Arbitrations CAS 2016/A/4623 & 4624 Joshua Simpson & BSC Young Boys v. Manisaspor, award of 15 March 2017

Panel: Mr Fabio Iudica (Italy), President; Mr Patrick Lafranchi (Switzerland); Mr Pieter Kalbfleisch (The Netherlands)

Football
Termination of an employment contract with just cause by the player
Inadmissibility of a counterclaim under CAS Code
Non-payment or late payment of remuneration
Compensation for damages and duty to mitigate

1. **From the amendment of January 2010 of Article R55 of the CAS Code, it is no longer possible to file a counterclaim within an appeal procedure to challenge a decision. Thus the only way to do it is through an independent appeal to be filed in due time. In this respect, a petition filed by the respondent in its answer to increase the compensation amount awarded by FIFA, while the respondent did not appeal the appealed decision, clearly exceeds the content that an answer to an appeal should have pursuant to Article R55 of the CAS Code. Therefore it does not fall within the panel's power to review and thus is to be declared inadmissible.**

2. **The non-payment or late payment of remuneration by an employer does in principle and particularly if repeated constitute "just cause" for termination of the contract. In this regard, a club's failure to pay the player's salaries in a substantial amount, together with the failure to reply to the player's letters of formal notice is a clear indication that the breach has reached such a level of seriousness that the player cannot expect a continuation of the employment relationship. Furthermore, the payments made by the club to the player corresponding to collective bonuses cannot be made against contractual remuneration.**

3. **A club in breach of its financial obligation shall pay the player the outstanding remuneration owed at the time of the termination of the contract. To determine the definitive amount of the compensation, a CAS panel should take into consideration the remuneration and other benefits due under the new contract entered into by the player, as it mitigates the damages suffered for the club's breach of contract.**

I. PARTIES

1. Mr. Joshua Christopher Simpson (hereinafter the "Player" or the "First Appellant") is a retired Canadian professional football player born on 15 May 1983.

2. BSC Young Boys Betriebs AG (hereinafter "YB" or the "Second Appellant") (hereinafter also jointly with the First Appellant referred to as the "Appellants".) is a Swiss football club with its registered office in Bern. It is a member of the *Association Suisse de Football* ("ASF"), which in turn is affiliated to the *Fédération Internationale de Football Association* (hereinafter "FIFA").

3. Manisaspor Kulübü Derneği (hereinafter "Manisaspor" or the "Respondent") is a Turkish Football Club with its registered office in Manisa. It is a member of the *Türkiye Futbol Federasyonu* ("TFF"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

5. On 1 July 2009, Manisaspor and the Player entered into an employment contract (hereinafter the "First Contract") valid as from 1 July 2009 until 31 May 2010, with an extension option for the 2010/2011 season in favour of the club. In its most relevant parts the First Contract reads as follows:

> *"[…]*
>
> ***Article 3. Duration of the Contract:***
>
> *The present contract shall be effective as of 01.07.2009 and terminate on 31.05.2010.*
>
> *The Club has, unilaterally, the right to extend the contract for an optional second season namely for 2010-2011. If the Club notifies the player in writing until 31.December.2009 that the Club wants to extend the present contract, the amount to be paid to the player for 2010-2011 shall be as stated below.*

Article 4. Liabilities:

[…]

4.2 Liabilities of the Club

A – Financial Liabilities

1. *Total amount of payments to be made by the CLUB to the PLAYER for 2009-2010 season is* ***325.000 (three hundred twenty five thousand)*** *Euro and shall be paid as follows:*
   a) *The PLAYER shall be paid a Transfer fee of* ***75.000.-EUR (seventy five thousand)*** *as an advance payment on 30.07.2009*
   b) *An amount of* ***150.000.-EUR (one hundred fifty thousand)*** *shall be paid in ten monthly instalments of equal amounts, namely 15.000.-EUR (fifteen thousand) each month between 05.08.2009 – 05.05.2010.*
   c) *During the period of 34 matches, the PLAYER shall be paid a total amount of* ***100.000-EUR (One hundred thousand),*** *namely 2.941.- EURO (Two thousand nine hundred and forty one) /per match.*
2. *Total amount of payments to be made by the CLUB to the PLAYER for 2010-2011 season is* ***400.000 (four hundred thousand) Euro****. Payments related to 2010-2011 season shall be valid if the option right is used.*
   a) *The PLAYER shall be paid a Transfer fee of* ***100.000.-EUR (one hundred thousand****) as an advance payment on 30.07.2010.*
   b) *An amount of* ***175.000.-EUR (one hundred seventy five thousand)*** *shall be paid in ten monthly instalments of equal amounts, namely 17.500.-EUR (seventy thousand five hundred) each month between 05.08.2010 – 05.05.2011.*
   c) *During the period of 34 matches, the PLAYER shall be paid a total amount of* ***125.000-EUR (One hundred twenty five thousand),*** *namely 3.676.-EURO (Three thousand six hundred seventy six) /per match.*

1) *The amount to be paid per match shall be 100% if the payer plays in the first eleven, 75% if he joins the game when it is in progress and 50% if he is in the first 18 but does not participate in the game. Such match payments shall be paid by the end of the season at the latest. Match payments are made only for league matches.*

2) *All the payments stated herein are NET amounts. Taxes shall be paid by the Club.*

B – Other Liabilities

1) *The CLUB will provide to the Player a mid class house and a car during the term the contract is valid.*

[…]".

6. On 22 February 2011, Manisaspor and the Player signed a new employment contract (hereinafter the "Second Contract") valid as from 1 June 2011 until 31 May 2014. In its most relevant parts the Second Contract reads as follows:

"[…]

Article 3. Duration of the Contract:

The present contract is valid for 3 years, from 01.06.2011 to 31.05.2014

Article.4. Liabilities:

[…]

4.2 Liabilities of the Club:

A – Financial Liabilities

1) *Total amount of payments to be made by the CLUB to the PLAYER for* ***2011-2012*** *season is* ***EUR 675.000*** *and the said amount shall be paid as follows*

   a) *The PLAYER shall be paid* ***EUR 300.000*** *as an advance transfer payment on 30.08.2011.*

   b) ***EUR 375.000*** *shall be paid in 10 monthly instalments of equal amounts, namely* ***EUR 37.500*** *each month between 05.09.2011 – 05.06.2012.*

   c) *The Player shall be paid an extra* ***EUR 25.000*** *for each set of 12 goals he scores in super league matches during 2011-2012 season. If the Player gets entitled to it, payment shall be made on 01.09.2012.*

   d) *If the Club participates in the UEFA Cup at the end of 2011-2012 season, the player shall receive* ***EUR 100.000*** *extra payment. If the Player gets entitled to it, payment shall be made on 01.09.2012.*

2) *Total amount of payments to be made by the CLUB to the PLAYER for* ***2012-2013*** *season is* ***EUR 700.000*** *and the said amount shall be paid as follows*

   a) *The PLAYER shall be paid* ***EUR 325.000*** *as an advance transfer payment on 30.08.2012.*

   b) ***EUR 375.000*** *shall be paid in 10 monthly instalments of equal amounts, namely* ***EUR 37.500*** *each month between 05.09.2012 – 05.06.2013.*

   c) *The Player shall be paid an extra* ***EUR 25.000*** *for each set of 12 goals he scores in super league matches during 2012-2013 season. If the Player gets entitled to it, payment shall be made on 01.09.2013.*

   d) *If the Club participates in the UEFA Cup at the end of 2012-2013 season, the player shall receive* ***EUR 100.000*** *extra payment. If the Player gets entitled to it, payment shall be made on 01.09.2013.*

3) *Total amount of payments to be made by the CLUB to the PLAYER for* ***2013-2014*** *season is* ***EUR 725.000*** *and the said amount shall be paid as follows*

   a) *The PLAYER shall be paid* ***EUR 350.000*** *as an advance transfer payment on 30.08.2013.*

b) ***EUR 375.000*** *shall be paid in 10 monthly instalments of equal amounts, namely* ***EUR 37.500*** *each month between 05.09.2013 – 05.06.2014.*

c) *The Player shall be paid an extra* ***EUR 25.000*** *for each set of 12 goals he scores in super league matches during 2013-2014 season. If the Player gets entitled to it, payment shall be made on 01.09.2014.*

d) *If the Club participates in the UEFA Cup at the end of 2013-2014 season, the player shall receive* ***EUR 100.000*** *extra payment. If the Player gets entitled to it, payment shall be made on 01.09.2014.*

4) *Moreover, the Player shall be paid an extra* ***EUR 75.000*** *in addition to the amounts he will receive in 2010-2011 season. The said* ***EUR 75.000*** *shall be paid in three instalments of EUR 25.000 each on March 1st, May 1st and July 1st, 2011.*

5) *The player has a fixed transfer fee of EUR 2.500.000. If the Player is sold within transfer registration periods at a minimum price of EUR 2.500.000, EUR 500.000 of the said price shall be paid to JOSHUA CHRISTOPHER SIMPSON.*
If the Player is sold at a price which is above EUR 2.500.000, 30% of the amount above EUR 2.500.000 shall be paid to the player. In such a case, the 30% to be paid to the player is in addition to EUR 500.000 stated in the previous sentence.

6) *All the payments stated herein are NET amounts. All taxes will be paid by the Club. […]".*

7. On 19 July 2011, the Player's counsel at that time (Mr. Andreas Kirsch) sent a letter to Manisaspor stating, *inter alia,* the following:

"[…]

As you know, we are looking after the legal interest of your player, Mr. Joshua Simpson, born 15.05.1983.

The following payments from your club are still outstanding:

2009/2010 SEASON

1 appearance bonus for final match of the season (100,000/34=2.941,17 EURO)

2010/2011 SEASON

75.000,00 EURO Signing Bonus

103.311,81 EURO (Salary)

4.000,00 TL (IBB Draw Bonus)

*14.400,00 TL (RENT 1,200 TL *12 months)*

Please pay until ***Friday, 29.07.2011*** *the total amount of* ***181.252,98 Euro plus 18.400,00 TL*** *to the account of our client.*

[…]".

8. On 1 August 2011, the Player's counsel addressed another letter to Manisaspor requesting the payment of the above-mentioned outstanding amounts plus EUR 300,000 related to the 2011/2012 season as follows:

"[...]

The reasons of our letter today are the following outstanding payments:

2009/2010 SEASON

1 appearance bonus for final match of the season (100,000/34=2.941, 17 EURO)

2010/2011 SEASON

75.000,00 EURO Signing Bonus

103.311,81 EURO (Salary)

4.000,00 TL (IBB Draw Bonus)

*14.400,00 TL (RENT 1,200 TL *12 months)*

2011/2012 SEASON

From today on 300.000,00 EURO

You promised several times to pay the outstanding amounts for the season 2009/2010 and 2010/2011 by Friday, 29. July 2011.

We must inform you that the total amount of

481.252,98 Euro plus 18.400,00 TL

is no longer acceptable.

Please pay the total amount by Wednesday, ***03.08.2011****, to the account of our client.*

If you miss the deadline we have to inform the Turkish federation, the Turkish league and the FIFA about the outstanding payments of your club to our client. […]".

9. On 3 August 2011, the Player's counsel sent a letter to Manisaspor extending the deadline for the above-mentioned payment until 4 August 2011, underlining in this regard that *"[…] Mr Simpson has not been paid his salary now for* ***over 3 months*** *and we are strictly advised that Mr Simpson can now* ***terminate his contract*** *regarding FIFA regulations on the status and transfer of players"* and indicating that *"If he does not receive the total payment until Thursday, 04.08.2011 at midnight, Mr Simpson will terminate his contract with immediate effect and will present this case to the Dispute Resolution Chamber of FIFA to get compensation. […]".*

III. PROCEEDINGS BEFORE FIFA'S DISPUTE RESOLUTION CHAMBER

10. On 15 August 2011, the Player filed a claim against Manisaspor before the Dispute Resolution Chamber of FIFA (hereinafter "DRC of FIFA") claiming the payment of outstanding remunerations in the amount of EUR 178,303.80 and TRY 18,400. Notwithstanding this, after having filed his claim before the DRC of FIFA, the Player kept playing for the Respondent.

11. On 21 September 2011, the Player amended his claim before the DRC of FIFA and requested a further amount of EUR 300,000.00 as an advance transfer payment which became due on 30 August 2011. Therefore, after the aforesaid amendment, the outstanding remuneration claimed by the Player before the DRC of FIFA amounted to EUR 478,308.80 and TRY 18,400.00.

12. On 12 January 2012, the Player's counsel sent a letter to Manisaspor requesting the payment of EUR 346,808.80 stating *inter alia* that *"If he does not receive the total payment by Monday, 16 January 2012, 12:00 pm (noon), Mr. Simpson will be terminating his contract (Art. 14 FIFA Regulations On The Status And Transfer of Players FIFA/TS) with immediate effect"*.

13. On 16 January 2012, the Player's counsel sent another letter to Manisaspor indicating that *"[…] Our client received a total payment of 266.809,00 € per today. We therefore state, that you are still in default with the payments owed to our client"*. In this same letter the Player's counsel also warned Manisaspor that *"Our client reserves his right to terminate his employment contract effective immediately. Please note that our client does not waive that right by fulfilling his contractual obligations"*.

14. On 17 January 2012, the Player sent a letter by courier and by fax to Manisaspor by virtue of which he terminated the Second Contract on the basis of *"[…]consistently late and missing payments"*.

15. On 18 January 2012, Manisaspor filed its answer to the Player's claim and additionally lodged a counterclaim before the DRC of FIFA against him for breach of contract and requesting: (i) to be awarded EUR 2,000,000.00 as compensation for breach of contract; (ii) to declare that the Player's new club, YB, was jointly liable for the payment of the aforesaid compensation and (iii) to impose a sporting sanction on the Player.

16. On 19 January 2012, the Player concluded a new employment contract with YB, valid as from 19 January 2012 until 30 June 2015, and according to which YB guaranteed the Player a yearly minimum income of CHF 480,000.

17. On 29 June 2012, the Player's counsel sent a letter to the TFF informing the latter that Manisaspor still owed him the total amount of EUR 74,999.80 and requesting the TFF to *"[p]lease let us know when we can expect the payment from Manisaspor or what the next legal steps against the club are"*.

18. On 6 December 2013, following several amendments of his claim done within the FIFA proceedings, the Player definitively claimed that the Respondent was to be held liable for the early termination of the Second Contract and requested the payment of (i) EUR 74,999.80 corresponding to outstanding remuneration until 17 January 2012 and (ii) EUR 962,500 as compensation for breach of contract.

19. On 28 January 2016, the DRC of FIFA rendered the following Decision concerning the aforementioned dispute:

    1. "The claim of the Claimant / Counter-Respondent I, Joshua Simpson, is rejected.

2. *The counterclaim of the Respondent / Counter-Claimant, Manisaspor Kulubu Derneği, is partially accepted.*

3. *The Claimant / Counter-Respondent I is ordered to pay to the Respondent/Counter-Claimant the amount of EUR 650,000 as compensation for breach of contract,* ***within 30 days*** *as from the date of notification of this decision.*

4. *The Counter-Respondent II, BSC Young Boys, is jointly and severally liable for the payment of the aforementioned compensation.*

5. *In the event that the amount of EUR 650,000 due to the Respondent/Counter-Claimant is not paid within the above-mentioned time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

6. *The Respondent / Counter-Claimant is directed to inform the Claimant/Counter-Respondent I and the Counter-Respondent II, immediately and directly, of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

20. On 5 February 2016, the findings of the Decision passed by the DRC of FIFA were notified to the parties.

21. On the same day, the Player requested FIFA to notify him the grounds of the Decision passed by the DRC of FIFA.

22. On 11 February 2016, YB also requested FIFA to notify it the grounds of the Decision rendered by the DRC of FIFA.

23. On 4 May 2016, FIFA notified the parties the grounds of the Decision passed by the DRC of FIFA on 28 January 2016.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 24 May 2016, YB filed a Statement of Appeal before the Court of Arbitration for Sport ("CAS") against Manisaspor and FIFA with respect to the Decision passed by the DRC of FIFA on 28 January 2016 (hereinafter the "Appealed Decision"), with the following requests for relief:

1. *"Points Nr. 1-6 of the decision of the Dispute Resolution Chamber passed on 28 January 2016 are to be annulled.*

2. *Declaring that the Player Joshua Simpson has terminated his contract with the Respondent I with just cause all claims of the Respondent I are to be rejected.*

3. *The Respondent I is ordered to bear all costs incurred with the present procedure and to cover all legal expences of the Appellant related to the present procedure, especially all attorneys-fees.*

EVENTUALITER:

1. *Points Nr. 1 - 6 of the decision of the Dispute Resolution Chamber passed on 28 January 2016 are to be annulled, insofar, as the compensation to the Respondent I is reduced to an amount of less than EUR 100'000.00.*

2. *The Respondent I is ordered to bear all costs incurred with the present procedure and to cover all legal expences of the Appellant related to the present procedure, especially all attorneys-fees.*

***The execution of the appealed decision is to be stayed due to its financial nature**".*

25. On 25 May 2016, the Player filed his Statement of Appeal against Manisaspor with respect to the Appealed Decision, requesting the following:

*2.1. "**Main title**, Mr. Simpson requests that the Court of Arbitration for Sport:*

- *Find and decide that with respect to all rules of law applicable to this case, Mr. Simpson has terminated his contract with Manisaspor for just cause on the 17th of January, 2012 and therefore no compensation should be paid by Mr. Simpson to Manisaspor;*
- *Accordingly, set aside the Decision issued by the DRC on 28 January, 2016 with grounds served on the parties on 4 May, 2016;*
- *Orders Manisaspor to pay Mr. Simpson:*
  - *the sum of 75,000 EUR as outstanding remuneration until 17 January, 2012, i.e. two outstanding monthly salaries in the amount of 37,500 EUR each (2 x 37,500 EUR = 75,000 EUR),*
  - *the sum of 962,500 EUR as compensation for breach of the contract, this amount corresponding to the residual value of the contract with Manisaspor plus six additional monthly salaries for moral prejudice suffered, from which the "minimum salary guarantee" of his new contract with BSC shall be deducted.*
- *Denies all claims that may be brought by Manisaspor against Mr. Simpson;*
- *Orders Manisaspor to pay all costs and expenses of the present appeal.*

*2.2 In **the alternative,** should the CAS consider and decide, contrary to Mr. Simpson's submission, that Mr. Simpson had no just cause to terminate the contract with Manisaspor on 17 January 2012, then Mr. Simpson would request that the Court of Arbitration for Sport to reduce the amount of compensation owed to Manisaspor to a maximum of 100,000 EUR".*

26. In his Statement of Appeal, the Player requested the CAS: (i) to order the Respondent to produce some documents that allegedly could prove certain determinative issues of the case, and (ii) an extension to file the Appeal Brief on the basis of the documents to be produced and given the complex legal and factual issues of the case that requested to submit substantial witness evidence.

27. On 30 May 2016, the CAS Court Office:

i. informed YB, Manisaspor and FIFA that the Player had filed an appeal against the Appealed Decision (giving rise to the proceedings *CAS 2016/A/4623 Joshua Simpson v. Manisaspor*);

ii. informed the Player and Manisaspor that YB had filed an appeal against the Appealed Decision (which gave rise to the proceedings *CAS 2016/A/4624 BSC Young Boys v. Manisaspor & FIFA*);

iii. invited the parties to inform the CAS Court Office within 3 days whether they agreed to consolidate both proceedings;

iv. invited the Respondent to inform by 3 June 2016 whether it agreed to the Player's request for disclosure and extension of his deadline to file the Appeal Brief.

28. On 31 May 2016, YB filed before the CAS a *"Request for Evidentiary Measures and Extension of time for filing the Appeal Brief"*, by means of which it requested the CAS: (i) to order the Respondent to provide within 21 days certain documents in relation to the alleged existence of collective match bonuses similar to the evidentiary request submitted under paragraph 4 and 5 of the Player's Appeal Brief and (ii) an extension of the deadline to file its appeal brief.

29. On the same day, the CAS Court Office granted Manisaspor and FIFA a deadline until 2 June 2016 to provide their position on YB's requests.

30. On 1 June 2016, Manisaspor sent a letter to the CAS Court Office informing that it did not agree with the request for the disclosure and extension of the deadline for filing the appeal brief that had been requested by YB.

31. On this same day, both YB and the Player informed the CAS Court Office that they agreed with the consolidation of the procedures.

32. Also on 1 June 2016, in view of the Respondent's objection, the CAS Court Office informed the parties: (i) that YB's request for an extension of the deadline to file the appeal brief would be submitted to the President of the CAS Appeals Arbitration Division, or her Deputy, for her/his consideration and decision, and (ii) that YB's request for disclosure would be submitted to the Panel, once constituted, for its decision.

33. On 2 June 2016, FIFA requested the CAS Court Office to be excluded of the CAS procedure *CAS 2016/A/4624 BSC Young Boys v. Manisaspor & FIFA* as such procedure related to a contractual dispute between the Player and Manisaspor and thus it did not concern FIFA, who had only acted as the competent first instance deciding body and was not a party to the dispute.

34. On the same day, the CAS Court Office informed YB and Manisaspor that FIFA did not intend to participate in the arbitration and invited them to provide the CAS their position with regard to this issue.

35. Also on this same day 2 June 2016, the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Division had decided to dismiss the Player's request for a suspension/extension of the deadline to file his appeal brief.

36. On 4 June 2016, the Player filed his Appeal Brief in which he reiterated the petitions previously filed with his Statement of Appeal but increasing the compensation for breach of contract claimed to EUR 1,307,499.80.

37. Also on 4 June 2016, YB filed its Appeal Brief with the following requests for relief:

> *"**MAIN REQUESTS OF RELIEF (according to the Statement of Appeal)***
>
> *The Dispute Resolution Chamber has made two main findings in the challenged decision: Firstly the conclusion that the Respondent I did pay the full salary of the player Joshua Simpson within the time set by the player. Secondly that the player Joshua Simpson did terminate his contract of employment without just cause. As a consequence the DRC assumed the Respondent is entitled to compensation, payable by the player and under jointly and severally liability of the Appellant.*
>
> *With the present Appeal, the Appellant mainly challenges these two findings. It will be shown that the players' salary was in fact not paid in full and that the non-payment of the remaining salary has nothing to do with a simple delay, but amounts to an unjustified denial of the players' entitlement to a part of his salary. Furthermore, it will be shown that the Respondent was in a constant and severe delay with his salary-payments towards the player. It will also be shown that the player notified the Respondent on a regular basis regarding the salary-arrears and that he was even forced to launch a claim against the Respondent before FIFA in this respect. Before and during the mentioned procedure before FIFA the player warned his employer that he would terminate his contract if the debts are not settled within the delays set by the player.*
>
> *As a consequence, the Appellant is and always was convinced that the player terminated his contract with the Respondent I with just cause and was therefore a free agent when employed by the Appellant. In this respect, the Appellant requests the annulment of points 1 - 6 of the challenged decision and asks the Panel to reject any claims of the Respondent I towards the player and the Appellant.*
>
> ***EVENTUALITER REQUESTS FOR RELIEF (according to the Statement of Appeal)***
>
> *If the Panel would not agree with the Appellant point of view regarding the termination of contract the Appellant asks in the sense of eventual-request of relief that any compensation due to the Respondent is reduced to a sum less than EUR 100'000.00, possibly to an amount of EUR 0.00. On the one hand the Appellant is convinced of a remaining debt of the Respondent towards the player; such debt reduces a possible compensation. On the other hand when considering the relevant factors evaluating the compensation the Appellant concludes that the findings of DRC are not in line with CAS-Jurisprudence and such findings cannot rely on the facts provided by the Respondent in this respect.*
>
> *As a consequence, the Panel is asked to annul points 1-6 of the challenged decision, reducing the compensation due to the Respondent".*

38. On this same day 4 June 2016, YB withdrew its appeal against FIFA.

39. On 7 June 2016, Manisaspor informed the CAS Court Office that it did not agree with the consolidation of the procedures.

40. On the same 7 June 2016, the CAS Court Office informed the parties that YB had withdrawn its appeal against FIFA and that proceedings originating from the appeal filed by YB would,

therefore, continue under the reference *CAS 2016/A/4624 BSC Young Boys v. Manisaspor*. It also informed the parties that, in view of Respondent's objection to the consolidation of the procedures, the President of the CAS Appeals Arbitration Division, or her Deputy, would take the relevant decision in this respect.

41. On 9 June 2016, the CAS Court Office informed the parties that in accordance with Article R52 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"), the Deputy President of the CAS Appeals Arbitration Division had decided to consolidate the procedures *CAS 2016/A/4623* and CAS *2016/A/4624*.

42. On 25 June 2016, the Respondent filed its Answer before the CAS, requesting the following:

- *"refuse all the demands of the appellants such as decrease of the compensation amount and annulment of the official decision of the FIFA DRC.*
- *take into the consideration the buy – out – clause that was fixed in the terminated contract and increase the compensation amount to be paid by the appellants to* ***2.000.000.-EURO.***
- *Order the appellants to pay all the procedural costs and other related expenditures".*

43. On 5 July 2016, the CAS Court Office invited the parties to state by 12 July 2016 whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the parties' written submissions.

44. On 12 July 2016, YB and the Player informed the CAS Court Office that they preferred a hearing to be held in the present case.

45. On 13 July 2016, the Respondent informed the CAS Court Office that it preferred the Panel to issue an award based solely on the parties' written submissions.

46. On 30 August 2016, pursuant to 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 resolve the present dispute had been constituted as follows: (i) Mr. Fabio Iudica, attorney-at-law in Milan (Italy), as the President of the Panel; (ii) Mr. Patrick Lafranchi, attorney-at-law in Bern, (Switzerland), as the arbitrator appointed by the Appellants and (iii) Mr. Pieter Kalbfleisch, attorney-at-law in the Hague (the Netherlands), as the arbitrator appointed by the Respondent.

47. On 26 October 2016, the CAS Court Office informed the parties that pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in this case.

48. On 27 October 2016, the Respondent informed the CAS Court Office that it could not attend the hearing *"due to military coup attempt in Turkey […] a state of emergency has been declared in Turkey and therefore the travelling of the lawyers abroad has been suspended until a further notice by the government"* and reiterated its request that the Panel rendered an award based on the parties' written submissions.

49. On 28 October 2016, the CAS Court Office requested FIFA to provide a copy of the complete case file related to the present matter.

50. On 28 October 2016, the CAS Court Office, on behalf of the Panel, instructed the Respondent to disclose by 3 November 2016: (i) the documents that had been requested by Player with his Appeal Brief and (ii) *"a list approved by the Turkish Professional Football Federation and/or the Turkish Football League, which make appear all matches of the Respondent's first team in the Turkish Süper Lig regarding the season 2009/2010, 2010/2011 and 2011/2012, including the dates and results of all matches"*.

51. On 1 November 2016, the CAS Court Office communicated to the parties that the Panel had decided to confirm the hearing which would be held on 18 November 2016.

52. On 2 November 2016, the Respondent sent a letter to the CAS Court Office informing that it would only be available to attend the hearing via video conference due to the above-mentioned *"government travelling suspension"*.

53. On 3 November 2016, the CAS Court Office, on behalf of the Panel, confirmed that the Respondent was allowed to attend the hearing via video-conference/skype and invited the latter to provide the CAS Court Office with its contact details. At the same time, it invited the Respondent to clarify the contents of the enclosures to its letter dated 2 November 2016 which were illegible and were not accompanied by a translation.

54. On 10 November 2016, the CAS Court Office acknowledged receipt of the complete case file produced by FIFA.

55. On the same date, the CAS Court Office sent the Order of Procedure to the parties, which was duly countersigned and returned by all the parties.

56. On 17 November 2016, in view that the Respondent had failed to comply with the Panel's order of disclosure of the documents requested by means of the CAS letter dated 28 October 2016 and had also failed to clarify the content of the enclosures to its letter of 2 November 2016, the CAS Court Office, on behalf of the President of the Panel, ordered the Respondent to disclose by 17 November 2016 the documents referred to in its correspondence of 28 October 2016.

57. On the same day, since the Respondent had failed to provide its contact details for the hearing's videoconference, the CAS Court Office requested again to the latter to provide such contact details (i.e. skype username and/or IP for videoconference). In the same letter, the CAS Court Office also warned the Respondent that, pursuant to Article R57, par. 4, of the CAS Code *"if any of the parties (…) having been duly summoned fails to appear the Panel may nevertheless proceed with the hearing and render an award"*.

58. Also on this day, the Respondent requested the CAS to send the documents that were not legible dated 2 November 2016, arguing that it did not have access to this (its own)

correspondence, and it also informed the CAS that, with regard to the requested documents from the TFF, it had not received them yet from the national federation.

59. This same day, the CAS Court Office sent a letter to the parties attaching the documents requested by the Respondent and reminding the latter that, with regard to the documentation requested in the CAS letter of 28 October 2016, besides those documents to be received from the TFF, it had been also ordered to disclose those other documents referred to in par. 4 of the Player's Appeal Brief.

60. On 18 November 2016, the CAS Court Office sent a letter to the parties informing them that the Respondent had failed to provide its contact details for the videoconference to be held during the hearing of this same day, despite having been advised and reminded to do so. In this same letter, the CAS Court Office also informed the parties that it had tried to reach the Respondent several times by phone but without receiving any answer and warned the latter that *"the hearing will take place today as scheduled, pursuant to Article R57 of the Code of Sports-related Arbitration"*.

61. The hearing of the present arbitration took place in Lausanne on 18 November 2016. The following persons attended the hearing:

a) For the First Appellant:
   - Mr. Joshua Simpson, who attended the hearing in person.
   - Mr. Alexis Rutman, counsel for the Player.

b) For the Second Appellant:
   - Mr. Nils Eckmann, counsel for YB.
   - Ms. Jessica Schindler, CFO of YB.
   - Mr. Cédric Sturny, counsel for YB.

c) As witnesses of the Appellants:
   - Mr Ilker Tugal, former player of Manisaspor.
   - Mr. Ferhat Cokmus, former player of Manisaspor.
   - Mr. Andreas Kirsch, former counsel of the Player.
   - Mrs. Erica Holt Hämmerlin, interpreter of the witnesses.

62. Mr. Daniele Boccucci, Counsel to the CAS, and Ms. Rosa Monteira, *ad hoc* clerk, assisted the Panel at the hearing.

63. Before the start of the hearing, the Panel tried to contact the Respondent by telephone. However, despite the several attempts made, the Respondent did not answer any of these calls and thus it did not attend the hearing via videoconference. At the outset of the hearing, the parties present therein (i.e. the Player and YB) confirmed that they had no objections with respect to the composition of the Panel and with respect to the jurisdiction of the CAS in the present matter. After the opening statements of the parties, the Panel examined the following

persons in order of appearance: (i) Mr. Joshua Simpson; (ii) Mr. Ferhat Cokmus; (iii) Mr. Ilker Tugal and (iv) Mr. Andreas Kirsch.

64. At the hearing, the parties present therein had the opportunity to present their case, to submit their arguments and to answer to the questions posed by the Panel. At the end of the hearing, they expressly declared that they did not have any objection with respect to the procedure, that their right to be heard and to be treated equally had been fully respected.

65. The Panel is satisfied to confirm that the Respondent was duly summoned and fully informed of the scheduled time for the hearing and, despite the several attempts of the CAS to contact it by telephone before the hearing, it neither attended the hearing via videoconference as agreed nor gave any explanation for its nonattendance.

66. On 21 November 2016, the Respondent sent a letter to the CAS Court Office apologising for not having attended the hearing and explaining that, even though it had been duly informed about the scheduled time for the hearing, it was not available to attend it as agreed. In the same correspondence, the Respondent stated that although in accordance with Article R57 par. 4 of the CAS Code the Panel may nevertheless proceed with the hearing and render an award if any of the parties duly summoned fails to appear, it preferred the Panel to render and award based solely on the parties' written submissions.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

67. 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, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. The First Appellant

68. The Player is now a retired professional football player who was employed by Manisaspor since the season 2009/2010 until 17 January 2012, date on which he terminated the Second Contract that was valid until 31 May 2014.

69. Manisaspor breached the Second Contract by systematically defaulting on paying the Player's salary between June 2011 and January 2012. Therefore, contrary to the position of the DRC of FIFA, the Player had a just cause to terminate the Second Contract with Manisaspor. For that reason, the DRC of FIFA should have granted the Player the sum of EUR 75,000.00 as outstanding remuneration until 17 January 2012 (i.e. two outstanding monthly salaries amounting to EUR 37,500.00 each), plus a compensation for the prejudice he suffered for the early termination of the aforesaid contract due to the Respondent's breach of contract.

70. Basically, in the Appealed Decision the DRC of FIFA mistakenly accepted the Respondent's argumentation according to which all payments made in Turkish Lira to the Player were related

to the payment of salaries agreed in the employment contracts. However, such assumption is wrong since all the payments performed by Manisaspor to the Player in Turkish Lira were related to *"collective match bonuses"* (i.e. bonuses that were not stipulated in the employment agreements but were rather negotiated between the Respondent and its first team for each win and draw achieved in the respective football match).

71. Indeed, the DRC of FIFA incurred in a mistake when it analysed the evidence produced, in particular, it was misled by the content of some documents produced by Manisaspor such as the proofs of the payments (bank statements) made in Turkish Lira by the latter to the Player. In this respect, the DRC of FIFA mistakenly concluded that these payments were related to the salaries agreed in the employment contracts. Nevertheless, such payments made in Turkish Lira were merely related to collective match bonuses that were not agreed in the written employment agreements signed by the parties.

72. In addition, the further evidence produced in the present procedure (in particular the witness statements issued by Mr. Ferhat Cokmus and Mr. Ilker Tugal, both former players and teammates of the Player whilst he played for Manisaspor) confirm that all players used to receive collective match bonuses after each win or draw of an official league game and that these bonuses were not mentioned in the employment contracts but were rather paid to the players in addition to the financial liabilities referred to in their contracts. In fact, all of the players who played in the Respondent's first team were entitled to these additional collective match bonuses that were paid in Turkish Lira, while all the agreed remunerations stipulated in their contracts were owed and paid in Euros or in American dollars to the players.

73. This is further proven by the fact that Manisaspor never challenged or rejected the amount of the outstanding remunerations claimed in the formal notices that the Player sent to Manisaspor. On the contrary, the first time that Manisaspor alleged that all the payments made in Turkish Lira corresponded to contractual liabilities, was before the DRC of FIFA. Furthermore, during all the meetings held by the Player's counsel with the Respondent in order to try to settle the dispute in an amicable way, the Respondent never contested the amount claimed by the Player. On the contrary, during one of these meetings, the Respondent pretended to be transferring this amount to the Player's account. Therefore, Manisaspor not only recognized that the amounts claimed were due but also acted in bad faith towards the Player.

74. In light of the foregoing, since Manisaspor did not fulfil its financial obligations towards the Player in spite of the several formal notices sent by the Player claiming the outstanding amounts owed to him, the Player had no other option but to unilaterally terminate the Second Contract on 17 January 2012. Consequently, the Player terminated the Second Contract with just cause.

75. Therefore, Manisaspor cannot claim any compensation from the Player. On the contrary, the Player is not only entitled to receive the payment of his outstanding salaries, which amount to EUR 75,000.00 (i.e. two monthly salaries amounting to EUR 37,500.00 each), but also a compensation from Manisaspor in the amount of EUR 1,037,499.80 for breach of contract

as, in any case, the party in breach should pay a compensation to the party that has suffered such breach.

76. Finally, with respect to the amount of the compensation claimed (EUR 1,037,499.80), such amount results from the following calculation:

- EUR 74,999.80 as outstanding payments for the period running until the date of termination of the contract (17 January 2012);
- plus the sum of EUR 1,912,500.00 as compensation for the breach of the contract without just cause by Manisaspor, being this amount calculated as follows: (i) the global amount of EUR 262,500.00 which corresponds to the basic salaries that Manisaspor should have paid to the Player since the date of termination of the Second Contract until the end of the 2011/2012 season; (ii) plus the agreed salaries and special payment in the amount of EUR 700,000.00 that should have been paid by Manisaspor during the 2012/2013 season; (iii) plus the agreed salaries and special payment in the amount of EUR 725,000.00 that Manisaspor should have paid to the Player during the 2013/2014 season plus (iv) the amount of EUR 225,000.00 corresponding to six monthly salaries of EUR 37,500.00 each, as additional compensation for the moral prejudice suffered by the Player due to the unacceptable behaviour of Manisaspor;
- minus the sum of EUR 950,000.00 corresponding to the *"minimum salary guarantee"* owed by YB to the Player for the period between the 18th January 2012 (signing date of the contract between the Player and YB) and the 31st May 2014 (agreed term of the Second Contract signed by the Player and Manisaspor).

77. In any case, should the Panel conclude that there was no just cause for the Player to terminate the Second Contract, the compensation set by the Appeal Decision shall be reduced to a maximum amount of EUR 100,000.00.

B. The Second Appellant

78. The Appealed Decision is based on two wrong findings. First of all, the DRC of FIFA reached the conclusion that the Respondent did pay the full salaries to the Player within the time limit he set and, in second place, ruled that the Player terminated the Second Contract without just cause. Therefore, the DRC of FIFA granted Manisaspor a compensation for breach of contract in the amount of EUR 650,000.00, payable by the Player and being the Second Appellant jointly and severally liable for this amount.

79. However, both findings are wrong. First of all, the contractual salaries were not paid in full to the Player. In fact, Manisaspor was in a constant and severe delay on the payment of the Player's salaries, despite the fact that the Player's counsel sent on a regular basis several default notices to the club claiming the outstanding salaries and warning the latter that the Player would terminate the Second Contract if the aforesaid debts were not settled. In particular, even though the Respondent paid part of the requested salaries by 16 January 2012, it was still in default of the payment of two monthly salaries.

80. Manisaspor pretends to prove the payment of all the Player's salaries by denying that some of the payments it made to the Player corresponded to the collective bonuses owed to the latter in addition to his contractual salary, and thus it should not be considered to this purpose. Particularly, during the seasons 2009/2010, 2010/2011 and 2011/2012 Manisaspor made 38 payments to the Player's account in Turkish Lira (i.e. TRY 224,596.50, which amounts to EUR 116,126.00) that were not related to the salaries mentioned in the employment contracts and therefore cannot be considered as salary payments.

81. The aforementioned payments made to the Player's account in Turkish Lira correspond to collective match bonuses that Manisaspor agreed to pay to the players of its first team when a favorable result was achieved in order to motivate them. These collective match bonuses were not stipulated in the First and Second Contract since they were paid as a sur-plus to the Player's contractual salary. In fact, before a football match, the management of Manisaspor appeared in the players' changing room and promised such collective match bonuses to the players if the team reached a favorable outcome in the respective match.

82. For example, with respect to the 2009/2010 season, Manisaspor fulfilled its contractual salary payments in the amount of EUR 310,289.00 but, in addition to the Player's contractual salary, it paid him 13 further instalments as collective match bonuses in Turkish Lira (TRY 81,410.00). Such 13 installments clearly corresponded to matches wherein the team achieved favorable results.

83. Moreover, regarding the 2010/2011 season, Manisaspor also fulfilled its contractual salary payments in the amount of EUR 465,809.00 and, in addition, it also paid to the Player 13 further instalments as collective match bonuses in Turkish Lira (TRY 104,361.05), that clearly corresponded to matches wherein the team achieved favorable results.

84. With respect to the season 2011/2012, by 16 January 2012 Manisaspor had still not paid the Player two monthly salaries corresponding to the months of November and December 2011 which amounted to EUR 37,500.00 each (i.e. a total outstanding amount of EUR 75,000.00). Nevertheless, despite the Respondent's non-payment of the Player's salaries, as in the previous seasons, it had already paid to the Player 9 instalments in Turkish Lira (TRY 38,825.00), which corresponded to collective bonuses. Furthermore, in this season, Manisaspor also made two payments in Turkish Lira (TRY 23,000.00) to the Player which corresponded to the box seats in the Manisa Stadium and to the housing allowance of the Player. These last payments, pursuant to the Second Contract, were to be made in addition to the contractual stipulated salary payments.

85. In this context, and without any justification, the Respondent is retroactively pretending that such match bonuses were part of the Player's salary and even asserts that the Player was overpaid. In addition, the Respondent wrongfully declares that the payment made to the Player's bank account in Turkish Lira (TYR 23,000.00), which corresponds to box seats in the Manisa Stadium and housing allowance, are included in, and not in addition to, the contractual salary payments.

86. It is thus clear that Manisaspor breached the contract and thus that the Player's early termination of the Second Contract was with just cause. Therefore, when he was employed by YB he was a free agent.

C. The Respondent

87. Manisaspor has fulfilled all its financial obligations towards the Player who terminated the Second Contract without just cause on 17 January 2012. In this regard, contrary to the Player's statements, when he terminated the Second Contract, the club was not in breach of the contract and had paid all his salaries. Therefore, the Player terminated the Second Contract without just cause.

88. Indeed, as evidenced by the bank statements produced, Manisaspor not only fulfilled its financial obligations towards the Player but even overpaid the Player. In particular, the Player acknowledged receipt of EUR 1,305,075.92 as an overall payment. In this respect, neither the Player nor his legal representative at that time had any objection regarding the receipt of all the sums that Manisaspor paid to the Player during the validity of both employment agreements. However, the Player pretends that this amount included an additional remuneration (i.e. EUR 116,227.00) that was allegedly not stipulated in the employment agreement and was related to out-of-contract collective match bonuses.

89. Certainly, the Player was not entitled to receive the so-called collective match bonuses due to the fact that Manisaspor, as an internal rule, does not pay any bonuses to its players. In fact, there is no clause whatsoever in neither the First nor the Second Contract stipulating the payment of the aforesaid collective match bonuses. It is not true that the payments made by Manisaspor to the Player in Turkish Lira were payments related to collective match bonuses. On the contrary, all these payments were made in concept of Player's salaries. In this regard, the Appellants have not submitted any written agreement confirming that the Player was entitled to receive such collective match bonuses.

90. Besides this, the witness statements produced by the Player are not reliable and cannot be taken into consideration as said statements belong to former players of Manisaspor who terminated their employment relationship with Manisaspor in a bad way and thus have submitted such testimonies in order to damage the image of Manisaspor.

91. Therefore, at the time of the termination of the Second Contract, Manisaspor had even overpaid the Player in the amount of EUR 41,478.10. In this regard, such advance payment credited to the Player's bank account would have been compensated with the Player's future receivables if he would have not decided to unilaterally terminate the Second Contract. Consequently, the correct assessment of the payments made by Manisaspor to the Player's bank account leads to conclude that, contrary to the Player's allegations, there was no outstanding amount due to him by the date on which he terminated the Second Contract.

92. Finally, when calculating the compensation, the DRC of FIFA did not take into consideration the buy-out clause established in the Second Contract. In this regard, in accordance with Article 4.2 (*Liabilities of the Club*) of the Second Contract, particularly in the fifth point of such

clause, the parties beforehand agreed on a fixed release-out fee payable to the parties in order to facilitate a possible transfer of the Player in the future. Mainly, such clause established that Manisaspor reserved itself a release-out fee amounting to EUR 2,500,000.00 in the event the Player was sold during the transfer registration period. In such case, the Player was entitled to receive EUR 500,000.00 and Manisaspor was entitled to receive the remaining EUR 2,000,000.00. For this reason, taking into account the fixed buy-out clause agreed by the parties in the Second Contract, it is clear that Manisaspor has suffered a huge economic damage by the Player's breach of the Second Contract when he unilaterally decided to terminate it without just cause. Therefore, Manisaspor is entitled to receive compensation in the amount of EUR 2,000,000.00 in order to compensate such loss and damage.

VI. JURISDICTION

93. Article R47 of the CAS Code provides 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

94. In the present case, the jurisdiction of the CAS, which has not been disputed by any party, arises out of Articles 57 and 58 of the FIFA Statutes (Edition 2016), in connection with the abovementioned Article R47 of the CAS Code.

95. In addition, CAS jurisdiction has been confirmed by the parties by signing the order of procedure. Therefore, the Panel considers that the CAS is competent to rule on this case.

VII. ADMISSIBILITY

96. Pursuant to Article 67, para. 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellants had 21 days from the notification of the grounds of the Appealed Decision to file their Statements of Appeals before the CAS.

97. The grounds of the Appealed Decision were communicated to the Appellants on 4 May 2016, and the Statements of Appeals were filed on 24 May 2016 by the Second Appellant and on 25 May 2016 by the Fist Appellant, i.e. within the time limit required both by the FIFA Statutes and Article R49 of the CAS Code.

98. Therefore, the appeals filed by the First and Second Appellant are admissible.

99. On the other hand, the Panel has observed that, in its answer to the appeal, the Respondent is asking the CAS not only to confirm the Appealed Decision but to increase the compensation amount awarded in the previous instance from EUR 650,000.00 to EUR 2,000,000.00. In this regard, the Panel notes that the request for relief submitted by the

Respondent clearly exceeds the content that any answer to an appeal should have pursuant to Article R55 of the CAS Code.

100. In particular, as it has been well established by the consistent CAS jurisprudence, *"From the amendment of January 2010 of Article R55 of the CAS Code, CAS jurisprudence (e.g. CAS 2010/2035, TAS 2010/A/2101, CAS 2010/A/2108, CAS 2010/A/2193, or CAS 2012/A/2707) has declared that the new wording of the aforesaid Article determines that it is no longer possible to file a counterclaim within an Appeal procedure to challenge a decision and thus the only way to do it is through an independent appeal to be filed in due time"* (i.e. CAS 2013/A/3432).

101. In the present case, the Respondent has not limited itself to request the confirmation of the Appealed Decision but also to increase the amount of the compensation awarded by the DRC of FIFA. Such petition goes beyond a mere statement of defence and, therefore, it should have been raised in a separate appeal.

102. Consequently, as the Respondent did not appeal the Appealed Decision, this prayer for relief (i.e. increase the compensation amount awarded by FIFA) does not fall within the Panel's power to review and thus it is declared inadmissible.

VIII. APPLICABLE LAW

103. Article R58 of the CAS Code reads as follows:

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

104. In addition, Article 66, par.2 of the FIFA Statutes establishes the following:

"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".

105. In the present case, as it has been submitted by the parties, the rules to be considered as the "applicable regulations" are the FIFA Regulations on the Status and Transfer of Players ("RSTP").

106. Therefore, taking into account the abovementioned, the Panel considers that to settle the present dispute, it shall apply the RSTP (Edition 2010) and additionally, in those questions not governed by the RSTP, if any, Swiss Law shall be applied.

IX. MERITS

107. In the present procedure (as they also did before the DRC of FIFA), both the Player and Manisaspor are claiming each other to have breached the contract and are mutually claiming a compensation for the early termination of the Second Contract. Therefore, to settle the present dispute the Panel has to address and decide the following questions:

a) Did the Player terminate the Second Contract with just cause?

b) Which are the consequences of the termination of the Second Contract?

A. Did the Player terminate the Second Contract with just cause?

108. The First and Second Appellant sustain that the Player terminated the Second Contract with just cause because Manisaspor had breached its contractual obligations by systematically defaulting on the payment of the Player's salaries between June 2011 and January 2012. In the Appellants' opinion, the Appealed Decision misinterpreted the evidence produced in the first instance, as it was misled by the content of some of the documents produced by Manisaspor. In particular, it misunderstood the concept in which the payments in Turkish Lira were made by the Respondent (i.e. collective match bonuses). For this reason, as it mistakenly considered that these payments corresponded to salary payments, the Appealed Decision decided that the Player did not have just cause to unilaterally terminate the Second Contract.

109. On the contrary, the Respondent argues that it fulfilled all its financial obligations towards the Player and that, therefore, the latter terminated the Second Contract without just cause. In particular, the Respondent sustains that on the date on which the Player terminated the Second Contract, no amounts were due by Manisaspor. Therefore, in the Respondent's opinion, the Player terminated the Second Contract without just cause. In this regard, the Respondent asserts that the payments made to the Player's bank account in Turkish Lira were in fact related to the Player's contractually stipulated salaries as Manisaspor does not pay bonuses of this kind to its players.

110. The Panel reminds that, pursuant to Art. 14 of the RSTP, a contract may be terminated by a party where there is just cause. In order to establish if the Player terminated the Second Contract with just cause, the Panel has to determine whether at the time of the termination of this contract the Respondent had fulfilled all its contractual obligations towards the Player or not.

111. In this respect, after examining all the parties' submissions and the documentation produced by each party, the Panel observes that already in the summer of 2011 (i.e. during the months of July and August of 2011), the Player sent several formal default notices to the Respondent (in particular, on 19 July 2011, 1 August 2011 and on 3 August 2011), claiming the payment of the outstanding salaries corresponding to the sporting seasons 2009/2010, 2010/2011 and 2011/2012 (i.e. amounts owed in connection with both the First and Second Contract). In this regard, on 3 August 2011 and for the third time, the Player formally requested the Respondent to pay the remuneration owed at that time, warning the club that if it did not pay

these amounts before 4 August 2011, he would terminate his contract and file a claim before FIFA in order to get compensation.

112. However, even though the Respondent did not pay the outstanding remuneration in the given term, the Player decided not to terminate the Second Contract but to simply claim before the DRC of FIFA the amounts due by Manisaspor, which he did on 15 August 2011. As explained by the Player at the hearing, he wanted to maintain his employment relationship with the Respondent because he was happy to play in this team and to live in Manisa. However, while the FIFA proceedings were being conducted, even though the Player kept fulfilling his labor obligations towards the Respondent, the latter continued disrespecting its financial obligations with the Player and making late payments on account of the Player's outstanding salaries.

113. For this reason, some months later, on 12 January 2012, the Player sent another formal default notice to the Respondent claiming the outstanding remuneration and warning Manisaspor once again that he would terminate the Second Contract if the debt was not settled by 16 January 2012. In this regard, after having checked all the documentation produced by the parties, the Panel has confirmed that, in connection with the economic obligations agreed in the Second Contract, at this time (i.e. 12 January 2012) the Respondent had made the following payments to the Player:

SECOND CONTRACT SEASON 2011/2012	**PAYMENTS MADE BY MANISASPOR**
"Advance Transfer Payment" due on 30/08/ 2011 (€ 300,000.00)	€ 150,000.00 on 01/12/2011
Salary due on 05/09/2011 (€ 37,500.00)	-
Salary due on 05/10/2011 (€ 37,500.00)	-
Salary due on 05/11/2011 (€ 37,500.00)	-
Salary due on 05/12/2011 (€ 37,500.00)	-
Salary due on 05/01/2012 (€ 37,500.00)	-
Total= € 487,500.00	Total = € 150,000.00

114. At this point, the Panel shall clarify that, with regard to the other payments made in Euros by the Respondent to the Player after the filing of his claim before FIFA and until 1 December 2011, both parties have recognized that these corresponded to the settlement of the remuneration owed to the Player for the First Contract, and thus such payments are not relevant to determine the contractual situation in connection with the Second Contract at the time of its termination by the Player.

115. The Panel should also point out that, on 16 January 2012, the Respondent made a subsequent payment to the Player of EUR 266,809.00, which was done through the following bank transfers:

- EUR 150,000.00 as "Advance Transfer Payment"

- EUR 37,500.00 as salary
- EUR 37,500.00 as salary
- EUR 37,500.00 as salary
- EUR 4,309.00 to settle outstanding remuneration of the First Contract.

116. It is noted that the Player argues that the amount paid on 16 January 2016 for the outstanding remuneration of the Second Contract (EUR 262,500.00) was lower than the amount owed to him at that time (EUR 337,500.00) and therefore, on 17 January 2012, he finally terminated the Second Contract, while Manisaspor argues that on the date on which the Player terminated the Second Contract it had fulfilled all of its financial obligations towards the Player. The Respondent sustains that during its contractual relationship with the Player (i.e. for the First and Second Contract), it paid to the Player the total amount of EUR 1,305,075.92, whereas the Player was only entitled to EUR 1,263,597.82.

117. The Panel shall underline that the Player has admitted that during his labor relationship with the club (i.e. seasons 2009/2010, 2010/2011 and 2011/2012), he received an additional amount of TRY 224,596.00 (equivalent to EUR 116,126.00) that corresponded to the collective bonuses orally established by the Respondent during these seasons. Pursuant to the Player's submissions, these payments were not related to the salaries agreed in the First and Second Contract but were related to collective match bonuses established by the club.

118. In this scenario, in order to decide if on the date of termination of the Second Contract the Respondent had fulfilled all its financial obligations towards the Player or not, the Panel shall determine if the global amount paid in Turkish Lira (TRY 224,596.00) to the Player corresponded to contractual remunerations agreed or, on the contrary, to additional and extraordinary payments that the Respondent unilaterally decided to make to the Player in concept of collective match bonuses to trigger their sporting performance.

119. In this regard, the Panel firstly observes that all the remunerations agreed in the First and Second Contract were established in Euros and not in Turkish Lira. In addition, the Panel notes that such payments made by Manisaspor to the Player in Turkish Lira were made to a separate bank account and not to the account where the Player's salaries were paid. Besides this, the fact that the time in which these payments were made and the amount of the payments do not correspond to the remunerations agreed in the First and Second Contract, makes difficult to believe that these payments were made against contractual remunerations.

120. In line with this, the Panel has further noted that, during the season 2009/2010, besides the contractual remunerations agreed, Manisaspor made further payments to the Player's bank account in Turkish Lira as a surplus to his salaries. Furthermore, from the evidence produced by the Appellants, the Panel observes that the dates on which Manisaspor made a payment to the Player in Turkish Lira coincide with the dates on which the Respondent's first team achieved favorable results i.e. (either a win or a draw). Therefore, it seems reasonable to conclude that these payments indeed corresponded to collective bonuses agreed out of the employment contracts. Furthermore, this conclusion was corroborated by the witnesses that were examined at the hearing of the present arbitration, who convincingly stated that

Manisaspor usually paid this kind of bonuses to its players as a surplus to their contractual remunerations. With regard to the objection raised by Manisaspor about the supposed non-reliability if such witnesses, the Panel observes that the Respondent's relevant arguments are not supported by evidence and shall therefore be rejected.

121. On the other hand, the fact that the Respondent did not answer to any of the Player's default notices and, even more important, it neither contested nor challenged the sum of the amounts claimed by the Player in these notices, leads to the same conclusion.

122. In addition, the Panel finds that the Respondent's explanations in connection with these payments (i.e. that these were made against contractual remunerations) are not plausible, as it would lead to the conclusion that Manisaspor would have paid the Player more than what he was entitled under the employment contracts and the Panel is not persuaded that such overpayment can be considered as an advance payment on the Player's future receivables, as suggested by the Respondent. Moreover, this argument is contradictory with the documentary evidence produced by the parties and, in particular, with the fact that the Respondent never denied to the Player (in spite of the many letters of claim sent by the latter) to be in default of payments.

123. For all these reasons, the Panel reaches the conclusion that the amount of TRY 224,596.00 that the Respondent paid to the Player corresponded to the collective bonuses established by the Respondent and that when the Player terminated the Second Contract the Respondent was still in breach of its contractual obligations by owing the Player the amount of EUR 75,000.00.

124. In this respect, the Panel considers that the Commentary to the FIFA Regulations provides guidance as to when an employment contract is terminated with just cause:

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

125. Moreover, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following in this respect:

"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).

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).

126. In consideration of the above, the Panel is persuaded that the Player terminated the Contract with just cause on 17 January, in accordance with Article 14 of the FIFA Regulations.

127. In this regard, the Respondent's failure to pay the Player's salaries in the amount of EUR 75,00.00, together with the Respondent's failure to reply to the Player's letters of formal notice as well as the fact that the Respondent was already in default at the time when the Second Contract was signed, in addition to the consideration that Manisaspor repeatedly failed to comply with its financial obligations 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 Respondent of its financial obligations and expect a continuation of the employment relationship with the

Respondent and therefore that he was entitled to unilaterally terminate the Employment Contract.

128. Therefore, the Panel concludes that the Player was entitled to terminate the Second Contract based on the breach of the Respondent, and thus that the early termination executed on 17 January 2012 was with just cause. Consequently, in the present case YB has no liability of any kind as a consequence of the early termination of the Second Contract by the Player.

B. Which are the consequences of the termination of the Second Contract?

129. Taking into account that the Player terminated the Second Contract with just cause, the Panel has to establish what the consequences of this termination are. In this regard, in his Appeal Brief the Player requested:

- the sum of EUR 75,000.00 as outstanding remuneration until 17 January 2012 and,
- the sum of EUR 1,037,499,80 as compensation for breach of contract, corresponding to *"the residual value of the contract with Manisaspor plus six additional monthly salaries for moral prejudice suffered, from which the 'minimum salary guarantee' of his new contract with BSC shall be deducted"*.

130. In connection with the first prayer for relief, the Panel has already declared that at the time of the termination, the Respondent owed the Player two monthly salaries of EUR 37,500.00 each, and thus this petition shall be admitted. Therefore, the Panel firstly decides that the Respondent shall pay the Player EUR 75,000 as outstanding remuneration owed at the time of the termination of the Second Contract.

131. On the other hand, with regard to the compensation claimed, since the Second Contract does not contain any provision regarding the amount of compensation payable by the contractual parties in case of breach of contract, Article 17 of the RSTP shall be taken as the starting point to deal with the above-mentioned issue. In particular, this article reads as follows:

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

[…]".

132. Bearing the aforementioned in mind, to determine the amount of the compensation, the Panel takes into account that, on the basis of the Second Contract, the Player was entitled to receive the following amounts:

2011-2012 season: EUR 187,500.00 (corresponding to 5 monthly salaries of EUR 37,500.00 each).

2012-2013 season: EUR 700,000.00

2013-2014 season: EUR 725,000.00

Total: EUR 1,612,500.00

133. In this regard, the Panel has noticed that, when calculating the amount of the compensation claimed, the Player has taken into account the amount of the outstanding salaries twice (i.e. as a separate claim for outstanding payments and as part of the compensation arising from the application of Art. 17 of the RSTP). For obvious reasons, this is not correct and shall be rejected.

134. On the other hand, to determine the definitive amount of the compensation, the Panel should take into consideration the remuneration and other benefits due to the Player under the new contract, as it mitigated the damages suffered for the Respondent's breach of contract. In this respect, the Panel notes that in the employment contract signed between the Player and YB, it was agreed that the Player would have a *"minimum salary guarantee"* of CHF 480,000 per year.

135. In particular, pursuant to the information provided by the Player (that has not been contested by the Respondent), until the date on which the Second Contract would have expired (i.e. 31 May 2014) under his new contract the Player was entitled to the following remuneration:

Period from 18 January 2012 to 30 June 2012: CHF 220,00.000 (5,5 monthly salaries)

Period from 01/07/2012 to 30/06/2013: CHF 480,000.00 (12 monthly salaries)

Period from 01/07/2013 to 31/05/2014: CHF 440,000.00 (11 monthly salaries)

Total remuneration: 1,140,000.00 CHF (equivalent to 950,000.00 EUR[1] net).

136. On this basis, the amount of the compensation to be paid to the Player by the Respondent amounts to EUR 662,500.00 (i.e. EUR 1,612,500.00 - EUR 950,000.00).

137. Notwithstanding this, the Player has requested the Panel to condemn the Respondent to pay him an additional compensation of EUR 225,000.00 for the *"moral prejudice"* that he alleges to have suffered. However, the Player has not proved the reality of this damage. Indeed, he neither brought any evidence to support this additional compensation, nor has given any reason or particular circumstance that could lead to conclude that any moral damage that the Player might have suffered as a consequence of the Respondent's breach of contract should be included in the global compensation established by and calculated pursuant Art. 17 of the RSTP. In addition thereto and notwithstanding the above, whatever facts the Player at the hearing mentioned with respect to the moral prejudice suffered, these facts do not qualify for

[1] In accordance with the exchange rate and the conversion made by the Player, which has not been challenged by the Respondent.

a compensation on this ground under Swiss law. Therefore, this additional compensation is rejected.

138. In light of the foregoing, the Panel has decided that the Appealed Decision shall be set aside and that:

(i) no amount shall be paid by YB to the Respondent;

(ii) the Respondent shall pay the Player (a) EUR 75,000.00 in concept of outstanding salaries and (b) compensation in amount of EUR 662,500.00 due to its breach of the Second Contract.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by BSC Young Boys against the Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 28 January 2016 is upheld.

2. The appeal filed by Mr. Joshua Simpson against the Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 28 January 2016 is partially upheld.

3. The Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 28 January 2016 is set aside and Manisaspor Kulübü Derneği is ordered to pay to Mr. Joshua Simpson:

   3.1. the amount of EUR 75,000.00 in concept of outstanding salaries;
   3.2. the amount of EUR 662,500.00 as compensation for breach of contract.

4. The counter-appeal filed by Manisaspor Kulübü Derneği in its Answer is not admissible.

5. (…).

6. (…).

7. All other or further motions or prayers for relief are dismissed.