Arbitration CAS 2016/A/4709 SASP Le Sporting Club de Bastia v. Christian Koffi N'Dri Romaric, award of 16 March 2017

Panel: Mr Fabio Iudica (Italy), President; Mr Didier Poulmaire (France); Mr Efraim Barak (Israel)

Football
Contractual dispute
Recognition of the existence of a binding contract based on the presence of the contractual essentialia negotii in a document
Essential requirements under French labour law for the validity of a contract of employment

1. **If a contractual document signed by both parties in order to envisage the extension of an existing employment contract contains all the necessary essential elements, *i.e.* an agreement on the performance of a work against remuneration, the names and the signatures of the parties, the club's stamp, a signature date, a reference to the parties' underlying contract of employment, and further stipulates the starting date of the extended employment contract, the player's guaranteed and conditional remuneration during said extended period of time and the counterparty's financial entitlements related to a further conditional extension of the parties' contractual relationship, it contains all the contractual *essentialia negotii* to be considered as a valid and binding employment contract in itself.**

2. **According to French labour law, the essential elements needed for a proposal to be considered a valid employment contract are the determination of the employment, a salary, and a relationship of subordination between the parties. Other elements, such as, a starting date, working hours, or specifics of the employment position are not essential for the validity of an employment contract, even less for the valid conclusion of an agreement on the extension of a pre-existing employment contract.**

I. INTRODUCTION

1. This appeal is brought by SASP Le Sporting Club de Bastia against Mr Christian Koffi N'Dri Romaric with respect to the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (hereinafter also referred to as "FIFA DRC") on 18 February 2016 regarding an employment-related dispute.

II. THE PARTIES

2. The Appellant is a professional football club based in Bastia (Corse), France, competing in the French Ligue 1, affiliated with the FFF (*Fédération Française de Football*) which in turn is affiliated with FIFA (hereinafter also referred to as the "Club" or the "Appellant").

3. Mr Christian Koffi N'Dri Romaric is an Ivorian professional football player, born in Ivory Coast on 4 June 1983 (hereinafter also referred to as the "Player" or the "Respondent").

(hereinafter jointly referred to as "Parties").

III. THE CHALLENGED DECISION

4. The challenged decision is the decision rendered by the FIFA DRC on 18 February 2016, on the claim filed by the Player against the Club regarding an employment-related dispute that arose between the Parties (hereinafter also referred to as the "Appealed Decision").

IV. FACTUAL BACKGROUND

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

6. On 31 July 2013, the Player and the Club concluded an employment contract valid for one sporting season as of the date of signing until the end of the season 2013/2014 according to which the Player was entitled to receive a monthly gross salary of EUR 15,000.00 and statutory bonuses provided for by the Charter of Professional Football, the collective bargaining agreement in the field of football (hereinafter the "Employment Contract").

7. According to a separate agreement signed on the same date, the Parties agreed that the Player would also be entitled to the following bonuses:

- EUR 100,000.00 as signing bonus payable on 1 January 2014;
- EUR 180,000.00 as special bonus to be paid in three instalments of EUR 60,000.00 each on 31 January 2014; 31 March 2014 and 30 June 2014 respectively.

8. In addition, an addendum to the Employment Contract was also signed on 31 July 2013, stipulating that in the event that the Club remains in Ligue 1 at the end of the sporting season 2013/2014, the Employment Contract will be renewed for one more season (*i.e.* the sporting

season 2014/2015). The addendum contained the following financial provisions applicable to the current season (2013/2014) and the next one (2014-2015) which are as follows:

Sporting season 2013/2014

- EUR 60,000.00 as monthly gross salary as from 1 January 2014;
- EUR 285,000.00 as extra bonus payable on 31 January 2014;
- EUR 150,000.00 as non-relegation bonus payable with the salary for June 2014;
- EUR 150,000.00 as additional bonus in case the Club is ranked between the 1st and 12th position at the end of the season 2013/2014, payable with the salary for June 2014.

Sporting season 2014/2015

- EUR 60,000.00 as monthly gross salary;
- EUR 150,000.00 as non-relegation bonus in the event that the Club remains in Ligue 1 at the end of the sporting season 2014/2015, payable with the salary for June 2015;
- EUR 150,000.00 as additional bonus if the Club is ranked between the 1st and 12th position at the end of the sporting season 2014/2015, payable with the salary for June 2015.

9. On 26 August 2014, the Parties signed a document named *"Proposition de prolongation"* [free translation: "Proposal of renewal"], providing *"Prolongation du contrat professionnel d'une saison plus une en option"* [Free translation: renewal of the professional contract for a season plus one optional season] (hereinafter the "Proposal") pursuant to which an extension of the Employment Contract was envisaged for the sporting season 2015/2016 under the following terms and condition:

- EUR 75,000.00 as monthly gross salary;
- EUR 100,000.00 as ranking bonus if the Club is ranked at least 12th at the end of the season and the Player has played at least 45 minutes in 23 matches of Ligue 1;
- EUR 30,000.00 as additional bonus per position gained by the Club as from the 11th position.

10. In addition, the Proposal stipulates a further extension of one sporting season if the Player reaches 23 participation in Ligue1 with the Club during the sporting season 2015/2016, in which case, the following conditions would apply:

- EUR 60.000,00 monthly gross remuneration;
- EUR 100,000.00 as ranking bonus provided that the Club is ranked at least 12th at the end of the season and the Player has played at least 45 minutes in 23 matches of Ligue 1;
- EUR 30,000.00 per position gained by the Club as from the 11th position.

11. On the same date, the news concerning the extension of the Employment Contract signed between the Parties appeared on the Club's official web site: *"Le défenseur international ivoirien a prolongé cet après-midi son contrat avec le Club jusqu'en 2016. Précédemment engagé jusqu'à la fin de la saison en cours, Romaric a rempilé pour une saison supplémentaire assortie d'une option d'un an supplémentaire"* [Free

translation: The international Ivory Coast defender has renewed his contract with the Club this afternoon until 2016. Previously employed until the end of the current season, Romaric signed up again for an additional season with an option for one more year].

12. The news also appeared on the twitter account of the club *"@s_c_bastia: Romaric prolonge son contrat jusqu'en 2016 plus une année en option"* [Free translation: @s_c_bastia: Romaric signed up again for an additional season with an option for one more year].

13. The Player participated in 26 of the Clubs' official matches in Ligue 1 during the sporting season 2013/2014 and 34 matches during the sporting season 2014/2015.

14. At the end of the sporting season 2014/2015, on June 30th 2015, the Club informed the Player that, it would not extend the Employment Contract for the sporting season 2015/2016. Written evidence dating back to the end of the sporting season 2014/2015 does not make it possible to know why the Club took that decision.

15. On 3 July 2015, the Players' legal counsel sent a reminder letter to the Club with regard to the Proposal, informing the Club of the following: *"Specifically, we refer to the decision addressed to my client on 30th June 2015, by SC Bastia's President, according to which it seems that the Club's intention is not to comply with the obligations and commitments agreed between both parties under the Agreement signed on 26 August 2014. At this regard, we do consider that such decision could be solely interpreted as a clear and evident breach of the contractual agreement entered into between the parties on the mentioned date"*. With this respect, and with the purpose of evaluating the position of the Player, the Player's counsel invited the Club to clarify which were its determinations with regard to the extension of the Employment Contract, reserving the right to initiate all suitable legal actions in defence of the Player's legitimate interests and rights.

16. On 7 July 2015, the Club replied to the Player's counsel as follows: *"We would like to meet you at your convenience to talk about this file. Romaric is a good person and we don't have anything against him"*.

17. On 10 July 2015, the Player's counsel acknowledged the Club's correspondence reiterating the previous considerations and stressing that the Proposal *"is, in our opinion, totally valid, has full legal effects and therefore, is binding for both, the Club and the Player"* and finally invited the Respondent to travel to Madrid, Spain, in order to hold a meeting for discussing the matter.

18. By letter to the Player's counsel dated 10 August 2015, the Club confirmed the necessity to hold a meeting regarding the position of the Player.

19. On 12 August 2015, the Player's counsel addressed an email to the Club underlying that, since the Club had not rebutted its apparent decision of not respecting the Proposal, a breach of contract actually occurred and, therefore, any possible conversation or meeting would only concern the economic consequences of the breach.

20. On 28 August 2015, the Player lodged a claim before the FIFA DRC against the Club for breach of contract requesting the following:

- EUR 360,000.00 plus 5% interest as from each due date, as outstanding remuneration corresponding to his salary for June 2015 (EUR 60,000.00), as well as the non-relegation bonus (150,000.00) and the additional bonus (EUR 150,000.00) in relation to the sporting season 2014/2015 pursuant to the provisions of the Employment Contract;

- EUR 1,620,000.00 plus 5% interest as from notification of the FIFA DRC's decision, as compensation for breach of contract;

- EUR 25,000.00 as reimbursement of legal fees;

- Sporting sanctions to be imposed on the Club.

21. Besides the request for payment of the outstanding amounts due under the Employment Contract, the Player maintained that the Proposal was a real binding contract since it contained all the *essentialia negotii* and that the decision by the Club not to give effect to the extension of the Employment Contract was unjustified and constituted a breach of contract.

22. With regard to compensation, the Player claimed he was entitled to receive the remuneration stipulated under the Proposal until the end of the sporting season 2016/2017; furthermore, he underlined that the breach occurred during the protected period.

23. The Club, on one side, acknowledged its debt towards the Player amounting to EUR 360,000.00 as outstanding remuneration; on the other side, it objected that the Proposal was a binding contract but rather a "preparatory contract" establishing the framework for future discussions between the Parties and, moreover, it contended that the Club had decided not to execute it because of the alleged unprofessional behaviour of the Player during the sporting season 2014/2015, which circumstance was contested by the Player. Besides that, the Club put forward that the decision of not executing the Proposal was justified by the fact that the Club was subject to relegation for the sporting season 2015/2016 due to a ruling of the relevant office of management control within the FFF dated 23 June 2015, which was nonetheless overturned by the appeal committee on 17 July 2015.

24. As to compensation, the Club objected that the Player is not entitled to claim bonuses as well as other uncertain and potential amounts envisaged under the Proposal, such as salaries stipulated for the sporting season 2016/2017 and therefore, that the amount of compensation, if any, should not exceed EUR 900,000.00, (*i.e.* the monthly salary of EUR 75.000,00 x 12 months).

25. In addition, as to the Player's request for sporting sanctions to be imposed on the Club, the Club argues that the decision to terminate the employment relationship occurred after the expiry of the second sporting season and therefore, outside the protected period.

26. On 1 September 2015, the Player signed a new employment agreement with the Cypriot Club, AC Omonia Nicosia, valid as from the date of signing until 31 May 2016 and according to which

the Player was entitled to receive the total gross amount of EUR 27,146.40 payable in 9 instalments.

27. On 18 February 2016, the FIFA DRC rendered the Appealed Decision by which the Player's claim was partially upheld and the Club was ordered to pay to the Player the total amount of EUR 360,000.00 as outstanding remuneration plus 5% interest per annum as from 1 July 2015 until the date of effective payment; as well as the amount of EUR 872,853.60 as compensation for breach of contract, plus interest at the rate of 5% per annum as from the date of notification of the said decision until the date of effective payment.

28. The grounds of the Appealed Decision were served by fax to the Parties on 16 June 2016.

V. SUMMARY OF THE APPEALED DECISION

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

30. The matter concerns an employment-related dispute with an international dimension between an Ivorian player and a French club.

31. Since the claim was lodged on 28 August 2015, the 2015 edition of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Regulations") is applicable, as to the substance of the present matter.

32. The Chamber firstly acknowledged that the Employment Contract, which was initially due to expire at the end of the 2013/2014 sporting season, was automatically renewed for one season, *i.e.* until the end of the sporting season 2014/2015, in view of the Club's success to remain in Ligue 1 at the end of the 2013/2014 season.

33. In this context, and taking into consideration the relevant acknowledgement made by the Club, the DRC established that the Club was liable to pay to the Player the amount of EUR 360,000.00 as outstanding salaries and bonuses, plus interest at the rate of 5% as of 1 July 2015 until the date of effective payment.

34. With regard to the issue concerning the validity of the Proposal, which was objected by the Club, after a careful study, the Chamber concluded that the Proposal contained all the *essentialia negotii* as it envisaged, in particular, that the Player is entitled to receive remuneration, including a monthly salary, in exchange for his services to the Club as a professional.

35. As a consequence, the Proposal was valid and binding between the Parties, with the result that the employment relationship was validly extended at least until the end of the 2015/2016 sporting season.

36. In order to establish whether such contract had been breached, the DRC considered the reasons put forward by the Club to justify the termination of the employment relationship and

established that the Club failed to satisfactorily carry the burden of proof with regard to the alleged Player's misconduct during the sporting season 2014/2015.

37. In continuation, with respect to the Club's allegation that the financial difficulties in relation to its possible relegation was the actual reason behind the termination of the employment relationship with the Player, the Chamber recalled its longstanding jurisprudence according to which financial difficulties are not deemed as a valid reason to terminate a contract.

38. In consideration of the foregoing, the Chamber decided that the Club had no just cause to unilaterally terminate the employment relationship with the Player on 30 June 2015 and that it was therefore liable to pay compensation for breach of contract, pursuant to article 17 of the FIFA Regulations.

39. As to the calculation of the compensation for breach, having established that the Employment Contract did not provide any compensation clause, the FIFA DRC considered that the amount has to be assessed in application of the other parameters set out in article 17 of the FIFA Regulations.

40. In this respect, the Chamber took into account the amount of remuneration that should have been paid to the Player during the time remaining on the existing contract according to the Proposal and stressed that the renewal for the sporting season 2016/2017 was made conditional upon certain sports results to be achieved by the Club in the future, *i.e.* after the time when the employment relationship was terminated and was therefore only hypothetical. As a consequence, the Chamber considered that at the time of the termination of the Employment Contract, the remaining term was until the end of the sporting season 2015/2016 and concluded that the amount of EUR 950,000.00 (*i.e.* the monthly basic salary of EUR 75,000.00 x 12 months) served as the basis for the relevant calculation, with the exception of any bonus and other conditional payment stipulated for the sporting season 2015/2016.

41. The Chamber further mitigated the amount of EUR 950,000.00 by deducting the alternative salaries earned by the Player with the Cypriot Club, AC Omonia Nicosia, after the termination of the Employment Contract, in accordance with FIFA's constant practice with regard to the application of art. 17 of the FIFA Regulations and, therefore, the FIFA DRC concluded that EUR 872,853.60 was a reasonable and justified amount as compensation for breach and that 5% interest shall also apply on that amount as from the date of notification of the Appealed Decision until the date of effective payment.

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

42. On 6 July 2016, the Club filed an appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against the Appealed Decision by submitting a statement of appeal in accordance with articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2013 (hereinafter referred to as the "CAS Code"). In its statement of appeal, the Appellant nominated Mr Didier Poulmaire as arbitrator and chose French as the language of the present arbitration. As a

provisional measure, the Appellant requested the stay of the execution of the Appealed Decision.

43. The appeal was not directed at FIFA.

44. On 15 July 2016, the Appellant filed its appeal brief.

45. By fax letter dated 20 July 2016, the CAS Court Office notified the Appellant that, consistent with CAS steady jurisprudence, decisions of financial nature rendered by FIFA are not subject to execution as long as they are appealed before the CAS and invited the Appellant to inform the CAS Court Office whether it intended to maintain or to withdraw the relevant application for a stay. On 20 July 2016, the Appellant expressly withdrew its request for a stay.

46. By fax letter dated 22 July 2016, the Respondent raised an objection to the Appellant's choice of language and requested that English be chosen as the language of the present arbitration proceedings.

47. On the same day, the CAS Court Office invited the Appellant to take position on the Respondent's objection to the choice of French as the language of the present proceedings, until 27 July 2016, informing the Parties that failing any agreement between them or failing any answer by the Respondent, it would be for the President of the Appeals Arbitration Division to decide in accordance with Article R29 of the CAS Code.

48. By fax letter on 25 July 2016, the Appellant insisted that French be selected as the language of the present arbitration proceedings.

49. On 27 July 2016, the President of the Appeals Arbitration Division rendered an order on language, by which it was decided that English shall be the language of the present procedure and the Appellant was ordered to file a translation in English of its statement of appeal and of its appeal brief together with all exhibits filed in another language, within 10 days from the notification of the same order. The Respondent was granted a deadline of 10 days from the notification of the translated statement of appeal and appeal brief to nominate an arbitrator and another deadline of 20 days from the notification of the translated Appellant's submissions to file his answer.

50. On 2 August 2016, following a request by the Appellant on 1 August 2016, the CAS Court Office granted the Appellant an additional time of 15 days to provide translation in English of its statement of appeal and appeal brief.

51. On 8 August 2016, the Appellant provided the CAS Court Office with an English translation of its statement of appeal and relevant attachments.

52. By fax letter dated 12 August 2016, FIFA informed the CAS Court Office that it had renounced its right to request for intervention in the present arbitration proceedings.

53. By fax letter dated 19 August 2016, the CAS Court Office informed the Parties that since the Respondent had failed to nominate his arbitrator within the prescribed deadline, the President of the CAS Appeals Arbitration Division, or her Deputy, would appoint an arbitrator in his stead.

54. By fax letter on the same day, the Respondent requested that the CAS Court Office reconsider the Respondent's deadline to nominate his arbitrator, in view of the content of the order on language issued on 27 July 2016 and in the light of the fact that the Respondent's relevant deadline should run from the moment in which the translation of both the statement of appeal and the appeal brief are notified to the Respondent, which fact occurred on 15 August 2015. By the same fax letter, the Respondent nominated Mr Efraim Barak as an arbitrator in the present proceedings.

55. By a new fax letter on 19 August 2016, the CAS Court Office informed the Parties that in view of the consensual nature of the arbitration and in view of the content of the order on language, on behalf of the President of the CAS Appeals Arbitration Division, the Respondent's nomination of Mr Efraim Barak was taken into consideration.

56. On 30 August 2016, the Respondent filed his answer according to Article R55 of the CAS Code.

57. By fax letter on 1 September 2016, the CAS Court Office invited the Parties to express their preference for a hearing to be held in the present proceedings or for the Panel to render an award based solely on the Parties' written submissions.

58. On 6 September 2016, the Respondent informed the CAS Court Office that he did not consider a hearing to be necessary in the present arbitration proceedings.

59. By fax letter dated 7 September 2016, the Appellant also informed the CAS Court Office that he preferred that the Panel render a decision based solely on the Parties written submissions.

60. By fax letter on 6 October 2016, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

President:	Mr Fabio Iudica, attorney-at-law in Milan, Italy;
Arbitrators:	Mr Didier Poulmaire, attorney-at-law in Paris, France;
	Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel.

By the same fax letter, the Parties were informed that the Appellant had paid its share of the advance of costs in the present arbitration proceedings.

61. On 18 October 2016, the CAS Court Office informed the Parties that the Panel had decided not to hold a hearing in the present procedure.

62. On 20 October 2016, the CAS Court Office forwarded the Order of Procedure to the Parties inviting them to return a signed copy to the CAS Court Office within 27 October 2016.

63. The Order of Procedure was returned duly signed by the Respondent to the CAS Court Office on 21 October 2016.

64. On 28 October 2016, the CAS Court Office granted the Appellant a new deadline until 2 November 2016 to sign and return a copy of the Order of Procedure, which was finally submitted by the Appellant on 31 October 2016.

65. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS over the present dispute and that their right to be heard has been respected.

VII. SUBMISSIONS OF THE PARTIES

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

A. Appellant's Submissions and Requests for Relief

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

68. In substance, the Appellant argues that the Proposal is not a valid and binding contract and therefore, no breach was committed by the Club when the Employment Contract was terminated.

69. In this respect, the Club avers that the Appealed Decision goes against the strict application of French civil and employment law and relevant collective bargaining agreements and that, as a consequence, the FIFA DRC wrongly considered the Proposal as if it was a real contract instead of a preliminary contract or "promise of employment", as it actually is.

70. In this respect, the Appellant contends that the Proposal lacks the essential elements of a real employment contract according to French law, in that the relevant document makes no reference as regards the Player's position, the starting date of the employment, as well as the working hours and *"only formulating offers of pay in the event that the Club SC Bastia remained in French Professional Football League 1"*.

71. In this context, the Club objects that the Proposal fails to comply with the applicable rules concerning the players' remuneration, due to the alleged absence of the Player's salary's details, particularly in the event of the Club's relegation to the French Professional Football Ligue 2 during sporting season 2015/2016, which circumstance is not envisaged in the Proposal. As a consequence, the provision relating to remuneration is incomplete.

72. *"As a result, the decision of the Dispute Resolution chamber should be amended in that the offer of extension dated 26 August 2014 cannot constitute an employment contract".*

73. In any case, even admitting the existence of a "promise of contract", if any, French employment law requires that fixed-term employment contracts must be concluded in writing, and signed by the parties and, moreover, they shall comply with certain formal requirements according to a specific software called "Isyfoot" as well as with further requirements concerning their registration and approval by the relevant Football Federation, failing which the employment contract must be considered null and void, as is the present case.

74. In addition to and notwithstanding the above, at the beginning of the sporting season 2015/2016, *i.e.* when the Employment Contract was supposed to be extended according to the Proposal, the Club was not admitted to participate in the relevant competition within Ligue 1 and therefore, it was unable to conclude any employment contract with the Player who was duly notified of this fact.

75. In conclusion, the Proposal cannot be considered as a valid and binding contract between the Parties and, therefore, the Club committed no breach of contract by terminating the employment relationship with the Player on 30 June 2015.

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

"SC Bastia applies to the Court of Arbitration for Sport for it to:

- *AMEND the decision of the FIFA Dispute Resolution Chamber dated 18 February 2016 in so far it found that an employment contract existed between SC BASTIA and Mr. Koffi Christian ROMARIC N'DRI for the sport season 2015/2016;*

- *AMEND the decision of the FIFA Dispute Resolution Chamber dated 18 February 2016 in so far as it orders SC BASTIA to pay Mr. Koffi Christian ROMARIC N'DRI the sum of EUR 872,853.60 Euros;*

- *ORDER that Mr. Koffi Christian ROMARIC N'DRI pay the entire costs of the proceedings relating to the appeal before the Court of Arbitration for Sport".*

B. The Respondent's Submissions and Requests for Relief

77. The position of the Respondent is set forth in his answer and can be summarized as follows.

78. As a preliminary consideration, the Player points out that his arguments and allegations are based on the assumption that, contrary to the Appellant's contentions, the law applicable to the present dispute shall be the FIFA Regulations and, subsidiarily, Swiss law, and thus considering that French law is not applicable to the present case.

79. The Player firstly stresses that the Club bases the present appeal on legal arguments and allegations which are basically different from those provided in the proceedings before the FIFA DRC, where the Club maintained that the termination of the relevant employment relationship was allegedly justified by the Player's unprofessional behaviour during sporting season 2014/2015, which fact is not even mentioned by the Club in its submissions before the CAS.

80. As to the legal nature of the Proposal, in accordance with FIFA's and CAS' steady jurisprudence, the Player claims that it is a valid and binding employment contract as it contains all the *essentialia negotii* and, in particular, it establishes that the Player is entitled to remuneration, including a monthly salary plus bonuses, in exchange for his services to the Club as a professional. Moreover, it contains a) the full name of the Parties and their signatures, b) the Club's details and stamp, c) the date of formalisation, d) the Player's basic remuneration and the variable remunerations, such as individual and team bonuses; e) the different remuneration depending on the sporting season concerned (2015/2016; 2016/2017). Conversely, the Respondent argues that the stipulation of other details mentioned by the Appellant such as the working hours or the Player's employment position within the Club are neither required for the validity of the employment contract between a club and a professional nor customary.

81. With regard to the Appellant's argument that the FIFA DRC allegedly confused the notions of "promise of employment" and real "employment contract", the Respondent makes reference to FIFA's and CAS' jurisprudence according to which, irrespective of any definition, the fact that the relevant agreement contains all the essential elements of an employment contract, and the fact that the document contains no indication to the contrary, entails that it cannot be considered nothing else but a final binding employment contract between the Parties.

82. As to the formal requirements which are allegedly missing according to the Appellant's position, the Respondent objects that they are not able to affect the validity or the enforceability of the Proposal and, in any case, the fulfilment of formal requirements for which a club is responsible does not have any legal effect on the validity or enforceability of the employment contract, as it has been constantly established by FIFA.

83. In addition to the foregoing, the Appellant showed from the outset that it also relied on the validity of the Proposal with respect to the extension of the Employment Contract as it is demonstrated by the Club's announcement of the relevant news to the media and on the Club's official website on the same date of the signing. It follows that the Proposal shall also be considered and interpreted in the light of the clear and common intention of the Parties, as it is apparent from their behaviour.

84. Even in the unlikely event that the CAS should consider that French law is applicable to the present dispute, the Appellant avers that, contrary to the Appellant's contentions on this point, the Proposal also complies with the requirement imposed by French law in order to consider an agreement as an employment contract.

85. Moreover, the facts of the case show that the Club acted in bad faith and breached the principle *"venire* contra *factum proprium non valet"*, according to which no one may set himself in contradiction to his own previous conduct.

86. In fact, notwithstanding the above, at the time when the Proposal was supposed to enter into force, *i.e.* at the beginning of the sporting season 2015/2016, the Club surprisingly informed the Player of its decision not to execute the extension of the Employment Contract, without providing any justifiable reason and subsequently failing to offer any kind of amicable solution.

87. In this respect, the reason put forward by the Appellant for not executing the Proposal, with regard to the alleged relegation of the Club to French Ligue 2 is not only a pretext but, moreover, it does not constitute any valid reason for the unilateral termination of the Employment Agreement according to FIFA's and CAS jurisprudence. In addition, the Player notes that the Respondent was informed on 5 July 2015 of the final decision of the appeal body of the FFF to keep the Club in Ligue 1.

88. As a consequence, the Respondent agrees with the conclusion of the FIFA DRC in the Appealed Decision that the Appellant terminated the Employment Contract without just cause and it is therefore liable to pay compensation according to FIFA Regulations.

89. With this regard, the Respondent also considers the amount of EUR 872,853.60 established by the Appealed Decision to be a reasonable and justified amount as compensation for breach not only in compliance with the criteria set out under article 17 of the FIFA Regulations, but also with reference to French employment law as the "Law of the country concerned" and consistent with the SCO.

90. The Respondent's requests for relief were submitted in his answer and are the following:

a) *"That the appeal filed by the Appellant shall be entirely dismissed and, thus, the appealed decision of the Dispute Resolution Chamber, dated 18 February 2016, shall be confirmed by the Court of Arbitration for Sport.*

b) *That the Panel shall condemn the Appellant to pay the pending amount of € 360,000.00 corresponding to the outstanding remuneration related to Season 2014/2015, plus an interest rate of 5% from the due date until the date of receipt by the Respondent of the amount owed as determined by the DRC.*

c) *That the Panel shall condemn the Appellant to pay the Respondent a total compensation of EUR 872,853.60 for breach of contract by the Appellant, plus an interest rate of 5% as from the notification of the appealed decision until the effective date of payment.*

d) *That the Panel shall condemn the Appellant to pay the whole costs and expenses of the present arbitral proceedings, among others, a compensation of EUR 15,000.00 as contribution towards the legal expenses of this party, including all the Respondent's attorney fees and other expenses incurred for the defence of its interests in the present arbitration".*

VIII. CAS JURISDICTION

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

92. The Appellant relies on article 67, para 1 of the FIFA Statutes which reads as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by* Confederations*, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*. The jurisdiction of the CAS is not contested by the Respondent.

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

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

IX. ADMISSIBILITY OF THE APPEAL

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

96. More specifically, the Panel notes that article 67 para 1 of the FIFA Statutes determines as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by* Confederations*, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

97. The Panel notes that the FIFA DRC rendered the Appealed Decision on 18 February 2016 and that the grounds of the Appealed Decision were notified to the Parties on 16 June 2016. Considering that the Appellant filed its statement of appeal on 6 July 2016, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was filed timely and is therefore admissible.

X. APPLICABLE LAW

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

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

99. In addition, Article 66 para 2 of the FIFA Statutes so provides:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

100. According to the Appellant, French law would be applicable to the present dispute, while the Respondent objects that the Parties agree on the application of French law and that therefore the Panel should apply FIFA Regulations and, subsidiarily, Swiss law.

101. In this respect, the Respondent maintains that since the present arbitration proceedings is based in Switzerland, the Swiss Private International Law Act (the "PILA") is applicable, which fact further entails that the arbitral tribunal shall primarily rule according to the law chosen by the Parties and that such a choice may also be indirect, by reference to the rules of an arbitral institution.

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

103. Moreover, even admitting that the Employment Contract contains reference to articles L 1242-2, 3rd para and D 1212-1 of the French labour code which concern fixed-term employment contracts as well as the *"Charte du Football Professionnel"* and the relevant Collective bargaining agreements, the Panel is not persuaded that the Parties expressly chose French law as the substantive law applicable to the present dispute based on the following considerations:

- the Employment Contract does not contain a specific clause concerning jurisdiction or the applicable law;

- the Employment Contract is set out on the basis of a standard form provided by the FFF and therefore the specific reference made to two specific articles of the French Labour Code does not necessarily reflect the real intent of the Parties to choose French law as the applicable law;

- the Appellant has not challenged the FIFA jurisdiction in the first instance in favour of an independent arbitration tribunal established within the framework of FFF or a collective bargaining agreement, at national level;

- the Appellant has not discussed applicable law in the first instance in favour of French law;

- the Appellant has accepted the procedure before CAS;

- The decision of the Cour de Cassation invoked by the Appellant (Cour de Cassation, chambre sociale, 10 February 2016 n°14-26147) does not deal with jurisdiction or applicable law; it deals with the fact that a collective bargaining agreement does not make it possible to modify an employment contract unless there is a specific legal provision.

104. Moreover, the Panel abides by CAS previous jurisprudence according to which *"When the rules and regulations of FIFA are to be applied primarily and Swiss law complementarily, there is no place for the application of the rules of another national law, except in the case where these rules would have to be considered as mandatory according to the law of the seat of the arbitration, i.e. Swiss law in cases involving FIFA Regulations and submitted to the FIFA Statutes"* (2009/A/1956).

105. In addition, it was established that *"For appeal proceedings before the CAS, Article R58 of the CAS Code foresees that the federation's regulations take precedence over a choice of law originally taken by the parties. Accordingly the regulations of a federation which has issued a first instance decision challenged in front of CAS also take precedence over a legal system chosen by the parties in an employment contract"* (2013/A/3398).

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

107. With regard to the applicability *ratione temporis* of the relevant FIFA Regulations, the Panel holds that the present case is governed by the 2015 edition of same regulations, given that the Player lodged his claim with FIFA on 28 August 2015.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

108. As to the scope of the present review, the Panel first observes that the Appealed Decision is contested by the Appellant only to the extent that the FIFA DRC ordered the Club to pay to the Player the amount of EUR 872,853.60 as compensation for breach of contract and not with regard to the amount of EUR 360,000.00 as outstanding salaries.

109. In this context, the Appellant argues that it shall not be considered liable for breach since it was not bound by any employment contract when the Club decided to terminate the relationship with the Player.

110. In this respect, it is undisputed that on 26 August 2014 the Parties signed a document in order to envisage the extension of the existing Employment Contract, for at least one more sporting season (*i.e.* sporting season 2015/2016), plus one additional season in option, for a monthly gross salary of EUR 75,000.00, as well as other conditional payments.

111. However, the main issue in dispute is whether the Proposal signed between the Parties validly extended the employment relationship until the end of sporting season 2015/2016 since, according to the Appellant, as opposed by the Respondent, no legally binding contract had come into effect between the Parties, as the Proposal is to be considered as a "preparatory contract" and not a final employment contract.

112. According to the Appellant, in fact, the Proposal does not contain the *essentialia negotii* nor does it comply with other formal requirements pursuant to French law and therefore, the Club was not bound by the promise of extension, since no real employment contract was ever concluded between the Parties.

113. In this respect, the Club avers that the Proposal lacks of the following elements: a) the Player's employment position or responsibilities, b) the starting date of the employment, as well as c) the working hours and d) the salary payable to the Player in the event of relegation of the Club to French Ligue 2.

114. The Panel observes that according to consistent CAS jurisprudence, *"The clear distinction between a <precontract> and a <contract> is that the parties have not agreed on the essential elements of the contract or at least the <precontract> does not reflect the final agreement. On the contrary, if the interpretation of the <precontract> leads to the conclusion that the parties agreed on all the essential elements of the final contract, on the basis of the general principles applicable to the conclusion of a contract as defined under Article 1 et seq. of the Swiss Code of Obligations (SCO), the <precontract> would be nothing else but the final contract"*; *"Starting with the argument of the existence of a "precontract", the Panel first noted that the FIFA Regulations and Swiss law do not provide a specific, explicit definition of a "precontract". This notion is however well known in legal practice and the Panel would define it as the reciprocal commitment of at least two parties to enter later into a contract, a sort of "promise to contract" (in French: "promesse de contracter"). The clear distinction between a "precontract" and a "contract" is that the parties to the "precontract" have not agreed on the essential elements of the contract or at least the "precontract" does not reflect the final agreement. In the present matter, the Employment Agreement does clearly contain an agreement on all the essential elements of the contract, namely the transfer of the Player and the terms and conditions of his engagement with the Appellant. The Panel considered without any doubt that the Employment Agreement was clearly not a "precontract" as defined above"* (CAS 2008/A/1589).

115. The Panel notes that the Proposal constitutes, in fact, an agreement on the extension to an existing employment contract between the Parties (*i.e.* the Employment Contract), the validity of which is not in dispute. As such, the Proposal is to be considered as an *addendum* to the Employment Contract, which already contains all the essential elements of the employment relationship between the Parties, which fact was not contested by the Appellant.

116. Moreover, the Proposal contains the indication of the name of the Parties and the Club's stamp; it is signed by both the Club and the Player, it bears the date of signing; it makes reference to the existing professional contract; it provides the extension of the Employment Contract for one sporting season which also implies the starting date; it stipulates the amount of the Player's gross monthly salary and other extra conditional payments for the season 2015/2016; it

provides a further conditional extension of the Employment Contract for another sporting season with corresponding salary and supplementary payments.

117. In this respect, the Panel also makes reference to the well-established principle in CAS jurisprudence according to which: *"La réglementation de la FIFA ne donne aucune indication sur la notion de précontrat. En revanche pour le droit suisse (art. 22 CO), le précontrat est un contrat bilatéral par lequel les deux parties, ou l'une d'elles seulement, s'engagent à conclure un contrat déterminé dans le futur. Toutefois, en ce qui concerne le contrat de travail, il résulte clairement de l'art. 320 al. 2 CO que l'élément déterminant pour en présumer sa conclusion est l'accord sur l'exécution d'un travail, contrepartie d'une rémunération. Dès lors que la convention passée entre un joueur et un club contient toutes les conditions nécessaires à l'existence d'un contrat de travail, soit la description du travail à fournir, la durée de l'engagement et le salaire, le seul fait que l'entrée en service ait été convenue pour un terme futur ne suffit pas pour conclure à l'existenæ d'un précontrat plutôt que d'un contrat"* ([free translation: The regulations of FIFA give no indication on the concept of pre-contract. In contrast to Swiss law (Art. 22 CO), pre-contract is a bilateral contract in which both parties, or only one of them, undertake to enter a specific contract in the future. However, with regard to the employment contract, it is clear from art. 320 al. 2 CO that **the decisive criteria of an employment contract is the agreement on the performance of work, for remuneration**. Since the agreement between player and club contains all the necessary conditions for the existence of a contract or the description of the work required, duration of engagement and pay, the fact that entry into service has been agreed for a future term is not sufficient for a finding of a preliminary contract rather than a contract]; TAS 2006/A/1082 & 1104).

118. In consideration of the foregoing, and consistent with CAS jurisprudence (CAS 2015/A/3953; CAS 2013/A/3221), the Panel agrees with the FIFA findings in the Appealed Decision that the Proposal itself contains all the essential elements in order for an employment contract to be considered valid and binding and, in any event and all the more, it contains all the essential elements of an agreement on the extension of the existing Employment Contract.

119. In addition, the Panel also notes that the Club itself acknowledged the validity and effectiveness of the Proposal, by announcing the relevant news of the extension of the Player's contract on its website.

120. As to the alleged formal requirements pursuant to French law, besides the fact that French law is not applicable to the present case, the Panel observes that in any event, such additional formalities are not mentioned in the Proposal as a condition to its validity and moreover, consistent with FIFA (FIFA DRC decision 26 October 2006) and CAS jurisprudence, it is up to the Club to make sure that all the mandatory requirements, if any, are met when an employment agreement is concluded with a player and any possible failure to do so may not be attributed to the Player nor held against the Player who signed the Proposal in good faith.

121. In any case, also according to French law, if it would have been considered the applicable law – *quod non* - the proposal contains the needed elements in order to be considered a valid employment contract since the following essential elements are present: a) the job is determined;

b) there is a salary; c) a subordination relationship between the parties exists, as is the present case.

122. In the present case, the job is determined. The Proposal is signed by "Le Joueur" ("The player"). The Proposal refers to the initial agreement of 31 July 2013 where the Respondent is employed as a "professional player".

123. There is a salary. The basic monthly salary of 75.000.00 Euros is stated alongside with bonuses.

124. There is a subordination relationship. The Player worked under the supervision of the Club.

125. With regard to other elements allegedly missing as asserted by the Club, such as the starting date, working hours, the specific Player's employment position, the amount of salary in the event of the Club's relegation or the use of the Isyfoot software process, the Panel rejects the Appellant's argument in that they are not essential to the valid conclusion of the agreement on the extension of the Employment Contract, and, in any case, they are not even essential elements for the validity of an employment contract with a professional, even under French law. In addition, with regard to the salary, the Panel observes that pursuant to the wording of the Proposal, the fixed amount of EUR 75,000.00 per month is not made conditional on the presence of the Club within Ligue 1.

126. As a general rule, under French law, the failure to comply with a provision of labour law is detrimental to the employer and has no negative effects on the employee.

127. For example, the lack of any of the compulsory indications requested in an employment contract for a fixed term (such as employment contracts of professional footballers) entails the modification of the contract as a contract for an undetermined duration.

128. Similarly, the duty to use the Isyfoot software registration process is imposed on the clubs. If the clubs fail to use Isyfoot, they face penalties as well as the compulsory registration of the contracts with the players.

129. Finally, the Panel notes that the French courts cases quoted by the Appellant do not hold that the lack of the various conditions referred to by the Appellant (starting date, number of hours…) entail the lack of an employment contract.

130. In conclusion, the Panel holds that the fact that the document called "Proposal" does not derogate from its true nature as a valid and binding contract and that the Club was bound to the agreed extension of the Employment Contract for the sporting season 2015/2016, which implies that it shall be considered responsible for breach of contract as a consequence of the non-execution of the Proposal, as it was correctly established by the FIFA DRC in the Appealed Decision.

131. In this respect the Panel recalls that pursuant to FIFA Regulations and to the general principle of *pacta sunt servanda, "A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause".*

132. In fact, the Club failed to provide any justified reason for the non-execution of the Proposal.

133. With regard to the Appellant's suggestion that the Club could not enforce the Proposal due to the alleged impending relegation to Ligue 2, the Panel rejects such allegation as inconsistent and baseless and abide by the principle established by the FIFA DRC in the Appealed Decision that the relegation of the Club to Ligue 2, if any, or any possible financial difficulties arising from such relegation is not deemed to be a valid reason for the early termination or the non-performance of an employment contract.

134. With regard to compensation for breach, the Panel agrees with the assessment and calculation set forth by the FIFA DRC in the Appealed Decision as it is consistent with the well-established interpretation of Article 17 of the FIFA Regulations, and, moreover, it is not contested by the Appellant.

135. In the light of the considerations above, the Panel rejects the appeal lodged by the Club and the Appealed Decision is upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SASP Le Sporting Club de Bastia is rejected.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 18 February 2016 is upheld.

3. (…).

4. (…).

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