Arbitration CAS 2016/A/4384 Rizespor Futbol Yatirimlari AS v. David Alberto Depetris & Fédération Internationale de Football Association (FIFA), award of 11 October 2016

Panel: Mr Fabio Iudica (Italy), President; Mr Michael Gerlinger (Germany); Mr Hernán Jorge Ferrari (Argentina)

Football
Termination of contract of employment between a player and a club
Just cause to terminate the contract
Application of the principle ne ultra petita when granting compensation for damages

1. **In general, a player has just cause to terminate an employment contract due to a club's failure to comply with its financial obligations. In particular, a club's failure to pay the player's salaries, together with the club's failure to comply with the promise of payment put forward in a letter, along with the failure to reply to the player's reminder letter as well as the fact that the club was already in default at the time when the agreement was signed, is a clear indication that the breach had reached such a level of seriousness that the player could not trust in the fulfilment by the club of its financial obligations and expect a continuation of the employment relationship with the club. In the circumstances, the player was entitled to unilaterally terminate the employment contract.**

2. **In case of termination of an employment contract with just cause, the other party which has given rise to premature termination, is liable to pay compensation for damages suffered by the injured party. However, without prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the panel to decide all claims submitted by the parties and, at the same time, prevents the panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita*.**

I. INTRODUCTION

1. This appeal is brought by Rizespor Futbol Yatirimlari AS, against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 13 August 2015 between Rizespor Futbol Yatirimlari AS, Mr David Alberto Depretis and the Mexican club Monarcas Morelia.

II. THE PARTIES

2. Rizespor Futbol Yatirimlari (the "Club" or the "Appellant"), also known as Caykur Rizespor AS, is a professional football club based in Rize, Turkey, competing in the Turkish Super Lig, affiliated with the TFF (*Türkiye Futbol Federasyonu*) which in turn is affiliated with the Fédération Internationale de Football Association.

3. Mr David Alberto Depetris (the "Player" or the "First Respondent") is an Argentinian professional football player, born on 11 November 1988 in Santa Fe, Argentina.

4. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the governing body of football worldwide, exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players affiliated to it.

(hereinafter jointly referred to as the "Parties").

III. THE CHALLENGED DECISION

5. The challenged decision is the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") on 13 August 2015, on the claim filed by the Player against the Club regarding an employment-related dispute arisen between them also involving the Mexican club Monarcas Morelia (as the "Appealed Decision").

IV. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, on the file of the proceedings before the FIFA DRC and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the award only to the submissions and evidence it considers necessary to explain its reasoning.

7. On 23 January 2013, the Player and the Club signed an employment contract valid as of the date of signature until 31 May 2016 (the "Employment Contract")

8. According to clause 3 of the Employment Contract, the Club undertook to pay the following salaries to the Player:

- For the season 2012/2013: EUR 125,000 net in 5 monthly instalments of EUR 25,000 each, as from 31 January 2013 until 31 May 2013:
- For the season 2013/2014: EUR 250,000 net in 10 monthly instalments of EUR 25,000 each, as from 30 August 2013 until 31 May 2014:
- For the season 2014/2015: EUR 250,000 net in 10 monthly instalments of EUR 25,000 each, as from 30 August 2014 until 31 May 2015;

- For the season 2015/2016: EUR 250,000 net in 10 monthly instalments of EUR 25,000 each, as from 30 August 2015 until 31 May 2016.

9. Moreover, according to the same provision, the Player was also entitled to receive the following bonuses:

   - EUR 50,000 net for the season 2012/2013 to be paid *"in 5 days after receiving the ITC"*;
   - EUR 100,000 net for the season 2013/2014 to be paid in June 2013;
   - EUR 100,000 net for the season 2014/2015 to be paid in June 2014;
   - EUR 100,000 net for the season 2015/2016 to be paid in June 2015.

10. On 18 February 2014, the Appellant and the Player signed a new agreement (the "Agreement") whereby they agreed on the transfer of the Player on a loan basis to the club SK Sigma Olomuc until 30 June 2014 during which the Player's monthly salaries would be paid by the Club in the amount of EUR 17,500 and by SK Sigma Olomuc in the amount of EUR 7,500.

11. According to the Agreement, the Club also acknowledged a previous debt towards the Player amounting to EUR 75,000, corresponding to outstanding salaries under the Employment Contract for the season 2013/2014. In this regard, the Club undertook to pay the mentioned amount in three instalments of which EUR 25,000 on 20 March 2014, EUR 25,000 on 20 April 2014 and EUR 25,000 on 20 May 2014. Finally, the Parties declared *"that the existing conflicts to date have been settled. Therefore, the parties agree to rescind all the imputations and intimations contained in their previous communications"*.

12. On 3 April 2014, the Player sent a formal notice to the Appellant reminding the Club its failure to comply with its financial obligations and claiming the payment of the outstanding amount of EUR 42,500 of which EUR 25,000 corresponding to the first instalment of the outstanding debt which became overdue on 20 March 2014 and EUR 17,500 as salary for the month of February 2014, according to the Agreement.

13. The Club replied by a letter dated 7 April 2014 reading as follows: *"We refer to your letter dated in 03.04.2014 requesting the payment of the unpaid amount of Mr. David Alberto Depetris. Our club now is trying to arrange cash flow and wishes to solve it in a short time. We are planning to pay the amount in one month to the player's bank account. Thank you for your cooperation and understanding"*.

14. By a second reminder letter dated 28 April 2014, the Player reiterated his request for payment of the amount claimed in his previous notice, plus EUR 25,000 corresponding to the second instalment of the outstanding debt payable on 20 April 2014 and his salary of March 2014 in the amount of EUR 17,500, for a total amount of EUR 85,000, plus interests.

15. By fax letter sent on 23 May 2014, the Player terminated the Employment Contract alleging the Club's failure to fulfil the outstanding payments notwithstanding the previous warnings as well as the Club's continuous late and partial payments since the beginning of the Employment Contract. With this respect, in the said fax letter, the Player referred to the Club's earlier failure to comply with its financial obligations which apparently led the Player to put the Club in default

with a first notice of payment since 23 January 2014, which was followed by two other warnings on 5 February 2014 and on 11 February 2014, *i.e.* before the settlement concluded under the Agreement.

16. On 30 May 2014, the Appellant replied by rejecting the unilateral termination since *"none of the amounts have been passed over 2 months, which is regarded as acceptable and justified delay"*.

17. On 9 September 2014, the Player lodged a claim before FIFA against the Club requesting the following amounts:

- EUR 35,000 as salaries for the month of March and April 2014;
- EUR 75,000 corresponding to the instalments due on 20 March, 20 April and 20 May 2014 pursuant to the Agreement;
- EUR 637,439 as compensation for breach of contract;
- plus interest accruing on all the amounts as from 23 May 2014.

18. The Player maintained that at the moment of the termination of the Employment Contract, he had already put the Club in default twice and that the outstanding salaries amounted to EUR 110,000 and therefore he had just cause for termination.

19. The Player also informed the FIFA DRC that after the termination of the Employment Contract, he signed a new employment agreement with the Mexican club, Monarcas Morelia valid from 1 July 2014 until 30 June 2015, according to which he was entitled to receive the total amount of USD 105,000.

20. In this respect, the Player contended that after deduction of the salaries envisaged under the agreement with Monarcas Morelia from the remaining value of the Employment Contract, he would be entitled to compensation for breach of contract in the amount of EUR 637,439.

21. In its reply before the FIFA DRC, the Club rejected the Player's claim; contended that *"before 10.01.2014"* the Player had already received EUR 175,000 and provided documentation thereof as well as the payment receipt of the Player's salary for the month of May 2014; that *"none of the amounts have been passed over 2 months, which can be accepted as justified delay and are not substantial compared to payments* [the Club] *has made to the player before"*; that the oldest unpaid amount was EUR 25,000, payable on 20 March 2014; that the Player apparently refused to find an amicable solution with the Club. As a consequence, the Club concluded that the Player terminated the Employment Contract without just cause and lodged a counterclaim for breach of contract against the Player and Monarcas Morelia in the amount of EUR 200,000 and requested the imposition of sporting sanctions on both the Player and the Mexican club.

22. In his final replica, the Player contested that the payment receipts produced by the Club in the amount of EUR 175,000 corresponded to payments made before the signature of the Agreement and were related to amounts which were not in dispute; that, moreover, the payment of the salary for the month of May 2014 was not included in his claim and that no amicable settlement was concluded because the offer by the Club was not satisfactory. The Player further

explained that with regard to the proportionality of the debt, contrary to the Club's allegation, it amounted to *"6.28 monthly salaries"* and that, as of the conclusion of the Agreement he only received payment in the amount of EUR 17,500 instead of EUR 145,000 which were actually due.

23. On 13 August 2015, the FIFA DRC rendered the Appealed Decision by which the Player's claim was partially upheld and the Club was ordered to pay to the Player the total amount of EUR 110,000 as outstanding remuneration, plus 5% interest per annum as of 23 May 2014 until the date of effective payment, and the amount of EUR 550,000 as compensation for breach of contract, plus interest at the rate of 5% per annum as of 9 September 2014 until the date of effective payment. Any other claim by the Player and the Club was rejected.

24. The grounds of the Appealed Decision were served by fax to the Parties on 10 December 2015.

V. SUMMARY OF THE APPEALED DECISION

25. The grounds of the Appealed Decision can be summarized as follows:

- Taking into account the claim lodged by the Player and the counterclaim submitted by the Club, the FIFA DRC considered that the underlying issue in the present matter was to determine whether the Employment Contract had been unilaterally terminated with or without just cause by the Player and which party was responsible for the early termination and shall be subject to the relevant consequences.
- In this respect, the Chamber pointed out that it is undisputed that at the moment of the termination of the Employment Contract, *i.e.* on 23 May 2014, the Club had failed to pay to the Player the total amount of EUR 110,000 which included the debt instalments due on 20 March, 20 April and 20 May 2014 (of EUR 25,000 each) together with the monthly salaries of March and April 2014 (of EUR 17,500 each).
- The Chamber further underlined that by submitting its position in the FIFA proceedings, the Club did not invoke any reason that could possibly have justified the non-compliance with its financial obligations with respect of the abovementioned amounts but limited itself to argue that the Player had no just cause to terminate the Employment Contract since the delay in payment was not of such importance as to justify the unilateral termination, *a fortiori* if compared with the payment already made by the Club: *"none of the amounts have been passed over 2 months, which can be accepted as justified delay and are not substantial compared to payments [the Club] has made to the player before"*.
- On the contrary, it emerged from the documents in the file that the Club had already been in delay of payment over the duration of the Employment Contract, as it is demonstrated by the fact that the signing of the Agreement actually derived from a previous debt of the Club towards the Player for the season 2013/2014.
- In fact, at the moment of the termination of the Employment Contract, the Club had seriously neglected its contractual obligation towards the Player in a continuous manner; it had only made one payment of EUR 17,500 against an outstanding debt of EUR

127,500; it had already been put in default twice and also failed to fulfil its promise of payment contained in its letter of 7 April 2014.

- In consideration of such serious default, the Chamber considered that, at the moment of termination, the Player had no reason to believe that the Club would comply with the rest of its obligations and that *"his loss of confidence towards the club respecting its future duties under the contract was therefore justified"*.
- In conclusion, the FIFA DRC decided that the Player had just cause to terminate the Employment Contract on 23 May 2014 and that the Club should be held liable of the relevant consequences in term of outstanding payments (plus interest at the rate of 5% *p.a.*) as well as compensation for breach of contract according to the FIFA Regulations.
- In this respect, and with regard to the calculation of the above-mentioned compensation for breach of contract, the FIFA DRC, having established that the Employment Contract did not provide any compensation clause, decided that the amount of compensation payable to the Player has to be assessed in application of the other criteria set forth under article 17 of the FIFA Regulations and, in particular, with regard to the remuneration due to the Player according to the Employment Contract and the Agreement, along with the professional situation of the Player after the termination of the Employment Contract.
- Consequently, the Chamber concluded that the remaining value of both the Employment Contract and the Agreement as from the early termination until their regular expiry, amounting to EUR 717,500 (resulting from the sum of EUR 17,500 as salary of May 2014, EUR 200,000 as per the payments due in June 2014 and June 2015, EUR 250,000 for the season 2014/2015 and EUR 250,000 for the season 2015/2016) shall serve as the basis for the relevant calculation.
- The Chamber mitigated the starting amount of EUR 717,500 of the alternative salaries earned by the Player with the Mexican club Monarcas Morelia after the termination of the Employment Contract, amounting to USD 105,000 in accordance with FIFA's constant practice with regard to the application of article 17 of the FIFA Regulations and the Player's general obligation to mitigate his damages.
- In addition to the above, and *"in the context of the player's obligation to mitigate his damages the members of the Chamber observed that whereas the player's contract with Caycur [the Club] would have run until May 2016, his new contract with Monarcas Morelia ended in June 2015. Consequently, the Chamber underlined that the player will have two complete registration periods in order to further mitigate his damages"*.
- In view of the above mentioned considerations, the FIFA DRC deemed that the resulting amount should be further mitigated and therefore established that the amount of EUR 550,000 was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

VI. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 31 December 2015, the Club filed a statement of appeal before the Court of Arbitration for Sport (the "CAS") against the Player and FIFA with respect to the Appealed Decision in accordance with articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2013 (the "CAS Code"). In its statement of appeal, the Appellant nominated Dr Michael Gerlinger as arbitrator and chose English as the language of the present arbitration.

27. On 9 January 2016, the Appellant filed its appeal brief. Together with its appeal brief, the Club also applied for the stay of the execution of the Appealed Decision pursuant to article R37 of the CAS Code.

28. By fax letter dated 11 January 2016, the Player informed the CAS Court Office that he agreed with the Appellant's choice of language.

29. On 15 January 2016, FIFA requested to the CAS Court Office that the time limit to file its answer be fixed after the payment by the Appellant of its share of the advance of costs, pursuant to article R55 para. 3 of the CAS Code.

30. Following the First Respondent's letter on 21 January 2016 whereby the Player nominated Mr Hernán Jorge Ferrari as arbitrator in the present proceedings, FIFA was granted a deadline until 27 January 2016 to inform the CAS Court Office whether it agreed with the said nomination, in accordance with article R41.1 para. 2 of the CAS Code, advising that the Second Respondent's silence shall be deemed as an agreement.

31. On 25 January 2016, the Appellant submitted to the CAS Court Office copies of the *"bank receipts regarding payments that were made to the football player"* as previously announced in its appeal brief.

32. By fax letter dated 1 February 2016, the CAS Court Office informed the Parties that the nomination of Mr Hernán Jorge Ferrari as arbitrator for the Respondents had been confirmed, in the absence of response from the Second Respondent.

33. On 2 February 2016, the First Respondent requested that his time limit to file his answer be fixed after the payment by the Appellant of its share of the advance of costs in accordance with article R55 para. 3 of the CAS Code.

34. On 21 and 22 March 2016, respectively, the First Respondent and the Second Respondent filed their answer in accordance with article R55 para. 1 of the CAS Code.

35. By fax letter dated 29 March 2016, the CAS Court Office invited the Parties to inform the CAS whether they preferred for a hearing to be held in the present arbitration proceedings or for the Panel to issue an award solely based on the Parties' written submissions.

36. By fax letter dated 31 March 2016, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

President:	Mr Fabio Iudica, Attorney-at-law in Milan, Italy
Arbitrators:	Dr Michael Gerlinger, Director Legal Affairs FC Bayern München AG, Munich, Germany
	Mr Hernan Jorge Ferrari, Attorney-at law in Buenos Aires, Argentina.

37. On 4 and 5 April 2016, respectively, both Respondents informed the CAS Court Office that they did not consider a hearing to be necessary in the present arbitration proceedings.

38. By fax letter dated 10 May 2016, the CAS Court Office reminded the Appellant that, with regard to its request for the stay of the Appealed Decision, according to long standing CAS jurisprudence, a decision of financial nature issued by a private Swiss association, as is the Appealed Decision, is not enforceable while under appeal and it may not, therefore, be stayed and an application in that respect would in principle be dismissed with the Appellant having to bear the consequential arbitration costs. In this context, the Appellant was invited to inform the CAS Court Office whether it wished to maintain or withdraw its application for stay. Moreover, the Appellant was invited to inform the CAS Court Office, within the same time limit, of its position with regard to the possibility that a hearing be held in the present matter.

39. On 20 May 2016, in the absence of any communication by the Appellant with respect to the decision to withdraw the application for stay, the CAS Court Office informed the Parties that the Appellant's application shall be deemed maintained and invited the Respondents to file their position with respect to such request for a stay.

40. The Appellant also failed to express its position with regard to the hearing within the prescribed time limit.

41. On 24 June 2016, the Panel rendered an Order on Request for a stay of the Appealed Decision denying the Appellant's application.

42. By fax letter dated 14 July 2016, the CAS Court Office informed the Parties that the Panel considered itself to be sufficiently well informed to decide this matter without the need to hold a hearing.

43. On 22 July 2016, the CAS Court Office forwarded the Order of Procedure to the Parties.

44. The Order of Procedure was returned to the CAS Court Office duly signed by the First Respondent on 25 July 2016, and by the Second Respondent on 29 July 2016.

45. By fax letter on 3 August 2016, the CAS Court Office granted the Appellant a new deadline until 8 August 2016 to return the Order of Procedure duly signed.

46. Despite the aforementioned reminder, the Appellant failed to sign and return the Order of Procedure within the given time limit.

47. With the filing of the appeal by the Appellant and with the signature of the Order of Procedure by the Respondents, the Parties confirmed the jurisdiction of the CAS over the present dispute and that their right to be heard and to be treated equally has been respected.

VII. SUBMISSIONS OF THE PARTIES

48. The following outline is a summary of the main positions of the Appellant and the Respondents which the Panel considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Appellant and the Respondents, even if no explicit reference has been made in what follows. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

49. The Appellant made a number of submissions in its statement of appeal and in its appeal brief which can be summarized as follows.

50. The Club basically recognizes its debts towards the Player deriving from the Employment Contract and from the Agreement.

51. What the Appellant objects is that the Player acted in bad faith as he terminated the Employment Contract notwithstanding the Club's letter of reply of 7 April 2014 informing that the Appellant was trying to solve its cash flow deficiency and was planning to pay the outstanding amount within one month.

52. According to the Club, the Player was not really interested in recovering his outstanding salaries, but rather to terminate the Employment Contract without being subject to any sanction and therefore the Club's default in payment was allegedly an illegitimate pretext and not a just cause for termination.

53. In addition, the Club maintains that the FIFA DRC erroneously failed to consider that the outstanding amounts claimed by the Player (EUR 25,000 and EUR 17,500) were insignificant in comparison with the residual value of the Employment Contract and that these sums were only 2 months overdue at the time of the termination of the Employment Contract which must be considered as a reasonable delay.

54. With regard to the compensation established in the Appealed Decision and to the relevant deductions, the Club argues that the amount of USD 105,000 corresponding to the Player's receivables under the employment contract signed with the Mexican club Monarcas Morelia, is excessively low with respect to the Player's age and professional position and it is therefore extremely unlikely that the Player could accept such financial condition after the termination of the Employment Contract.

55. In this context, the Club alleges that the Player may have signed two different contracts with the Mexican club or that the agreement which has been disclosed is simulated.

56. As a consequence, the Appellant contends that the compensation for breach in the amount of EUR 550,000 as established by the FIFA DRC is excessive and unreasonable and shall be further decreased.

57. In this regard, the Club also underlines that, on 11 September 2015, the Player apparently signed a new contract with the Slovenian club Spartak Trnava and therefore the compensation for breach shall be also deducted with the relevant salaries payable to the Player under the employment contract with the above mentioned club.

58. In its appeal brief, the Appellant submitted the following requests for relief:

"We request stay of execution and annulment of the decision given by FIFA DRC with the ref. no; 14.01410;

We also request the court to order for compensation and sportive sanction against the football player on the grounds of his unjust termination of the agreement".

B. The First Respondent's Submissions and Requests for Relief

59. The position of the First Respondent is set forth in his *"Statement of Defense"* and can be summarized as follows.

60. The Player contests the Club's alleged good faith which, according to the Appellant's argument, would be demonstrated by the content of its letter of reply to the Player on 7 April 2014 whereby the Club committed to arrange the payment of the overdue amounts within the following month.

61. On the contrary, notwithstanding the Club's assurance, the Player did not receive any payment within the following month or afterwards, which fact proves that the relevant communication was only an attempt to justify the Club's default and to try do postpone the financial obligations assumed towards the Player under the Agreement.

62. Conversely, it is undeniable that the Player acted in good faith, as it is demonstrated by the fact that the he claimed his outstanding salaries, by warning the Club twice and granting a deadline for the relevant payment before deciding to terminate the Employment Contract, which is in contrast with the Club's allegations that the Player's aim was not to recover his salaries, but to find a pretext for termination.

63. Moreover it is to say that the Club never responded to the Player's ultimate default notice on 28 April 2014 and, in any case, the Player waited until 23 May 2014 to terminate the Employment Contract despite the shorter deadline initially granted for the payment of the overdue amounts.

64. The Player also argues that from the signing of the Agreement (18 February 2014) to the date of termination, he should have received the amount of EUR 145,000 while the Club only paid his salary for the month of February 2014 amounting to EUR 17,500.

65. In such a context, it is not conceivable to impute bad faith to the Player's behaviour as well as it is undoubted that the Player terminated the Employment Contract with just cause.

66. With regard to the weight of the Club's failure to comply with its financial obligations, it is important to stress that at the time of the termination of the Employment Contract, the debt amounted to EUR 110,000 and not to EUR 42,500 as contended by the Club.

67. As to the worse financial conditions under the employment contract signed with the club Monarcas Morelia, the Player maintains that a player who early terminates his contract with a club faces great difficulty in finding a new club, due to the provision of article 17 para. 2 of the FIFA Regulations (especially when the termination occurs during the protected period, as is the present case) and, moreover, the course of the events showed that the Player was not highly valued in the market at that time.

68. With reference to the Club's request that the amount of compensation be further reduced with all the other salaries due to the Player up to the natural expiration of the Employment Contract, the Player emphasizes the following. The FIFA DRC, besides considering the salaries received by the Player under the employment contract with Monarcas Morelia, also deducted a further lump sum (approximately EUR 85,000) corresponding to the income the Player would be supposed to receive, by way of presumption, in the period from the termination of the contract with the Mexican club and 31 May 2016 (*i.e.* the natural expiration of the Employment Contract).

69. Since the Player's salaries under the contract with the Slovenian club amounted to EUR 31,500, it results that the estimated amount deducted by the FIFA DRC is even higher than the actual income and therefore the Club's argument with respect to the Player's duty of mitigation shall be rejected.

70. With regard to the evidence submitted by the Appellant, the Player objects to the admissibility of the Club's submissions after the time limit to file its appeal brief (*i.e.* after 11 January 2016).

71. In his "Statement of Defense", The First Respondent submitted the following requests for relief:

"a. To reject the appeal raised and confirm the decision appealed in full.

b. The Appellant shall pay the costs of the present arbitration.

c. The Appellant shall pay the legal fees and other expenses incurred by the First Respondent in connection with the present arbitration procedure".

C. The Second Respondent's Submissions and Requests for Relief

72. The position of FIFA is set forth in its Answer and is the following.

73. As a preliminary issue, FIFA objects to the admissibility of the bank receipts submitted by the Appellant on 25 January 2016, *i.e.* after the deadline for the filing of the Appellant's appeal brief, pursuant to article R56 para. 1 of the CAS Code. The unauthorized late submission would in fact improperly extend the time limit of the Appellant to file its appeal brief as these documents form an integral part of it; and, in any case, the Appellant failed to give any reason why it was not able to present the relevant bank receipts on due time, besides the fact that the documents were not submitted in the English language, in contrast with the content of article R29 of the CAS Code.

74. With regard to the merits of the case, FIFA first emphasizes that the Club's failure to pay to the Player his salaries for March and April 2014 as well as the instalments due on 20 March, 20 April and 20 May 2014 in accordance with the Agreement for a total amount of EUR 110,000, has remained undisputed by the Appellant.

75. The Club is responsible of a severe breach of contract which has been repeated over time, thus creating the basis for termination with just cause of the Employment Contract, in accordance with article 14 of the FIFA Regulations, since when the employer fails to meet its main obligation of payment, and the failure repeatedly occurs, the employee can no longer be expected to continue to be bound by the contract in the future, due to the loss of confidence in the continuation of the employment relationship, as is the present case.

76. With regard to the Appellant's allegation that the delay in payment was "reasonable" since the amounts were only two months overdue at the time of termination, FIFA objects that besides the outstanding salaries of March and April 2014, three of the five outstanding payments, totalling EUR 75,000 corresponded to an acknowledged previous debt already rescheduled by the Parties.

77. Moreover, the Player put the Club in default twice before terminating the Employment Contract; the Club failed to comply with the promise of payment put forward in its letter on 7 April 2014 and indeed, between the date of the Appellant's letter and the day of termination, almost 2 months passed by with the Appellant making only one payment of EUR 17,500 out of the total amount due.

78. As a consequence, it is undoubted that the Player's loss of confidence towards the Appellant respecting its future contractual obligations was absolutely warranted and that, therefore, the Player had just cause for termination, despite any argument of the Club to the contrary.

79. With reference to the calculation of the compensation for breach of contract, and with respect to the Appellant's contention that the relevant amount should be further mitigated of the sums payable to the Player under the employment contract with the club Spartak Trnava, FIFA contests that the Club failed to include an explicit and corresponding request for relief in its

appeal brief and, therefore, the compensation granted by the FIFA DRC cannot be amended by the Panel in view of the boundary of its power to review.

80. As regards the Appellant's request for compensation and sporting sanction to be imposed on the Player, it is inadmissible as it is completely unspecified and, as such, could also entail a potential violation of the Respondents' right of defence.

81. In its Answer, the Second Respondent submitted the following requests for relief:

"In conclusion of all of the above, we request that the CAS rejects the present appeal and confirms the decision passed by the Dispute Resolution Chamber on 13 August 2015 in its entirety;

Finally, we ask that the CAS orders the Appellant to bear all costs incurred with the present procedure, and to cover all legal expenses of FIFA related to the proceedings at hand".

VIII. CAS JURISDICTION

82. The Appellant implicitly relies on article R47 of the CAS Code and on article 67 para. 1 of the FIFA Statutes as conferring jurisdiction to the CAS.

83. Article R47 of the CAS Code, reads as follows: *"An Appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

84. The jurisdiction of the CAS is not disputed by the Respondents.

85. Moreover, the signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed. Accordingly, the Panel is satisfied that it has jurisdiction to hear the present case.

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

IX. ADMISSIBILITY OF THE APPEAL

87. Article R49 of the CAS Code provides as follows: *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".*

88. More specifically, the Panel notes that article 67 para. 1 of the FIFA Statutes determines as follows: *"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".

89. The Panel notes that the FIFA DRC rendered the Appealed Decision on 13 August 2015 and that the grounds of the Appealed Decision were notified to the Parties on 10 December 2015. Considering that the Appellant filed its statement of appeal on 31 December 2015, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was filed timely and is therefore admissible.

X. APPLICABLE LAW

90. 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".

91. Article 66 para. 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".

92. The Panel observes that according to consistent CAS case law *"by accepting the jurisdiction of the CAS as established in the FIFA statutes, the parties accept that, pursuant to the above quoted Articles R58 of the CAS Code and 66 para. 2 of FIFA Statutes, CAS panels decide the dispute in accordance with the rules and regulations of FIFA, with additional application of Swiss law on a subsidiary basis"* (see CAS 2014/A/3690).

93. In its statement of appeal, the Appellant refers to Swiss law as the applicable law in the present proceedings.

94. The *"Statement of defense"* of the First Respondent does not contain any specific indication on this point.

95. In consideration of the above and pursuant to Article R58 of the CAS Code, the Panel holds that the present dispute shall be decided according to FIFA Regulations as a first choice, with Swiss law applying subsidiarily.

96. With regard to the applicability *ratione temporis* of the relevant FIFA Regulations, the Panel holds that the present case is governed by 2014 edition, given that the Player lodged his claim with FIFA on 9 September 2014.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

97. Before addressing the merits of the present case, the Panel preliminarily notes that both the First and Second Respondent object to the admissibility of the documents (*"bank receipts regarding payment that were made to the football player"*) filed by the Appellant on 25 January 2016, *i.e.* after the time limit for the filing of the appeal brief.

98. With this respect, the Panel observes that, as a general rule, according to article R56 of the CAS Code, *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer"*.

99. Having considered the above, consistent with the CAS jurisprudence in the case CAS 2011/A/2681, the Panel believes that the documents at stake only confirmed arguments already put forward by the Appellant in its appeal brief and do not introduce any different submission which could possibly harm the Respondents' right to defence and moreover they were announced by the Appellant in its appeal brief and therefore the Respondents could not have been surprised by the "new" disclosure.

100. Although the relevant documents are therefore formally admissible, the Panel considers that, with the exception of one of them, all the bank receipts produced by the Club correspond to payments made before the signature of the Agreement and are related to amounts which are not in dispute or, with regard to the payment made on 7 May 2014, to amounts which are not even included in the Player's claim.

101. Therefore, as to the substance of the relevant documents filing, the Panel considers that they are absolutely irrelevant for the purpose of deciding the present matter.

102. With regard to the merits of the present dispute, first of all, the Panel observes that it is undisputed between the Parties that the Employment Contract was unilaterally terminated by the Player on 23 May 2014, and that at the time of the termination, the Club had failed to pay to the Player a certain amount corresponding to the Player's overdue salaries.

103. What is disputed in the present case, is whether the Player had or not just cause to terminate the Employment Contract.

104. In fact, the Appellant maintains that its failure to make the relevant payments to the Player was not of such weight to justify the termination of the employment relationship. In this respect, the Club avers that the actual debt at the time of termination only amounted to EUR 42,500, which is insignificant in comparison with the residual value of the Employment Contract and that these sums were only 2 months overdue, which must be considered as a reasonable delay.

105. The Appellant's argument is totally inconsistent with the facts of the case and must be rejected.

106. According to the Employment Contract and to the Agreement, it is unquestionable that the sums payable to the Player on the date of termination (*i.e.* 23 May 2014) amounted to EUR

110,000 corresponding to the salaries of March and April 2014 (EUR 17,500 x 2) as well as to three instalments due on 20 March 2014, 20 April 2014 and 20 May 2014 (EUR 25,000 x 3) pursuant to the Agreement.

107. Moreover, the Panel emphasizes that, at the moment of the signing of the Agreement (18 February 2014), the Club expressly acknowledged a previous debt towards the Player for outstanding salaries in the amount of EUR 75,000 for the season 2013-2014, which fact is in contrast with the Appellant's allegation that the amounts were only two months overdue.

108. In addition, the Panel further notes that the Player sent to the Club two (2) letters of formal notice respectively on 3 and 28 April 2014 before deciding to terminate the Employment Contract and that the Club completely failed to reply to the second warning when it had already failed to comply with the promise of payment put forward in its reply letter on 7 April 2014.

109. In order to establish whether the Player had just cause to terminate the Employment Contract, the Panel considers that the Commentary to the FIFA Regulations provides guidance as to when an employment contract is terminated with just cause:

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

111. In this regard, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following in this respect:

112. *"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered*

to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495).

113. *The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)"* (CAS 2006/A/1180, para. 25-26 of the abstract published on the CAS website).

114. In consideration of the above, the Panel shares the opinion of the FIFA DRC in the Appealed Decision that the Player terminated the Contract with just cause on 23 May 2014, in accordance with Article 14 of the FIFA Regulations.

115. In this regard, the Club's failure to pay the Player's salaries in the amount of EUR 110,000, together with the Club's failure to comply with the promise of payment put forward in its letter on 7 April 2014, along with the failure to reply to the Player's reminder letter on 28 April 2014 as well as the fact that the Club was already in default at the time when the Agreement was signed, is a clear indication that the breach had reached such a level of seriousness that the Player could not trust in the fulfilment by the Club of its financial obligations and expect a continuation of the employment relationship with the Club and therefore that he was entitled to unilaterally terminate the Employment Contract.

116. Having established that the Player had just cause to terminate the Employment Contract due to the Club's failure to comply with its financial obligations, as correctly decided by the FIFA DRC, the Panel is satisfied that the present case falls under the application of article 17 para. 1 of the FIFA Regulations which provides for financial compensation in favour of the injured party.

117. In fact, according to the well-known FIFA doctrine and consistent CAS jurisprudence, in case of termination of an employment contract with just cause, the other party which has given rise

to premature termination, is liable to pay compensation for damages suffered by the injured party (see Commentary under article 14 FIFA Regulations; CAS 2008/A/1447).

118. With regard to the Appellant's contention that the amount of compensation granted by the FIFA DRC shall be further deducted with the alternative salaries payable to the Player under the employment contract with the club Spartak Trnava, the Panel observes that the Club failed to submit a specific request for relief in that sense.

119. In fact the Appellant merely requested that the CAS annul the Appealed Decision.

120. In this context, the Panel observes that, without prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita*.

121. As a consequence, and irrespective of the merits of the Appellant's argument on the relevant point, the Panel has no power to amend the amount of compensation granted by the Appealed Decision.

122. For the sake of accuracy, and without going into the merits of the matter, the Panel merely observes that, in any case, the deductions applied by the FIFA DRC in the Appealed Decision are indeed inclusive of the amount of salaries payable to the Player under the employment contract with the club Spartak Trnava.

123. In consideration of the final findings above, the Panel shall not address any other issue and all other motions or prayers for relief are dismissed.

124. In view of all the foregoing, the Panel has reached the conclusion that the appeal filed by the Club shall be entirely rejected and the Appealed Decision shall be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 31 December 2015 by Rizespor Futbol Yatirimlari AS against the decision rendered by the FIFA Dispute Resolution Chamber on 13 August 2015 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 13 August 2015 is confirmed.

3. (…).

4. (…).

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