Arbitration CAS 2017/A/5012 Elaziğspor Kulübü Derneği v. Franco Cángele & Fédération Internationale de Football Association (FIFA), award of 7 August 2017 (operative part of 20 June 2017)

Panel: Mr Rui Botica Santos (Portugal), President; Mr José Juan Pintó (Spain); Mr Carlos Del Campo Cólas (Spain)

Football
Termination of the employment contract without just cause by the player
Admissibility of new evidence
Scope of review of the CAS

1. **Art. R57 para. 3 of the CAS Code vests CAS panels with discretion to consider facts and circumstances of every specific case and to decide whether the documents sought to be produced warrant exclusion. It is designed to prevent parties from abusing the court process as opposed to punishing genuine litigants, whose failure to completely defend themselves and/or respond to the first instance body's summons should not be construed in a manner that prejudices their right to do so at appellate level. Rather than preventing one party seeking to defend itself and present its case for the first time before a judicial body, consequences for having failed to respond to first instance's summons should reflect on the allocation of costs of proceedings.**

2. **In the absence of request for relief related to the pecuniary aspects of a case of established breach of a contract of employment, the scope of the appeal proceedings shall be limited to assessing the legality of the sporting sanctions having been imposed. In this respect, and given that the FIFA regulations do not provide for a possibility to suspend, as a final decision, a sporting sanction based on art. 17 of the FIFA Regulations on the Status and Transfer of Players, except as a provisional measure, a CAS panel has no authority to suspend said sporting sanctions as a final decision and such prayer for relief fall outside the scope of the issues to be reviewed by the CAS.**

I. THE PARTIES

1. Elaziğspor Kulübü Derneği (the "Appellant" or the "Club"), is a Turkish professional football club and a member of the Turkish Football Federation ("TFF"), which in turn is affiliated with the Fédération Internationale de Football Association.

2. Franco Cángele (the "First Respondent" or the "Player") is an Argentinean professional football player currently playing for the Colombian club Asociación Deportivo Cali.

3. The Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an international association of national and international football associations/federations, and is the governing body of football worldwide. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliates. Its seat is in Zurich, Switzerland and has legal personality under Swiss law.

II. INTRODUCTION

4. This appeal is brought against a decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 13 October 2016 (the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Appellant on 8 February 2017.

5. The Appealed Decision found the Appellant to have violated Article 17.1 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") by breaching an employment contract entered with the Player. Consequently, the Appellant was ordered to pay to the Player a total of USD 165,000 plus interest and banned from registering any new players, either nationally or internationally, over the next two consecutive registration periods, in application of Article 17.4 of the FIFA RSTP.

III. THE FACTUAL BACKGROUND

6. The facts leading to the present arbitration as presented by the Parties can be summarized as follows:

A. The Club's contractual relationship with the Player

7. On 23 January 2014, the Club and the Player signed an employment contract valid from 23 January 2014 to 31 May 2015 (the "Employment Contract"). Under the Employment Contract, the Club undertook to pay the Player:

(i) A total salary of USD 250,000 to be paid in 10 monthly instalments on the last day of each month with effect from 30 September 2014 to 25 June 2015;

(ii) A "match rate" of USD 85,000 (Article 3 (b) of the Employment Contract) divided in 34 matches, and the following bonuses under Article 3 (c) of the Employment Contract:

- USD 2,500 if he started a match;
- USD 1,875 for every substitute appearance in a match; and
- USD 1,250 if he was an unused substitute in a match.

8. The Player recognised before the FIFA DRC that he had been paid the following amounts by the Club:

   a) USD 77,500 in cash in August 2014; and

   b) USD 7,500 by way of bank transfer in December 2014.

9. On 11 March 2015, the Club claimed that the Player had missed the team's training sessions and therefore purported to fine him USD 60,000 and ordered him to train away from the rest of the team.

10. On 25 March 2015, the Player placed the Club on notice demanding payment of the following overdues:

    - USD 250,000 as salaries in the entire value of the Employment Contract;
    - USD 85,000 in accordance with Article 3 (b) of the Employment Contract; and
    - USD 33,750 in accordance with Article 3 (c) of the Employment Contract.

11. In the above notice, the Player only acknowledged having been paid USD 77,500 in August 2014 and USD 7,500 in December 2014. He also challenged the Club's decision to fine him USD 60,000 for a purported disciplinary offence and demanded that the Club refrain from breaching the Employment Contract and to allow him to train with the rest of the first team.

12. On 17 April 2015, the Player sent another reminder to the Club granting it 7 days to pay the overdues mentioned above.

13. On 29 April 2015 (the "Termination Date"), the Player sent to the Club a notice terminating the Employment Contract on grounds that he had not been paid the amounts mentioned above (the "Termination Notice").

B. The FIFA DRC proceedings

14. On 2 June 2015, the Player filed a claim before the FIFA DRC. He claimed that the Club had beached the Employment Contract by failing to pay him since December 2014. Although the Player acknowledged having been paid USD 85,000 during this period, he also claimed that the Club had breached the Employment Contract by excluding him from training with the first team in February 2015, and therefore sought the following reliefs from the Club:

    a) USD 368,750 as *"compensation for the foregoing breach of contract"* broken down as follows:

       - USD 250,000 in unpaid salaries;
       - USD 85,000 as match day bonuses; and

- USD 33,750 in in accordance with Article 3 (c) of the Employment Contract for *"the appearances that he has made in the first squad"*.

b) Interest at 5% *p.a.* on the above amounts from the relevant dates due; and

c) He also asked that sporting sanctions be imposed on the Club.

15. The Club did not file any defence despite having allegedly been invited to do so by the FIFA DRC.

16. On 13 October 2016, the FIFA DRC rendered the Appealed Decision and held as follows:

"1. The claim of the Claimant, Franco Dario Cangele, is partially accepted.

2. The Respondent, Elazigspor, has to pay to the Claimant, ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of USD 115,000 plus 5% interest p.a. until the date of effective payment as follows:*

a. 5% p.a. as of 1 January 2015 on the amount of USD 25,000;
b. 5% p.a. as of 1 February 2015 on the amount of USD 25,000;
c. 5% p.a. as of 1 March 2015 on the amount of USD 25,000;
d. 5% p.a. as of 1 April 2015 on the amount of USD 25,000;
e. 5% p.a. as of 1 May 2015 on the amount of USD 15,000;

3. The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 50,000 plus 5% interest p.a. from 2 June 2015, until the date of effective payment.

4. (…)

5. (…)

6 (…)

7. The Respondent shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision".

17. The Appealed Decision was based on the following grounds:

a) Under the Employment Contract, the Player was entitled to receive a monthly salary of USD 25,000 from 30 September 2014 to 29 April 2015 (USD 25,000 x 8 months = USD 200,000). Given that the Club had made a partial payment of USD 85,000 prior to the termination, the amount due to the Player on the Termination date was USD 115,000.

b) The Club had engaged in repeated breaches of the Employment Contract for a significant period and had particularly failed to pay the Player up until the Termination Date. By this time, the Player was owed USD 115,000, being 5 months' salary. The Player therefore had just cause to terminate the Employment Contract.

c) The "match rate bonuses" were subject to the Player playing in the relevant matches. However, the Player had not adduced any evidence of having played in any matches that would entitle him to these bonuses. In its assessment, the FIFA DRC therefore found that the Player was not entitled to any bonus and neither would they be considered in determining the compensation due given that they were also linked to matches to be played in the future, *i.e.* after the Termination Date.

d) The Player was entitled to USD 50,000 in compensation, being the value remaining under the Employment Contract (May and June 2015 salaries) in accordance with the criteria established under Article 17.1 of the FIFA RSTP.

e) The Club was a repeated offender. Despite having been banned from registering players for two registration periods on 21 May 2015, the Club thereafter proceeded to breach its employment contracts with 3 other players, namely player H (FIFA DRC decision dated 11 June 2015), player J (FIFA DRC decision dated 2 July 2015) and player I (FIFA DRC decision dated 30 September 2016). Its conduct was therefore reprehensible and warranted stricter deterrent measures in the form of a ban from registering any new players either nationally or internationally over the next two registration periods in accordance with Article 17.4 of the FIFA RSTP.

IV. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

18. On 28 February 2017, the Appellant filed its Statement of Appeal before the CAS, pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code") and applied for a stay of the Appealed Decision, only with respect to the imposed sporting sanctions. The Appellant nominated Mr. José Juan Pintó, Attorney-at-law, Barcelona, Spain, as an arbitrator.

19. On 9 March 2017, the Appellant applied for an extension of its deadline for filing the Appeal Brief. Whereas the First Respondent consented to this application, the Second Respondent raised its objection.

20. On 9 March 2017, the First Respondent informed the CAS Court Office that he did not object to the Appellant's application to stay the Appealed Decision.

21. On 15 March 2017, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to grant the Appellant a 15-day extension of its deadline for filing the Appeal Brief.

22. On 17 March 2017, the Second Respondent objected to the Appellant's request for a stay of the Appealed Decision.

23. On 27 March 2017, the President of the CAS Appeals Division rendered her ruling on the Appellant's application for a stay of the Appealed Decision and dismissed the same.

24. On 28 March 2017, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

25. On 30 March 2017, pursuant to Article R55 of the CAS Code, the Second Respondent requested that its deadline for filing its Answer be fixed after the payment by the Appellant of its share of the advance of costs.

26. On 18 April 2017, the First Respondent filed his Answer in accordance with Article R55 of the CAS Code.

27. On 15 May 2017, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code. In its Answer, the Second Respondent requested English translations of Annex 3/a, Annex 3/b, Annex 3/c and Annex 3/d of the Appeal Brief (the "Bank Transfers"). The Second Respondent further invoked Article R57, par. 3 of the CAS Code and specifically objected to the admission of the following documents which had not been filed in the context of the FIFA DRC proceedings ("New Documents"):

    a) A data print out from the TFF's website purporting to show that the First Respondent remained an employee of the Appellant up until 4 February 2016;

    b) The Bank Transfers which purported to show payments made by the Appellant to the First Respondent on 20 August 2014 (USD 70,000), 23 January 2015 (USD 7,500), 2 March 2015 (USD 80,250) and 3 April 2015 (USD 35,500); and

    c) Minutes of a meeting held by the Appellant's board of directors on 10 March 2015 which resolved to fine the First Respondent USD 60,000 for alleged indiscipline.

28. The Respondents jointly nominated Mr. Carlos Del Campo Colás, Attorney-at-law, Madrid, Spain, as an arbitrator.

29. On 16 May 2017, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

    - Mr. Rui Botica Santos, Attorney-at-law, Lisbon, Portugal (President)
    - Mr. José Juan Pintó, Attorney-at-law, Barcelona, Spain (arbitrator)
    - Mr. Carlos Del Campo Colás, Attorney-at-law in Madrid, Spain (arbitrator)

30. On 16 May 2017, the First Respondent informed the CAS Court Office of its wish for a hearing in this matter.

31. On 22 May 2017, the Second Respondent informed the CAS Court Office of its preference to have the matter determined on the basis of the Parties' written submissions.

32. On 23 May 2017, the Appellant informed the CAS Court Office of its wish for a hearing in this matter.

33. On 24 May 2017, the CAS Court Office invited the Appellant and the First Respondent to comment on the admissibility of the New Documents. The Appellant was also asked to adduce English translations of the Bank Transfers. The Parties were also informed that pursuant to Article R57 of the CAS Code, the Panel had deemed itself to be sufficiently well informed to decide the appeal based on their written submissions, without the holding of a hearing. The Panel's decision was based on (i) the facts that the Parties did not indicate any witness to be heard; (ii) the clarity of the facts and (iii) the simplicity of the legal issues for determination.

34. On 26 May 2017, the Order of Procedure was sent to the Parties and was duly signed and returned by the Parties. The latter in particular expressly confirmed that their right to be heard had been respected.

35. On 31 May 2017, the Appellant reiterated its request that the New Documents be admitted on grounds that it was unable to adduce them before the FIFA DRC owing to misunderstandings with its former counsel which deprived the Appellant of the services of a competent counsel to defend it on the case. The Appellant also adduced English translations of the Bank Transfers.

36. On 5 June 2017, the First Respondent informed the CAS Court Office that he did not object to the admission of the New Documents.

37. On 8 June 2017, the Appellant filed a renewed urgent application seeking to stay the execution of the Appealed Decision based on alleged new facts and evidence (the "Second Application for Stay").

38. On 12 June 2017, the Appellant informed the CAS Court Office that it agreed with the Panel's ruling to decide the matter based on the Parties' written submissions.

39. On 12 June 2017, the First Respondent informed the CAS Court Office that he respected the Panel's ruling to decide the matter based on the Parties' written submissions. He also stated that he did not object to the Appellant's Second Application for Stay.

40. On 19 June 2017, the Second Respondent objected to the Appellant's Second Application for Stay.

41. On 19 June 2017, the CAS Court Office informed the Parties that the Panel had decided not to render an Order on request for a stay with respect to the Second Application for a Stay in view of the fact that it had decided to render the operative part of the award. The Appellant's Second Application for Stay was therefore considered to be without object.

42. On 20 June 2017, the CAS Court Office notified the Parties of the operative part of this award.

V. THE PARTIES' RESPECTIVE POSITIONS

43. Below is a summary of the facts and allegations raised by the Parties. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Appellant's submissions

44. The Appellant essentially avers as follows:

a) The Player's termination of the Employment Contact is "doubtful" since neither the Club nor the TFF received the Termination Notice.

b) It did not breach the Employment Contract. Prior to the termination, the Player had been paid the total amount of USD 278,250, as follows:

- USD 70,000 on 20 August 2014;
- USD 77,500 in August 2014;
- USD 7,500 in December 2014;
- USD 7,500 on 23 January 2015;
- USD 80,250 on 2 March 2015; and
- USD 35,500 on 3 April 2015.

c) The Player had engaged in several breaches by failing to attend training sessions despite having been several times warned by the Club. This forced the Club to fine him USD 60,000.

d) The Club could be forced into insolvency (and consequently affect the integrity of the competition) if the FIFA ban on registering players were to be upheld. In particular, the said ban should be set aside because:

i. The Player's FIFA DRC case against the Club was only partially granted. Therefore, there was no logic behind the imposition of sporting sanctions. These sanctions contravene Article 36.3 of the Swiss Constitution, pursuant to which *"[a]ny restrictions on fundamental rights must be proportionate";*

ii. The Club did not act in bad faith. It had settled all the Player's dues and acted within its rights by deducting part of these dues (USD 60,000) on account of his indiscipline;

iii. Sporting sanctions are not applied automatically and/or mandatorily for contracts breached during the protected period. Indeed, the FIFA DRC has in previous cases (FIFA DRC Case No.11161512, FIFA DRC Case No. 11161200, FIFA DRC Case No. 11161712 and FIFA DRC Case No. 1116254) declined to impose sporting sanctions for contracts breached during the protected period. Article 64 of the FIFA Disciplinary Code also envisages a transfer ban on clubs that fail to abide by a FIFA decision but does not provide that such bans be automatically and always imposed in all cases;

iv. The Club is not a habitual offender. It had no knowledge of the other cases that had been pending before the FIFA judicial bodies (notably regarding the players H, J and I) because FIFA declined to update the Appellant on the status of those proceedings. There is no law in the FIFA regulations providing for "repeated offense" as a criterion for imposing sporting sanctions; and

v. The Club has since served the first transfer ban in 2016. It cannot be banned from signing players for 4 consecutive registration periods as this would violate the Club's rights and those of the player's interested in signing for the Club.

45. The Appellant concludes its submissions by requesting the CAS:

"1. To uphold the present appeal of Elaziğspor Kulübü Derneği in view of the several reasons pointed out in both Statement of Appeal and this Appeal brief. to dismiss the decision of the FIFA Dispute Resolution Chamber in the case ref. huk 16-01190 rendered on 13 of October 2016.

2. To issue a new decision stating that the sanction in the form of prohibition to register new players for Elaziğspor Kulübü Derneği, either nationally or internationally for two entire consecutive registration periods is dismissed.

Or Alternatively:

3. To suspend the application of the sanction in the form of prohibition to register new players for Elaziğspor Kulübü Derneği, either nationally or internationally for two entire consecutive registration periods giving the Club a probation period in order to comply with its activity.

But in any case:

4. To fix a maximum of 15,000 CHF to be paid by the Respondents to the Appellant, to help the payment of its legal fees costs.

5. To condemn the Respondents to the payment of the whole CAS administration costs and Arbitrators fees".

B. The First Respondent's submissions

46. The First Respondent concurs with the facts and findings that led to the Appealed Decision. In this regard, the Player denies having engaged in any misconduct that warranted the alleged fine of USD 60,000. He reiterates that he was not notified of any disciplinary proceedings neither granted an opportunity to defend himself.

47. Having already been paid the amounts ordered in the Appealed Decision, the Player submits that he does "not object" to the setting aside of the sporting sanctions imposed by the FIFA DRC.

48. The First Respondent therefore submitted the following requests for relief:

"1. The Player does not oppose the corresponding request of the Club in order to dismiss the sporting sanctions imposed on it by virtue of the decision of the FIFA Dispute Resolution Chamber dated 13th of October, 2016.

2. To dismiss the Club's arguments on the alleged application of the disciplinary sanctions on the Player.

3. To fix a sum of EUR 10,000 to be paid by the Appellant to the Player, to help the payment of its legal costs.

4. To condemn the Appellant to the payment of the whole CAS administration costs and the arbitrators' fees".

C. The Second Respondent's submissions

49. The Second Respondent wants the Appealed Decision to be fully upheld.

50. Both the Player's default notice dated 25 March 2015 and the Termination Notice were sent to the Club's fax number as officially provided by the TFF and duly received by the Club as evidenced in the fax report that accompanied the notices. The Club cannot deny having been unaware of the termination.

51. The Player terminated the Employment Contract with just cause. He was owed 5 months' salary (USD 115,000) and could no longer be expected to continue rendering his services in good faith.

52. The monies paid on 20 August 2014 and 23 January 2015 are irrelevant to the assessment of whether the Club had complied with its contractual obligations given that they were

acknowledged by the Player during the FIFA DRC proceedings and taken into account when arriving at the outstanding remuneration.

53. If the monies claimed to have been paid on 2 March 2015 and 3 April 2015 (USD 80,250 and USD 35,500 respectively) were indeed paid, they can only correspond to the match bonuses and not outstanding monthly salaries. In this regard, reference is made to the Player's FIFA DRC petitions, wherein he sought USD 85,000 and USD 33,750 as match bonuses. In any case, these payments were not brought to the FIFA DRC's attention.

54. By paying the amounts ordered by the FIFA DRC, the Appellant has effectively admitted liability and breach. Any payments made after the Termination Notice are in determining the question of just cause.

55. With regard to the USD 60,000 fine, the Appellant has not given particulars of the Player's misconduct and/or evidence that the Player was granted his right to be heard prior to the disciplinary sanctions.

56. As a general rule, Article 17.4 of the FIFA RSTP provides for the imposition of sporting sanctions on any club found to have breached a contract during the protected period. These sanctions are not outright but are to be imposed on a case by case basis in order to prevail on clubs that habitually breach players' contracts and to deter them from future acts.

57. The Appellant had previously been found to have breached its contracts with its former employees, these being the players H., J. and I. The Club failed to learn from an earlier ban imposed by FIFA on 21 May 2015 from registering players for two registration periods for similar conduct.

58. The mere fact that the Player's FIFA DRC claim was partially upheld, or that the Club was not in any bad faith has no bearing on whether sporting sanctions ought to be imposed. Reference in this regard is made to the finding in CAS 2014/A/3797, which stated that *"(…) the fact that the player was awarded only limited financial compensation for his loss is not even remotely relevant to the conduct of the Club itself, or its degree of fault in the termination of the Contract"*.

59. The Club has not adduced evidence proving that the sporting sanctions could lead to its insolvency. Neither has it substantiated that the same could affect the integrity of the competition. To the contrary, sporting sanctions do help safeguard and promote sporting integrity by forcing clubs to honour their contractual obligations and preventing clubs that breach their contracts from having a competitive and financial advantage over those that honour their contracts.

60. With regard to prayer 3 of the Appeal Brief, Article 17.4 of the FIFA RSTP contains no provision granting a judicial body powers to stay the imposition of a transfer ban in order to give a club a "probationary" period to comply with its duties.

61. The Second Respondent therefore made the following requests from CAS:

> *"1. That the CAS rejects the present appeal at stake and confirms the presently challenged decision passed by the Dispute Resolution Chamber (hereinafter: the DRC or the Chamber) on 13 October 2016 in its entirety.*
>
> *2. That the CAS orders the Appellant to bear all the costs of the present procedure.*
>
> *3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".*

VI. JURISDICTION OF THE CAS

62. Article R47 of the CAS Code provides as follows:

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

63. The jurisdiction of the CAS, which is not disputed, derives from Article 58.1 of the FIFA Statutes (2016 edition) which states 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".*

64. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

66. The grounds of the Appealed Decision were communicated to the Appellant on 8 February 2017. The Statement of Appeal was filed on 28 February 2017. This was in accordance with the 21-day deadline fixed under Article 58.1 of the 2016 edition of the FIFA Statutes.

67. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

68. 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".*

69. Article 57.2 of the FIFA Statutes (2016 edition) states that:

> *"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".*

70. Therefore, in the absence of any rule of law chosen by the Club and the Player in the Employment Contract, the Panel finds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary.

IX. LEGAL ANALYSIS

71. The Parties have addressed the Panel on the facts and their respective cases. The Appellant maintains that the Player did not have just cause to terminate the Employment Contract. Besides this, it reiterates that the sporting sanctions are harsh and ought to be suspended or set aside. FIFA insists that the Player's termination was justified and that the Appellant's conduct called for the imposition of sporting sanctions. Having been paid, the Player does not object to having the sporting sanctions lifted. He however maintains that he terminated the Employment Contract with just cause.

A. Procedural issues – admissibility of the Bank Transfers

72. The Panel takes notice of (i) FIFA's objection to the admission of the Bank Transfers on grounds that they were not adduced before the FIFA DRC (Article R57 par. 3 of the CAS Code); and (ii) the Player's non-objection to the admission of the Bank Transfers.

73. Article R57 par. 3 of the CAS Code states as follows:

> *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".*

74. It is true that the above provision allows a panel to disallow any evidence which could reasonably have been produced at the lower instance level. It is designed to prevent parties from abusing the court process as opposed to punishing genuine litigants who can prove that they

completely failed to exercise and enjoy their rights accorded to them by the court process at lower instance level.

75. The Club's failure to completely defend itself and/or respond to the FIFA DRC's summons should not be construed in a manner that prejudices its right to do so at appellate level. There are of course consequences for failing to respond to summons issued by FIFA and these should have an impact on the allocation of costs. The Panel however deems it harsh if a party that seeks to defend itself and present its case for the very first time before a judicial body were to be prevented from adducing any or all the evidence it considers key to its case.

76. Notwithstanding the above, Article R57 par. 3 of the CAS Code is discretionary as opposed to mandatory. It vests the panel with discretion to consider the facts and circumstances of every specific case and to decide whether the documents sought to be produced warrant exclusion. In addition to the reasons highlighted above, the circumstances of these appeal proceedings do not warrant the exclusion of the Bank Transfers given that they amount to relevant evidence which shows monies paid to (and acknowledged by) the Player. It therefore amounts to evidence which could potentially change the outcome of these proceedings.

77. The Panel therefore admits the Bank Transfers.

B. Substantive issues

a. Introduction

78. The Panel takes notice of the fact that FIFA DRC rightly arrived at its decision based on the facts and evidence adduced before it. It was therefore right in imposing the sporting sanctions as provided for under Article 17.4 of the FIFA RSTP and in accordance with several CAS jurisprudences such as:

    a) CAS 2014/A/3765 which stated that *"(…) the offence and the sanction are clearly defined in Article 17(4) of the FIFA Regulations. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behaviour and the sanction";* and

    b) CAS 2008/A/1593, which stated as follows at paragraphs 134 and 135: *"Having established that the Employment Contract was subject to the protected period and that it was unilaterally terminated by the Club, the Panel has no choice but to apply the provisions of article 17.4 of the FIFA Regulations which imposes a ban from registering players, either nationally or internationally on any club which unilaterally terminates a player's contract within the protected period. Such sanctions are imposed on the basis of strict liability as provided by the FIFA Regulations and the Panel has no choice but to impose them (…)".*

79. The facts and circumstances have however changed following the Club's appearance before the CAS presenting for the first time its case and evidence supporting the argument that the Player

had no just cause to terminate the Employment Contract. For reasons not attributable to FIFA DRC, the Bank Transfers were not assessed and considered. This evidence is considered crucial in the decision of the present case since the Player's claim is based on lack of payment of salaries and bonuses.

80. The Panel also highlights that the scope of this appeal is restricted to the revision of the part of the Appealed Decision related to the validity of the imposed sporting sanction on the Club. The Club is not claiming any reimbursements of amounts eventually paid in excess and does not claim the cancelation of the compensation awarded by the FIFA DRC in relation to the established breach of the Employment Contract. The Club only seeks to suspend or dismiss the sporting sanctions.

81. The Panel also points out that the Club has not adduced any evidence proving that the Player was indisciplined and/or that due process was satisfactorily followed before the Player was allegedly fined USD 60,000. The issue regarding the Player's indiscipline and the fine are therefore irrelevant to the scope of these appeal proceedings.

82. The scope of these appeal proceedings shall therefore be limited to assessing the legality of the sporting sanctions and on the formulated prayers of the Club regarding the "suspension" or "dismissal" of the sanctions imposed by the FIFA DRC.

83. Before moving to the analysis of the legality of the sporting sanctions, the Panel concurs with FIFA that, except as a provisional measure, the Panel has no authority to suspend the sporting sanctions as a final decision. Indeed, the FIFA regulations do not establish such options or possibility. As such, the Club's request to suspend the sporting sanctions as a final request and prayer for relief falls outside the scope of issues to be reviewed by the CAS.

b. Did FIFA have legal grounds to impose sporting sanctions on the Club?

84. The answer to the above issue necessarily entails a finding as to whether the Player had just cause to terminate the Employment Contract.

85. When terminating the Employment Contract, the Player essentially claimed that he had not been paid since December 2014. He alleged that the Club owed him USD 250,000 as outstanding salaries, USD 85,000 as match day bonuses and USD 33,750 for *"appearances that he has made in the first squad"* pursuant to Article 3 (c) of the Employment Contract.

86. The FIFA DRC partially granted the Player's claim by finding that the salaries due until 29 April 2015 was USD 115,000. The FIFA DRC recognized that the Player had only received the total amount of USD 85,000 and, having in mind the recognized Player's credit of USD 200,000, established that the outstanding amount due until the Termination Date was USD 115,000. The FIFA DRC dismissed the Player's claim for bonuses for lack of evidence.

87. The Player did not appeal and has fully backed the findings made by the FIFA DRC with respect to the above. It is therefore a fact that the Player terminated the Employment Contract on the grounds that he was owed USD 115,000 in outstanding salaries from December 2014 to 29 April 2015. This was the fact on which FIFA based the "just cause" for the termination of the Employment Contract by the Player.

88. However, the evidence adduced before the CAS by the Club and unchallenged by the Player shows that as of the Termination Date, the Player had been paid a total of USD 278,250 as follows:

Amounts considered in the CAS Proceedings		
DATE	**EVIDENCE**	**AMOUNT**
20 August 2014	Bank Transfer – exhibit 3/d of the Appeal Brief	USD 70,000
August 2014	Cash payment made on unspecified date but accepted by the Player at page 2 paragraph 4 and page 3 paragraph 7 of the FIFA Decision	USD 77,500
December 2014	Accepted by the Player at page 2 paragraph 4 and page 3 paragraph 7 of the FIFA Decision	USD 7,500
23 January 2015	Bank Transfer – exhibit 3/c of the Appeal Brief	USD 7,500
2 March 2015	Bank Transfer – exhibit 3/b of the Appeal Brief	USD 80,250
3 April 2015	Bank Transfer – exhibit 3/a of the Appeal Brief	USD 35,500
	Total	**USD 278,250**

89. From the above table, it is undisputed that the Player received more than what FIFA considered due. At the Termination Date, the Player had been paid USD 278,250, while his recognized credit under the Employment Contract was only USD 200,000 and the outstanding salaries USD 115,000.

90. Based on the evidence produced before the Panel, it is a fact that the Player received more than the amount determined by the FIFA DRC as his validated credit. The Panel could not enter into the reasons or circumstances that led to the Player being overpaid, since he did not appeal or adduce any evidence that the overpayment was related to other credits. The FIFA DRC was also clear that no additional monies other than the outstanding salaries were due to the Player. It is therefore contradictory for FIFA – at this stage – to state before the CAS, without any evidence and support, that the monies paid on 2 March 2015 and 3 April 2015 could have related to the Player's bonuses.

91. Therefore, the Panel finds that there were no salaries outstanding to the Player as at 29 April 2015 and, consequently, the Panel is included to find that the Player had no just cause to terminate the Employment Contract.

92. Indeed, for just cause to exist, the injured party must as a bare minimum establish that the other party is at fault and/or has breached its contractual obligations. This is not the case in these appeal proceedings.

93. As underlined above, the Panel obviously understands that the FIFA DRC rightly arrived at the Appealed Decision based on the documents before it. It did not have the benefit of assessing the Bank Transfers given the Club's failure to file any defence or submissions at FIFA level.

c. The legal consequences

94. Having already paid the amounts ordered by the FIFA DRC on different grounds, it is the Club's primary request that the sporting sanctions be either "suspended" or "dismissed" in the event of a finding that the Player's termination was unjustified.

95. Indeed, the above sanctions were based on Article 17.4 of the FIFA RSTP which reads in part as follows:

> *"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period (…). The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods".*

96. The Panel obviously recognises FIFA's powers and prerogative to impose sporting sanctions on clubs that breach the FIFA regulations. As FIFA says, Article 17.4 of the FIFA RSTP allows FIFA to impose sporting sanctions on a club that breaches a contract during the protected period.

97. Having found the Club not to have breached the Employment Contract, the imposed sporting sanctions by FIFA should be cancelled.

d. Conclusion

98. Based on the evidence adduced and submissions of the Parties, the Panel finds that the Player had no reason to conclude that he had just cause to terminate the Employment Contract. The Appealed Decision is therefore set aside and the ban imposed by the FIFA DRC is lifted. This consequently renders the Club's Second Application for Stay of the execution of the Appealed Decision moot.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Elaziğspor Kulübü Derneği against the FIFA Dispute Resolution Chamber decision dated 13 October 2016 is upheld.

2. The FIFA Dispute Resolution Chamber decision dated 13 October 2016 is set aside.

3. (…).

4. (…).

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