



Arbitration CAS 2015/A/4161 Vladimir Sliskovic v. Qingdao Zhongneng Football Club, award of 28 April 2016

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

Football

Contract of employment between an assistant coach and a club

Evidence of an employment relationship despite the absence of a written contract

Termination of contract without just cause by the club

Determination of the compensation due to the assistant coach

1. Although the FIFA RSTP implies without necessarily requiring professional players to have written contracts with their clubs, the same cannot be said for coaches, whose contracts – apart from the issue of the FIFA PSC’s jurisdiction - are not governed by the FIFA RSTP. Notwithstanding the absence of a written contract, the circumstances i.e. mutual obligations between the parties, employer’s control and direction over employee may imply the manifested existence of an employer-employee relationship. Moreover, it can be inferred from the circumstances that an initial relationship between an unpaid intern coach and a club may be transformed to an employer-employee relationship. In this regard, careful consideration has to be given to the standard of proof, which requires the panel to be comfortably satisfied but not necessarily convinced beyond reasonable doubt of the existence of an employment contract. In this respect, the lack of registration of the contract with the federation and the coach’s absence from the federation’s official guidebook of professional staff might not be weighty enough to comfortably dissuade a panel from a legitimate finding that the parties had an implied contract as apparent from their conduct and the strong *prima facie* documentary evidence assessed in the proceedings.
2. Pursuant to CAS jurisprudence, just cause to terminate a contract is generally said to exist where the breach has reached such serious levels that the injured party cannot in good faith be expected to continue the contractual relationship. In addition, and before proceeding with the termination, it is advisable, depending on the circumstances, for the aggrieved party to send a notice to the breaching party asking it to desist its breachful acts. In this respect, a coach’s dismissal 3 day after the latter failed to attend and oversee three training sessions without explanation should be considered harsh. A warning notice should have been sent to the coach with a view to bringing an end to the breaches, and thereafter consider other options such as fines or reprimands if the situation persisted. Termination, as evidenced from CAS jurisprudence, ought to have been an *ultima ratio* if the breach had reached serious levels.
3. The FIFA regulations do not contain any provision regarding the manner in which compensation is to be awarded in employment disputes between clubs and coaches.

Reference must therefore be made to Swiss law on the issue of compensation. Pursuant to Article 337 c (1) CO, an assistant coach is entitled to compensation in case of termination of his employment contract without just cause by his employer. In the absence of an express contract between the parties laying out the financial terms due, reference must be made to the standard termination clause included in the head coach's contract with the club with a view to discerning the consideration otherwise reasonably due to the assistant coach and other ancillary evidence adduced.

I. THE PARTIES

1. Vladimir Sliskovic (hereinafter the "Appellant" or the "Assistant Coach") is a football coach of Bosnian nationality. He was born on 20 February 1983.
2. Qingdao Zhongneng Football Club (hereinafter the "Respondent" or "Qingdao" or the "Club") is a Chinese professional football club affiliated to the Football Association of the People's Republic of China (hereinafter the "CFA"), which is in turn a member of the Fédération Internationale de Football Association (hereinafter "FIFA").

II. THE FACTUAL BACKGROUND

3. This matter is related to an appeal filed by the Appellant against the decision rendered by the FIFA Players' Status Committee (hereinafter the "FIFA PSC") on 23 September 2014 (hereinafter the "Appealed Decision"). The grounds of the Appealed Decision were communicated to the Appellant on 2 July 2015.
4. The facts leading to the present arbitration as presented by the parties can be summarized as follows.

A. The dispute between the Parties

5. On 27 January 2012, the Respondent signed an employment contract with Mr. Blaz Sliskovic under which they agreed to hire him as the head coach of the Club (hereinafter the "Head Coach") for the period 1 February 2012 until the end of China's Super league season of 2014. They agreed an annual salary for the Head Coach of USD 200,000 (approximately USD 16,666.66 per month).
6. Upon his appointment, the Head Coach claims to have requested an assistant and proposed his son, Mr. Vladimir Sliskovic, to join the club as assistant coach.

7. On or about 28 January 2012, the Appellant claims to have entered into an employment contract (hereinafter the “Employment Contract”) with the Respondent under which the latter allegedly employed him as the assistant coach of Qingdao on the following terms and conditions:
 - duration: until the end of the 2014 season;
 - salary: USD 6,000 per month plus bonuses, apartment, rental fees etc. A copy of the Employment Contract has not been filed in the present proceedings because the Appellant claims that Qingdao neither gave him a copy for his personal records nor sent a copy to the CFA. As expounded in the section on the parties’ position below, Qingdao maintains that it undertook no obligation to pay the Assistant Coach and that the parties did not sign any employment contract. It reiterates that the Assistant Coach was merely working as an intern “*on the basis that the financial arrangement for that appointment were worked out between [him and his father]*” with a view to learning coaching skills from his father, the Head Coach. Nonetheless, it is not disputed that the Appellant embarked on and performed his duties as assistant coach.
 8. On 31 March 2012, the Respondent released the Appellant from his position as assistant coach for allegedly refusing to train the Clubs’ B team on 28, 29 and 30 March 2012. The letter (hereinafter the “Release Letter”) reads as follows:

“In order to strengthen the management and training of Professional team’s B group, Club decided to appoint Vladimir Sliskovic to take charge of the training of Professional team’s B group. Although on 28th, 29th and 30th of March, the club notified Vladimir this appointment for 3 times, however, Vladimir rejected it with various excuses and the quality of B group’s training thus was badly affected. As the assistant coach of professional team, such behaviour of Vladimir violated the relative regulations of ‘Management Regulations on Coaches of Qingdao Jonoon Football Club’. Based on this fact and to tighten the management of professional team, the club made the following decision: from March 31st, 2012, Vladimir is released from the post of assistant coach of Qingdao Jonoon Football Club and dismissed by the club”.
 9. On 1 April 2012, Qingdao imposed a penalty on the Assistant Coach. The nature and reasons thereof have not been brought to the Sole Arbitrator’s attention.
 10. On 3 April 2012, Qingdao asked the Assistant Coach to clear his office and to hand over any purported belongings to the Club. The letter as originally translated from mandarin to English by an independent translator appointed by the CAS (cf. paragraph 27 below) reads as follows:

“On April 1st, 2012, the Qingdao Jonoon Football Club took a decision concerning you, Vladimir Sliskovic, Assistant Coach of the Professional Team, on account of your not accepting the penalty administered by the Club’s management. The Club hereby gives you the notice and asks you to settle your salary and complete the relevant separation procedures by April 6th, 2012”.
- B. The proceedings before the FIFA Players’ Status Committee**
11. On 10 April 2012, the Assistant Coach lodged a claim before FIFA against Qingdao requesting FIFA to hold that Qingdao had unilaterally terminated their contractual relationship without

just cause and to be awarded USD 216,000 as outstanding remuneration, plus procedural and legal costs.

12. The Assistant Coach claimed to have been informed by Qingdao that *“he was not honouring his contractual obligation, in particular, that he did not start coaching the Team B, as allegedly orally told to do, that he thereby committed a grave violation of his duties, wherefore he was ordered by 6 April 2012 to settle his salaries and to hand his duties over (...)”*.
13. Qingdao denied the Assistant Coach’s claim and averred that the parties had not signed any employment contract. It added that the Appellant’s father had *“requested [the Respondent] to employ [the Appellant] as the team’s assist coach, but [the Respondent] refused his request”* and that afterwards, since the Appellant’s father had *“requested one more time, to keep his son as his private assist which can help his son to live in Qingdao”*, it had *“agreed his request, therefore, [the Appellant] as the [Blaz Sliskovic’s] private assist to live in Qingdao”* but also stated that *“about the salary issue, [Qingdao] also did not agree with his explain”*.
14. On 23 September 2014, the FIFA PSC rendered the Appealed Decision and held as follows:
 1. *The claim of the Claimant, Vladimir Sliskovic, is rejected.*
 2. *The final costs of the proceedings in the amount of CHF 7,000 are to be paid **within 30 days** as from the date of notification of the present decision, by the Claimant, Vladimir Sliskovic. Given that the Claimant already paid an advance of costs in the amount of CHF 4,000 during the present proceedings, the latter has to pay the remaining amount of CHF 3,000 directly to FIFA (...)*.
15. The FIFA PSC’s decision was based on the following grounds:
 - a) pursuant to Article 12.3 of the FIFA Rules governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter the “FIFA Procedural Rules”), the Assistant Coach had failed to establish and prove the existence of a contractual relationship with Qingdao;
 - b) in the absence of a contract containing the essential elements, Qingdao’s Release Letter was insufficient to establish with certainty that a binding contractual relationship existed; and
 - c) the Assistant Coach was therefore not entitled to compensation.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 23 July 2015, the Appellant filed his Statement of Appeal before the Court of Arbitration for Sport (hereinafter the “CAS”), pursuant to article R48 of the Code of Sports-related Arbitration (edition 2013) (hereinafter the “CAS Code”).
17. On 31 July 2015, the Appellant filed his Appeal Brief together with exhibits.

18. On 21 August 2015, the Respondent requested a seven-day extension of the deadline for filing its Answer. Invited by the CAS Court Office to provide his position on this request, the Appellant remained silent and the extension was thus granted.
19. On 3 September 2015, the Respondent filed its Answer.
20. On 9 September 2015, the Appellant requested a second round of written submissions.
21. On 11 September 2015, the CAS informed the parties that the Panel had been constituted of Mr. Rui Botica Santos as the Sole Arbitrator.
22. On 16 September 2016, the Respondent adhered to the Appellant's request for a second round of written submissions.
23. On 28 September 2015, the Appellant filed his second written submission, by means of which, among others, he challenged the authenticity of the English translation of the Respondent's letter dated 3 April 2012 together with exhibit 3 of its own appeal brief, which contained photos of the Respondent's officials. The Appellant also requested that the Sole Arbitrator would order the Respondent to produce an original copy of the Employment Contract.
24. On 30 October 2015, the Respondent filed its second written submission.
25. On 9 November 2015, the CAS Court Office informed the Parties that the Sole Arbitrator had ordered an independent translation of the Respondent's letter dated 3 April 2012. The Respondent was also ordered to bring with it original photos of exhibit 3 of the Appeal Brief to the hearing. The Parties were also informed that the Appellant's request for an order asking the Respondent to provide an original copy of the Employment Contract could not be issued as the existence of the said Employment Contract was indeed the thrust of contention.
26. On 9 November 2015 the CAS Court Office sent the Orders of Procedure to the Parties, which they duly signed.
27. On 30 November 2015, the CAS Court Office received a copy of an independent translation to the Respondent's letter dated 3 April 2012.
28. On 10 December 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the composition of the Panel.
29. At the hearing, the Panel was assisted by Mr. Christopher Singer, Counsel to the CAS. In addition to the translators respectively hired by the Parties, the following persons (including witnesses) attended the hearing:

For the Appellant

Mr. Vladimir Sliskovic – Assistant Coach

Mr. Blaz Sliskovic – Head Coach

Ms. Doris Kosta – Lawyer

Mr. Radovan Keckemet – Interpreter

Mr. Darko Susjnar – Witness, FIFA licensed agent (video conference)

Mr. Krunoslav Lovrek – Witness, Football Player (video conference)

For the Respondent

Mr James Fairbairn – Lawyer

Mr Che Xu – Witness, translator professional team Qingdao (video conference)

Mr Li Xialong – Witness, team translator Qingdao (video conference)

Ms Yu Jian – Witness, accountant (video conference)

Mr Tan Xu – Witness, deputy general manager (video conference)

30. At the conclusion of the hearing, the Parties expressly stated that they were satisfied with how the hearing was conducted and that their right to be heard had been respected. The Sole Arbitrator proposed to the Parties that the CFA be asked to confirm whether any contract was registered in relation to the Appellant. The Parties accepted the proposal at issue. For this reason and before the closing of the hearing, the Sole Arbitrator agreed with the parties to the filing of post hearing submissions after the response from the CFA.
31. On 11 December 2016, the CAS Court Office wrote to the CFA requesting it to confirm whether a copy of the Appellant's Employment Contract had been registered with them by the Respondent and in the affirmative, to provide a copy of the said contract.
32. Without waiting for the CFA's reply in relation to the CAS Court Office's letter dated 11 December 2016, on 13 January 2016, the Respondent filed its post hearing submissions on the assumption that the CFA would confirm that no Employment Contract existed.
33. On 22 January 2016, the CFA informed the CAS Court Office that its offices did not have any registration records of an employment contract between the Appellant and the Respondent.
34. On 2 February 2016 February 2016, the Appellant filed his post hearing submissions together with a video and some photos which were received by the CAS Court Office via DHL on 22 February 2016 and then sent to the Respondent.
35. On 10 February 2016, the Respondent enquired as to whether it would be invited to file a short response to the Appellant's post hearing submissions, indicating that this was its understanding of the Sole Arbitrator's instructions at the hearing.
36. On 12 February 2016, the CAS Court Office informed the Parties that as the respondent in these proceedings, Qingdao would have the final word in as far as the submissions were

concerned. The Respondent was therefore granted 5 days to file a short response to the Appellant's post hearing submissions.

37. On 19 February 2016, the Respondent filed its response to the Appellant's post hearing submissions.
38. On 29 February 2016, the CAS Court Office granted the Respondent a deadline of 1 March 2016 to comment, if it so wished, on the video and photos enclosed in the Appellant's post hearing submissions.
39. On 29 February 2016, the Respondent informed the CAS Court Office that it had already addressed the issues regarding the video and photos enclosed in the Appellant's post hearing submissions given that the Appellant had previously been adduced this evidence in his earlier submissions.

IV. THE PARTIES' POSITION

40. Below is a summary of the facts and allegations raised by the Parties. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Appellant's submissions

41. It is the Appellant's position that he entered into the Employment Contract with the Club and that he never received a copy of such Employment Contract. Furthermore, the evidence of the Respondent is unreliable.
42. The Appellant's submissions can in essence be summarized as follows.
 - a) The parties had a written Employment Contract
43. The Appellant states that Qingdao made and entered into the Employment Contract to employing him as an Assistant Coach. The certified FIFA Agent, Mr. Wen Jiaqing, was present during the execution of the Employment Contract and confirmed this.
44. However, the Respondent did not provide a copy of the Employment Contract to the Appellant and did not send it to the CFA for due registration.
45. The Appellant states that immediately after signing the Employment Contract, he started performing his contractual duties as stipulated within the contract. The Respondent's allegations

that no Employment Contract was entered and that the Appellant came to China only on the basis of the request of his father, the Head Coach, are incorrect.

46. Furthermore, the existence of the Employment Contract is supported by the official documents produced by the Club. On the Club's official web pages, the Appellant was presented as the assistant coach. There is also a video recording showing the Assistant Coach signing the Employment Contract and talking with the club's clerk regarding payment of his salary.
 47. This is even more supported by the notice of the Club to the Appellant that he was discharged of his position and that he "*should square [his] salary and hand over [his] work before April 6th, 2012 and complete the relevant separation procedures therewith*". This would not be possible if there were no contractual obligations at all.
 48. Besides, the Appellant stated at the hearing that he indeed received USD 6,000 cash in February 2012. The letter dated 3 April 2012 also asked him to pick his salary. He asserts that he was on a monthly salary of USD 6,000 by adducing an un-dated document allegedly written by the Club stating as follows: "*According to the "decision of penalty on Vladimir Sliskovic (Assistant Coach of professional Team)", issued on April 1st 2012, we square the salary totally USD 6,000, please sign to confirm the amount of you salary*".
 49. The Appellant states that it is without any doubt that he was employed as an Assistant Coach by Qingdao. The fact that the Appellant did not receive and therefore does not possess a copy of the Employment Contract cannot be accepted as an evidence that the labour relationship has never existed. Prior to dismissing him, the Club had penalised him for allegedly abdicating his duties as seen in the Release Letter.
 50. The Appellant alleges furthermore that Qingdao stated before FIFA that it was not notified of his arrival at the club. However, it was Qingdao that cared about the necessary formalities to obtain the Chinese permit of stay for the Assistant Coach.
- b) Jurisdiction and applicable law
51. FIFA had already asserted its jurisdiction *ex officio*. This is therefore not an issue before the CAS. The FIFA regulations are therefore applicable supplemented by Swiss law.
- c) Accommodation
52. Regarding the accommodation, the Assistant Coach submits that Qingdao only paid the accommodation costs of the Head Coach and, as opposed to the agreement, Qingdao did not provide him any accommodation.

d) Termination and Compensation

53. The Appellant claims to have been dismissed without just cause. He asserts that the Employment Contract had a duration of 36 months, starting on 27 January 2012 and expiring in the end of the 2014 season (31 October 2014) during which period he was to earn USD 6,000 per month. The Employment Contract had a total value of USD 216,000 (USD 6,000 x 36 months), and he claims half of this amount (USD 102,000) as compensation, stating that “[a]ccording to the established practice, the compensation is to equal 1/2 of the value of the contract, thus amounting to USD 108,000. Since Mr. Sliskovic received USD 6,000, the compensation claimed here is USD 102,000”. The Appellant understands the USD 102,000 to include “other contracted benefits: accommodation, car, airplane tickets, Chinese visa etc” and is the “fair compensation expected”.

e) Prayers and requests

54. In his Appeal brief, the Appellant requests the CAS:

“To examine and accept the Appeal and to make a decision conforming the existence of the Employment Agreement between the Claimant/Appellant and the Respondent and, therefore, the legal base and the contractual obligations between them, and that the Respondent gravely failed in performing their employment related contractual obligations, wherefore, that the Respondent is to pay to the Claimant USD 216,000 as well as to bear all the legal costs of this procedure”.

55. In his closing submissions, the Appellant requests the CAS to: “(...) Accept the Appeal, to cancel the decision made by the Single Judge of the FIFA Players Status Committee on 23 September 2014, and to rule that the Respondent, Qingdao Jonoon FC (also known as Qingdao Zhongheng FC), is to pay to the Appellant, Mr. Vladimir Sliskovic, compensation in the amount of USD 102,000”.

B. The Respondent’s submissions

56. It is the Respondent’s position that the Employment Contract does not exist and the Appellant did not provide cogent evidence in order to support his position.

57. The Respondent’s submissions can in essence be summarized as follows.

a) Preliminary issues

58. The Respondent submits that the Appellant’s case is based on Article 17 of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”), which it argues applies to players/professionals and not to coaches or their assistants.

59. The Respondent therefore argues that there can be no breach of Article 17 of the FIFA RSTP in this case, even if Article 22 (c) of the FIFA RSTP allows FIFA to rule on disputes of an international dimension between a club and a coach. According to the Respondent, the scope

of the FIFA RSTP as provided for under Chapter IV thereof is limited to “*Maintenance of contractual stability between professionals and clubs*” - not coaches - and as such the FIFA RSTP do not entitle the Appellant to any compensation for breach.

- b) There was no employment relationship between the Parties
60. The Respondent states that Qingdao accepts the fact that the Appellant was working as an assistant coach with the Club. However, the financial arrangements and the only employment contract that existed were between the Appellant and his father, the Head Coach. The Club was not looking for an assistant coach and no terms had been discussed with the Appellant prior to his arrival in China. It is improbable for a club to employ for 3 years an assistant coach for whom they had received no details of experience or ability in advance. The Assistant Coach went to China on a gratuitous arrangement.
61. The various documents upon which the Appellant relies, are consistent with this role. Those documents however do not establish that there is an Employment Contract between the Appellant and the Respondent.
62. This is totally unsurprising, since it is inherently improbable that a club would commit to employ for 3 years an assistant coach from whom it had received no details of experience of ability in advance, contrary to the due diligence undertaken by Qingdao regarding Blaz Sliskovic, the Head Coach.
63. The statement of Mr. Wen Jiaqing does not prove the existence of the Employment Contract either, since he only submits that Qingdao should provide such a contract to the Appellant. However, the content of the Employment Contract is not described by Mr. Wen Jiaqing either.
64. Besides, the Appellant did never reply to the letter Mr. Wen Jiaqing sent to the CFA. Therefore, the letter does not prove anything and provides no evidence of the alleged employment relationship between Qingdao and the Appellant. Mr. Wen Jiaqing was not present at the signing of the Head Coach’s contract and therefore he is not in a position to give any evidence of what happened on that day.
65. The Assistant Coach has not even adduced any correspondence before the contract indicating the terms on which the Parties intended to enter into a formal contract. Furthermore, the Respondent submits the extract from the CFA Super League Guide Book, an official publication of the CFA Super League, which shows the coaching team. Contrarily to the Head Coach, the Appellant is not present on this publication. The Appellant’s accusations against Qingdao are not supported by any evidence.
66. The inexistence of the Employment Contract is further supported by the fact that the Appellant claims USD 216,000 without specifying any of the terms specifically. There is no legal basis for the claim. The Appellant’s case is obscure in that he has failed to assert the length of the

Employment Contract and he does not indicated the other relevant terms he claims to have been breached.

67. The Appellant was showed in the team picture, however he was not specified among the individual pictures of the coaches below the team picture. The Respondent emphasises that these pictures are not manipulated, contrary to the accusation made by the Appellant.
68. The Respondent stipulates furthermore that even if the monthly salary was USD 6,000, the maximum claim would be USD 144,000 based upon two years of monthly salaries, contrary to the claim of the Appellant for USD 216,000.
69. Lastly, the Respondent states that there is no requirement that a certified independent translator should be used in order to translate the evidence provided. The allegation of the Appellant that the evidence provided by the Respondent is unreliable is made with no evidence to support it and there is no reason to assume that the provided translations are inaccurate translations.
70. The Respondent emphasises that it agreed that the Appellant worked as an assistant coach with his father, but only on the basis that the financial arrangement for that agreement were worked out between the Appellant and the Head Coach. Qingdao never undertook an obligation to pay salary to the Appellant since there is no contract concluded between them.
71. Article 12.3 of the FIFA Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber require that any party who claims a right on the basis of an alleged fact shall carry the burden of proof. However, the Appellant repeatedly claims that he entered into an Employment Contract with Qingdao, but so far the Appellant has not been able to produce the alleged contract.
72. The Appellant has not provided any cogent evidence to support his case. The produced evidence contains inexplicable inconsistencies.

c) Prayers and requests

73. The Respondent concludes its submissions by requesting the CAS: *"For the reasons given there is no evidence of a contract between [Qingdao] and [the Appellant], nor could there be such evidence since no contract was ever concluded. In the circumstances the Tribunal is asked to reject the Appeal"*.

V. JURISDICTION OF THE CAS

74. Pursuant to Article 22 (c) of the FIFA RSTP, *"[w]ithout 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: employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level"*.

75. It is on the basis of the aforementioned provision that the FIFA PSC proceeded to adjudicate this matter and issued the Appealed Decision. Reference must therefore be made to Article R47 of the CAS Code, which provides as follows:

“An appeal against a 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”.

76. In addition, Article 67(1) of the FIFA Statutes (2015 edition) states that:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

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

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

VI. ADMISSIBILITY

79. The grounds of the Appealed Decision were communicated to the Appellant on 2 July 2015. The Statement of Appeal was filed on 23 July 2015. This was in accordance with 21-day deadline fixed under Article 67.1 of the FIFA Statutes.

80. The admissibility of the appeal is further confirmed by the Order of Procedure duly signed by the parties and by the fact that the Respondent did not raise any objection.

81. It follows that the appeal is admissible.

VII. APPLICABLE LAW

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

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

83. Article 66.2 of the FIFA Statutes so 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”.

84. Therefore, the Sole Arbitrator holds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary.

VIII. MERITS OF THE APPEAL

85. Based on the Parties' written submissions and the discussions held during the hearing, in order to resolve this matter, the Sole Arbitrator has to determine two key issues, namely, (i) whether there was any employment contract between the parties and, in the affirmative, (ii) whether Qingdao terminated the contract with just cause and the legal consequence of such termination.

- a) Did the parties have an employment contract?

86. It is the Assistant Coach's case that the Parties had an Employment Contract due to expire at the end of the 2014 superleague season and that his monthly salary was USD 6,000. He however claims not to have been given a copy of the said contract by Qingdao and corroborates his assertions by relying on one of the two statements provided by Mr. Wen Jiaqing, the one dated 31 March 2012 wherein Mr. Jiaqing states that the parties signed an Employment Contract on 20 January 2012 and by stating that the Assistant Coach was not given a copy thereof. The Assistant Coach also adduces video clips allegedly containing a conversation between him and a Club official regarding payment of his salary and Club photos purportedly showing him as one of the members of the Club's technical bench.

87. Qingdao denies the existence of any employment contract between the Parties and corroborates this by pointing at the Appellant's failure to produce a copy thereof. It further corroborates this by relying on Mr. Wen Jiaqing's second statement dated 26 October 2015, in which he denies having attended the ceremony that led to the celebration of the alleged Employment Contract, effectively reiterating that he is not acquainted with the details regarding the said contract. Qingdao reiterates that the Assistant Coach came to Qingdao to work as an intern learning from his father, the then Head Coach. Qingdao claims to have made no undertaking to pay the Assistant Coach and insists that the Appellant worked "*on the basis that the financial arrangement for that appointment were worked out between [him and his father]*".

88. The Sole Arbitrator must thus establish whether or not the Assistant Coach was merely an intern or whether the Parties indeed had an employer-employee relationship.

89. As a preliminary observation, the Sole Arbitrator notes some striking inconsistencies in Mr. Wen Jiaqing's two statements. In his first statement adduced by the Appellant, he says the Assistant Coach signed the Employment Contract but was not given a copy thereof while in a latter statement adduced by Qingdao, he claims not to be acquainted with the details regarding the signing of the alleged Employment Contract. As such, the Sole Arbitrator sees little credibility in Mr. Wen Jiaqing's statements, a fact further corroborated by his failure to testify in these proceedings. He also finds the video and Club photos adduced not to be firm or

conclusive evidence of the existence of an employment contract *per se* even if the Appellant allegedly appears therein.

90. Although Article 2.2 of the FIFA RSTP implies without necessarily requiring professional players to have written contracts with their clubs (CAS 2014/A/3739 & 3749, para. 159), the same cannot be said for coaches, whose contracts – apart from the issue of the FIFA PSC’s jurisdiction - are not governed by the FIFA RSTP (cf. section VIII (c) below).
91. Given the above and following the absence of a written contract or the evidence of its existence, reference must be made to the general principles of Swiss law, according to which reference must be made to the Parties’ acts and conduct in establishing, by implication, whether or not there existed an employment relationship. Indeed, Article 1 of the Swiss Code of Obligations (hereinafter the “CO”) states as follows:
 - “1. The conclusion of a contract requires a mutual expression of intention by the parties.
 2. The expression of intent may be express or implied”.
92. From the facts and evidence facing this particular case, a number of key tests and elements could be determinant in establishing the existence or otherwise of an employer-employee relationship between the Parties. Was the Appellant under the control and direction of Qingdao? Was there some sort of mutuality of obligation between the parties? Was the Appellant an integral part of the club, or was he merely a casual or accessory thereof? And most importantly, was the Appellant entitled to consideration, *i.e.* wages?
93. Three elements of undisputed facts or evidence are key to establishing the above: (i) the Release Letter (ii) the penalty imposed by Qingdao on the Assistant Coach on 1 April 2012 and (iii) Qingdao’s letter dated 3 April 2012.
94. It is evident from the Respondent’s Release Letter that Qingdao had “*decided to appoint Vladimir Sliskovic to take charge of the training of Professional team’s B group*”. The letter goes on to add that despite his appointment, the Assistant Coach had on three consecutive occasions, these being on 28, 29 and 30 March 2012, declined to obey and respect a notice from the Club asking him to train the Club’s B team and that his refusal was in breach of the “*Management Regulations on Coaches of Qingdao Jonoon football Club*”. This, according to the Respondent, forced Qingdao to “*release [the Appellant] from the post of assistant coach of Qingdao Jonoon Football Club and dismissed [him from] the club*”.
95. The following facts are thus discernible from the aforementioned Release Letter:
 - a) that Qingdao appointed the Appellant to work as the Club’s Assistant Coach;
 - b) that following his appointment as Qingdao’s Assistant Coach, the Appellant was subjected to the Club’s Management Regulations on Coaches, which shows that he had been integrated into the Club;
 - c) that on 28, 29 and 30 March 2012, Qingdao asked and/or ordered the Assistant Coach to train the Club’s B team; and

- d) that on 31 March 2012, Qingdao released the Assistant Coach from his duties for having refused to obey the orders and/or requests made on 28, 29 and 30 March 2012.
96. It therefore appears as though the Appellant's appointment as assistant coach was coupled with a mandatory duty and obligation to report to work. Qingdao had the final word as to how and when the Assistant Coach was to work. He was not free to accept or reject certain duties without consequences of any kind or to work at his pleasure. He was an integral part of the Club subject to the Club's Management Regulations on Coaches, liable to sanctions for violation thereof. This is corroborated by the Respondent's decision to impose a penalty on the Appellant on 1 April 2012 following the Release Letter and the Respondent's post-Release Letter dated 3 April 2012 to the Appellant asking him to "*hand over [his] work and complete the relevant separation procedures therewith*".
97. Significantly, the Release Letter points towards Qingdao having had powers to dispense with the Assistant Coach's services if they were not satisfied with the manner in which he carried out his duties. It seems as though the Assistant Coach was under the Club's instruction and supervision, typical rights of an employer. If the Assistant Coach was indeed working as an intern under the Head Coach's supervision, one would have expected the Club to first involve or approach the Head Coach – who better understood the Appellant's role - in resolving any minor misunderstandings between the Parties. Through its conduct though, Qingdao created legitimate expectations of the existence of the Employment Contract.
98. These, in the Sole Arbitrator's view, demonstrate the existence of mutual obligations between the Parties together with Qingdao's control and direction over the Assistant Coach, characteristic features of an employer-employee relationship.
99. The Sole Arbitrator also takes into consideration Qingdao's letter dated 3 April 2012 in which it asks the Assistant Coach to "*square [his] salary and complete the relevant separation procedures by April 6th, 2012*".
100. Reading the aforementioned letter, it is hard for the Sole Arbitrator or any other reasonable person with background knowledge of the Parties' relationship to believe Qingdao's assertion that the word "square", or this letter in general requested the Assistant Coach to "*clear the account with the club including paying his debts to the club*".
101. Indeed, Qingdao has not advanced any particular of the alleged debt. The cardinal presumption is that Qingdao intended what was in fact written in the aforementioned letter, calling for the words therein to be construed and understood for what they stand. Therefore, it can only be inferred from the letter in question that the Assistant Coach was being requested to pick his outstanding salaries and to clear his office before 6 April 2012.
102. The Respondent submits that it has no financial obligation at all towards the Appellant. However, it follows from the abovementioned circumstances that the Assistant Coach was also entitled to some form of valuable consideration, *i.e.* a financial benefit for his services to the detriment of Qingdao's accounts, another characteristic of an employer-employee relationship.

103. The Sole Arbitrator also finds it illogical for Qingdao to have reduced the Head Coach's terms and conditions to a written document (contract) but at the same time fail to do the same with the Assistant Coach – even if they had agreed to have him work as an intern.
104. One would have reasonably expected Qingdao to protect its rights by at least reducing the Assistant Coach's working conditions as an unpaid intern to some piece of paper or furnish the court with documents to the effect that the Appellant was attending a professional coaching course or programme in a coaching institution, and had therefore not acquired his professional coaching papers. Indeed, the CO requires apprenticeship contracts to be written, therefore placing the burden on Qingdao to prove its allegations that the Appellant was an intern. Article 344 (a) of the CO states as follows:
- “1. *In order to be valid, the apprenticeship contract must be in written form.*
2. *The contract shall specify the nature and duration of the professional training, the wage, the probation period, the working hours and vacation. (...)*”.
105. Qingdao has not adduced any evidence of the above and has thus failed to discharge its burden of proving its allegation that the Assistant Coach was working as an unpaid intern.
106. In view of all the foregoing and notwithstanding the absence of a written contract, the Sole Arbitrator finds the manifested existence of an implied employer-employee relationship, *i.e.* the Employment Contract between the Parties. Even if the Assistant Coach had initially travelled to Qingdao to work as an unpaid intern, the facts and evidence point towards a genuine intention and understanding that the Parties' relationship had as a matter of practice been transformed from that of a supervisor-intern relationship to an employer-employee relationship. This therefore negates the need to look out for any pre-contractual correspondence between the Parties as argued by the Respondent.
107. In arriving at above finding, the Sole Arbitrator gave careful consideration to the standard of proof, which, in his mind, requires him to be comfortably satisfied but not necessarily convinced beyond reasonable doubt of the existence of an employment contract. Consequently, the CFA's confirmation that the alleged Employment Contract was not registered with them, and the Appellant's absence from the CFA's official guidebook of professional staff, however tangible, is not weighty enough to comfortably dissuade the Sole Arbitrator from a legitimate finding that the Parties had an implied contract as apparent from their conduct and the strong *prima facie* documentary evidence assessed in these proceedings.
- b) Did Qingdao terminate the Contract with just cause?
108. Although it had an opportunity to address the Sole Arbitrator on why the termination is considered justified, Qingdao opted not to do so and instead focused its submissions on the inexistence of an Employment Contract between the Parties and confirmed during the hearing that its right to be heard had been fully respected.

109. It can be inferred from the Release Letter that the Assistant Coach was dismissed for having refused to train Qingdao's B team on 28, 29 and 30 March 2012. This, according to Qingdao, amounted to a violation of the Club's Management Regulations on Coaches.
110. Pursuant to CAS jurisprudence, just cause to terminate a contract is generally said to exist where the breach has reached such serious levels that the injured party cannot in good faith be expected to continue the contractual relationship (CAS 2008/A/1447 and CAS 2008/A/1517). Indeed the panel in CAS 2009/A/1956 stated (at para. 25) that "(...) *a termination of contract with immediate effect, for just cause, is to be declared only in circumstances where the employee has committed a serious breach of the contract. According to Swiss law, which applies additionally, and as emphasized by the FIFA Dispute DRC in the appealed decision, the termination of the contract with immediate effect is to be applied as ultima ratio*".
111. In addition, and before proceeding with the termination, it is advisable, depending on the circumstances, for the aggrieved party to send a notice to the breaching party asking it to desist its breachful acts. Indeed, the panel in CAS 2014/A/3460 held (at para. 63) that "[a]lthough the need to send notices is not mandatory in all cases and is established on a case by case basis, CAS panels have regarded notices as a vital step which could possibly have played a role in bringing an end to an unexplained breach or series of breaches, particularly where the breach or breaches in question has not yet reached a fundamentally unacceptable level and/or unduly prejudiced the non-breaching party to the extent that the latter cannot be reasonably expected to continue the contract".
112. In this particular case, the Assistant Coach was dismissed for having failed to attend and oversee three training sessions. He was dismissed 3 days later and there is no evidence that he had previously engaged in similar behaviour. Under the circumstances, the Sole Arbitrator finds the termination, that was given without any explanation, to have been harsh or rather undertaken in a rush and irrational manner. What would otherwise have been reasonably expected from Qingdao in such a situation was to first open some internal disciplinary proceedings against the Assistant Coach by sending him a warning notice with a view to bringing an end to the breaches, and thereafter consider other options such as fines or reprimands if the situation persisted. Termination, as evidenced from CAS jurisprudence, ought to have been an *ultima ratio* if the breach had reached serious levels. Indeed, "*not all failures to report to work grant the club the outright and unequivocal right to terminate the player's contract*" (see CAS 2014/A/3460 at para. 59) and the Sole Arbitrator finds the Assistant Coach's absence from training for 3 consecutive days not to have reached serious levels that would justify the termination of his Employment Contract.
113. In view of the foregoing, the Sole Arbitrator finds Qingdao to have terminated the Employment Contract without just cause.

c) What are the legal consequences?

114. The Respondent submits that Chapter IV of the FIFA RSTP is limited to “*Maintenance of contractual stability between professionals and clubs*” - not coaches - and as such the FIFA RSTP do not entitle the Appellant to any compensation for breach.
115. Whereas the Sole Arbitrator has established that the FIFA regulations are primarily applicable to this case supplemented by Swiss law (cf. section VII above), he is cognizant of the fact that the FIFA regulations do not contain any provision regarding the manner in which compensation is to be awarded in employment disputes between clubs and coaches. Indeed, Article 1.1 of the FIFA RSTP limits the scope thereof to “*global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations*”.
116. Reference must therefore be made to Swiss law on the issue of compensation.
117. Pursuant to Article 337 c (1) of the CO, “[i]f the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period”.
118. Para. (2) of the same provision stipulates that “[t]he employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn”.
119. The Assistant Coach is therefore entitled to compensation.
120. In order to arrive at the compensation due, the Sole Arbitrator must establish the terms and conditions intended by the Parties in the implied Employment Contract, in particular the duration and the consideration.

ca) The duration

121. It is not in dispute that the Assistant Coach joined Qingdao at the behest of his father, the Head Coach, and that he took up the said post at or about the same time as the Head Coach (in February 2012). It is also not in dispute from the submissions in CAS 2015/A/4158 *Qingdao Zhongneng Football Club v. Blaž Sliskovic* that the Head Coach’s contract with Qingdao was valid for the period 1 February 2012 to the end of the Chinese super league 2014 season, *i.e.* until 31 October 2014 and that the Assistant Coach was and did work alongside the Head Coach. Therefore, and in the absence of any rebuttable evidence to the contrary, it can only be presumed that the Assistant Coach’s Employment Contract was also valid for a similar period, *i.e.* from 1 February 2012 to 31 October 2014.

cb) Consideration

122. Although the Parties have not adduced a written copy of the Employment Contract, there is no doubt – as evidenced from Qingdao’s letter dated 3 April 2012 –, that Qingdao paid, offered and/or gave some monetary consideration to the Assistant Coach in exchange for his services. The Assistant Coach claims to have been on a monthly salary of USD 6,000 and admitted to having received USD 6,000 from Qingdao during the validity of the Employment Contract.
123. In the absence of an express contract between the Parties laying out the financial terms due, reference must be made, in the Sole Arbitrator’s view, to the Head Coach’s contract with Qingdao with a view to discerning the consideration otherwise reasonably due to the Assistant Coach and other ancillary evidence adduced.
124. Looking at the Head Coach’s contract, it is not in dispute that he was on a monthly salary of USD 16,666.66, close to three times more than what the Assistant Coach claims to have been entitled to (USD 6,000).
125. In the Sole Arbitrator’s view, the USD 6,000 the Assistant Coach claims to have been entitled to is not an unreasonable figure for a young coach (he was then aged 29) who had just taken up his first professional job as an understudy and assistant coach in a foreign country.
126. The Assistant Coach’s monthly salary claims have also been corroborated by the testimonies of the Head Coach, and the Sole Arbitrator finds little reason to doubt or question a monthly salary of USD 6,000 as having been disproportional, inadequate or unreasonable *vis-à-vis* the value of the services rendered by the Assistant Coach. Under the circumstances, the Sole Arbitrator finds USD 6,000 to be a reasonable monthly salary. He reiterates that in arriving at this finding, he did not consider the Appellant’s claim that his monthly salary was USD 6,000 as evidence of the existence of the Employment Contract. The Sole Arbitrator has merely used this figure to guide him in arriving at what he considers an acceptable monthly wage given the absence of direct evidence, and the Appellant’s admission to having been paid USD 6,000 prior to the termination.

cc) The compensation

127. Therefore, and in view of Article 337 c (1) of the CO, the Assistant Coach would in theory be entitled to compensation corresponding to what he would have earned had the Employment Contract been fulfilled to its expected date of expiry, pursuant to the so-called doctrine of restitution (CAS 2008/A/1519-1520).
128. In a demonstration of good faith in overlooking the above provision, and also its earlier request for the full value of the Employment Contract (USD 216,000) as sought in the Appeal Brief, the Appellant, in his post hearing submissions, seeks USD 102,000 in compensation, stating that “(...) *since Mr. Sliskovic received USD 6,000, the compensation claimed here is USD 102,000*”. He

reiterates that the USD 102,000 includes “*other contracted benefits: accommodation, car, airplane tickets, Chinese visa etc.*” and is the “*fair compensation expected*”.

129. The Sole Arbitrator understands the amount requested to be based on a similar standard termination clause contained in the Head Coach’s employment contract, which stated that “[i]f any of the two parties breach this contract, the other party will get 50% salary of the rest period of execution of the Contract as compensation”.
 130. The timing of the post hearing submissions *vis-a-vis* the Appeal Brief further suggests the Appellant’s intention to overlook and/or amend the relief sought in the Appeal Brief. This conclusion is to a greater extent corroborated by the fact that in the post hearing submissions the Appellant failed to maintain the reliefs made in the Appeal Brief as an alternative prayer. The Sole Arbitrator has no reason to depart from this request as doing so would be *ultra petita*. He therefore regards the Appellant to have requested USD 102,000 in compensation.
 131. No evidence has been adduced to the effect that the Assistant Coach got a new job in the period covering the Employment Contract or that he intentionally failed to mitigate his damages by finding a new job. Consequently, the provision of para. 2 of Article 337 c (1) of the CO is not applicable to this particular case.
 132. Consequently, the Assistant Coach is entitled to USD 102,000 in compensation. Interest on the said amount has not been requested in these or the FIFA PSC proceedings and as such, cannot be granted.
- d) Conclusions
133. The Sole Arbitrator finds the Parties to have entered into a contractual relationship, which the Respondent terminated without just cause. Consequently, the Appellant is entitled to compensation to the tune of USD 102,000 without any interest thereon.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Vladimir Sliskovic against the FIFA Players' Status Committee decision dated 23 September 2014 is upheld.
2. The FIFA Players' Status Committee decision dated 23 September 2014 is set aside.
3. Qingdao Zhongneng Football Club is ordered to pay Mr. Vladimir Sliskovic USD 102,000 (One hundred and two thousand United States Dollars) as compensation. No interest shall accrue on the aforementioned amount.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.