1. *The player commits a material breach of his/ hers obligations according to this contract. [...]*

***C. The player's right to terminate the contract***

*The player may terminate the contract with one months notification if:*

1. *The club does not fulfil their salary obligations according to this contract and the delay in payment for one term exceeds one calendar month.*
2. *The club commits a material breach of its obligations according to this contract and any such breach is continued after the player has notified the club in writing of the breach*" (emphasis added).

124. The Panel notes that the Parties in their Contract clearly distinguish between the right of both the Club and the Player to "terminate the contract with one months notification" and the right of (only) the Club to "dismiss the player with immediate effect". Accordingly, in case of the Club's failure to fulfil its salary obligations for one month, the Player was merely entitled to "terminate the contract with one months notification". Therefore, contrary to the Player's position and the finding of the DRC, the Panel concludes that the Parties in Section C Appendix 1 of the Contract did not define a right of the Player to terminate the Contract *with just cause* within the meaning of the RSTP (*i.e.* immediately and resulting in a right to compensation) in case the club falls behind with a salary payment by just over one month.
125. As a result, the Player was not able to terminate the Contract with just cause within the meaning of the RSTP based on the mere fact that Hønefoss had not paid his salary for one month and two days.

(2) The (mis)treatment of the Player in general

126. The Panel also takes into account that the Player in his termination letter of 17 July 2013 stated that:

*"I was forced to work separately about my teammates, I was hired to work in the first team of the Club, and I consider that a different treatment, as I have received so far constitutes bullying to me, and is another reason to*

*terminate this contract”.*

127. However, after reviewing the facts presented by the Parties in their submissions and at the hearing, the Panel deems that the Player’s exclusion from the team for disciplinary reasons for a period of approximately two weeks did not suffice to constitute just cause within the meaning of the RSTP for the Player to terminate the Contract. In this regard, the Panel also took into account that the Player had failed to notify Hønefoss of its alleged breach of contract (*i.e.* the exclusion of the Player from the team) prior to the termination and that the Player handed in a letter of apology and resumed training thereafter.
- (3) The Player’s right to terminate pursuant to the Contract
128. While the Player did not have just cause to terminate the Contract within the meaning of the RSTP, the Panel still needs to assess whether the Player was able to terminate the Contract pursuant to clause C of Appendix 1 of the Contract.
129. The Panel has established (cf. para. 123 et seq.) that the Parties agreed on a right for the Player to terminate the Contract with one month’s notice if Hønefoss fell behind in paying the Player’s salaries for over one month. An employment contract providing for one month’s notice normally requires the terminating party to continue to offer his or her services for one month after termination. This contractual arrangement chosen by the Parties based on the *NFF standard employment contract for non-amateur football players* (April 2008 edition) deviates from the RSTP (which provide in Articles 13 and 14 for only three scenarios to lawfully end a player’s contract: (i) upon expiry of the contract; (ii) by mutual agreement; or (iii) with just cause; see above para. 114 et seq.) and may also appear impractical in the context of professional football (as can be seen in the case at hand). However, it is not unlawful or in violation of the applicable rules.
130. The Panel notes that Articles 13 et seq. of the RSTP are not binding at a national level according to Article 1(3) a) and b) of the RSTP. National football associations shall merely include appropriate means to protect contractual stability in their respective regulations. While the Panel recognizes that the *NFF standard employment contract for non-amateur football players* (April 2008 edition) with several different termination scenarios for clubs and players may not have entirely reflected the intention of the RSTP (which led to an amendment of the NFF standard employment contract in subsequent editions), the Parties were able to rely on the NFF standard employment contract at the time.
131. That said, the Panel notes that the elements of the Player’s right to terminate the Contract pursuant to Section C of Appendix 1 of the Contract have been fulfilled. The Club was in delay with two salary payments at the time of the Player’s termination, with one for 32 days, with the other by 2 days. The Player had even notified the Club of the outstanding salary payment which was not required under Section C No. 1 of Appendix 1 of the Contract.
132. That the Player failed to provide his services to the Club after his termination does not affect the validity of the Player’s termination but needs to be considered in connection to the Player’s claim for outstanding salaries (cf. para. 137 et seq.).

b. *The consequences of the Player's termination*

133. The consequences of the Player's termination are as follows:
- (1) The Player's claim for compensation pursuant to Article 17 RSTP
134. The Panel has established that the Player did not have just cause to terminate the Contract within the meaning of the RSTP (see above para. 113 et seq.). Consequently, the Panel finds that the Player does not have a claim for compensation pursuant to Article 17 of the RSTP.
- (2) Hønefoss' claim for compensation pursuant to Article 17 RSTP
135. At the same time, the Panel finds that the Player does not have to pay compensation to Hønefoss pursuant to Article 17 of the RSTP either.
136. The Panel has established that the Parties in Sections A and C of Appendix 1 of the Contract had agreed on different termination scenarios, according to which either Party was allowed to terminate the Contract "*with one months notification*". In this regard, the Panel understands that the Parties did not want to establish a right for either of the Parties to claim compensation in case of a termination in accordance with Sections A and C of Appendix 1 of the Contract.
- (3) The Player's claim for outstanding salaries
137. The Player is entitled to his outstanding salary payments until termination.
138. The Panel finds that Hønefoss in the proceedings failed to substantiate its right to withhold the Player's salary payments for May and June 2013. The alleged disciplinary offences by the Player after his return from Costa Rica remained unclear. Moreover, the Panel notes that the Club never sent a notice to the Player, notifying him about his alleged misconduct and threatening to withhold salary payments on the basis of the Club's disciplinary regulations. Equally, the Panel is not convinced that the Parties had entered into negotiations on a reduction of the Player's salary potentially allowing the Club to withhold certain salary payments from the Player for the time of the negotiation. Finally, the Panel deems that any wrongdoing by the Player, for instance, the alleged but contested statements in the media or the Player's late (but excused?) return from Costa Rica, was eventually cured by the Player's apology and his subsequent reintegration into the team.
139. However, because the Player failed to provide his services to the Club after his termination on 17 July 2013, he cannot claim the entire salary for July 2013 and a partial salary for August 2013 which he would have been entitled to had he offered his services to the Club for an additional month after his termination in accordance with Section C of Appendix 1 of the Contract.
140. As a result of the above, the Panel finds that the salary payments for May 2013 (NOK 90,000.00), June 2013 (NOK 90,000.00) and a partial salary payment for July 2013 (NOK 49,354.83, *i.e.* 17 of 31 days in July 2013) are still outstanding, adding up to NOK 229,354.83

total.

141. The Panel is not barred under the *ne ultra petita* principle from ordering the Club to pay NOK 229,354.83 to the Player, although the Player in his prayers for relief has merely requested the Panel to uphold the DRC Decision which awarded only the May and June 2013 salary payments amounting to NOK 180,000.00 plus interest to the Player. The Panel has rejected the Player's compensation claim in the amount of NOK 1,375,850 (cf. para. 134) and thus was able to award more to the Player under the heading of the claim for "outstanding salaries", because the total amount awarded remains lower than the total amount claimed by the Player (cf. KAUFMANN-KOHLER/RIGOZZI, International Arbitration – Law and Practice in Switzerland, 2015, p. 478, para. 8.164).
142. With regard to interest on the outstanding salary payments, the Panel finds that the day after the respective amounts fell due is the relevant start date for the accrual of interest, *i.e.* the 16<sup>th</sup> day of the following month for each salary payment. The applicable interest rate is 5 % p.a. pursuant to Article 104(1) Swiss Code of Obligations ("SCO").

(4) The Player's claim for travel costs

143. Equally, the Panel finds that the Player is entitled to travel costs in the amount of USD 5,168. In this regard, the Player is able to rely on the respective clause in Appendix 2 of the Contract ("The club pays for the immigration cost for players family, that means to flight tickets from Costa Rica to Norway, one child and one grown up"). The Panel notes that Hønefoss has failed to substantively contest the amount which had been awarded to the Player already in the DRC Decision.
144. Regarding interest, the Panel finds that an interest rate of 5 % p.a. shall apply as of the date when the claim was first raised in front of the DRC, *i.e.* 19 August 2013.

(5) Hønefoss' claim for NOK 25,500

145. On the other hand, contrary to the Player's argument that Hønefoss' claim concerning the deposit of NOK 25,500.00 has "*nothing to do*" with the present dispute, the Panel cannot find a reason why this amount should not be awarded to Hønefoss which had paid the deposit in the first place.
146. While the respective claim apparently had not been raised by the Club before the DRC, the Panel, in light of Article R57 of the CAS Code, accepts the claim nevertheless for it cannot find that the newly adduced evidence constitutes a clearly abusive or otherwise unacceptable procedural conduct by the Club (cf. RIGOZZI/HASLER, in ARROYO M. (Ed.), Arbitration in Switzerland – the Practitioner's Guide, 2013, Chapter 5, Sports Arbitration under the CAS Rules, Article R57 CAS Code, p. 1037, para. 4).
147. The Club has provided a receipt which shows that the Player took out the deposit which amounted to NOK 25,788.71, *i.e.* NOK 25,500.00 plus interest accumulated in the amount of NOK 288.71. However, under the *ne ultra petita* principle the Panel is unable to award to the

Club more than the claimed NOK 25,500.00.

148. With regard to interest on the amount claimed by Hønefoss, the Panel finds that the day after the Player took out the deposit – to which he was not entitled – is the relevant start date for the accrual of interest at 5 % p.a., *i.e.* 27 June 2013.

(6) Hønefoss' claim to be reimbursed for legal costs of the DRC proceedings

149. Hønefoss' claim to be reimbursed for legal costs incurred in connection with the proceedings held before the DRC is dismissed for the Club failed to substantiate its claim any further in these appeal proceedings.

(7) Hønefoss' request to impose sporting sanctions on the Player

150. Hønefoss' request to impose sporting sanctions on the Player is dismissed because the Club did not name FIFA as a respondent. FIFA itself has renounced to intervene in the proceedings.

151. In this regard, the Panel relies on long standing CAS jurisprudence, including the decision in CAS 2014/A/3489 & CAS 2014/A/3490 in which the CAS Panel held:

*"Indeed, a disciplinary sanction does not concern the contractual relationships between the (direct and indirect) members of the association but it concerns the hierarchical relationships between FIFA and its (direct and indirect) members (see M Baddeley, L'association sportive face au droit, Bâle, 1994, p. 220: "la relation entre la société et ses membres repose sur un rapport hiérarchique"), with the consequence that the disciplinary sanctions provided by FIFA rules could be ordered by the CAS only if FIFA were summoned as a respondent. In other terms, given that FIFA is a third party vis-à-vis the case CAS 2014/A/3489, the Panel is prevented from ordering FIFA to impose, or from overruling FIFA in imposing, disciplinary sanctions on indirect members of FIFA [...]" (CAS 2014/A/3489 & CAS 2014/A/3490, Award of 10 November 2014, p. 31, para. 175).*

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules as follows:**

1. The appeal filed on 29 May 2015 by Hønefoss Ballklubb against the decision rendered by the FIFA Dispute Resolution Chamber on 19 February 2015 is partially upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 19 February 2015 is set aside.
3. Hønefoss Ballklubb is ordered to pay to Heiner Mora Mora NOK 229,345.83 plus interest at 5 % p.a. until the date of effective payment as follows:
  - a. as of 16 June 2013 on the amount of NOK 90,000.00;
  - b. as of 16 July 2013 on the amount of NOK 90,000.00;
  - c. as of 16 August 2013 on the amount of NOK 49,354.83.
4. Hønefoss Ballklubb is ordered to pay to Heiner Mora Mora USD 5,168.00 plus interest at 5 % p.a. as of 19 August 2013 until the date of effective payment.
5. Heiner Mora Mora is ordered to pay to Hønefoss Ballklubb NOK 25,500.00 plus interest at 5 % p.a. as of 27 June 2013 until the date of effective payment.
6. (...).
7. (...).
8. All other motions or prayers for relief are dismissed.