Arbitration CAS 2018/A/5742 Marat Shaymordanov, Nikita Fursin, Sergey Shumeyko v. FC Tyumen & Russian Football Union (RFU), award of 7 January 2019

Panel: Mr András Gurovits (Switzerland), Sole Arbitrator

Football
Claim for bonus payments under the employment contract
Determination of the law applicable to the dispute
Res iudicata
Review of decisions based on newly discovered or new evidence under Article 64 RFU RDR
Newly discovered or new evidence under Article 64 RFU RDR

1. **According to Article 187 para. 1 of the Swiss Private International Law Act, *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*. The choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. In agreeing to arbitrate a dispute according to the Code of Sports-related Arbitration, the parties submit to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code.**

2. **For a decision to have the force of *res iudicata* it must meet the so-called triple identity test which consists of verifying (i) the identity between the parties to the first decision, (ii) the identity of objects between the two decisions and (iii) the identity of the basis (*causa pendi*) on which the claim is submitted.**

3. **While Article 64 RFU Regulations on Dispute Resolution (RFU RDR) provides that the Players' Status Committee of the RFU (RFU PSC) is competent to review its decisions based on newly discovered or new evidence, it does not expressly state whose competence it will be to take the new decision. However, Article 14 RFU RDR confers competence to determine employment contract matters to the Dispute Resolution Chamber of the RFU (RFU DRC). This means, in essence, that the judicial scheme under the RFU RDR in respect of a review of a decision is twofold: it is to be determined (i) who has competence to review or reverse a decision, and (ii) who has competence to take a new decision on the merits.**

4. **Construing Article 64 RFU RDR in light of Article 4 para. 2 of the Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms and standard international practice, it should be understood to say that a revision is allowed only on the basis of evidence that is new or that was discovered only after publication of the award and which proves either newly discovered facts or facts which were known and alleged in the previous proceedings, but which could not be proven at that time; facts that arose only after the publication of an award are not relevant when reviewing**

an award. Consequently, a subsequent decision of another arbitral tribunal or court should not qualify as a new fact under Article 64 RFU RDR as it constitutes a fact that has either happened after the publication of the award or that had already been considered by the tribunal issuing the previous decision. Similarly, a change of applicable law or jurisprudence that occurred after the rendering of the arbitral award should not be relevant in this context.

I. THE PARTIES

1. Messrs. Marat Shaymordanov, Nikita Fursin, and Sergey Shumeyko (individually an "Appellant" or "Player" and collectively the "Appellants" or "Players") are Russian football players.

2. FC Tyumen (the "First Respondent" or "Club") is a Russian foootball club.

3. The Russian Football Union (the "Second Respondent" or "RFU") is the national football federation in Russia affiliated with the Fédération Internationale de Football (FIFA).

II. FACTUAL BACKGROUND

4. Below is a brief summary of the main facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place in Lausanne, Switzerland on 11 September 2018. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.

5. In July 2013, each Appellant signed an employment contract (individually an "Employment Contract" and collectively the "Employment Contracts") with the Club, according to which they were employed by the Club as professional football players for the season 2013/2014 of the RFU. At that time, the Club was participating in the Professional Football League (the "PFL") which is the third professional football league of Russia.

6. Pursuant to Article 7.2 of the Employment Contracts, upon the Club's discretion, each Player was entitled to receive a bonus for achievement of sports results in compliance with the Club's regulations on bonuses (the "Bonus Regulations"). Paragraph 4 of the Bonus Regulations submitted by the Appellants provided for a bonus for victories in the Russian Cup of the 2013/14 season and paragraph 5 of the Bonus Regulations provided for a bonus for victories and draws in the Russian national championship season 2013/14. In addition, paragraph 6 of the Bonus Regulations provided for an additional bonus for promotion of the Club to the National Football League (the "NFL") corresponding to 100% of the bonuses for each victory and tied games that qualified for a bonus under paragraphs 4 and 5 (the "Promotion Bonus").

7. At the end of the 2013/14 season, the Club was promoted to the NFL.

8. The Club did not pay the Promotion Bonus according to paragraph 6 of the Bonus Regulations. For this reason, the Players lodged claims with the Dispute Resolution Chamber of the RFU (the "RFU DRC") and requested payment of the Promotion Bonus by the Club. The RFU DRC rendered its decision on 19 March 2015 and dismissed the claims of the Players.

9. Thereafter, the Players appealed against the said decisions of the RFU DRC before the Players' Status Committee of the RFU (the "RFU PSC"). The RFU PSC rendered its decisions on 9 July 2015 (the "First RFU PSC Decisions") and determined that the Club was to pay each of the Players the Promotion Bonus in the amount of RUB 997'500.

10. In 2016, another employee of the Club lodged a claim with the Tyumen city district court requesting payment of the Promotion Bonus (the "First Court Decision"). On 19 April 2016, the court rejected the claim. It held the Bonus Regulations to be invalid as they had been signed by a non-authorized person.

11. Following the publication of the First Court Decision, the Club made a submission to the RFU PSC and requested it to review the First RFU PSC Decisions on the basis of new evidence, *i.e.* on the basis that the Tyumen city district court had held in the First Court Decision that the Bonus Regulations were invalid. On 21 June 2016, the RFU PSC passed its decision (the "Second RFU PSC Decisions"). The RFU PSC decided to cancel the First RFU PSC Decisions. It further decided to consolidate the cases of the Appellants with those of other players and to refer the (combined) cases to the RFU DRC for review and determination on the basis of new evidence. The RFU PSC, however, rejected the Club's motion to review and decide the cases of the Players on their merits by itself.

12. One of the other players whose case had been heard by the RFU PSC, *i.e.* Mr Sergei Serdyukov, appealed against the Second RFU PSC Decision before the Court of Arbitration for Sport (the "CAS"). On 7 April 2017, the CAS, in CAS 2016/A/4733, decided to set aside the Second RFU PSC Decision and confirmed the First RFU PSC Decision in respect of the appellant Mr Sergei Serdyukov.

13. On 19 May 2017, on request of the Player Mr Marat Shaymordanov, the RFU DRC applied sanctions on the Club for non-compliance with the First RFU PSC Decision.

14. In 2017, the Sports Department of the Government of Tyumen region lodged a claim against the Club, the Players and other players before the Tyumen city district court and requested that the Bonus Regulations be declared invalid. On 9 October 2017, the Tyumen city district court declared the Bonus Regulations to be illegal (the "Second Court Decision").

15. On 17 January 2018, the RFU DRC, on request of the Club, decided to reverse the First RFU PSC Decisions as well as other previous decisions of the RFU DRC and, on request of the Players, to submit their cases for a new review in accordance with the RFU Regulations on Dispute Resolution.

16. On 16 March 2018, the RFU DRC passed its decision (the "Challenged Decision") and denied the Club's obligation to pay the Promotion Bonus.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 17 May 2018, the Appellants filed a statement of appeal with the CAS directed against the Respondents with respect to the Challenged Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") and requested, *inter alia*, that the deadline to file the appeal brief be extended by 15 days as well as that the matter be heard by a Sole Arbitrator.

18. On 28 May 2018, the First Respondent informed the CAS Court Office, *inter alia*, that it disagreed with the Appellants' request to have the matter dealt by a Sole Arbitrator and that it was not willing to pay any advance of costs.

19. On 1 June 2018, the Second Respondent requested the CAS to invite the Appellants to withdraw the appeal against the Second Respondent as it had no standing to be sued. It also requested that, if it was considered to be a party to these proceedings, the case be heard by a Panel of three arbitrators.

20. On 7 June 2018, following an agreed-upon extension of time, the Appellants filed their appeal brief.

21. On 8 June 2018, the Appellants informed the CAS Court Office that they considered it necessary for the Second Respondent to participate in the present proceedings.

22. On 19 June 2018, the CAS Court Office informed the Parties that the Sole Arbitrator appointed by the President of the CAS Appeals Arbitration Division was Dr András Gurovits, Attorney-at-law in Zurich, Switzerland.

23. On 18 July 2018, both Respondents filed their respective answers to the Appellants' Statement of Appeal and Appeal Brief.

24. On 24 August 2018, the CAS Court Office forwarded an Order of Procedure to the Parties. The Parties returned a signed copy on 30 August 2018.

25. On 11 September 2018, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr Brent J. Nowicki (Managing Counsel of the CAS). In addition, the following persons attended the hearing:

    i. for the Appellants: Mr Ivan Bykovskiy (counsel); Mr Nikita Fursin (Player); Ms Inga Agoshkova (interpreter); Mr Aleksey Shlyapkin (witness); Mr Sergey Danilov (witness).

    ii. for the First Respondent: Ms Anna Antseliovich (counsel).

    iii. For the Second Respondent: Mr Artem Patsev (counsel).

26. At the opening of the hearing, both Parties confirmed that they had no objections to the composition of the Panel.

27. During the hearing, the Parties made submissions in support of their respective cases and the witnesses called by the Appellants were heard and examind by the Parties. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

28. On 28 September 2018, the Second Respondent submitted, in accordance with the instructions issued by the Sole Arbitrator during the hearing, copies of the RFU Regulations on Status and Transfer of Players in force throughout the 2013/14 season and relevant English translations. By letter of the same day, the CAS Court Office forwarded said letter including the relevant attachments to the Parties.

29. By letter of the same day, the First Respondent submitted its observations to the Second Respondent's submission of 28 September 2018.

IV. THE POSITIONS OF THE PARTIES

30. The following is a summary of the Parties' written and oral submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. The Appellants

31. In their Statement of Appeal, the Appellants requested the CAS to decide as follows:

> *"1. Accept this Statement of Appeal against the Appealed decision as Annex 1.*
>
> *2. Adopt an award to set aside the decision appealed.*
>
> *3. Upheld this Appeal and by virtue of the arguments that will be presented, conclude that FC Tyumen is obliged to pay to the Appellants bonus amounts established in the internal club's regulations.*
>
> *4. State that the RFU took decision on 18 March 2018 exceeding its limits of competence and, thus, such decision should be dismissed in full. State that the decision taken by the RFU DRC on 18 March 2018 lacks legal basis.*
>
> *5. Condemn the Respondents to the payment of the whole CAS administration costs and Panel fees".*

32. In their Appeal Brief, the Appellants requested that the Sole Arbitrator establish that:

> *"a) The Russian Football Union Dispute Resolution Chamber has wrongly applied incorrect version of the RFU Regulations on Dispute Resolution.*
>
> *b) The RFU DRC lacked competence to review the case on 'new evidence' as per the RFU Regulations on Dispute Resolution.*
>
> *c) RFU DRC wrongly evaluated the facts of the case".*

and further requested the Sole Arbitrator

"1. To uphold the present appeal of Mr. Marat Shaymordanov, Mr. Nikita Fursin, Mr. Sergey Shumeyko, in view of the several reasons pointed out in both Statement of Appeal and this Appeal brief. To dismiss the decision of the RFU Dispute Resolution Chamber in the case 247-O-14 dated 16 March 2018.

2. To pronounce that the decisions rendered by the RFU Players' Status Committee on 9 July 2015 in the cases between the Appellants and the Club are stayed in force and consequently, the FC Tyumen is obliged to pay to the Appellants the amount bonus payments equal to 997,500 roubles to each one of them with the interests for the late payment as established in the decisions of the RFU Players' Status Committee dated 9 July 2015.

3. To fix a sum at the discretion of the CAS to be paid by the Respondents to the Appellants, to help the payment of their legal fees costs.

4. To condemn the Respondents to the payment of the whole CAS adminsitration costs and the Arbitrators fees".

33. In support of their appeal the Appellants have submitted, in essence, the following:

a. Jurisdiction of the CAS to hear the present case is given on the basis of Article 47 of the Statutes of the RFU, Articles 13 and 53 of the RFU Regulations on Dispute Resolution as well as Article R47 of the Code.

b. The present dispute shall be decided in accordance with the regulations of the RFU and, on a subsidiary basis, Russian law.

c. The award of the CAS in the matter CAS 2016/A/4733 setting aside the Second RFU PSC Decision must be respected by the RFU jurisdictional bodies. Although that appeal had been filed by another player, Mr Sergey Serdyukov, that CAS decision is also relevant in the matter at hand because of the joinder of the various cases, including the cases of the Players, in front of the RFU jurisdictional bodies.

d. In CAS 2016/A/4733, the CAS determined that the First RFU PSC Decision remains in force. Given that this CAS decision, as a result of the joinder of the cases before the RFU jurisdictional bodies, is also relevant for the Players, the RFU DRC was bound by and should have respected the award in CAS 2016/A/4733 when considering the claims of the Players.

e. The RFU Regulations on Dispute Resolution have been constantly modified, in particular, in respect of its Article 64 regarding a revision of decisions based on newly discovered or new evidence.

f. While in the versions of 2015 and 2016 the notion of "new evidence" only comprised one specific form of evidence, *i.e.* an "invalid transaction", under the 2017 version of

the RFU Regulations on Dispute Resolution new evidence could take any form of evidence.

g. The RFU DRC applied the 2017 version of the RFU Regulations on Dispute Resolution to review the First RFU PSC Decisions. This clearly contradicts the *tempus regit actum* principle which (as recognized by the CAS) means that the law cannot have retroactive effect unless otherwise specified in that law.

h. The new evidence that the Club refers to is, even theoretically, no new evidence. The Club from the very beginning contested validity of the Bonus Regulations and used this argument in front of all competent bodies of the RFU.

i. The RFU DRC was not competent to review the case on the basis of new evidence. Pursuant to Article 64 of the Regulations on Dispute Resolution, a decision of the RFU DRC and/or the RFU PSC shall be reviewed by the jurisdictional body that adopted the relevant decision. As the RFU PSC passed the First RFU PSC Decisions, the RFU PSC should have reviewed those decisions, and not the RFU DRC.

j. The RFU DRC itself confirmed that the award in CAS 2016/A/4733 had set aside the Second RFU PSC Decision also against the Players because on 19 May 2017, on application of the Player Mr Shaymordanov, the RFU DRC had applied sporting sanctions against the Club for non-compliance with the First RFU PSC Decisions.

k. The RFU DRC wrongly ignored the fact that during the sporting season 2013/2014 the Club had made all bonus payments according to the Bonus Regulations, a fact that is reflected in the First RFU PSC Decisions and is admitted by all parties.

l. The written statements of two former players of the Club confirm that the Club had paid to them the Promotion Bonus in accordance with paragraph 6 of the Bonus Regulations. The Club can neither deny the amout of the outstanding Promotion Bonus, nor the fact that it had paid such Promotion Bonus to other players.

m. The decision of the RFU DRC of 16 March 2018, *i.e.* the Challenged Decision, is to be set aside and the First RFU PSC Decisions should be pronounced to stay in force.

B. The Respondents

34. In its Answer, the First Respondent requested the CAS to rule as follows:

"i. This answer is deemed admissible.

ii. The Appellants' appeal be rejected.

iii. The claims raised by the Appellants be dismissed.

iv. The Appellants shall bear the entirety of the arbitration costs.

v. The Appellants are ordered to pay the First Respondent a contribution towards the legal and other costs incurred by it in the framework of this proceeding, in an amount to be determined at the discretion of the Panel".

35. In its Answer, the Second Respondent requested the CAS to rule that:

"- the appeal filed by Mr Shumeyko, Mr Fursin and Mr Shaymordanov is dismissed in its entirety;

- the FUR DRC decision dated 26 March 2018 is confirmed;

- the Appellants bear all costs for this arbitration;

- the FUR is granted an award for legal and other costs incurred in regard of this arbitration in the amount the Panel deems appropriate".

36. In support of the Answers, the Respondents have submitted, in essence, the following:

i. The First Respondent

a. The CAS has jurisdiction on the basis of Article R47 of the Code and Article 53 of the RFU Regulations on Dispute Resolution.

b. The present matter shall be resolved primarily in accordance with the statutes and regulations of the RFU, FIFA and applicable international law and international treaties of the Russian Federation. Subsidiarily, for matters not covered by the sports regulations and international law, the provisions of the Russian law shall apply.

c. Even if according to Article R57 of the Code the CAS Sole Arbitrator has *de novo* power of review, such power cannot be wider than that of the appellate body. The RFU DRC's decision of 16 March 2018, *i.e.* the Challenged Decision, was based on a review of the Appellants' cases *de novo*. The RFU DRC, however, had taken its decision to remand the First RFU PSC Decisions and other old decisions and to have them reviewed already on 17 January 2018.

d. For these reasons, the Appellants should have appealed the RFU DRC decision of 17 January 2018, and not the one of 16 March 2018. As a consequence, the Appellants missed the time limit for, and lost their right to, appeal against the RFU DRC decision that determined that their cases shall be reviewed.

e. The CAS decision in CAS 2017/A/4733 is not relevant to the present case. It is binding only on those who were a party to that proceeding. It has no force of a *res iudicata* decision for the present appeal proceeding.

f. According to well-established CAS case law, for a decision to have the force of *res iudicata* it must meet the so-called triple identity test which consists of verifying (i) the identity between the parties to the first decision, (ii) the identity of objects between the

two decisions and (iii) the identity of the basis (*causa pendi*) on which the claim is submitted.

g. The argument of the Appellants, according to which the RFU DRC lacked competence to deal with the matter as the first instance body lacks any legal basis. Based on the RFU Regulations on Dispute Resolution in force as from 25 November 2015, the competence of the RFU jurisdictional bodies changed and the powers were reassigned in order to make the procedures more transparent, swift and fair. As a result of these changes, the RFU DRC became the only competent body to consider, *inter alia*, disputes regarding violations of employment contracts and violations of collective contracts, agreements, regulations and other company regulations.

h. As a result of that change, any party got the right to appeal such decisions directly with the CAS, instead of having to lodge the appeal with the RFU PSC first. The RFU PSC's status, thus, changed significantly. The RFU PSC was no longer a RFU jurisdictional body competent to deal with any of the RFU DRC's decisions issued in regard of the alleged contractual violations.

i. As the Club's request to review the cases was filed on 15 December 2017, according to the *tempus regit actum* principle, the existing regulations must be applied, *i.e.* the RFU Regulations on Dispute Resolution from April 2017. According thereto, the RFU PSC has no competence to deal with such a request.

j. The *tempus regit actum* principle requires that the substantive aspects of a contract be governed by the law in force when the contract was signed, while any claim should be settled in accordance with the procedural rules in force at the time of the claim. Therefore, the RFU DRC, when taking the decision of 17 January 2018 to reverse previous decisions and review the cases *de novo*, was obliged to use the RFU Regulations on Dispute Resolution in force on the date of such review.

k. Applying the new version of the RFU Regulations on Dispute Resolution, the RFU DRC had to consider the Second Court Decision as new evidence in the sense of Article 64 of the RFU Regulations on Dispute Resolution.

l. The two written statements of former players that the Appellants have presented, according to which these two players had received a specific bonus for promotion of the team, but those players who had left the Club had not, are not accurate. These two players never received RUB 997'500 as a bonus. These statements appear to be suggested/corrected by someone else.

ii. The Second Respondent

a. According to the *tempus regit actum* principle which is constantly applied by the CAS, any procedural matter is governed by the regulation in force at the time of the procedural act in question, while the substantive issues are governed by the rules in force at the time of the alleged violation.

b. Therefore, on 9 July 2015 the RFU PSC had the competence to consider the appeals brought by the Players against the RFU DRC decisions of 19 March 2015.

c. After the RFU Executive Committee resolution of 25 November 2015, the RFU Regulations on Dispute Resolution were, however, changed and the RFU PSC lost its competence to consider employment related disputes. Since 25 November 2015, the RFU DRC is the only RFU jurisdictional body that has the right to consinder employment related matters.

d. While in the current appeal the Players request the CAS to set aside the RFU DRC decision of 16 March 2018, their arguments, as a matter of fact, are against the RFU DRC decision of 17 January 2018 by means of which the Club's request for a revision of the First RFU PSC Decisions has been granted. The Players could have appealed against the RFU DRC decision of 17 January 2018, but they failed to do so.

e. On 6 July 2017, the Department of sport of the Tyumen region, which is a founder of the Club, lodged a lawsuit with the Tyumen city district court requesting the court to declare the Bonus Regulations to be illegal. The Players and other parties to the case were duly informed of the date and time of the hearings. The court decided that the Bonus Regulations were illegal and void and not subject to application from the date of signing.

f. Pursuant to Article 64 of the RFU Dispute Resolution Regulations, the ground for a new revision is evidence that arises after the decision was taken and that has a significant effect on the proper resolution of the case.

g. As in the state court proceedings before the Tyumen city district court, the claimant, *i.e.* the Department of sport of the Tyumen region, was not a "football party" and as disputes on the declaration of companies' internal regulations as void are within the exclusive competence of the Russian state courts the claimant could not submit its claim for consideration to the RFU bodies, but had to lodge it with a state court.

h. For these reasons, when considering the cases and taking its decision of 17 January 2018, the RFU DRC could not ignore the court's decision of 9 October 2017, *i.e.* the Second Court Decision.

i. In the Second Court Decision, the court declared the Bonus Regulations to be void, illegal and not applicable from the the date of their signing. The Appellants, on the other hand, have not submitted any piece of evidence that would support their claim. As a consequence the appeal is baseless and must be rejected.

V. JURISDICTION

37. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 53 of the RFU Regulations on Dispute Resolution.

38. Article R47 para. 1 of the Code provides as follows:

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

39. Article 53 para. 2 of the RFU Regulations on Dispute Resolution reads as follows:

> *"The decision of the Committee or the decision of the Chamber that was taken on the issues specified in subparagraphs […] "c", […] of clause 1 of Article 13 hereof may be appealed only in CAS 21 (twenty one) days from the moment the parties received the decision of the Committee or the Chamber with the full text of it (in the final form)".*

40. The Appellants filed their appeal in application of the above provisions to the CAS and the Respondents did not object to the jurisdiction of the CAS. Furthermore, the Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

41. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

42. Article R49 of the 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

43. Article 53 para. 2 of the RFU Dispute Resolution Regulations provides that decisions of the RFU PSC or RFU DRC in employment matters *"may be appealed only in CAS 21 (twenty one) days from the moment the parties received the decision of the Committee or the Chamber with the full text of it".*

44. The Challenged Decision was issued on 18 March 2018 and notified with grounds on 26 April 2018. The Appellants' Statement of Appeal was filed on 17 May 2018, *i.e.* within the 21-day deadline. It follows that the appeal is admissible.

45. The Appeal Brief was sent to the CAS Court Office on 7 June 2018, *i.e.* within the 10-day deadline following the expiry of the time limit for filing the statement of appeal and the 15-day extension granted by the CAS on 29 May 2018. Therefore, the Appeal Brief was timely filed.

VII. APPLICABLE LAW

46. The starting point for determining the applicable law on the merits is – first and foremost – the *lex arbitri*, *i.e.*, the arbitration law at the seat of the arbitration. Since the CAS has its seat in Switzerland (Article S1 and Article R28 of the Code), Swiss arbitration law applies. According to Article 176 para. 1 of the Swiss Private International Law Act (the "PILA"), the provisions of Chapter 12 of the PILA for international arbitration proceedings shall apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of the execution of the arbitration agreement. It is undisputed that this prerequisite is fulfilled in the case at hand.

47. Article 187 para. 1 of the PILA stipulates in regard to the applicable law on the merits as follows:

> *"1 The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. 2 The parties may authorize the arbitral tribunal to decide ex aequo et bono".*

48. The Employment Contracts do not provide for an express choice-of-law provision.

49. The Parties, however, have entered into a tacit or indirect choice-of-law agreement by their submitting the present dispute to the CAS. Reference is made insofar to the CAS jurisprudence, in particular to CAS 2014/A/3850, nos. 45 *et seq.*, where the panel held as follows:

> *"The PILA is the relevant law. … Art. 187 para. 1 of the PILA provides – inter alia – that 'the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected' …. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. In agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code. …".*

50. The conflict-of-law provision in the Code is to be found in Article R58 of the Code, which provides as follows:

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

51. Moreover, the Parties have signed the Order of Procedure that makes explicit reference to Article R58 of the Code. The Parties have signed the Order of Procedure without any reservation.

52. Article R58 of the Code provides that the dispute shall be decided first and foremost according to the *"applicable regulations"*. The term *"applicable regulations"* within the meaning of Article R58 of the Code refers to the rules of the association that made the first-instance decision which is being contested in the appeals arbitration procedure. In the case at hand, the applicable

regulations are the regulations of the Second Respondent, in particular, the RFU Regulations on Dispute Resolution.

53. As a consequence, the Sole Arebitrator will, first, revert to the regulations of the Second Respondent as the *"applicable regulations"* within the meaning of Article R58 of the Code in order to resolve the dispute. In a second step, and only for questions not covered by the Second Respondent's regulations, the Sole Arbitrator would have to consider Russian law.

VIII. THE POWER OF THE CAS

54. According to Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Sole Arbitrator has full power to review the facts and the law. The Sole Arbitrator therefore deals with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

IX. MERITS OF THE APPEAL

55. The Appellants appeal against the Challenged Decision which denied a valid claim of the Players for payment of the Promotion Bonus by the Club.

56. The Appellants, more particularly, request the CAS to pronounce that the First RFU PSC Decisions stay in force and that, as a consequence, the Club be obliged to pay each of the Players the Promotion Bonus in the amount of RUB 997'500, plus late payment interest. The Respondents, on the other hand, request that the appeal be dismissed.

A. Preliminary remark - The Second Respondent's standing to be sued

57. In its letter of 1 June 2018, the Second Respondent submitted that it had no standing to be sued in the present case and requested the Appellants to withdraw the appeal against it. As the question of the standing to be sued is a question of the merits of the case, it shall be examined here.

58. By letter of 8 June 2018, the Appellants submitted that they consider it necessary for the Second Respondent to participate in these proceedings because the Appellants question the procedural aspects of the application of the RFU Regulations on Dispute Resolution and as the position of the Second Respondent in respect of the application of the procedural rules by the Second Respondent's jurisdictional bodies is essential for the case at stake.

59. In its letter of 11 June 2018, the CAS Court Office informed the Parties that in light of the Appellants' answer the Second Respondent shall remain a party to these proceedings. It, however, invited the Second Respondent to specify its request in its Answer if it wanted to have the Panel to reconsider its request.

60. The Second Respondent, however, did not follow-up on this topic in its Answer. The Second Respondent, therefore, continued to remain a party to these proceedings.

B. The Issues to be reviewed

61. The Sole Arbitrator, when determining the present appeal, considered, in particular, the following main questions:

    a. What is the scope of the Second RFU PSC Decision of 21 June 2016?

    b. Did the award in CAS 2016/A/4733 reverse the Second RFU PSC Decision of 21 June 2016 in respect of the Players?

    c. What is the scope of the RFU DRC decision of 17 January 2018?

    d. What is the scope of the RFU DRC decision of 30 January 2018?

    e. What is the scope of the RFU DRC decision of 16 March 2018, *i.e.* of the Challenged Decision?

    f. Is the Club obliged to pay the Appellants the Promotion Bonus?

C. Scope of the Second RFU PSC Decision

62. In May 2016, the Club submitted a request to the RFU PSC for review of the First RFU PSC Decisions.

63. The Club lodged its request on the basis of the First Court Decision which had held that the Bonus Regulations had been signed by a non-authorized person and did, therefore, not create any obligations for the Club. The proceedings before the Tyumen city district court resulting in the First Court Decision had been initiated by another player of the Club as claimant who had filed a request against the Club for payment of the Promotion Bonus which the Club had failed to pay. Other players, including the Players, were not involved as party in that court proceeding.

64. In the Second RFU PSC Decision, the RFU PSC explained, *inter alia*, the following:

65. The framework for review of a decision of a RFU jurisdictional body is reflected in Articles 64 and 64 of the RFU Regulations on Dispute Resolution. These provisions reflect and refer to international legal norms, including *"those which recognize the necessity to correct the errors in case there is some information on the new or newly discovered circumstances, which is stipulated, in particular, by para 2, art. 4 of Minutes No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms"*.

66. The RFU PSC, against this background, held that the First Court Decision was to be considered as new evidence in the sense of Article 64 para. 1 of the RFU Regulations on Dispute Resolution and, therefore, gave ground for a review of the First RFU PSC Decisions.

67. At the same time, the RFU PSC explained that *"assessment of the circumstances which were established and specified in the judgement as well as issued of resolution with consideration of the new circumstances may be performed only by the body which is competent to review the dispute, including the form of revision"*. The RFU PSC went on to explain that according to Article 14 of the RFU Regulations on Dispute

Resolution *"in the revision applicable as of the date when the respondent's plea is reviewed, decision of disputes in connection with cases […] is no longer included in the scope of competence of the Players' Status Committee; therefore, the respondent's plea for review of the above cases directly by the Players' Status Committee shall be dismissed; in compliance with art. 13 of the RFU Regulations on Dispute Resolution, the above cases shall be referred to the RFU Dispute Resolution Chamber, i.e. the body which has the competence to review such disputes in accordance with the effective revision of the Regulations"* (emphasis added).

68. The RFU PSC stressed that *"the RFU did not grant the right to the RFU Dispute Resolution Chamber to cancel the resolutions of the higher level instance for the purpose of review of issued decisions; therefore, in order to eliminate the procedural obstacle for review of the issued decisions based on part 3 of art. 59, art. 64 of the RFU Regulations on Dispute Resolutions, the Players' Status Committee considers that the decisions issued by the […] the Players' Status Committee earlier […] should be cancelled"* (emphasis added).

69. In sum, in the Second RFU PSC Decision the RFU PSC took, in essence, two decisions: (i) it set aside the First RFU PSC Decisions, and (ii) it referred the cases for decision on their merits to the RFU DRC. It did so in consideration of the fact that the RFU Regulations on Dispute Resolution had been changed in the meantime and had conferred competence to determine employment contract matters in accordance with Article 14 of the Regulations on Dispute Resolution to the RFU DRC.

D. Did the award in CAS 2016/A/4733 reverse the Second RFU PSC Decision in respect of the Players?

70. The Sole Arbitrator notes that the parties to the CAS 2016/A/4733 proceeding were the player Sergei Serdyukov as appellant, on the one hand, as well as the Club as first respondent and the RFU as second respondent, on the other hand. The Players, however, were not involved in those proceedings as a party.

71. In CAS 2016/A/4733, the Sole Arbitrator decided to set aside the Second RFU PSC Decision and ordered that the First RFU PSC Decision of 9 July 2015 remain in force.

72. The Sole Arbitrator follows the arguments brought forward by the Club and the Second Respondent that this decision of the CAS only set aside the Second RFU PSC Decision as far as it related to the appellant in that case, *i.e.* Mr Serdyukov. It had, however, no effect on the Players given that they were not involved in those proceedings as a party. The fact that the RFU jurisdictional bodies had combined several proceedings into one case for procedural reasons does not mean that the decision in CAS 2016/A/4733 would also extend to other persons that were not involved as a party.

73. The Sole Arbitrator, therefore, concludes that the decision in CAS 2016/A/4733 did not set aside the Second RFU PSC Decision in respect of the Players and, therefore, the Second RFU PSC Decision remained in force in respect of the Players.

E. Scope of the RFU DRC decisions of 17 January 2018

74. In its decisions of 17 January 2018, the RFU DRC decided*, inter alia*, to (i) reconsider the First RFU PSC Decisions on the basis of new evidence, (ii) to remand the First RFU PSC Decisions, and (iii) to send the cases for a new review as provided for under the RFU Regulations on Dispute Resolution.

75. As far as the decisions (i) and (ii) above are concerned, the RFU DRC reconsidered and set aside decisions that no longer existed.

76. The RFU PSC had cancelled the First RFU PSC Decisions already on 21 June 2016 when issuing the Second RFU PSC Decision. As has been shown above, that decision had not been set aside by the CAS in decision CAS 2016/A/4733 in respect of the Players, which means that the First RFU PSC Decisions remained cancelled in respect of the Players.

77. The Sole Arbitrator, in addition, notes that the RFU DRC would not have been competent to cancel the Second RFU PSC Decision. Article 64 para. 4 of the RFU Regulations on Dispute Resolution is very clear in this respect: *"For the decision of the Chamber and/or the Committee that came into force, the revision by the newly discovered or new evidences shall be performed by the jurisdictional body that has delivered the decision. For the Committee's decision that changed the Chamber's decision or made a new decision, the revision by the newly discovered or new evidences shall be performed by the Committee"*. This provisions makes clear that the competence to review a decision is with the RFU PSC, a fact that the RFU PSC has confirmed in the Second RFU PSC Decision.

78. The Sole Arbitrator further notes that while Article 64 of the RFU Regulations on Dispute Resolution provides that the RFU PSC is competent to review its decision, it does not expressly state whose competence it will be to take the new decision.

79. In the Second RFU PSC Decision the RFU PSC explained that this competence, *i.e.* the competence to take a new decision instead of the former decision, is, with respect to the employment issues at hand, with the RFU DRC in accordance with Article 14 of the RFU Regulations on Dispute Resolution.

80. The Sole Arbitrator sees no ground to question this interpration of the RFU Regulations on Dispute Resolution by the RFU PSC. This means, in essence, that the judicial scheme under the RFU Regulations on Dispute Resolution in respect of a review of a decision is twofold: it is to be determined (i) who has competence to review or reverse a decision (*i.e.* the RFU PSC in the case at hand), and (ii) who has competence to take a new decision on the merits (*i.e.* the RFU DRC in the case at hand).

81. Against this background, the RFU DRC, when reversing the First RFU PSC Decisions, reversed a decision that had already been cancelled and took a decision for which it had no jurisdiction. If, however, a RFU jurisdictional body takes a decision for which it has no competence, such decision shall be null and void. This was also confirmed by the Parties during the hearing.

82. In sum, the Sole Arbitrator concludes that by passing its 17 January 2018 decisions, the RFU RDC cancelled decisions that were no longer in force and that, had the decisions still been in force, the RFU DRC would not have been competent to cancel.

83. As a consequence, the Sole Arbitrator concludes that the 17 January 2018 decision of the RFU DRC, as far as it set aside the First RFU PSC Decisions, is null and void.

84. Against this background, the argument brought forward by the Respondents that the Players should have lodged their appeal against the 17 January 2018 decisions and, failing to do so, their appeal is late must not be examined any further.

F. The scope of the RFU DRC decision of 30 January 2018

85. In its decision of 30 January 2018, the RFU DRC decided, *inter alia*, to consolidate the cases of the Players and took some further decisions of procedural nature in respect of the determination of the cases on their merits.

G. The scope of the RFU decision of 16 March 2018, i.e. the Challenged Decision

86. In its decision of 16 March 2018, *i.e.* the Challenged Decision, the RFU DRC explained that in this proceeding the Players had requested, *inter alia*, payment from the Club of the Promotion Bonus in the amount of RUB 997'500 each.

87. The RFU DRC further explained that the Club had asked the RFU DRC to dismiss the claims of the Players in consideration of the Second Court Decision which had been issued as a result of a claim that the Department of sport of the Tyumen region had initiated against the Club, the Second Respondent and other persons, including the Players, requesting that the Bonus Regulations be declared invalid.

88. The Sole Arbitrator noted that in the Second Court Decision the court made reference to the First Court Decision and explained, in particular, that in said First Court Decision it had already held that the Bonus Regulations were invalid, a fact that did not have to be repeatedly proven. The court, therefore, upheld the claim lodged by the Department of sport of the Tyumen region and declared in the Second Court Decision, again, that the Bonus Regulations were illegal.

89. The RFU DRC, considering the Second Court Decision, declared the Bonus Regulations to be illegal and, as a consequence, denied the Players' claim for payment by the Club of the Promotion Bonus.

90. Against this background, the Sole Arbitrator went on to analyze whether the Challenged Decision was, on its merits, *i.e.* denial of the claims of the Players for payment of the Promotion Bonus, justified or not.

H. Does the First Respondent have an obligation to pay the Promotion Bonus?

1. Jurisdiction of the RFU jurisdictional bodies

91. As an initial matter, the Sole Arbitrator notes that Article 11 of the Employment Contracts provide that any dispute between the Club and any Player was to be resolved in compliance with the RFU Regulations on the Status and Transfer of Players. On request of the Sole Arbitrator, the Second Respondent submitted, after the hearing, two versions of the RFU Regulations on the Status and Transfer of Players that were valid throughout the season 2013/14.

92. Under both such versions the provisions on dispute resolution are to be found in Article 30. While the wording under both versions differ, both provide, in essence, that disputes under employment contracts of players with their clubs are to be resolved by the jurisdictional bodies of the RFU in accordance with the RFU Charter, the RFU Regulations on the Status and Transfer of Players as well as the RFU Regulations on Dispute Resolution. The Sole Arbitrator also notes that the standard form of employment contract attached to the RFU Regulations on the Status and Transfer of Players provides for, in respect of dispute resolution, language that is in line with the relevant language used in Article 11 of the Employment Contracts.

93. The Sole Arbitrator further notes that Article 53 of the RFU Regulations on Dispute Resolution provides that decisions of the RFU DRC that were taken in the context of violations of employment contracts of football players may be appealed with the CAS.

94. All of the foregoing cleary implies that in respect of employment disputes between football players and clubs, the RFU regulations foresee an internal dispute resolution procedure before the RFU jurisdictional bodies that may be followed by CAS arbitration proceedings. In other words, the RFU regulations do not foresee that employment contract disputes pursuant to Article 13 of the RFU Regulations on Dispute Resolution be brought to and resolved by the state courts.

95. Against this background, the Sole Arbitrator concludes that in accordance with the RFU regulations, the Tyumen city district court would not have had jurisdiction to decide disputes regarding the violation of employment contracts between football players and their clubs, this being the sole competence of the RFU jurisdictional bodies and, on appeal, of the CAS.

2. The notion of new or newly discovered evidence

96. The RFU PSC, when issuing the Second RFU PSC Decision, considered the First Court Decision as a reason for review of the First RFU PSC Decisions in accordance with Article 64 of the RFU Regulations on Dispute Resolution, and the RFU DRC, when issuing its 17 January 2018 decision as well as the Challenged Decision, considered the Second Court Decision as a reason for review of the First RFU PSC Decisions. Both the RFU PSC and the RFU DRC argued that these court decisions were to be seen as new evidence or newly discovered evidence pursuant to Article 64 of the RFU Regulations on Dispute Resolution.

97. Although the present case is not about the decision of reviewing and cancelling, respectively, the First RFU PSC Decisions as this decision has already been taken by the RFU PSC in the Second RFU PSC Decision, the Sole Arbitrator moves on to analyze whether the RFU PSC was right in deciding to review and cancel the First RFU PSC Decisions. In this context he notes the following:

98. Article 64 para. 2 of the (current) RFU Regulations on Dispute Resolution reads as follows:

> *"The grounds for the revision of the decisions of the Chamber and/or the Committee that came into force are as follows:*
>
> *1) newly discovered evidences, i.e. the evidences that are significant for the case, which were not and could not be known to the applicant, and existed at the time of the decision, as well as knowingly false testimony of a witness, […] which led to the delivery of the ilegal (not complying with regulations) or unjustified evidence.*
>
> *2) new evidence that arises after the decision was taken and that have a significant effect on the proper resolution of a case (inter alia, the declaration of a transaction, which led to the delivery of an illegal (not in compliance with regulatory regulations) or an unreasonable decision in a relevant case, to be invalid by a judicial decision of a state court of general jurisdiction or a state commercial court that had entered into legal effect".*

99. In its Second RFU PSC Decision, the RFU PSC explained that Article 64 of the RFU Regulations on Dispute Resolution reflects and refers to international legal norms, including *"those which recognize the necessity to correct the errors in case there is some information on the new or newly discovered circumstances, which is stipulated, in particular, by para 2, art. 4 of Minutes No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms".*

100. The Sole Arbitrator notes that Article 4 para. 2 of the Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the following: *"The provisions of the preceeding paragraph shall not prevent the reopening of the case in acordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case".*

101. The Sole Arbitrator holds that evidence, ultimately, only serves the purpose to prove a certain alleged fact. Construing Article 64 of the RFU Regulations on Dispute Resolution also in light of Article 4 para. 2 of the Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms and standard international practice, it should be understood to say that a revision is allowed only on the basis of evidence that is new or that was discovered only after publication of the award and which proves either newly discovered facts or facts which were known and alleged in the previous proceedings, but which could not be proven at that time. On the other hand, facts that arose only after the publication of an award are not relevant when reviewing an award.

102. As a consequence, a subsequent decision of another arbitral tribunal or court should not qualify as a new fact under Article 64 of the RFU Regulations on Dispute Resolution as it constitutes a fact that has either happened after the publication of the award or that had already been considered by the tribunal issuing the previous decision. Similarly, a change of applicable law or

jurisprudence that occurred after the rendering of the arbitral award should not be relevant in this context (cf. also for instance STIRNIMANN F. X., in "Arbitration in Switzerland – A Practitioner's Guide", vol. I, 2nd ed., 2016, no. 41, p. 1359; BERGER/KELLERHALS, "International and Domestic Arbitration in Switzerland", 3rd ed. 2015, no 1963).

103. The Sole Arbitatrator, therefore, concludes that that the RFU PSC should not have considered the First Court Decision as new evidence in order to review the First RFU PSC Decision. As the evidence submitted by the Parties shows, the question whether the Bonus Regulations were valid or not was a disputed matter which the RFU PSC had already investigated before it rendered the First RFU PSC Decisions. The First Court Decision and the Second Court Decision only pronounced a differing legal view as to the validity of the Bonus Regulations. But this is not a new or newly discovered evidence at least in these sense of international norms such as Article 4 para. 2 of the Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms to which the RFU PSC makes express reference. Both, the First Court Decision and the Second Court Decision, rather, refer to facts that already existed when the DRC PSC passed the First RFU PSC Decisions and are, thus, no new or newly discovered evidence.

3. Scope of review of the CAS Sole Arbitrator

104. However, as by issuing the Second RFU PSC Decision the RFU PSC cancelled the First RFU PSC Decisions, as the CAS in its decision CAS 2016/A/4733 did not reverse the Second RFU PSC Decision in respect of the Players and as the Second RFU PSC Decision was not otherwise appealed by the Players, the Second RFU PSC Decision became final.

105. The Sole Arbitrator, therefore, does not have to take a decision as to the Second RFU PSC Decision on review of the First RFU PSC Decisions, but rather whether the Challenged Decision of 16 March 2018 on the merits of the case was justified.

4. The merits of the Challenged Decision

4.1 The question of applicability of the Bonus Regulations

106. The Club argues that the Bonus Regulations are not valid and that, instead, the *"Regulations of labor and material incentives of the employees of the SAI TF 'Football Club 'Tyumen'"* of 15 January 2010 are applicable (the "Club Regulations"). According to the Club, the Club Regulations do not foresee the payment of bonus as claimed by the Players.

107. The Sole Arbitrator noted that pursuant to Article 2.3 of Annex 2 to the Club Regulations ("Annex 2"), the amount of bonus shall not exceed the amount of RUB 20'000 per month. According to Article 2.3 of Annex 2, this bonus is defined to depend *"on the employee's personal contribution to the overall performance of the corresponding unit"*, and pursuant to Article 1.3 the *"main conditions for paying bonuses to employees on the results of monthly work are: - successful and conscentious performance by employees of their official duties; - positive results of the Club's work; - availability of the Club's funds"*.

108. These provisions indicate that the bonus in accordance with the Club Regulations is a kind of bonus that is available, in principle, to all employees of the Club, and not only to football players whose bonus, typically, depends on achievement of concrete sporting results. This is also confirmed by Article 1.3 of the Club Regulations providing that *"This Regulation applies to employees who are in labor relations with the club on the basis of concluded employment contracts. Employees of the Club, who are covered by this Regulation, are persons who carry out labor activity in the club at the main place of work, as well as working in the Club concurrently"*.

109. At the same time, the Sole Arbitrator noted that Article 2.4 of the Club Regulations provides that the *"Club on the basis of decisions of the Director has the right to establish other kinds of bonuses, surcharges and extra charges paid from own (extra-budgetary) means, according to the current legislation of the Russian Federation"* (emphasis added).

110. Against this background, the Sole Arbitrator concludes that the Club Regulations referred to by the Club, leave room, in principle, for the Club to issue further regulations on bonuses, including bonuses for players (and coaches) that shall award achievement of specific sporting results. This is in line with Article 7.2 of the Employment Contracts which provides that *"the Employee may be paid a bonus for achievement of sports results in compliance with the regulations on bonuses"*. The Club Regulations on which the Club relies, however, do not foresee such specific bonus for achievement of sports results, while the Bonus Regulations on which the Players rely do so.

111. In support of its position that the Club's coach who had issued the Bonus Regulations had authority to do so, the Club presented a written explanation of its coach of 10 November 2014, where the coach pointed out that he had drafted the Bonus Regulations on the basis of his own professional experience not knowing that such Bonus Regulations had to be approved by someone else in the Club. He concluded by stating that *"After that on 20 June 2014 I proposed to the Director to approve the Regulations on bonuses"*.

112. The Club did not call the coach as a witness, nor did the Club present its director, whom the coach had allegedly proposed to approve the Bonus Regulations, as a witness so that these persons could not be heard and (cross)examined by the Parties at the hearing.

4.2 The question of payment of bonuses by the Club

113. On the other hand, the Sole Arbitrator notes that when the RFC PSC cancelled the First RFU PSC Decisions it did so only on the basis of the First Court Decision which it considered to be new or newly discovered evidence in the sense of Article 64 of the RFU Regulations on Dispute Resolution. Otherwise, the RFU PSC did not re-consider any other part of its motivation or reasoning provided in the First RFU PSC Decisions.

114. The Players contend that they had received bonus pursuant to paragraphs 4 and 5 of the Bonus Regulations. This was confirmed by the RFU PSC in the First RFU PSC Decisions where it stated that the *"total amount of distributed bonus payments specified in the payroll slips of the Football Player from July 2013 to June 2014 matches that calculations of the bonus payments made by the Club based on the Regulations on Bonus Payments, excluding the payments specified in para 6 of the Regulations on Bonus*

Payments. This fact confirms that the Club was guided by the Regulations on Bonus Payments throughout the entire season and did not question their validity" (emphasis added).

115. The Club did not argue otherwise, nor did it provide evidence that it had not such effected bonus payments.

116. As the bonuses specified in paragraphs 4 and 5 of the Bonus Regulations were not foreseen in the Club Regulations, the Sole Arbitrator concludes that the Club when paying the bonuses in accordance with paragraphs 4 and 5 of the Bonus Regulations, indeed, at least tacitly, approved the Bonus Regulations. It had the competence to do so in accordance with Article 2.4 of the Club Regulations. This is in line with the findings of the RFU PSC in the First RFU PSC Decisions where it concluded that *"the Club's Director was duly informed about the existence of the Regulations on Bonus Payments and that his actions confirm/approve the terms of said regulations. Moreover, being aware of existence of said Regulations in the Club, the Club's executives fully complied with these Regulations throughout the entire season, did not take actions to cancel the Regulations on the grounds that such regulations are not local regulatory act and did not inform the head coach about its invalidity".*

4.3 Assessment of the First Court Decision and the Second Court Decision

117. As regards to the First Court Decision and the Second Court Decision, the Sole Arbitrator holds, as already discussed, that these decisions should not have been seen as new or newly discovered evidence in the sense of Article 64 of the RFU Regulations on Dispute Resolution. However, the question as to whether or not the the RFU PSC was entitled to cancel the First RFU PSC Decisions on that basis is not the subject matter of the present proceeding, given that the RFU PSC had cancelled said decisions and referred the cases to the RFU DRC for decision on the merits.

118. Therefore, the Sole Arbitrator did not consider the First Court Decision and the Second Court Decision in connection with a review of the First RFU PSC Decision, but rather as documentary evidence within the scope of Article R51 and Article R55 of the Code in the context with the analysis of the Challenged Decision.

119. In assessing the First Court Decision and the Second Court Decision, the Sole Arbitrator noted, first, that these decisions were taken in proceedings where the parties were different to the Parties of the present proceedings so that they cannot have any *res iudicata* effect for the present proceeding.

120. Second, the Sole Arbitrator considered that the regulations of the RFU clearly provide that disputes under employment contracts between clubs and players must be resolved in accordance with the Regulations on the Status and Transfer of Players and the RFU Regulations on Dispute Resolution. These regulations do not foresee recourse to state courts so that both, the Club and the Players, would have been prevented to lodge a claim in relation to the Employment Contracts with a state court.

121. This is in line with Article 59 of the FIFA Statutes which provides the following principle: *"Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. The*

associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS".

122. Consequently, the First Court Decision and the Second Court Decision have been taken by a body that would not have had any competence to decide the present matter. Respecting the RFU Regulations on Dispute Resolution, neither the Appellants nor the First Respondent would have had the right to lodge a claim in respect with the matter at hand with the Tyumen city district court.

123. The Sole Arbitrator further considered that the RFU PSC cancelled the First RFC PSC Decisions only because of the First Court Decision which it considered to be new or newly discovered evidence in the sense of Article 64 of the RFU Regulations on Dispute Resolution, but that it had not identified any other new fact or evidence that would have caused it to review its previous decisions or would have otherwise changed its motivation of the First RFU PSC Decisions. The Sole Arbitrator holds that the First RFU PSC Decisions are well reasoned and the considerations in respect of the Club's duty to make payments in accordance with the Bonus Regulations are well founded.

4.4 The testimonies of the witnesses

124. The Sole Arbitrator also considered the written declarations of the players Aleksey Shlyapkin and Sergey Danilov. Both confirmed to having received an additional bonus as a reward for the promotion of the club. The written statements did not specify the amount of the additional bonus, and also during the hearing when being cross-examined by the Respondents the witnesses could not clarify what amount they had actually received as such additional bonus. Both witnesses, however, declared that the amount of such additional bonus was lower than RUB 997'500 and explained that they had not played the whole 2013/2014 season. Further, both witnesses explained that after the 2013/2014 season the Club's director had summoned the players and explained that the players would be entitled to such additional bonus.

125. In its Answer, the Club confirmed that the two witnesses had played for the Club for several seasons, but stresses that they have never received RUB 997'500 as a bonus, not in 2014, and not in subsequent years. The Sole Arbitrator, however, notes that the witnesses have not stated to having received RUB 997'500 as additional bonus, neither in their written declarations, nor during the hearing. The amount of such bonus was not specified in their written declarations. And during the hearing both witnesses explained that their bonus was less than RUB 997'500 and that both had not played the entire 2013/2014 season.

126. In light of the written statements and the testimony of the witnesses, the Sole Arbitrator feels comfortably satisfied to conclude that the two witnesses had received some sort of additional bonus for the promotion of the Club, although the amount of such bonus could not be established. The Sole Arbitartor, on the other hand, concludes that the Club had not provided

sufficient evidence to establish that the written statements and testimonies of the witnesses were inaccurate and that they had not received any additional bonus for the promotion of the Club at the end of the 2013/2014 season.

4.5 Result

127. Considering the explanations of the witnesses, considering the findings of the RFU PSC in the First RFU PSC Decisions according to which the Players had received bonuses that match the bonus provisions under paragraphs 4 and 5 of the Bonus Regulations and considering the further evidence at hand, the Sole Arbitrator feels comfortably satisfied that the Players were, indeed, entitled to receive bonus in accordance with the Bonus Regulations, including those under paragraph 6 of the Bonus Regulations in the amount of RUB 997'500 each.

128. Therefore, the Sole Arbitrator sees no ground to deviate from the findings of the RFU PSC in the First RFU PSC Decisions, neither in light of the First Court Decision and the Second Court Decision, for the reasons set out above, nor in light of what the Respondents have brought forward in the present proceeding.

X. CONCLUSION

129. Based on the foregoing and after taking into consideration the applicable regulations and all evidence produced and arguments submitted, the Sole Arbitrator finds that the appeal filed by the Appellants is upheld and the First Respondent is ordered to pay each Player the Promotion Bonus in the amount of RUB 997'500.

130. In addition, in line with the Appellants' prayers for relief, the Club shall be obliged to pay each Player late payment interest in the amount of 1/300 of the discount rate of the Russian Federation Central Bank for each day of delay, starting from the date of termination of the relevant Employment Contract to the actual payment date.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Marat Shaymordanov, Mr Nikita Fursin and Mr Sergey Shumeyko on 17 May 2018 against the decision issued by the Dispute Resolution Chamber of the Russian Football Union on 16 March 2018 is upheld.

2. The decision rendered by the Dispute Resolution Chamber of the Russian Football Union on 16 March 2018 is set aside.

3. The First Respondent, the Football Club Tyumen is ordered to pay Mr Marat Shaymordanov, Mr Nikita Fursin and Mr Sergey Shumeyko each the amount of RUB 997'500 plus late payment interest in the amount of 1/300 of the discount rate of the Russian Federation Central Bank for each day of delay starting from the date of termination of the employment contract to the actual payment date.

(…)

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