



Arbitration CAS 2015/A/4286 Sebino Plaku v Wroclawski Klub Sportowy Slask Wroclaw S.A, award of 29 July 2016

Panel: Mr Ercus Stewart (Ireland), President; Mr Mark Hovell (United Kingdom); Mr Piotr Nowaczyk (Poland)

Football

Termination of an employment contract

Submission of a player to individual training

Conditions to consider when weighing up whether removal from the first team would constitute a breach of contract

1. **Individual training is not good for players, but there can be circumstances when a club may deem it necessary for a player to train alone, for example if his fitness has dropped below the level of his team mates, if his body mass index is too high, if he is recovering from an injury, etc., but then only until his fitness had recovered, his body mass improved, his injury mended, etc. Football is a team sport and the majority of training needs to be as part of a team or squad and with a football. Also, any instructions regarding training should be reasonable.**
2. **Key factors to consider when weighing up whether removal from the first team would constitute a breach of contract include: a) why was the player dropped to the reserve team?; b) was the player still being paid his full wage?; c) was it a permanent or temporary measure?; d) were there adequate training facilities for the player with the reserve team?; e) was there an express right in the contract for the club to drop the player to the reserve team?; f) was the player training alone or with a team? The parties can expressly agree for a player to play in a certain team, but if the contract is silent, then the player does in principle have certain fundamental rights, such as his “personality rights”. However, a coach and the club also have the right, in certain sporting circumstances, to move players between the first team and other teams. These rights may conflict and when they do, a review of the above points and of the facts of each case needs to be undertaken.**

I. PARTIES

1. Mr Sebino Plaku (the “Player” or the “Appellant”), is an Albanian citizen and professional football player, born in Pukë, Albania on 20 May 1985. He currently plays for KF Skënderbeu Korçë in the Albanian Superliga.

2. Wroclawski Klub Sportowy Slask Wroclaw S.A. (“the Club” or “the Respondent”), is a football club with its registered office in Wroclaw, Poland. The Club is currently competing in the Ekstraklasa. It is a member of the Polish Football Association (the “Polish FA” or “PFA”).

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 25 June 2013, the Player signed an employment contract with the Club valid until 30 June 2016 (the “Contract”). The Contract provided for the Player’s salary to be EUR 168,000 gross per season, or EUR 14,000 gross per month.
5. In October - November 2013, there were changes of the Club’s Board, specifically the President, Vice-President and Coach in the Club.
6. During the 2013/2014 season the Player played in 26 matches, but after February 2014 he was used mainly as a substitute.
7. The 2014/2015 season started in July 2014. On 20 August 2014, the Player suffered a knee and ankle injury.
8. On 28 August 2014, the President of the Club allegedly proposed a reduction of the Player’s salary to the amount of EUR 5,000 gross per month from 1 September 2014. The President of the Club also allegedly provided the Player with a draft of an Annex to the Contract which specified the decrease in salary. The Player did not accept the proposal of the Club concerning the reduction of salary, and on 5 September 2014, the Player was moved to the Club’s second team, which competes in III Liga (the fourth tier of the Polish football league system).
9. From 15 September 2014, the Player was obliged to participate in individual training. The Player alleged that this was totally different from the training plans of the players on the Club’s first and second teams.
10. On 16 September 2014, the Player wrote to the Club enquiring as to why he was moved to the second team and why he was obliged to do individual training.
11. On 17 September 2014, the Club wrote to the Player that his sporting level had decreased and that the Club hoped that the individual training would bring him back to his normal sporting level and a return to the first team.
12. On 15 October 2014, the Player wrote to the President to complain again, but he received no response to his letter.

A. *Proceedings before the IRSS*

13. On 26 November 2014, the Player submitted to the Polish FA's Chamber for Dispute Resolution (the "IRSS") a motion for dissolving the Contract through the fault of the Club due to the breach of the Club's obligations. He alleged that subjecting him to individual training sessions was harassment and that the treatment was comparable to that in a case he referred to as "*Klub Kokosa*". He alleged that the Club was blocking his path to improving his skills and their actions were aimed at forcing him to accept a decrease of salary.
14. On the 4 December 2014, the Club responded that no proposals were put to the Player to decrease his remuneration and argued that his allegations of harassment were unjustified, that the additional training sessions showed the commitment of the Club to increasing his fitness, following a decrease in shape. The Club argued that he did not actively take part in training and did not take the pharmaceuticals as advised by the Club doctors.
15. On 11 December 2014, a three-person panel of the IRSS began hearing the case.
16. On 12 December 2014, the Player wrote to the Club regarding the alleged unpaid salaries for August and November. In January 2015, he wrote again to the Club as he was not paid for December.
17. On 11 January 2015, the Player expanded the legal basis of the motion for dissolution of the Contract, relying on Article 14.6 of Resolution No. II/12 of 19 May 2002 of the Management Board of the Polish FA (rules regulating relationships between a sport club and a professional player – the "Regulations"), due to the fact that the Club breached its obligation to pay remuneration specified in the Contract for a period longer than three months. Further hearings took place on 14 January, 19 January and 25 February 2015.
18. On 19 February 2015, the Player alleged that the Club de-registered him from being able to play first team games.
19. On 25 February 2015, a three-person panel of the IRSS decided to dissolve the Contract, without adjudicating fault.
20. On 20 April 2015, the Player submitted an appeal to the IRSS against the ruling of 25 February 2015. The Player argued that there was an erroneous application of Article 14 of the Regulations that the Contract be dissolved through the fault of the Club or the ruling be quashed and the matter be referred for re-examination.
21. On 28 May 2015, the Club moved to dismiss the Player's appeal and to uphold the decision of the IRSS.
22. On 12 June 2015, the Player signed on a one-year Contract with the Albanian football club Partizani Tirana, at a monthly gross salary of EUR 800.
23. On 16 June 2015, a five-person panel of the IRSS (the "IRSS Appeals Body") heard the appeal, where the Player, the Player's attorney and the Club's attorney all appeared before the panel.

24. On 30 June 2015, the IRSS Appeals Body rejected the Player's appeal and upheld the 25 February 2015 ruling. The five-person panel fully agreed with the opinion of the first instance ("the Appealed Decision").
25. The IRSS held that it had no power to assess the rationality of trainings carried out for players in order to improve their performance, but it was for the coaching staff of each club who are responsible for preparing players for the games.
26. The IRSS found that Article 21 of the Regulations was not breached.
27. The IRSS held that, according to the Club's coaching staff, the Player's performance was still unsatisfactory, unstable and fully justified individual training. The panel did not accept that the scheduled trainings were inadequate to the Player's skills or too hard, which it held would be a basis to find that the Club was at fault and thus to dissolve the Contract due to the fault of the Club.
28. The IRSS Appeals Body also shared the opinion of the first instance that further continuance of the Contract would be contrary to the aims and rules of professional sport. It noted that the Club accepted the possibility to dissolve the Contract, and the Player submitted a motion for Contract dissolution, and considered Article 14.12 of the Regulations in the ruling at first instance must be substantiated.
29. The IRSS Appeals Body held it may dissolve a contract without adjudicating fault if neither of the parties agrees to continue the Contract and the entirety of the circumstances points to the conclusion that continuance of the Contract would be contrary to the aims and rules of professional sport, as well as the aims and rules of engaging in physical culture activities.
30. The IRSS Appeals Body further held that, on the day that the Player submitted his motion for dissolving the Contract due to the fault of the Club, the Club was in arrears in payment of remuneration. However, in the opinion of the IRSS, the arrears due to the Player, which was unjustified, was not a basis for dissolving the Contract due to the fault of the Club. The IRSS Appeals Body found that the Player did not establish justification and basis for dissolving the Contract. In light of the above, the IRSS Appeals Body dismissed the Player's appeal and upheld the decision at the first instance in its entirety.

B. Proceedings before the CAS

31. On 16 November 2015, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48.1 of the Code of Sports-related Arbitration ("the CAS Code"), with the following prayer for relief:

"The Appellant moves for changing the ruling of the Chamber for Sport Disputes' Resolution at the Polish Football Federation (Izba ds. Rozwiązywania Sporów Sportowych przy Polskim Związku Piłki Nożnej) and dissolving the contract from the fault of the club or, as another possibility, for quashing the ruling in question and referring the case for re – examination to the Chamber fir Dusoytesdisputes' Resolution at the Polish Football Federation (Izba ds. Rozwiązywania Sporów Sportowych przy Polskim Związku Piłki Nożnej)".

32. In its statement of appeal, the Appellant nominated Mr. Mark A. Hovell, Solicitor in Manchester, UK, as an arbitrator.
33. On 25 November 2015, the Player filed his Appeal Brief with the CAS, challenging the Appealed Decision.
34. On 30 November 2015, the Club nominated Mr. Piotr Nowaczyk, Attorney-at-law, Warsaw, Poland, as an arbitrator.
35. On 16 December 2015, the Club filed its Answer to the Player's Appeal, with the following prayer for relief:

“to dismiss the appeal against the Ruling and confirm (sustain) the Ruling of the IRSS of the PFA case file no. IRS 37/2014), issued on 30 June 2015, in case between the Player and the Club”.

36. On 15 January 2016, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr. Ercus Stewart S.C., Barrister, Dublin, Ireland
Arbitrators: Mr. Mark A. Hovell, Solicitor, Manchester, United Kingdom
 Mr. Piotr Nowaczyk, Attorney-at-law, Warsaw, Poland

37. On 19 February 2016, the Player filed his observations on the jurisdiction of the CAS.
38. On 26 February 2016, the Club filed witness statements of Pawel Zelem, President of the management board of the Club; the club doctor (with his memo of 20 October, 2014); head of Scouting – assistant first-team coach, Mr. Bocelli; and Juniors coach, Mr. Kowalczyk

III. THE HEARING

39. A hearing was held on 4 March 2016 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the composition of the Panel who were all present and which were assisted by Mr. Fabien Cagneux, CAS Counsel.
40. The following persons attended the hearing:

For the Player: the Player himself and Mr Marcin Kwiecien, Counsel; and
For the Club: Mr Marcin Badura and Mr Grzegorz Kaluzny, Counsel.
41. The Player gave evidence and was questioned by the Club's Counsel. In addition, Mr Will van Megeen (expert) from FIFPro gave evidence for the Player.
42. The following witnesses gave evidence by telephone / video conference on behalf of the Club, and were questioned by the Player's Counsel:

- Mr. Pawel Zelem (President of the Club's Management)
 - Mr Marek Kowalczyk (Coach of the Respondent's youth team)
43. The Parties were afforded the opportunity to present their case, to submit their arguments and to answer the questions asked by the Panel. The Parties explicitly agreed at the end of the hearing that their rights to be heard and to be treated equally in these arbitration proceedings had been fully observed.
44. The Parties agreed at the hearing to furnish further information within two weeks by 21 March 2016, and following compliance by both Parties they agreed to furnish further information, which was received within the agreed time limit on 18 April 2016.

IV. THE PARTIES' SUBMISSIONS

45. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

A. The Player's submissions

46. In summary, the Player submitted the following in support of his Appeal:
47. The Player gave evidence in accordance with and consistent with the facts set out above, and in his previous communications, statements and pleadings. He referred to the treatment he received, which he alleged amounted to harassment, and also gave details of non-payment of salaries, including for August and November 2014, and only half payment in September 2014, and, further, December 2014, and that he had demanded payment on a number of occasions, including by letters of 12 December 2014 and 11 January 2015.
48. The Player gave evidence of the training imposed on him with details of the programmes. He submitted that football is a team sport and that the requirement for him to train alone was not proper or correct. Further that he was required to do so for a long time, with no proper programme set to achieve any purpose or outcomes. He also argued that he had wanted to be reinstated to the first team and had asked for this.
49. Even though he did not think the training was appropriate or proper, if on any occasion he arrived late, even by as short as a few minutes, he was penalised and sanctioned, and fines were imposed by the Club.
50. The Player referred to the change of coach, and change of President and Vice President. It was from this time that things changed for him.

51. He was required to attend a meeting, and, when he did, there were three persons present, the President, Vice-President and the coach. In addition, there was a sheet of paper on the desk. He was told of financial problems in the Club, that he was too expensive and the annex to the Contract provided for a reduction in salary. He was told that if he did not accept that reduction then many things would happen to him.
52. He did not accept the proposal. On 5 September 2014 he was moved to the second team and from 15 September was obliged to undergo individual training, totally different to what he was used to and entitled to.
53. He alleged he was required to attend three training sessions daily. The first session took place from 8 AM and consisted of running in the park with one trainer. He advised that this did not change. In order to arrive as required (45 minutes before commencement) he had to leave his home at 6:45 AM, to arrive approximately 7:15 AM. The second training session began between 1 PM and 2 PM and consisted of individual training in the gym with one trainer. The third training session was normal training with the second team, at 6:30 PM. The Player alleged there was insufficient time between training sessions to allow him to travel to have meals and he had therefore to eat at the training centre. He did not arrive home till approximately 9:30 PM.
54. He alleged he was instructed to take part in demonstration training for young players, which was to take place in a more remote area with travel time of approximately 45 minutes one way. He alleged he was not then required to take part in the sessions but to stand on the sidelines and watch. He also alleged he was obliged to take part in marketing activities for the Club, such as giving out leaflets in supermarkets.
55. He believed he was one of the best players in the first team. He stated that after the meeting, everything changed, that whereas before there were tests and medicals, there were no tests and, thereafter, he believed the Club had just “given up” on him. There were not the usual blood or physical tests. He was not eating with the team, which was usual. His clothes, linked to the first-team, were taken and replaced by older gear.
56. His training was not appropriate, involving running on his own in the Park, being watched by the coach. He was told he was not in full shape. He looked for first-team training, which was refused. The individual training continued from September 2014 until February 2015, when the Contract was terminated as a result of the proceedings, as set out herein.
57. He gave evidence of the second training and third training during each day. He said that despite the inadequacy of the training, he was tired and exhausted, but tried to do his best.
58. The tests that were administered before, in the first-team, were not done at this time. He was penalised on those few dates that he did arrive late, even though he was only late eight minutes, and was told he could be punished if he was one minute late. He stated that what was done to him was unreasonable to be done to a professional player, and that he had a good record in this team, and in previous teams, before this.

59. The Player alleges that during the period 15 January to 15 March 2015, the Club imposed on him disciplinary penalties up to the sum of 80,000 PLN, approximately EUR 20,000, but that due to his appeals he only paid one penalty in the sum of 20,000 PLN.
60. He said his life changed completely, he was treated as a “black sheep”, and that, apart from management, other team members’ attitudes to him changed, they were distant, and afraid to make contact with him.
61. The Player did not agree with the Club stating that he was in poor shape. The Player alleged that the only reason for moving him to the second team and requiring him to do individual training was to make him dissolve the Contract with the Club or agree to a reduction of salary.
62. He tried to resolve the situation, but was unsuccessful. He prepared a letter which he emailed to the President on 15 October 2014.
63. He said that he saw no hope, he had tried the President, and he had sent messages, physically and by post, as he wanted to stop what was being done to him. In the Christmas 2014 period, he asked for his winter break, which was not given.
64. The first team had stopped training one week before, and he had booked a flight home, but there was no reply to his requests. It was only one, himself, training. The first team was on holidays. On 12 December 2014, he believes, his coach left on holidays, and he had to do everything without a coach.
65. After the Contract was adjudicated to be dissolved without fault of the Club, he stayed until the end of June 2015, four months without a new club. He eventually signed a contract with a new club, as set out above, and his first salary was EUR 800 gross per month, as his position was not then strong. Although they knew his name and his skills, he was in the second team, in a low division, and it was difficult for anybody to believe in him. He had to sign that new contract which provided much less money. Although he tried to get better contracts, he was too late, all the teams were already prepared, and the transfer window was closed.
66. In the final submissions of the Player, dated 15 April 2016, he repeated that the Club delayed for more than 30 days with the payments of three salaries to him for August, November, and December 2014, and part of the salary for September 2014, and that despite the deadlines he set for the late payment of salaries, only one salary requested (December 2014) was paid.

B. The Club’s submissions

67. In summary, the Club submitted the following:
68. The two witnesses who gave evidence by videoconference alleged the problems started in mid-2014, after the Player’s knee injury, between 20 August and 5 September 2014. He was put on an individual programme, to get back to proper form and shape.

69. They alleged the Player was not prepared to perform his duties as a professional football player, and this was why he was moved to the second team. They further alleged that it was the coaching staff of the first team who ultimately decided. They referred to reports and tests, to get the Player into his normal shape, and to recover from his knee injury. A programme was prepared for the Player, but he did not achieve. It was dependent not only on his knees, but on himself.
70. The Player had a bad result in the “Norwegian test”, after his injury, after he started training with the second team, but the reason he started with the second team was not because of the test. They alleged that the decision was made by the coaching staff of the first team. They said that the only goal of the individual training was to get the Player back to the first-team. They referred to the actual training sessions, the jogging in the morning in the park, and that these were the only method to improve his recovery.
71. They claimed that the team physician oversaw the Player’s progress and if health problems were reported by the Player, the training was adjusted. They alleged that the Player was always too slow and that he ignored the proper training, even though he was given a programme and weekly plan, which were not fulfilled by the Player.
72. The weekly plan was communicated to the President, and the physician and the coordinator adjusted the plan to the Player’s needs. They alleged that the Player thought he knew best, and that he neglected the Club.
73. They alleged the Player was unwilling to perform. The witnesses were questioned as to the reasons he was moved to the second team, and how his trainer could bring him to the right shape if he didn’t know the reason for the move to the second team. They referred to Mr Becello, who was not called to give evidence at the hearing or by videoconference. They stated that after each training, training was adjusted, where necessary by Mr Becello and that he was communicating to the Player what he needed to do to return to the proper shape to go back to the first team.
74. The President gave evidence that he joined the management board in November 2013. In spring 2014, the coach for the first team said the Player was below expectations and that a move to the second team would allow him get back to his proper shape.
75. He invited the Player to a meeting. At the meeting in September 2014, the Player was told they were not happy with his performance and that he was not giving the team what was expected of him.
76. It was standard procedure to move a player to the second team in such instances. There was no specified time; it was until he got back into shape. The President alleged that the Player suggested he was ready to renegotiate the Contract up to the time he was able to get back to represent the team properly.
77. The document at the meeting was the notice to go to the second team. The Player did not accept the move to the second team, which was offered at the meeting, and it was then sent to him by registered mail.

78. The President referred to the injury that the Player was out for 10 days, before resuming training. After the recovery the Player went to the second team, and he referred to recommendations from the coaching staff. The Player was not able to fulfil his part. The President delegated to the coaching staff to take care of the situation and get the Player back in shape as soon as possible. There were two years ahead in his Contract
79. The President disagreed with the evidence of the Player. He still hoped it would only be a temporary situation. However, the Player was unwilling to perform and argued with the coaches, whom he alleged were unqualified. The Player did not cooperate, although his “door was always open”.
80. In summing up, the objective was to bring him back into proper sport form and shape, and this was not achieved due to the Player’s attitude. The Club claimed that the Player never complained to the management board regarding the training and never made objection to the management board or coaches. The Club alleged that the Player was reminded by the coaches that the faster he performed, the sooner he would get back to work with the first team. The President asked the coaches how he performed and was informed that he had not fulfilled the programme, and he was reprimanded a number of times.
81. Regarding the non-payment of salary, they did receive the default notices, by letter, regarding non-payment of salary, including August, November and December, and part payment for September 2014. Payments were made, albeit late, before the letter of 20 January 2015 arrived.
82. In the Club’s final submissions, it denied that it delayed payment for three or more months and that on receipt of the Player’s payment demands of 12 December 2014 and 20 January 2015, which were received, respectively, on 15 December 2014 and 21 January 2015, the payments were made on 14 and 20 February 2015. The Club argued that they were entitled to deduct part of his salary for September 2014 in the view of a penalty imposed on him by the Club on the basis of the disciplinary decision of 9 October 2014.

V. JURISDICTION OF THE CAS

83. Article R47 of the CAS Code 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”.

84. The Player submitted that Article 35 of Resolution No. 1/3 of 16 January 2013 of the Management Board of the Polish FA on adopting the rules and regulations for the IRSS (“IRSS Regulations”) provided the CAS with jurisdiction to hear this dispute as it stipulated the following:

“Within 21 days from receiving a decision of the five-person adjudicating panel of the Chamber together with a statement of grounds – issued in accordance with the procedure under Article 5 Section 2 of these Rules and Regulations - a party who is dissatisfied with the ruling may lodge an appeal to an independent and duly appointed arbitration court. Should there be no such court in Poland disputes shall be settled by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland”.

85. In its Answer, the Club challenged the jurisdiction of the CAS and stated that:

“... The Appellant has not shown that in Poland there is no appropriate independent and duly set up arbitration court, which could consider the appeal of the Ruling and only this would justify the jurisdiction of CAS in this matter. For this reason, the Respondent indicates that there can be the lack of CAS jurisdiction in this matter”.

86. In his submission on 19 February 2016, the Player submitted that the PFA’s Statutes did not indicate or provide for an independent arbitral body in Poland to appeal decisions passed by the PFA. The Player argued that pursuant to Article 56 of the PFA’s Statutes, as no appropriate arbitration court had been specified by the PFA, the CAS had jurisdiction to hear any appeals from PFA decisions. The Player also stated that the Club did not indicate which arbitration court in Poland would have jurisdiction to hear this appeal, if the CAS did not have jurisdiction. Finally, the Player submitted that pursuant to CAS jurisprudence (CAS 2013/A/3199, CAS 2008/A/1602, CAS 2009/A/1910, CAS 2008/A/1708 and CAS 2005/A/952 to name a few), in order for the CAS to have jurisdiction, it must be expressly recognised in the statutes or regulations of a sports related body. Article 35 of the IRSS Regulations expressly recognise the CAS as the relevant appeal body if no other independent and duly constituted arbitral tribunal was recognised by the PFA. As the PFA did not recognise such an arbitral tribunal, it followed that the CAS had jurisdiction to hear appeals such as this one.

87. Pursuant to Article R55 of the CAS Code and the principle of *Kompetenz-Kompetenz*, the Panel has the competence to rule on its own jurisdiction. After considering all the arguments submitted by the Parties in this regard, on balance, the Panel concluded that the Parties did not identify or agree “an independent and duly appointed arbitration court in Poland”. As the Player noted, while the Club challenged CAS jurisdiction, it did not actually propose any alternative arbitral body in Poland which it deemed to have jurisdiction over this dispute instead of the CAS. Based on the Parties’ submissions, no such arbitral body appears to be cited in the PFA’s Statutes either. According to Article 35 of the IRSS Regulations, in this situation the CAS is granted jurisdiction.

88. Therefore, pursuant to Article 35 of the IRSS Regulations and Article R55 of the CAS Code, the Panel concludes that the CAS has jurisdiction to hear this dispute. Moreover, the Panel notes that the Club (and Player) willingly signed the Order of Procedure, thereby confirming their agreement that the CAS had jurisdiction to hear this dispute.

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

VI. ADMISSIBILITY

90. The Appeal was filed within the 21 day deadline provided by the PFA's Statutes and stated in the Appealed Decision. It complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court office fees.
91. It follows that the appeal is admissible.

VII. APPLICABLE LAW

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

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

93. The Panel notes that the Appealed Decision has been rendered by a jurisdictional body of the Polish FA and accepts the various Statutes and Regulations of the Polish FA and Polish law, subsidiarily, as the applicable law in the matter at hand.

VIII. MERITS OF THE APPEAL

94. The Panel noted that in the matter at hand the Club submitted that it has done nothing wrong. The coaches at the Club determined that the Player was not in good shape and would benefit from a programme of individual training. His attitude was poor and he never improved enough to return to the first team. On the other hand, the Player submitted that the Club approached him and insisted that he take a pay cut. When he refused he was punished and subjected to a long period of individual training away from his team mates, the Club did not make the payments due to him under the Contract and he eventually was left with no option but to terminate the Contract.
95. The Panel noted that this conflicting version of events is not uncommon in football and has been considered by other CAS panels in the past. In *CAS 2011/A/2428* the Panel noted that the panel in that case confirmed that individual training was not good for players, but could be required in certain circumstances. Para. 30 of that award stated:

“The Panel concluded that the Contract was there to establish the rights and obligations of the parties. The Club had to pay the Player for his services and provide him with the ability to ply his trade, i.e. to play football. This would extend to playing matches, if selected, and training to improve and develop his skills. The Panel could see there could be circumstances when a club may deem it necessary for a player to train alone (for example if his fitness had dropped below the level of his team mates, if his body mass index was too high, if he was recovering from an injury, etc, but then only until his fitness had recovered, his body mass improved, his injury mended, etc), but equally notes that football is a team sport and that the majority of training would need to be as part of a

team or squad and with a football. The Panel also determined that any instructions regarding training should be reasonable...”.

96. The jurisprudence in *CAS 2013/A/3091, 3092 & 3093*, that CAS panel thoroughly considered, inter alia, whether the de-registration of a player from the first team squad constituted a breach of his “performance rights”, under Swiss law. This Panel noted that the applicable law in the case in hand is not Swiss law, but rather the various Regulations of the PFA and Polish law on a subsidiary basis. Neither party made any submissions regarding the performance or personality rights of the Player. However, this line of jurisprudence was adopted by the CAS panel in *CAS 2014/A/3642* and the panel there set out the considerations that would be necessary to consider by a panel when weighing up whether removal from the first team would constitute a breach of contract or not.

97. In particular, paras 112 and 113 of *CAS 2014/A/3642* stated:

“112 ...The key factors that can be drawn from that case, and from the other cases cited by the parties in the matter at hand, include:

- *Why was the player dropped to the reserve team?*
- *Was the player still being paid his full wage?*
- *Was it a permanent or temporary measure?*
- *Were there adequate training facilities for the player with the reserve team?*
- *Was there an express right in the contract for the club to drop the player to the reserve team?*
- *Was the player training alone or with a team?*

113. In principle, this Panel, like others, notes that the parties can expressly agree for a player to play in a certain team, but that if the contract is silent, then the player does in principle have certain fundamental rights, such as his “personality rights”, but that a coach and the club also have the right, in certain sporting circumstances, to move players between the first team and other teams. These rights may conflict and when they do, a review of the above points and of the facts of each case needs to be undertaken”.

98. This Panel determined to follow this same test and apply it to the facts at hand.

A. Why was the Player dropped from the first team environment?

99. The Panel noted that the Parties had differing version of the events that took place in the meeting in September 2014 between the President and others on behalf of the Club and the Player.

100. It seems to be common ground that the President convened the meeting, but the Player says the Club insisted that he signed the Annex to the Contract to receive a pay cut, whereas the Club say that the Player offered to take a pay cut until his performance improved to the level of a first team player.
101. The Player cites his refusal to take a pay cut as the reason for his long stint of individual training and training with the second team. The Club say that he was in poor shape and needed individual training.
102. The Panel has considered the evidence given at the hearing and by videoconference. The Player appeared truthful to the Panel and answered fully the questions put to him, including the questions in cross-examination. The Panel found the evidence of the Player convincing. The two witnesses who gave evidence on behalf of the Club, were not in a position to answer a number of questions (Mr. Becello might have been able to assist the Panel in that regards, but was not present at the hearing and did not give evidence by telephone or video conference on behalf of the Club), and were not clear in the answers that they did give. Further, the head coach that allegedly took the decision to drop the Player on sporting grounds was not brought to the hearing to give evidence and be examined.
103. The Panel finds the evidence of the Player more convincing, and accept his evidence in regard to this issue in dispute in this case. As such, the Panel is convinced that the Club punished the Player for not accepting a salary decrease with many months of individual training and a demotion to the second team, with no sporting justification whatsoever.

B. Was the player still being paid his full wage?

104. In addition, the Panel holds that the Club had breached the Contract by not paying the Player his salary within time for August, September and November 2014. The parties were given the opportunity to agree this position after the hearing and it is clear to the Panel that the Player was not being paid properly during this time.

C. Was it a permanent or temporary measure?

105. The Panel noted that the Club submitted that once the Player had returned to the correct physical shape, then he would be reintegrated with the first team. The Panel noted, however, that the Club's witnesses struggled to explain exactly what was wrong with the Player's shape and what he would have to do to improve it. The Player was subjected to approximately six months of individual training and training with the reserves. It was clear to the Panel that there was never any intention of the Club to return the Player to the first team, this was a permanent demotion, as a punishment for refusing to take a pay cut.
106. The Panel noted that midway through, the Player even then approached the Club to say that he would take a pay cut in order to return to the first team, but this was ignored by the Club. It had no intention of this being a temporary move made on sporting grounds.

D. The remaining factors

107. The Panel noted that on the one hand the Player did not have any express right to be a first team player, he was provided with a coach to oversee his training and some kit (albeit, his first team kit was taken off him) and he was provided with some team environment training each day with the second team (albeit, the majority of his training appeared to be alone and without a football); however, none of these factors which may go in favour of the Club come close to outweighing the appalling treatment the Player was subjected to and the Panel has no doubts in determining the Player had just cause to terminate this Contract due to the fault of the Club.

E. Conclusion

108. Based on all of the evidence, and the submissions made before and during the hearing (and after the hearing, as agreed) the Panel has decided to annul the Appealed Decision, to replace it with our findings, in favour of the Player, that the Contract is terminated as a result of the Club's fault, and that the Player is entitled to compensation or damages.

109. The Panel notes that the player did not in his prayers for relief ask this Panel to determine the compensation payable to him by the Club. As such, the compensation or damages will be assessed by the IRSS Appeals Body on the basis of these findings (which findings cannot be re-opened), also taking into account the mitigation of the Player.

110. As such, the compensation or damages (*if not settled amicably*) will be assessed by the IRSS Appeals Body on the basis of these findings (which findings cannot be re-opened), also taking into account the mitigation of the Player.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sebino Plaku on 16 November 2015 against the decision rendered on 30 June 2015 by the Polish Football Association's Chamber for Dispute Resolution is upheld.
 2. The decision rendered on 30 June 2015 by the Polish Football Association's Chamber for Dispute Resolution is set aside
 3. Sebino Plaku's application and motion for dissolving the Contract through the fault of the Club is upheld. Sebino Plaku is entitled to compensation and damages to be assessed by the Polish Football Association's Chamber for Dispute Resolution in accordance with the findings in this Award (which findings cannot be re-opened).
- (...)
6. All other motions or prayers for relief are dismissed.