

**Arbitration CAS 2016/A/4699 Mubarak Wakaso v. FC Rubin Kazan, award of 13 January 2017**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football**Agreement to suspend a contract of employment while on loan**Interpretation of a contractual agreement*

In order to interpret a contractual agreement, the true and mutually agreed intention of the parties should first be identified. Alternatively, and in case the parties' true intention cannot be identified, an objective interpretation has to be concluded in which the adjudicating body will intend to understand the parties' declaration and actions in the way the other party could and in good faith should have understood them.

1. THE PARTIES

- 1.1 Mr Mubarak Wakaso ("the Appellant" or "the Player") is a professional football player of Ghanian nationality.
- 1.2 FC Rubin Kazan ("the Respondent" or "the Club") is a Russian football club currently participating in the Russian Football Premier League. The Club is affiliated with the Football Union of Russia ("FUR"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the FUR Dispute Resolution Chamber ("FUR DRC") on 5 April 2016 ("the Decision"), the written submissions of the Appellant and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 27 August 2013, the Club and the Player signed an Employment Contract ("the Contract"), valid from the date of signing until 31 May 2017 and the Annex 1 to the Contract regulating the remuneration of the Player in relation to the Contract ("the Annex") (collectively "the Contracts"). Both the Contract and the Annex established the legal framework under which the Player provided his services as a professional football player to the Club.

2.3 The Contract stated, *inter alia*, as follows:

“[The Club] and the [Player] ...accepting that the present Contract is governed by the legislation of Russia Federation, rights and obligations of the Parties are regulated by the labor legislation and other laws and regulations of Russian Federation which contain labor law norms , by collective contracts, agreements and other local normative acts adopted by the Club subject to regulations of Russian Football Union, [...] FIFA, UEFA, have agreed upon as follows:

3.1 The Club is obliged to:

3.1.1 Pay the Player monthly salary and other remunerations set in the present Contract, in annexes to it and in local normative acts of the Club establishing conditions and forms of bonuses by the due date and in full amount.

...

3.2 The Club has other rights and obligations according to labor legislation and other laws and regulations of Russian Federation which contain labor law norms, collective contracts, agreements and local normative acts adopted by the Club subject to regulations of FIFA, UEFA and RFU.

4.1 In accordance with article 59 of the Labor Code of Russia the present agreement is valid for a predetermined period of time that is from 27 August 2013 till 31 May 2017.

....

6.1 Monthly salary of the Player is set at 300.000 (three hundred thousand) rubles.

6.2 The Club has the right to introduce different bonus payments, additional payments and so on.

...

9.1 Liability of the Parties is subject to the legislation of Russian Federation and the regulations of FIFA, UEFA, RFU and RFPL.

9.2 Labor law is applicable to the Player with consideration of special aspects established in federal laws and other normative acts.

9.3 In case of a disagreement between the Parties it is resolved within the Club.

9.4 If not resolved within the Club a disagreement between the Parties should be resolved in accordance with the regulations of FIFA, UEFA, RFU and RFPL.

9.5 If the Player does not perform his duties under the present Contract and relevant legislation or performs them improperly, the Club is entitled to take disciplinary measures as it is set up under labor law of Russia”.

2.4 The Annex stated, *inter alia*, as follows:

“[The Club] and the [Player] ... have signed the present Annex 1 (hereinafter referred to as “Annex”) to the Contract of employment between [The Club] and the [Player] from 27 August 2013 (hereinafter referred to as the “Contract”) determining the following amount and form of bonuses and compensation from the Club to the Player:

1. The remuneration of the Player for each full contractual year during the course of the contract with the Club is 1175000 (one million one hundred seventy five thousand) Euro, which includes the amount of monthly salary established by the Contract. The Club pays the amount established in this paragraph during the course of the Contracts monthly in the amount of 1/12 (one twelfth) part of 1175.000

(one million one hundred seventy five thousand) Euro minus the sum of actually paid amount of the monthly salary for a given month.

The calculation of the Player's monthly salary subject to article 6.1. of the Contract and of the remuneration subject to the present paragraph starts from 01 September 2013.

...

6. *All amounts set in this Annex are net, and have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments, in rubles at the currency rate on the date of the actual payment. The Player must receive all the amounts set in this Annex in full.*

...

8. *"The present Annex is a part of the Contract. All information of this Annex is confidential and it not supposed to be disclosed to third parties except in the cases established by the law of Russian Federation".*

2.5 On 30 August 2015, the Player was transferred on loan from the Club to the Spanish football club FC Las Palmas ("Las Palmas"), and an Agreement on employment contract suspension ("the Suspension Agreement") was signed between the Parties on the same date.

2.6 The Suspension Agreement stated, *inter alia*, as follows:

"[The Club] and the [Player]...accepting that their rights and obligations are governed by the valid until 31 May 2017 employment contract from 27 August 2013 (hereinafter referred to as the "Contract"), the labor legislation of Russian Federation and other laws and regulations of Russian Federation, organizational and other documents and regulations of the Club, relevant regulations of FUR, FIFA, UEFA and RPFL, have agreed upon as follows:

1. *The Club and the Player have come to a mutual agreement to suspend the employment contract signed between the Club and the Player on 27 August 2013 in Barcelona, as the Player is temporarily transferred on loan to FC Las Palmas until 30 June 2016 in accordance with the conditions of the transfer (on loan) agreement between the Club, the Player and FC Las Palmas from 30 August 2015.*
2. *The parties have agreed that the Contract is suspended as of 30 August 2015 till 30 June 2016.*
3. *The Club confirms that for the loan period the Player has the right to sign a fixed-term employment contract with FC Las Palmas with the term until 30 June 2016. The Contract between the Club and the Player resumed as of 01 July 2016, the Player is obliged to commence his work for the Club on 01 July 2016.*
4. *The parties agreed that during the loan period in FC Las Palmas the Club does not pay the Player any salary, remuneration, compensations, bonuses or any other payments in accordance with the Contract and Annex 1 to it.*

During the loan period in FC Las Palmas, namely from 30 August 2015 till 30 June 2016, the Club pays the player an unconditional compensation in the amount of 381 250 (three hundred eighty one thousand two hundred fifty) Euro and a conditional compensation in the amount of 300 000 (three hundred thousand) Euro on the following conditions:

- *The unconditional compensation in the amount of 381 250 (three hundred eighty one thousand two hundred fifty) Euro is paid to the Player in three instalments: 130 000 (one hundred thirty thousand) Euro until 15 October 2015; 130 000 (one hundred thirty thousand) Euro until 15 November 2015; 121 250 (one hundred twenty one thousand two hundred fifty) Euro until 15 December 2015.*
- *The payment of the conditional compensation is caused by the fact that FC Las Palmas intends to partially compensate FC Rubin expenses on Player's allowance during the loan period, in other words, the conditional compensation to the Player directly depends on receiving by FC Rubin of the Payment from FC Las Palmas for Player's loan;*
- *The conditional compensation is paid in the following way: 100 000 (one hundred thousand) EURO not earlier than 15 October 2015 in case the first instalment is received from FC Las Palmas in accordance with clause 4.1 of the transfer (on loan) agreement between the Club, the Player and FC Las Palmas from 30 August 2015; 100 000 (one hundred thousand) Euro not earlier than 15 November 2015 in case the second instalment is received from FC Las Palmas in accordance with the abovementioned contract; 100 000 (one hundred thousand) not earlier than 15 December 2015 in case the third instalment is received from FC Las Palmas in accordance with the abovementioned contract.*
- *Therefore the parties have agreed that the payment by FC Rubin of conditional compensation to the Player is performed only after the Club receives relevant payments from FC Las Palmas in accordance with clause 4.1. of the transfer (on loan) agreement between the Club, The Player and FC Las Palmas from 30 August 2015; the payment to the Player is performed within 15 days after receiving the relevant payment from FC Las Palmas;*
- *To avoid any disagreements, both parties hereby confirm that in case of non-receipt of the payments from FC Las Palmas, FC Rubin does not perform the abovementioned payment of conditional compensation towards the Player; the Player accepts this agrees to the present conditions and waives his right to have any claims against FC Rubin in the future.*
- *In case the Player in fact commence his work for the Club before the loan ends, but not earlier than as of 01 June 2016, the Annex 1 to the Contract resumes as of the date, the Player Started his work in the Club.*

The abovementioned amounts of conditional compensation payments towards the Player are net and, providing that abovementioned conditions are fulfilled, have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments in accordance with the law of Russian Federation, in rubles at the currency rate of the Central bank of Russian Federation on the date of the actual payment”.

2.7 On 30 September 2015 and on 28 October 2015, respectively, Las Palmas made two payments to the Club of EUR 100,000 each, and also the third payment of EUR 100,000 was made on time.

2.8 By letter to the Club in early February 2016, the Player put the Club in default, stating as follows:

“In accordance with my valid and binding employment contract signed between me and FC Rubin Kazan on 27 August 2013, the club undertook an obligation to pay me monthly salary, compensations of flights and apartment rent in the amounts established by the employment contract and annex 1 to it. Also during the loan period to FC Las Palmas in accordance with my agreement on employment contract suspension dated 30 August 2015 FC Rubin is obliged to pay me unconditional and conditional compensations.

Breaching the undertaken obligations, the club did not provide me payments since September 2015, meaning that the delay of payment is more than two months. This puts me in a difficult financial situation, as I am far away from my home and my family.

I am kindly asking you to take case of the overdue amounts due to me by the club as soon as possible and pay me in full all due amounts in accordance with the employment contract and annex 1 to it and also with the agreement on employment contract suspension as well as interest for overdue payment at the rate of 1 / 300 of the refinancing rate of the Central Bank of Russia per each day of delay.

In case FC Rubin Kazan continues to breach my employment contract and annex 1 to it as well as the agreement on employment contract suspension, I will be forced to claim the Dispute Resolution Chamber of RFU”.

2.9 On 19 February 2016, and without having received the outstanding payments from the Club, the Player lodged a claim with the FUR Dispute Resolution Chamber (“FUR DRC”) against the Club regarding unpaid remuneration in the amount of EUR 681,250 due to the Player in accordance with the Suspension Agreement.

2.10 On 29 February 2016 and on 23 March 2016, the Club made payments to the Player’s bank account in Rubles equivalent to EUR 200,000 and, respectively, EUR 75,000.

2.11 In support of his claim before the FUR DRC, the Player stressed, *inter alia*, that the Club did not make full payment of the unconditional and conditional compensations pursuant to the Suspension Agreement. In accordance with the Suspension Agreement, both the unconditional and conditional compensations are “net” and therefore have to be paid to the Player by the Club after the Club has deducted all taxes and fiscal payments in accordance with the applicable regulations. With its payments in Rubles equivalent to EUR 200,000 and EUR 75,000 on 29 February 2016 and on 23 March 2016, the Club has already started to perform its obligation in respect of the Player’s “net” remuneration, thus recognising its responsibility to pay the amount “net”. The Parties agreed that all amounts payable to the Player pursuant to the Annex should be “net”, in line with all payments pursuant to the Suspension Agreement. Furthermore, the Club should be obliged to pay interest to the Player in accordance with the Labour Code of Russia due to the delay in payments to the Player.

Moreover, the Player submitted that at the time of lodging his claim before the FUR DRC, the Club had a debt for a period of more than two months, which constitutes a serious violation pursuant to the FUR Regulations on the Status and Transfer of Players (the “FUR Regulations”) and, consequently, gives the Player just cause to terminate the Contracts and entitles the Player to be paid compensation from the Club for breach of contract pursuant to the FUR Regulations. Finally, the Player asked the FUR DRC to impose on the Club a ban for registration of new players as a provisional measure.

- 2.12 In its reply to the Player’s claim, the Club first of all acknowledged the Player’s claim for payment in Rubles of an amount equivalent to EUR 288,393. The Club further stated, *inter alia*, that said amount is in accordance with the provision of the Suspension Agreement, meaning that the conditional compensation equivalent to EUR 300,000 is paid “net”, *i.e.* after taxes, while the unconditional payment equivalent to EUR 381,250 is considered to be taxed with the tax on personal income like all other payments due to the Player under the Contracts. As the Club had already made the payment of the unconditional compensation taxed with tax on personal income, however, the Club had actually paid the amount of EUR 392,857, resulting in an overpayment of EUR 11,607.14 to the Player. The conditional compensation had not yet been paid by the Club. The Club disputed that all amounts mentioned in the Suspension Agreement are “net”, since the provision in the Contract, where suspended by the Parties signing of the Suspension Agreement and, thus, the Parties agreed on new terms of payment in favour of the Player. Since the amount of conditional compensation was specifically stated as “net” in the Suspension Agreement, all other amounts include by default tax on personal income, which is usual for FUR and in accordance with the practice of the Parties. Based on that, the outstanding debt to the Player amounted to EUR 288,393. With regard to the alleged termination of the Contracts due to breach of contract, such termination is not within the competence of the FUR DRC. Furthermore, the Player never respected the deadline of the notification to the Club pursuant to the FUR Regulations, and the FUR DRC is therefore not required to satisfy the request of termination in any case.
- 2.13 The FUR DRC, after having confirmed its competence, first of all stressed that, pursuant to the Regulations, any party must prove the circumstances to which it refers as the basis of its requests and objections and that the FUR DRC evaluates proof based on its own internal persuasion, which is based on the all-round, full, objective and direct exploration of the proof in the present case.
- 2.14 With regard to the request regarding the debt under the Suspension Agreement, the FUR DRC analysed the Contract and the Suspension Agreement and noted that the Parties had agreed that, during the loan period with Las Palmas, the Player was not to receive any salary, remuneration, bonuses or other payments from the Club, except for the payments of the unconditional compensation equivalent to EUR 381,250 and the conditional compensation equivalent to EUR 300,000. The Club’s payment of the conditional payment was subject to Las Palmas paying the Club the agreed amount for the loan of the Player, which Las Palmas eventually did on time. Furthermore, it is stated explicitly in the Suspension Agreement that the payment of the conditional compensation is “net”, but this is not stated explicitly in the same agreement regarding the unconditional compensation.

- 2.15 The FUR DRC furthermore noted that by concluding the Suspension Agreement, the Parties agreed to suspend the Contract, including the Annex, according to which all payments to the Player were to be made “net”. Based on the above, the FUR DRC did not accept the argument of the Player that the unconditional compensation should also be paid “net” to the Player pursuant to the said rule set out in the Annex. From the documentation produced, it follows that the Club already had made two payments of the unconditional compensation, in total amounting to the equivalent of EUR 392,857.14, resulting in an overpayment of the unconditional compensation equivalent to EUR 11,607.14.
- 2.16 However, since the Club never paid the conditional compensation due to the Player equivalent to EUR 300,000, and taking into account the overpayment made by the Club regarding the unconditional payment, the Club must pay the amount equivalent to EUR 288,392.86, which is the amount that the Club has already acknowledged to owe to the Player. Furthermore, and in accordance with the Labour Code of Russia, the FUR DRC decided that the late payments of compensation must bear interest from the date the respective payment fell due and until the effective date of payment.
- 2.17 Regarding the Player’s claim of termination of the Contracts for breach of contract and the payment of compensation for the said breach of contract by the Club, the FUR DRC noted, *inter alia*, that in accordance with the Labour Code of Russian Federation, the original contract is suspended for the period of a temporary transfer of the Player to another employer, meaning that the parties have suspended the fulfilment of rights and obligations set out in labour legislation and other normative legal acts. Thus, the FUR DRC did not find grounds for establishing just cause for the termination of the Contracts by the Player. Furthermore, the Player had failed to provide proof that he had given the Club sufficient notice to terminate the Contracts in accordance with the Regulations. Based on that, the Player’s request to have the Contracts terminated and order the Club to pay compensation for breach of contract should not be met.
- 2.18 On 5 April 2016, the FUR DRC rendered its Decision as follows:

“1. To partially uphold the claim of the professional football player Wakaso M. against MAI “FC Rubin” Kazan.

2. To oblige MAI “FC Rubin” Kazan to pay the professional football player Wakaso M. a debt in the part of conditional compensation established by the suspension agreement, in the amount of 288 393 (two hundred eighty eight thousand three hundred ninety three) Euro within 14 (fourteen) working days after the decision comes into force.

3. To oblige MAI “FC Rubin” Kazan to pay to the professional football player Wakaso M. the interest for the delay of compensation payments, calculated as 1 / 300 of the refinancing rate of the Central bank of Russia (until 31 December 2015 inclusive) and in the amount of key interest rate of the Central bank of Russia (as of 01 January 2016) for each day of the delay, starting from the day when the relevant payments must have been made and until the day of actual payment, inclusive.

4. *To apply to MAI "FC Rubin" Kazan a ban for registration of new players as a provision measure. This ban can be lifted by the FUR Dispute resolution chamber based on MAI "FC Rubin" Kazan claim in case the obligations due to the professional football player Wakaso M. set by the present decision are fulfilled.*
5. *To dismiss without hearing on merits the claim of the football player Wakaso M. in the part with the request to consider the serious breach of contract committed by MAI "FC Rubin" Kazan.*
6. *To dismiss the claim of the professional football player Wakaso M. in other parts.*
7. *To oblige MAI "FC Rubin" Kazan to pay to the FUR a fee for bearing the case by the Chamber in the amount of 50 000 (fifty thousand) rubles within 30 (thirty) days from the decision coming into force in accordance with article 31 of FUR Regulations on dispute resolution.*
8. *The present decision comes into force as provided by article 50 of FUR Regulations on dispute resolution. The present decision can be appealed in accordance with FUR Regulations on dispute resolution".*

2.19 On 19 and, respectively, 26 May 2016, and after the receipt of the operative part of the Decision from the FUR DRC, the Club made payments to the Player's bank account in Rubles equivalent to the total amount of EUR 291,874.70.

2.20 Thus, the Player has received payments pursuant to the Suspension Agreement from the Club in the total amount of EUR 566,874.70.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 7 July 2016, the Appellant filed a Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration ("the CAS Code") against the Decision rendered by the FUR Dispute Resolution Chamber ("FUR DRC") on 5 April 2016.

3.2 In accordance with Article R51 of the CAS Code, the Appellant filed his Appeal Brief on 27 July 2016.

3.3 By letter of 2 September 2016 from the CAS Court Office, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator.

3.4 By letter of 2 September 2016 from the CAS Court Office, the Parties were informed, *inter alia*, that with reference to the letter from the CAS Court Office of 2 August 2016, by which the Respondent was granted a deadline of 20 days from the receipt of the Appeal Brief to file its respective answer, such deadline expired on 24 August 2016 without the CAS Court Office having received any answer or any other communication from the Respondent in this regard.

3.5 On 12 September 2016, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark, had been appointed as Sole Arbitrator in the case, and by letter of 14 December 2016, the Parties were informed that the Sole Arbitrator deemed himself sufficiently well-informed to decide the case based solely on the written submissions.

3.6 Finally, both Parties signed and returned the Order of Procedure, thus confirming, *inter alia*, their agreement that the case should be decided on the basis of the written submissions and that their right to be heard had been duly respected.

3.7 The Sole Arbitrator examined carefully and took into account in his deliberations all the evidence and arguments presented by the Parties, even if they have not been expressly summarised in the present Award.

4. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

4.1 Article R47 of the CAS Code states as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the 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”.

4.2 With respect to the Decision, the Appellant submits that the jurisdiction of the CAS derives from Article 47 of the FUR Statutes, which states as follows:

“In accordance with the relevant provisions of the FIFA, UEFA and FUR Statutes any appeal against final and legally binding decisions of the FIFA, UEFA and FUR shall be heard by the CAS. The Court of Arbitration for Sport, however, does not hear appeals concerning the matters stipulated by the FIFA, UEFA and FUR, or appeals against the decisions of an independent and properly constituted Russian arbitration tribunal referred to in Article 45 thereof”.

4.3 Furthermore, Article 53 of the FUR Regulations on Dispute Resolution – edition of 25 November 2015 – provides, *inter alia*, as follows:

“1. ...

2. The decisions of the PSC, or the decisions of the DRC which were issued on the matters set in subpar. b, c, d, f, h, of par. 1 of article 13 of the present Regulations, can only be appealed to Court of Arbitration for Sports (Tribunal Arbitral du Sport) in Lausanne, Switzerland within 21 (twenty one) calendar days from the moment the parties have received the grounds of the decision of PSC or DRC”.

4.4 The Sole Arbitrator also notes, as a matter of form, see Article R47 of the CAS Code, that there are insufficient grounds for assuming that the Appellant has not exhausted the legal remedies available to him prior to the Appeal, in relation to which the Sole Arbitrator points out that the wording of this provision may not be construed, by implication, to impose an obligation that would require the Appellant, if possible, also to have pursued his claim before the civil courts of law.

- 4.5 The jurisdiction of the CAS is not contested by the Respondent and is furthermore confirmed by the Parties' signatures on the Order of Procedure.
- 4.6 The Decision was notified to the Appellant on 16 June 2016, and on 7 July 2016, the Appellant filed a Statement of Appeal against the Decision, *i.e.* within the statutory time limit set forth in Article 53 of the FUR Regulations on Dispute Resolution, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements set out by Articles R48 and R51 of the CAS Code.
- 4.7 It follows that the CAS has jurisdiction to decide on this Appeal and that the Appeal is admissible.
- 4.8 Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the decision appealed against.

5. APPLICABLE LAW

- 5.1 Article R58 of the CAS Code states 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"*.
- 5.2 In his Appeal Brief, the Appellant maintains that pursuant to Article R58 of the CAS Code, *"the present dispute shall be decided in accordance with the relevant and applicable football regulations, if any, and, in addition, by Russian law"*.
- 5.3 Pursuant to the Suspension Agreement, the Parties accepted that their *"rights and obligations are governed by the valid until 31 May 2017 employment contract from 27 August 2013 (hereinafter referred to as the "Contract"), the labor legislation of Russian Federation and other laws and regulations of Russian Federation, organizational and other documents and regulations of the Club, relevant regulations of FUR, FIFA, UEFA and RPFL"*.
- 5.4 The Sole Arbitrator notes that even if the reference to applicable law as stated in the Suspension Agreement is not very clear indeed, the Appellant made reference to the Statutes and regulations of FUR with regard to the legal basis for the CAS being competent, just as the FUR DRC applied the regulations of FUR when deciding on the matter in the Decision.
- 5.5 On that basis, and since the Respondent did not dispute the Appellant's submission regarding applicable law, the Sole Arbitrator is satisfied to apply the regulations of FUR when deciding on the case, where relevant.

- 5.6 However, any other issues not addressed in such regulations, *i.e.* for which FUR has not set uniform standards of the football industry, are subject to the law the Parties may have chosen (see HAAS U., CAS Bulletin 2015/2, pp. 7 ff.).
- 5.7 The Sole Arbitrator notes in this case that the Parties seem to have agreed on the application of Russian law should the need arise.
- 5.8 Based on the above, the Sole Arbitrator is therefore satisfied to accept the application of the regulations of FUR and, additionally, Russian law, both insofar as the application relates to the normative application and interpretation of the regulations of FUR, and to the extent that the Sole Arbitrator has to decide on matters not addressed in the regulations of FUR.

6. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

6.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to such submissions or evidence in the following summary.

6.2 The Appellant

6.2.1 In his Appeal Brief of 27 July 2016, the Appellant requested the following from the CAS:

- 1) *"To fully accept the present Appeal.*
- 2) *To partially set aside the decision passed by the Dispute Resolution Chamber of the Football Union of Russia 031-15 on 5 April 2016;*
- 3) *As a consequence, to condemn [the Respondent] to pay in favour of [the Appellant], in addition to the amount of EUR 283,393.00/- as decided by the aforementioned appealed Decision, the further amount of EUR 114,375/- (One hundred fourteen thousand three hundred seventy five Euros), plus the relevant interest to be calculated pursuant to article 236 of the Labor Code of Russia starting from the date when the relevant payment should have been made until the date of effective payment;*
- 4) *For the effect of the above, to state that the Respondent shall be condemned to pay any and all costs of the present arbitral proceedings, including, without limitation, attorney's fee as well as any eventual further costs and expenses for witnesses and experts".*

6.2.2 In support of his requests for relief, the Appellant submitted as follows:

- a) This dispute concerns the question whether the amount due to the Player from the Club pursuant to the Suspension Agreement, during his loan from the Club to Las Palmas, must be paid "net", *i.e.* in full, to the Player after deduction of all taxes, fiscal payments, etc.

- b) The Suspension Agreement states explicitly that the conditional compensation equivalent to EUR 300,000 is “net”, which is undisputed by the Club, which already paid the said amount in full to the Appellant.
- c) However, with regard to the unconditional compensation equivalent to EUR 381,250, the Club withheld the tax of 30% equivalent to EUR 114,375 when paying the unconditional compensation to the Player.
- d) The Club was not entitled to deduct the tax of 30% and, thus, should have paid the entire unconditional compensation equivalent to EUR 381,250 to the Player, which is why the Club still owes the remaining amount of compensation.
- e) In August 2015, the Parties agreed that the Player’s loan period to Las Palmas, should run from 30 August 2015 until 30 June 2016 with a stipulated option for the Player to return to the Club one month earlier, *i.e.* on 1 June 2016.
- f) Pursuant to the Contracts, the Player would have been entitled to receive the amount equivalent to EUR 881,250 net (EUR 1,175,000 / 12 x 9 months (September 2015 – May 2016)) in remuneration from the Club. However, due to his interest in pursuing a career opportunity in Spain, the Player agreed to a reduction in his salary for the fixed loan period. This agreement was confirmed by e-mail from the Club to the Player’s representative on 30 August 2015, in which the Club stated, *inter alia*, that:
- “Please find attached a draft transfer and a suspension agreement (Rubin – Wakaso). The numbers are calculated based on his salary (1,175,000 Euro): we pay 9 month, minus Las Palmas share, minus 200,000 Euro. If he actually comes back earlier (e.g. in June 2016) we resume his employment contract payments earlier”.*
- g) Based on that the foregoing, the Parties agreed that the amounts of conditional and unconditional payments to the Player during the loan period were set at the total amount equivalent to EUR 681,250, meaning, *inter alia*, that the Parties did not change the practice of their relationship, which is also stated explicitly in the Annex, whereas all payments to the Player are “net”.
- h) Furthermore, the payments made by the Club to the Player in Rubles equivalent to EUR 200,000 and EUR 75,000 on 29 February 2016 and 23 March 2016, respectively, were net payments, which was confirmed by the Club in its letter to the FUR DRC on 9 March 2016, stating, *inter alia*: “At the present moment FC Rubin has partially paid the debt in the amount of 200,000 (two hundred thousand) euro – 16 594 960,07 rubles”. In this manner, the Club had started to perform its obligation of payment of net due amounts, which proves that the Club recognised that all amounts due were net.
- i) Club made all payments in Rubles, which also proves that the Club either accepted that Article 4, paragraph 9, of the Suspension Agreement is applicable to both the unconditional and the conditional compensation, or that a labour relationship still existed between the Parties, according to which the provisions stipulating that all

payments to be made to the Player should be “net” as stated in the Contracts must be applicable.

- j) Pursuant to the Civil Code of Russian Federation, civil rights and obligations arise, *inter alia*, “*due to other actions of natural persons and legal entities*”, and due to the fact that the Club started to perform the payment of the unconditional compensation “net”, this should be recognised as the basis of the Club’s obligation to perform all payments under the Suspension agreement “net”.
- k) Based on that and given these circumstances, the Club must pay to the Player the outstanding part of the unconditional compensation pursuant to the Suspension Agreement, an amount equivalent to EUR 114,375.

6.3 The Respondent

- 6.3.1 As already mentioned under paragraph 3.4 above, the Respondent never filed any answer within the specified deadline.

7. DISCUSSION ON THE MERITS

- 7.1 Initially, the Sole Arbitrator notes that the factual circumstances pertaining to the Contracts between the Parties and the time leading up to the loan of the Player to the Spanish football club FC Las Palmas are undisputed by the Parties. In rendering its Award, the Sole Arbitrator has therefore taken into account the following non-exhaustive list of factors and considerations:

- On 27 August 2013, the Parties signed the Contracts valid from the date of signing until 31 May 2017.
- Pursuant to the Contracts, the remuneration for each full contractual year during the course of the Contracts was agreed at EUR 1,175,000, which amount was to be paid in monthly instalments of one twelfth of the said amount, equal to EUR 97,916.67.
- Clause 6 of the Annex states as follows:

“All amounts set in this Annex are net, and have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments, in rubles at the currency rate on the date of the actual payment. The Player must receive all the amounts set in this Annex in full”.
- During the course of the Contracts from the date of signing until the end of August 2015, all payments of the Player’s remuneration made by the Club to the Player pursuant to the Contracts were made “net”.
- On 30 August 2015, the Player was transferred on loan to Las Palmas, and the Parties signed the Suspension Agreement, which stated, *inter alia*, as follows:

- “1. *The Club and the Player have come to a mutual agreement to suspend the employment contract signed between the Club and the Player on 27 August 2013 in Barcelona, as the Player is temporarily transferred on loan to FC Las Palmas until 30 June 2016 in accordance with the conditions of the transfer (on loan) agreement between the Club, the Player and FC Las Palmas from 30 August 2015.*
2. *The parties have agreed that the Contract is suspended as of 30 August 2015 till 30 June 2016.*
3. *...*
4. *The parties agreed that during the loan period in FC Las Palmas the Club does not pay the Player any salary, remuneration, compensations, bonuses or any other payments in accordance with the Contract and Annex 1 to it.*

During the loan period in FC Las Palmas, namely from 30 August 2015 till 30 June 2016, the Club pays the player an unconditional compensation in the amount of 381 250 (three hundred eighty one thousand two hundred fifty) Euro and a conditional compensation in the amount of 300 000 (three hundred thousand) Euro on the following conditions:

- *The unconditional compensation in the amount of 381 250 (three hundred eighty one thousand two hundred fifty) Euro is paid to the Player in three instalments: 130 000 (one hundred thirty thousand) Euro until 15 October 2015; 130 000 (one hundred thirty thousand) Euro until 15 November 2015; 121 250 (one hundred twenty one thousand two hundred fifty) Euro until 15 December 2015.*
- *The payment of the conditional compensation is caused by the fact that FC Las Palmas intends to partially compensate FC Rubin expenses on Player's allowance during the loan period, in other words, the conditional compensation to the Player directly depends on receiving by FC Rubin of the Payment from FC Las Palmas for Player's loan;*
- *The conditional compensation is paid in the following way: 100 000 (one hundred thousand) EURO not earlier than 15 October 2015 in case the first instalment is received from FC Las Palmas in accordance with clause 4.1 of the transfer (on loan) agreement between the Club, the Player and FC Las Palmas from 30 August 2015; 100 000 (one hundred thousand) Euro not earlier than 15 November 2015 in case the second instalment is received from FC Las Palmas in accordance with the abovementioned contract; 100 000 (one hundred thousand) not earlier than 15 December 2015 in case the third instalment is received from FC Las Palmas in accordance with the abovementioned contract.*
- *Therefore the parties have agreed that the payment by FC Rubin of conditional compensation to the Player is performed only after the Club receives relevant payments from FC Las Palmas in accordance with clause 4.1. of the transfer (on loan) agreement between the Club, The Player and FC Las Palmas from 30 August 2015; the payment to the Player is performed within 15 days after receiving the relevant payment form FC Las Palmas;*

- *To avoid any disagreements, both parties hereby confirm that in case of non-receipt of the payments from FC Las Palmas, FC Rubin does not perform the abovementioned payment of conditional compensation towards the Player; the Player accepts this agrees to the present conditions and waives his right to have any claims against FC Rubin in the future.*
- *In case the Player in fact commence his work for the Club before the loan ends, but not earlier than as of 01 June 2016, the Annex 1 to the Contract resumes as of the date, the Player Started his work in the Club.*

The abovementioned amounts of conditional compensation payments towards the Player are net and, providing that abovementioned conditions are fulfilled, have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments in accordance with the law of Russian Federation, in rubles at the currency rate of the Central bank of Russian Federation on the date of the actual payment”.

- Las Palmas fulfilled its payments obligations to the Club resulting from the loan of the Player, and the Club eventually paid to the Player the amount equivalent to EUR 300,000 net, thus fulfilling its obligation to pay to the Player the conditional payment pursuant to the Suspension Agreement.
- The Player has furthermore received payments from the Club equivalent to EUR 266,875 regarding the unconditional compensation.

7.2 However, while the Club is of the opinion that it has fulfilled all its obligations to the Player pursuant to the Suspension Agreement by paying EUR 266,875 (equivalent to EUR 381,250 after deduction of 30% tax), the Player claims an additional amount of EUR 114,375 as outstanding partial payment of the unconditional compensation agreed between the Parties. The disputed amount of EUR 114,375 constitutes 30% of the amount of EUR 381,250, which, according to the information received, is the Russian tax rate applicable to employment salaries within Russia.

7.3 The Appellant submits, *inter alia*, that the Parties agreed that the unconditional compensation was to be paid net by the Club, in the same way as the conditional compensation and in the same way as all payments made to the Player pursuant to the Contracts, and that the total amount of EUR 681,250 payable by the Club as compensation constitutes the exactly same net amount of remuneration which the Player would have been entitled to receive pursuant to the Contracts during the loan period (September 2015 – May 2016) minus the amount of EUR 200,000, which the Player accepted as a reduction in his remuneration for the said period in order to be able to pursue his career with the Spanish club. Furthermore, the Club acted in accordance with this agreement when paying net amounts as part payments of the unconditional compensation to the Player in February and March 2016, which, *inter alia*, should be recognized as the basis of the Club’s obligation to perform all payments under the Suspension Agreement “net”.

- 7.4 Thus, the main issues to be resolved by the Sole Arbitrator are **(i) whether the unconditional compensation pursuant to the Suspension Agreement is to be paid net to the Player and (ii), in the affirmative, what the financial consequences for the Parties are?**
- 7.5 Initially, the Sole Arbitrator notes that in order to answer the question whether the Parties indeed concluded an agreement pursuant to which the unconditional compensation is to be paid net to the Player, the Sole Arbitrator should seek to identify the true and mutually agreed intention of the Parties.
- 7.6 Alternatively, and in case the Parties' true intention cannot be identified, an objective interpretation has to be concluded in which the Sole Arbitrator will intend to understand the Parties' declaration and actions in the way the other Party could and in good faith should have understood them.
- 7.7 The Sole Arbitrator initially notes that, while it is stated explicitly in the Suspension Agreement that the conditional compensation in the amount of EUR 300,000 is to be paid net, it does not appear explicitly in the Suspension Agreement whether it was the true intention of the Parties that this provision regarding net payment should also apply to the unconditional compensation.
- 7.8 The Sole Arbitrator finds in this connection that Clause 6 of the Annex, specifying that "*All amount set in this Annex are net, and have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments in rubles at the currency rate on the date of the actual payment. The Player must receive all the amount set in this Annex in full*", is not directly applicable to payments pursuant to the Suspension Agreement, one of the reasons being that it clearly follows from the Suspension Agreement that the Contracts are suspended during the loan period.
- 7.9 However, the Sole Arbitrator further finds that the absence of an explicit statement in the Suspension Agreement to the effect that the unconditional compensation is to be paid net to the Player is not sufficient to conclude in this particular case that this should be construed to mean that it was the intention of the Parties to state this amount as a gross amount.
- 7.10 Thus, since the Sole Arbitrator finds that the true intention of the Parties cannot be identified based on the wording of the Suspension Agreement alone, an objective interpretation has to be concluded in order for the Sole Arbitrator to understand the Parties' declaration and actions in the way the other Party could and in good faith should have understood them.
- 7.11 The Sole Arbitrator initially notes that it is undisputed that the Player, in accordance with the Contracts, would have been entitled to receive the amount equivalent to EUR 881,250 net in remuneration during the loan period (EUR 1,175,000 / 12 x 9 months (September 2015 – May 2016)) if the Player had stayed with the Club for the duration of the said period.
- 7.12 It further appears in an e-mail of 30 August 2015 from the Club to the Player's agent, which accompanied the Suspension Agreement, that "*the numbers are calculated based on [the Player's] salary (1.175.000 EUR): we pay 9 months, minus Las Palmas share, minus 200.000 Euro. If he actually come back earlier (e.g. in June 2016), we resume his employment contract payments earlier*".

- 7.13 The Sole Arbitrator notes in this context that the Player's salary for nine months pursuant to the Contracts is EUR 881,250 net, which amount, after deduction of EUR 200,000, see the wording of the e-mail, and after deduction of the "Las Palmas share" of EUR 300,000, is EUR 381,250 and, accordingly, exactly the same amount as the one specified in the Suspension Agreement, constituting the unconditional compensation payable to the Player.
- 7.14 The Sole Arbitrator further notes that both the Player's salary pursuant to the Contracts and the Las Palmas share of EUR 300,00, corresponding to the conditional compensation payable to the Player under the Suspension Agreement, both of which are specified in the e-mail of 30 August 2015, are indisputably "net" amounts.
- 7.15 Based on the above, the Sole Arbitrator finds sufficient grounds for assuming that the Parties agreed, prior to signing the Suspension Agreement, that the Club, as confirmed in this e-mail, accepted to pay unconditional compensation in the amount of EUR 381,250 net to the Player for the duration of the loan period (September 2015 – May 2016).
- 7.16 Notwithstanding that the Suspension Agreement does not explicitly state that the unconditional compensation is to be paid net, the Sole Arbitrator finds that the Player – *inter alia* in view of the Club's statement in the mail forwarded on 30 August 2015 and in view of the fact that all payments from the Club to the Player had so far been made net, which has also been proved during these proceedings by the production of written witness statements given by representatives of the Club – could in good faith have a legitimate expectation that the unconditional compensation was to be paid net from the Club.
- 7.17 This is also supported by the fact that the Club, in its statement to the FUR DRC concerning part payments of the unconditional compensation made by the Club to the Player during the loan period, treated these payments as net payments.
- 7.18 Based on the foregoing, on the wording of the Suspension Agreement, on the principle of good faith, on the context as well as under the overall circumstances of the dispute, the Sole Arbitrator finds that the Player is entitled to receive the payment of the unconditional compensation from the Club as a net amount.
- 7.19 The Sole Arbitrator notes that it is undisputed that the Club already paid the amount of EUR 566,875 pursuant to the Suspension Agreement, of which EUR 300,000 constitutes full payment of the conditional compensation, whereas the remaining amount of EUR 266,875 thus constitutes a part payment of the unconditional compensation.
- 7.20 Considering that the Sole Arbitrator finds that the unconditional compensation pursuant to the Suspension Agreement is EUR 381,250 and that the Club has only paid EUR 266,875 to the Player, the Sole Arbitrator finds that the Player is entitled to receive an additional amount of EUR 114,375 from the Club as the remaining part of the unconditional compensation.

7.21 Finally, and since the Player's claim for interest was not disputed by the Club, the Sole Arbitrator finds that the outstanding amount of EUR 114,375 owed to the Player is subject to interest at a rate to be calculated pursuant to article 236 of the Labor Code of Russia starting from the date when the relevant payment should have been made, *i.e.* from 15 December 2015 (Clause 4 of the Suspension Agreement) until the date of effective payment.

8. SUMMARY

8.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the FUR DRC was wrong in deciding that the unconditional compensation payable to the Player pursuant to the Suspension Agreement was not a net amount.

8.2 The Appeal filed against the Decision is therefore upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 7 July 2016 by Mr Mubarak Wakaso against the Decision rendered by the FUR Dispute Resolution Chamber on 5 April 2016 is upheld.
2. FC Rubin Kazan is ordered to pay to Mr Mubarak Wakaso an additional amount of EUR 114,375 subject to interest to be calculated pursuant to article 236 of the Labor Code of Russia as from 15 December 2015.
3. (...).
4. (...).
5. All further and other requests for relief are dismissed.