

**Arbitration CAS 2018/A/5835 Alin Gligor v. AFC UTA Arad, award of 13 February 2019**

Panel: Mr Alexis Schoeb (Switzerland), Sole Arbitrator

Football

Termination of the employment contract by the club

I. PARTIES

1. Mr Alin Gligor (the “Appellant” or the “Player”) is a professional football player of Romanian citizenship, born on 9 November 1983.
2. AFC UTA Arad (the “Respondent” or the “Club”) is a Romanian professional football club with its registered office in Arad, Romania. The Club is affiliated with the Romanian Football Federation (the “RFF”).

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence filed. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the Award will be referred to in the following paragraphs.

A. The contract between the Parties and its unilateral termination by the Club

4. On 1 July 2015, the Parties signed contract no. 160/25.06.2015, valid from 1 July 2015 until 30 June 2018 (the “Contract”). According to the Contract, the Player was entitled to receive from the Club the monthly net salary of RON 5’000.-, payable on the 25th of each month for the previous month.
5. In May 2017, the Player began to suffer from back pain and consulted the team medical staff. Upon the referral of the team medical staff and following a screening at a clinic chosen by the team medical staff, the Player was diagnosed with osteoarthritis.
6. By letter dated 14 June 2017, the Club informed the Player of its decision to unilaterally terminate the Contract with effect on 1 July 2017. The unilateral termination of the Contract on 1 July 2017 was further confirmed by a second letter, received by the Player on 4 July 2017.

7. In the meantime, the Player's salary for the months of April, May and June 2017 had not been paid by the Club.
8. On 11 July 2017, the Player filed a complaint against the Club's unilateral termination of the Contract before the National Dispute Resolution Chamber of the RFF ("NDRC").
9. By letter dated 26 July 2017, the Club informed the Player of its decision to revoke its unilateral termination and that the missing salaries for the months of April, May and June 2017 had been paid to the Player.
10. On 24 August 2017, the NDRC rendered Decision no. 161/24 August 2017, according to which *"the termination of the contract was legal"*. The Player appealed such decision before the Appeal Arbitration Division of the RFF.
11. On 10 October 2017, the Appeal Arbitration Division of the RFF issued Decision no 53/10 October 2017, by which it upheld the Player's appeal, as follows:

"The Appeals Board finds that we are in the situation in which the Club denounced the contract unilaterally without just cause outside of the protected period, so that pursuant to art. 18.9.2 letter a) of the RSTJF will force the Club to pay to the Player a compensation representing the value of the financial rights owed to him until the expiry date of the contract, except for the bonuses for play and for objective, in a total net amount of 60.000 RON".

B. The dispute between the Parties

12. Following the revocation of the unilateral termination of the Contract by the Club on 26 July 2017, the Player returned to the Club and was ordered to follow a training schedule separate from the rest of the Club's first team and was included in the Club's second team.
13. On 31 July 2017, the Club confirmed in writing that the Player was exempted from obtaining a medical visa until 3 August 2017, when he would receive further instruction regarding his training schedule.
14. On 1 August 2017, the Player was diagnosed with an injury and was prescribed a physical rest period of 10 days.
15. On 2 August 2017, following further medical checks, the Player's injury was confirmed and he was prescribed a physical rest period until 11 August 2017.
16. On 17 August 2017, the Player was prescribed a physical rest period until 21 August 2017, *"when the player can progressively resume the trainings with the team"*.
17. On 25 August 2017, the Club did not pay the Player's salary for the month of July 2017.

18. On 26 August 2017, the Club's second team had a match scheduled. The Player did not play in the match.
19. On 30 August 2017, the Player was prescribed a physical rest period of 3 days (*i.e.* until 1 September 2017).
20. On 2 September 2017, the Club's second team had a match scheduled. The Player did not play in this match.
21. On 9 September 2017, the Club's second team had a match scheduled. The Player was registered on the match sheet as a "masseur", in the section dedicated to the "Officials on the bench", and did not take part in the match.
22. On 16 September 2017, the Club's second team had a match scheduled. The Player was again registered on the match sheet as a "masseur", in the same section dedicated to the "Officials on the bench", and did not take part in the match.
23. By letter dated 21 September 2017, the Club summoned the Player to a disciplinary hearing to be held on 25 September 2017, regarding the Player's "unjustified refusal to participate in trainings and official games of the team" and the Player's alleged breach of "the obligations set forth in article 5.2 letter b) and c) and article 5.4 of RSTJF, article 12 and 41 of the Internal Regulation registered at Club under no. 605/30.06.2017 and at RFF under no. 2691/04.08.2017 and article 2 para 1 of the Game Civil Contract no. 160/25.06.2015".
24. According to the Club, such disciplinary proceedings had been initiated against the Player on the basis of reports dated 28.08.2017, 30.08.2017, 05.09.2017, 11.09.2017 and 18.09.2017, established by Mr Ungur Adrian, coach of the Club's second teams and Mr Adrian Mihalcea (the "Reports"). However, such Reports were not disclosed to the Player.
25. On 22 September 2017, the Player's legal representative requested that the Club provide him with "the documents underlying the initiation of the disciplinary investigation of the player Gligor Alin (...) in order to prepare the defence for the meeting established on Monday, 25.09.2017". Such request was ignored by the Club.
26. On 25 September 2017, the Club held a disciplinary hearing (the "Disciplinary Hearing"), which the Player attended. The minutes of the Disciplinary Hearing state the following:

"It is brought to [the Player's] attention that he was called for a disciplinary investigation of the facts covered by the club coaches' reports: Mihalcea Adrian and Ungur Adrian.

The player Gligor Alin Sorin claims that he never refused to participate at the trainings and official games, he wants to obtain the reports of the trainers in order to prepare his defence and to consult a lawyer.

The reports were read to the player, cannot be given to the player.

The player refuses to explain why he did not play in the UTA II matches:

- i. 26.08.2017 Felnac against UTA II*
- ii. 02.09.2017 UTA II against Santana*
- iii. 09.09.2017 Socodor against UTA II*
- iv. 16.09.2017 UTA II against Chisineu Cris*

The player mentioned that he was present at all those matches.

Regarding report no 825 from 30.08.2017 prepared by the coach Mihalcea Adrian there is proof of the medical problem into the medical file of the player”.

27. The Player’s salary for the month of August 2017 was payable on 25 September 2017 but was not paid by that date.
28. On 25 September 2017, the Club issued four disciplinary decisions against the Player for his alleged unjustified refusal to play in the matches held on 26 August 2017, 2 September 2017, 9 September 2017 and 16 September 2017, and for which the Club imposed 4 financial sanctions on the Player for the total amount of RON 10’000.- (the “Financial Sanctions”).
29. In accordance with the Financial Sanctions issued by the Club, the Player had allegedly breached the following provisions:

“- Art. 5.2 letters b) and c) and art. 5.4 of the Romanian RSTP;

- Art. 14 and 30 of the Internal Regulations of the Club;

- Chapter IV art. 2 align 1 of the civil contract no. 160/25.06.2015, as well as the dispositions of the hierarchical leaders, respectively the coach”.

C. The proceedings before the judicial bodies of the RFF and the appealed decision

30. On 25 September 2017, in accordance with the Rules and Regulations of the RFF, the Club submitted the Financial Sanctions to the Disciplinary and Ethics Board of the RFF (“DEB RFF”) for their ratification.
31. On 14 February 2018, the DEB RFF issued Decision no. 23/14.02.2018 by which it denied the ratification of the Financial Sanctions. In substance, the DEB RFF held that the Contract had been effectively terminated on 1 July 2017, as follows:

“4.11. The Board, after taking note that the contractual relationships between the UTA Arad club and the player ceased on 01.07.2017, it undoubtedly holds that the enforcement of disciplinary sanctions following the

termination of the contract stands for a clear plea of inadmissibility, since the issue of the time of termination of the contract had been finally settled under decision no 53/10.10.2017, issued by the FRF Appeal Board and, moreover, it is unequivocally that at the time of enforcement of the sanctions the legal relationships between the parties had been terminated, and the sanctions could be enforced exclusively during the performance of the contract, according to the provisions of Article 42 paragraph (6) letter (f), reading as follows: "the players cannot be sanctioned after the termination of contractual relationships".

4.12. Given the aforementioned circumstances, the Board establishes that UTA's request for ratification of decisions 01-04/25.09.2017 on sanctioning the player Gligor Alin Sorin is unsubstantiated and consequently overrules it".

32. On 30 April 2018, the Club filed an appeal against the DEB RFF Decision no. 23/14.02.2018 before the Appeal Board of the RFF.
33. By a decision issued on 24 May 2018 (Decision no. 18/24.05.2018), the Appeal Board of the RFF admitted – by the majority of the members of the panel – the Club's appeal against the decision of the DEB RFF and ratified the Financial Sanctions (the "Appealed Decision"), as follows:

"After examining the appellant's claims in the raised issue, the Appeal Board finds that the final Decision no 53/2017 issued by FRF definitely established that the appellant in the present case had unilaterally terminated the contract, without just cause, outside the protected period, which was concluded with the player Gligor Alin Sorin. The finding of the termination of the contractual relationships as a result of the unilateral termination being in accordance with the provisions of art. 18 par. 3 and par. 7 of the RSTJF by the FRF competent board, in the pending case, under which circumstance, the contractual relationships between the parties remain in force and must be observed by the parties until the date of delivery of final judgment.

Therefore, it is noted that the date of finding the termination of contractual relationships between AFC UTA Arad and the player Gligor Alin Sorin as a result of the unilateral termination of the contract, without just cause, outside the period protected by the club, is 10.10.2017. On this very date, Decision no 53/CR/2017 was delivered by the FRF Appeal Board.

In view of the above, one can easily notice that, by the recitals of the Decision subject to appeal held by the FRF Disciplinary and Ethics Board, another date of termination of the contractual relationships between the parties was set, although there was a final judgment delivered on 10.10.2017. Therefore, the Appeal Board finds that, by the own way in which the Ethics Board intended to set a different date for the termination of contractual relationships, it wrongly failed to examine the claim on the merits which had been brought before it by the appellant.

(...)

According to the documents submitted to the case file, it has been found that the player Gligor Sorin Alin has been applied disciplinary sanctions for breach of the obligations stipulated in the contract concluded with the club, RSTJF and internal regulation. The reports prepared by the UTA 2 coach established the claims on the basis

of which the disciplinary investigation procedure was initiated and, following this procedure, the four decisions were issued - 01 - 04/25.09.2017.

The claims made by the respondent in appeal, i.e., that he was not informed of the Internal Regulation, and the notification by the appellant club to AFAN would not be opposable since, at that time, it would not represent the player, all these cannot be held by the Appeal Board as long as by the minutes drafted on 14.08.2018 it was noted that player Gligor Alin Sorin refused to be informed and to sign for the acknowledgement of the Regulation, and the player himself requested for this document to be delivered to AFAN.

Referring to the player's claims, by his official representative, according to which the sanctioning decisions are null and void, justified by the provision in Article 46 of the Internal Regulation, which establishes the right of the club to apply financial sanctions between 100 RON – 5,000 RON, and by the sanctions actually enforced on the player, there would be no individualization of the disciplinary misconducts, the board finds that such are unfounded, by the analysis of the Decisions no 01 - 04/25.09.2017, on the one hand, and, they were enforced gradually, namely between 1,000 RON and 4,000 RON, on the other hand.

Therefore, following the analysis of the written submitted to the case file and of the pieces of evidence produced in the case, it is found the existence of the deeds provided in the four Decisions on Sanctioning drawn up by the appellant AFC UTA Arad as having been committed by the player Gligor Alin Sorin, for which reason the claim which AFC UTA Arad brought before the FRF Disciplinary and Ethics Board is hereby grounded”.

34. The Appealed Decision was notified on 4 July 2018 to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 20 July 2018, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Club and the RFF with respect to the Appealed Decision, pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The Appellant requested a Sole Arbitrator be appointed by the Appeals Arbitration Division pursuant to Article R50 of the Code. In addition, the Appellant filed a Request for Provisional Measures by which the Appellant requested a stay of execution of the Appealed Decision pending the appeal proceedings before CAS.
36. By letter of 24 July 2018, the CAS Court Office acknowledged receipt of the Appellant’s submissions, provided the two respondents with a copy of the Statement of Appeal as well as the Request for Provisional Measures, together with their enclosure, and invited them to comment on the various procedural issues.
37. On 27 July 2018, the RFF informed the CAS Court Office that it agreed, among others, to the appointment of a Sole Arbitrator.
38. On 1 August 2018, the RFF submitted its position regarding the Appellant’s Request for Provisional Measures, according to which, *inter alia*: “The Second Respondent agrees that the challenged

Decision should not be enforced until a final Decision will be issued by CAS, but RFF has no legal base to suspend on its own will the Decision. (...)”.

39. On 3 August 2018, the Club submitted its position regarding the Appellant’s Request for Provisional Measures. In essence, while challenging the Appellant’s arguments, the Club nevertheless agreed with the requested stay of execution.
40. In light of the fact that the two respondents agreed with the Appellant’s requested stay of execution, the CAS Court Office informed the Parties on 3 August 2018 that the Deputy President of the CAS Appeals Arbitration Division granted the Appellant’s Request for Provisional Measures and that the Appealed Decision could thus not be enforced pending the proceedings before CAS.
41. By letter of 3 August 2018, the CAS Court Office acknowledged receipt of the Appellant’s Appeal Brief filed on 31 July 2018. In addition, the CAS Court Office informed the Parties that, since the Club did not express its view on the Appellant’s request for the appointment of a sole arbitrator, the President of the CAS Appeals Arbitration Division would decide this issue.
42. By letter of 6 August 2018, the Appellant withdrew its appeal in so far as it was directed against the RFF.
43. On 29 August 2018, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Alexis Schoeb, Attorney-at-law in Geneva, Switzerland, as Sole Arbitrator to decide the matter at hand.
44. By letter of 11 September 2018, the CAS Court Office acknowledged receipt of the Respondent’s Answer filed on 6 September, *i.e.* within the time limit granted by the CAS Court Office. The CAS Court Office provided the Appellant with a copy of the Answer together with its enclosure and invited the Parties to inform the CAS Court Office by 18 September 2018 whether they preferred that a hearing be held or the Sole Arbitrator issue an award based solely on the Parties’ written submissions.
45. On 18 September 2018, the Appellant informed the CAS Court Office that he left it to the Sole Arbitrator to decide whether a hearing was necessary in the present dispute.
46. By letter of 21 September 2018, the CAS Court Office invited the Respondent to provide, by 27 September 2018, its position as regards the hearing and informed the Respondent that in the absence of an answer within such deadline, the decision would be taken without a hearing, based exclusively on the submissions and documents provided by the Parties.
47. On 2 October 2018, the CAS Court Office informed the Parties that, in view of the Respondent’s silence, it confirmed that no hearing would be held in the present dispute, since the Sole Arbitrator deemed himself sufficiently well informed to decide this case based on the Parties’ written submissions and without the need to hold a hearing.

48. By letter of 8 October 2018, the CAS Court Office provided the Parties with an Order of Procedure and requested them to sign and return a copy of such Order of Procedure by 15 October 2018.
49. On 9 October 2018, the Appellant submitted to the CAS Court Office a signed copy of the Order of Procedure.
50. By letter of 23 October 2018, the Respondent informed the CAS Court Office of the following:

“(…)

5. Analyzing the balance of risks and benefits, we inform CAS that UTA Arad Football Club Association understands to waive at his rights provided by Decision no. 1/25.09.2017, Decision no. 2/25.09.2017, Decision no. 3/25.09.2017 and Decision no. 4/25.09.2017 and at the right to sanction the player for the break of the civil contract no. 160/25.06.2015.

6. Taking in to account the procedural conduct of UTA Arad Football Club Association we consider that the Appeal formulated by the player Gligor Alin against Decision no. 18/24 May 2018 remained without object”.
51. By letter of 30 October 2018, the Appellant took note of the Respondent’s position in its letter of 23 October 2018 and requested the continuation of the proceedings.
52. By letter of 1 November 2018, the CAS Court Office acknowledged receipt of the Appellant’s letter of 30 October 2018 and invited the Parties to request from such Office, by 6 November 2018, the suspension of the proceedings, if they wished to try to amicably settle their dispute.
53. By letter of 6 November 2018, the Respondent confirmed its position asserted in its letter of 23 October and requested the suspension of the proceedings.
54. By letter of 7 November 2018, the CAS Court Office acknowledged receipt of the Respondent’s letter of 6 November 2018 and invited the Appellant to express his position or observations on the requested suspension by no later than 12 November 2018.
55. By letter of 12 November 2018, the Appellant informed the CAS Court Office that it considered that the Respondent failed to negotiate a potential settlement agreement and requested the continuation of the proceedings.
56. By letter of 13 November 2018, the CAS Court Office acknowledged the Appellant’s request for the continuation of proceedings and informed the Parties that the Sole Arbitrator would proceed and issue his decision.

IV. POSITION OF THE PARTIES

57. The Sole Arbitrator has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but will limit his explicit references in the following summaries to those arguments that are relevant for this Award.

A. The Appellant's Position and Requests for Relief

58. The Appellant's position, in essence, may be summarized as follows:

- The Financial Sanctions are null and void for the following reasons:
 - i. The Player's right to be heard and his right to a fair hearing have not been respected:
 - The Appellant was not provided with the most essential documents on which the Club commenced disciplinary proceedings, *i.e.* the Reports, and the Player was thus not provided with the documentation necessary to properly prepare his defense before the Disciplinary Hearing.
 - During the Disciplinary Hearing, the Club refused, without specific reasons, to disclose the Reports to the Player. The Player was thus denied the possibility to defend himself during the Disciplinary Hearing.
 - ii. The Club could no longer fine the player after its decision to terminate the Contract:
 - Art. 42. par. 6 lit. f) of the RFF Disciplinary Regulations provides that "*Players cannot be sanctioned after the termination of the contract*". Therefore, since the Respondent terminated the Contract in July 2017, no sanctions could be imposed on the Appellant in September 2017, as concluded by the DEB RFF in its Decision no. 23/14.02.2018.
 - Alternatively, should it be considered that the Contract was effectively terminated on 10 October 2017, the Financial Sanctions should also be declared null and void in accordance with art. 42 par. 6 lit. g) of the RFF Disciplinary Regulations, which provides that:

"The sanctions applied, pending ratification by the RFF Disciplinary Committee at the date of termination of the contract, shall be null and void unless expressly provided for and accepted in the act by which the parties have agreed to the termination of the contractual relationship".
 - iii. The reasons for sanctioning the Player were neither proven nor justified:
 - The Player was injured during the first two matches and registered as the masseur for the second two matches. As such, the Player could evidently not play for the

Club and the sanctions imposed on him for his alleged refusal to partake in the matches are therefore not justified.

- The injury of the Player was duly communicated by the Player to the coach of the second team, as mentioned in the respective Reports.
 - The Reports do not specify that the Player refused to follow the instructions of the coach, refused to take part in the match or failed to comply with the rules and regulations of the Club.
 - The only document that has been provided by the Club to prove the Player's alleged refusal are 4 handwritten statements of an employee (i.e. Mr Ungur Adrian) of the Club, which are vague, inconsistent and not suitable as credible proof to sanction the Player.
 - In front of the DEB RFF, Mr Ungur Adrian confirmed that i) the Player informed him of his back problems before the matches of 26 August 2017 and 2 September 2017, ii) that he *"knew that the player had some problems with his back"* and iii) that he knew that the Player took antibiotics and *"was not training for a period of 4 days before this game [02.09.2017]"*.
 - Mr Ungur Adrian also confirmed that the Reports were submitted simply to inform the Club of the situation *"and not because we suspect the player could not have medical problems"*, which, according to the Appellant, demonstrate that *"the club received the reports of the coach and saw an opportunity to save some salary expenses"*.
 - The Player was not sent for a medical check-up and was not asked why he did not play in order to verify whether the Player was *"faking some kind of injury"*. The Club took no such measures and thus accepted the fact that the Player was indeed injured.
 - The Player was not able to participate in the matches of 9 and 16 September 2017 since he was registered on the official match sheet as "masseur".
- iv. The Club was already in default of its own obligations when it imposed the sanctions on the Player:
- The Club failed to pay the Player's salaries for July and August 2017 and could thus not request the execution of the Contract, being itself in breach of the Contract and in breach of art. 6 par. 1 of the Romanian RSTP.
- v. The fines are grossly excessive and disproportionate:

- According to the Appellant, it would have been much more appropriate to have first imposed a warning or reprimand against the Player as soon as the first alleged contractual breach had been committed by the Player, *i.e.* the alleged refusal to play the match of 26 August 2017.
- The four Financial Sanctions, which were imposed on the same day against the Player, equaled two months of the Player's salary for alleged incidents which occurred in two months, and are thus excessive. In addition, the fines imposed for the matches played in September equal RON 9'000 and are thus higher than the Player's monthly salary. The Appellant asserts that it would be absurd to support that an employer can fine its employee with an amount higher than the actual salary and is contrary to art. 42 par. 6 lit. c and d of the RFF Disciplinary Regulations.

vi. The manner in which the sanctions were imposed is incompatible with the objective of disciplinary sanctions:

- A sanction should be imposed in order to warn a player that his behavior is not in line with his contractual obligations but should not be an incentive for the benefit of the club itself.
- By imposing all four Financial Sanctions on the same day, the player could not improve his alleged objectionable behavior, and is thus, contrary to the "warning-element" of a fine and contrary to art. 42 par. 6 lit. c of the RFF Disciplinary Regulations, according to which the sanctions shall be imposed gradually.

59. In his Request for relief, the Appellant requests as follows:

- a) To set aside the decision passed by the Appeal Board of the RFF dated 24 May 2018.*
- b) To rule that the sanctions imposed by the first Respondent on the Appellant are null and void.*
- c) To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the player of any and all expenses he incurred in connection with this procedure.*
- d) To rule that the Respondents have to pay the Appellant a contribution towards his legal costs".*

B. Respondent's Position and Requests for Relief

60. The Respondent's position, in essence, may be summarized as follows:

- Art. 18.7 of the Romanian RSTP provides that *"the contract concluded between the parties will be in force until the final settlement of the dispute, the parties will have the obligation to fulfill all the contractual clauses"*. Therefore, the Contract ended on 10 October 2017, *i.e.* when the Decision no. 53/10.10.2017 of the Appeal Arbitration Division of the RFF has been issued.

- The Decision no. 53/10.10.2017 of the Appeal Arbitration Division of the RFF, which did not annul the termination of the Contract, is final and enforceable.
- In 2017/2018 season, the Player played in 3 official matches but refused to play in 4 other matches, in violation of his contractual obligations.
- The Player constructed his appeal on the idea of the nullity of the Financial Sanctions, but he did not challenge the legality of the Financial Sanctions on the basis that the contractual violation had not been committed.
- The Club complied with art. 42 par. 6 lit. f of the RFF Disciplinary Regulations since:
 - i. The Financial Sanctions are all previous to 10 October 2017, *i.e.* the date of termination of the civil contract no. 160/25.06.2015, and have been imposed on the Player when his contractual obligations had not ended.
 - ii. The Contract between the Parties terminated on 10 October 2017 cannot be challenged by the Player since Decision no. 53/10.10.2017 is final and enforceable and it would otherwise be a violation of the principle of *res judicata*.
 - iii. According to the regulations of the RFF, the unilateral termination of an employment contract is “*effective only [when] a decision of the competent bodies [is issued], the contract remaining in force until that moment*”.
 - iv. Applying the reasoning of the Appellant would mean that the Player “*can request the complete fulfilment of the obligation assumed by the Club (salary for July and August 2017) but the Club cannot request to his player a complete fulfilment of his contractual regulation, he can participate only in the games that he chose*”.
 - v. Art. 42 par. 6 lit. g of the RFF Disciplinary Regulations is applicable only when a contract is terminated by mutual agreement and not when a contract has been unilaterally terminated.
- The Club complied with art. 42 par. 6.2 lit. c of the RFF Disciplinary Regulations since:
 - i. The Player has been convoked for the Disciplinary Hearing and informed that he would be heard for his unjustified refusal to participate in training and official matches of the Club and that such actions may constitute disciplinary misconducts.
 - ii. The Player did participate in the Disciplinary Hearing;
 - iii. The Reports have been presented and read to the Player during the Disciplinary Hearing.

- iv. On 21 September 2017 at the latest, the Player knew that he violated the Contract and had the opportunity to justify its refusal to play and to prove his absence of fault. However, the Player did not prove his grounds for the refusal to play and has not proven his objective arguments for not playing.
- v. Even if the Player's right to be heard has been infringed by the Club, the Player had the opportunity to be heard and to defend himself in the proceedings before the judicial bodies of the RFF but chose to avoid the analysis of the facts.

➤ The Player committed a contractual breach since:

- i. The Player informed the Club as of 26 July 2017 that *"he had various health problems"* and *"through his colleagues and coaches the player affirmed that he was unwilling to risk an injury until he [would become] a free player"*. The Player did not play in any official match of the Club from 26 July 2017 until 22 September 2017.
- ii. For some of the matches the Player presented medical documents and for other matches he did not present such medical documents. The Club does not understand how it could prove the facts with additional documents in the absence of any medical document justifying the Player's contractual violation.
- iii. As soon as the Player was summoned for the Disciplinary Hearing, *i.e.* as of 21 September 2017, he *"accepted to evolve, stage with stage, in the match played by the second team of the club"* on 23 September, 30 September and 7 October 2017.
- iv. The misconduct of the Player was not only proven by the Reports but also by the Player's following declarations:

"I admit that I had the obligation to do what the club requested, but I could not play for medical reasons. I did not present on 2 [September] a medical document regarding the fact that I could not play.

I did not present medical documents for all of three matches.

I had the obligation to play in the four matches, but I cannot play for medical reasons.

I did not mention the same things at hearings in front of the club, because I wanted to present my defence after I had seen the reports and what are the accusations brought to me".

- v. In August 2017, the doctors of the team repeatedly consulted the Player. However, none of the medical documents provided by the Player as justification for his absence from the matches were issued by the doctors of the Club.
- vi. The Club did not request that the Player play in the disputed matches in the periods in which he proved that he had health problems. The Club requested that the Player

fulfil his contractual obligations when it became obvious that the Player was acting in bad faith.

vii. The Player understood that he had to comply with his contractual obligations only when the Club communicated its intention to sanction his behavior.

61. In its Request for relief, the Respondent requests as follows:

“To dismiss the appeal filed by the player Alin Gligor against Decision no. 18/24.05.2018 passed by the Appeal Committee of Romanian Football Federation and appealed by the Romanian professional football player Alin Gligor and to uphold the appealed decision as founded and legal.

Pursuant to art. R 64.5 of the CAS Code we ask you to compel the Appellant to pay the costs generated to UTA Arad Football Club Association, as Respondent in this case, representing arbitration costs and attorney fee”.

62. The Sole Arbitrator hereby confirms that, despite the letter sent by the Respondent on 23 October 2018 by which it waived its rights in relation to the present proceedings, all the submissions, evidence and arguments raised by the Respondent have been taken into consideration.

V. JURISDICTION

63. Article R47 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 him prior to the appeal, in accordance with the statutes or regulations of that body”.

64. In the present matter, the Decision which is the subject of this appeal was issued by the Appeal Board of the RFF. The jurisdiction of CAS arises out of Art. 36.17 of the RFF *Regulament privind statutul și transferul jucătorilor de fotbal* (“RFF RSTJ”), pursuant to which the decisions of the Appeal Board of the RFF can be appealed before CAS. The jurisdiction of CAS was explicitly confirmed by the Appeal Board of the RFF in the Appeal Decision.

65. The Parties did not object to the jurisdiction of CAS.

66. In light of the foregoing, the Sole Arbitrator, therefore, confirms that CAS has jurisdiction to hear this appeal.

67. Under Article R57, the Sole Arbitrator has full power to review the facts and the law. The Sole Arbitrator therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

VI. ADMISSIBILITY

68. The Appealed Decision was considered by the Appeal Board of the RFF on 24 May 2018 and the grounds of the Appealed Decision were subsequently notified to the Appellant on 4 July 2018. The Appellant then filed his Statement of Appeal on 20 July 2018, thus being within the 21-day deadline established by art. 36.17 of the RFF RSTJ.
69. Furthermore, the Appeal complied with all other requirements of Article R48 of the Code, including payment of the CAS Court Office Fee.
70. Consequently, the Appeal is admissible.

VII. APPLICABLE LAW

71. The law applicable in the present arbitration is defined by the Sole Arbitrator in accordance with Article R58 of the Code, which 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”.
72. The present dispute is a domestic case involving two Romanian parties and the Appealed Decision was issued by the RFF Appeal Body. Therefore, the applicable regulations in the case at hand shall be the statutes and regulations of the RFF.
73. In addition, the Contract states that:

“The parties understand that the present civil contract is duly completed with the provisions of the Regulations on the Status and Transfer of the Football Player, other regulations of the FRF and the Romanian Professional Football League (LPF)”.
74. In view of such provision, the Sole Arbitrator considers that the Parties agreed that the various regulations of the RFF and the Romanian Professional Football League shall supplement the Contract without stipulating a specific choice of national law.
75. Therefore, it appears that the applicable regulations and the rules of law chosen by the Parties, within the meaning of art. R58 of the Code, coincide.
76. As a result, the Sole Arbitrator holds that the present dispute is to be determined by applying the statutes and regulations of the RFF and the LPF, and if necessary, subsidiary rules of law which may be determined subsequently.

VIII. MERITS

A. The Main Issues

77. The present dispute between the Parties revolves around the validity of the Financial Sanctions imposed on the Player by the Club. However, the Sole Arbitrator observes that such dispute takes place in a broader conflict related context between the Parties, which generated five disciplinary decisions in Romania and which was triggered by the unilateral termination of the Contract by the Club.
78. The main feature of this case is the fact that the Financial Sanctions have been imposed on the Player at a time when the unilateral termination of the Contract was being decided by the Appeal Arbitration Division of the RFF.
79. It is undisputed by the Parties that the Club could not impose a sanction on the Player after the termination of their Contract according to art. 42. par. 6 lit. f) of the RFF Disciplinary Regulations which provides that *“Players cannot be sanctioned after the termination of contractual relationships”*.
80. However, the Parties disagree on the date of the termination of the contractual relationship.
81. The Club contends that the date of termination of the Contract corresponds to the date of issuance of Decision no 53/10 October 2017 of the Appeal Arbitration Division of the RFF, *i.e.* 10 October 2017. Accordingly, the Club submits that it was entitled to impose the Financial Sanctions on the Player on 25 September 2017.
82. The Player submits in essence that the Club could not impose any Financial Sanctions upon him after its decision to terminate the Contract with effect on 1 July 2017.
83. In light of the foregoing and in accordance with the Parties’ submissions, before analyzing whether the Player has committed a contractual violation and the eventual consequences of such violation (*ii*), the main issue to be solved by the Sole Arbitrator in the present dispute is to determine when the Contract was effectively terminated (*i*).

i. When was the Contract terminated?

84. In the Appealed Decision, the Appeal Board of the RFF decided that:

“The finding of the termination of the contractual relationships as a result of the unilateral termination being in accordance with the provisions of art. 18 par. 3 and par. 7 of the RSTJF by the FRF competent board, in the pending case, under which circumstance, the contractual relationships between the parties remain in force and must be observed by the parties until the date of delivery of final judgment.

Therefore, it is noted that the date of finding the termination of contractual relationships between AFC UTA Arad and the player Gligor Alin Sorin as a result of the unilateral termination of the contract, without just

cause, outside the period protected by the club, is 10.10.2017. On this very date, Decision no 53/CR/2017 was delivered by the FRF Appeal Board”.

85. The reasoning of the Appealed Decision was thus based on the assumption that, because of the provision of art. 18.7 of the RFF RSTJ (*“the contract concluded between the parties remains in force until the final settlement of the dispute, the parties having the obligation to observe the contractual clauses”*), the Contract was terminated on the delivery date of Decision no 53/10 October 2017, by which it was finally found that the Club had unilaterally terminated the Contract without just cause, *i.e* on 10 October 2017.
86. In this respect, the Appeal Board of the RFF considered that the termination date for the purpose of art. 42. par. 6 lit. f) of the RFF Disciplinary Regulations is the delivery date of Decision no 53/10 October 2017. As a consequence, the Respondent was entitled to sanction the Player until 10 October 2017.
87. The Sole Arbitrator notes, however, that the other three relevant decisions in the present matter defined the termination date to be 1 July 2017, in application of the termination notice issued by the Respondent.
88. Indeed, in the first decision concerning the question of the unilateral termination of the Contract (Decision no. 161/24 August 2017), the NDRC found that the Club *“decided to unilaterally terminate the contract starting from the date of 01.07.2017”*.
89. In the decision on appeal concerning the question of the unilateral termination of the Contract, (Decision no 53/10 October 2017), the Appeal Board of the RFF notes that the Player *“was informed about the unilateral termination of the contract starting from the date of 01.07.2017”*.
90. In the first decision concerning the question of the ratification of the Financial Sanctions (Decision no. 23/14.02.2018), the DEB RFF expressed the following opinion:

“4.11. The Board, after taking note that the contractual relationships between the UTA Arad club and the player ceased on 01.07.2017, it undoubtedly holds that the enforcement of disciplinary sanctions following the termination of the contract stands for a clear plea of inadmissibility, since the issue of the time of termination of the contract had been finally settled under decision no 53/ 10.10.2017, issued by the FRF Appeal Board and, moreover, it is unequivocally that at the time of enforcement of the sanctions the legal relationships between the parties had been terminated, and the sanctions could be enforced exclusively during the performance of the contract, according to the provisions of Article 42 paragraph (6) letter (f) (...)”.
91. In the same decision (Decision no. 23/14.02.2018), the DEB RFF underlined that *“Without initiating any civil controversy on the time of termination of the contract, it should be noted at first sight that the time of termination coincides with the date of July 1, 2017, since the player did not raise any objections pursuant to the applicable rules or regulations [...]”* and added that *“the subject of the dispute [...] was to compel the club to pay a sum of money and not the time of termination of the agreement, circumstances in which the provisions of Article 18 item 7 RSTJF are not incidental”*.

92. According to the three above-referenced decisions, the contractual relationship between the Player and the Club effectively ended on 1 July 2017 despite the application of art. 18.7 RFF RSFTJ which provides that the contract concluded between the parties remains in force until the final settlement of the dispute.
93. As acknowledged by the Respondent, Decision no 53/10 October 2017 “*did not annul the document by which UTA Arad ended the civil convention no. 160/25.06.2015, but established only if the ending of the contract was with or without just cause, more exactly if the player is entitled or not to compensation*”.
94. It therefore appears, that Decision no. 161/24 August 2017 and Decision no 53/10 October 2017 exclusively dealt with the question of the indemnity for unjustified termination of the Contract by the Club and did not address the time of the termination of the contractual relationship.
95. The Sole Arbitrator therefore considers that by sending a termination letter on 14 June 2017, the Club effectively terminated the contractual relationship by 1 July 2017.
96. According to art. 42 par. 6 lit. f) of the RFF Disciplinary Regulations, the Club was thus not allowed to sanction the Player after the date of termination of the Contract, *i.e.* after 1 July 2017.

ii. Has the Player committed a contractual violation?

97. Regardless of the foregoing, the Sole Arbitrator deems it appropriate to conduct an analysis of the claim of the Club regarding the alleged contractual violation by the Player.
98. In essence, the Club submits that the Player refused to play in the Club’s second team matches of 26 August, 2 September, 9 September and 16 September 2017 (the “Matches”) without justification and thus in violation of the Player’s contractual obligations, *i.e.* art. 2 paragraph 1 of the Contract, art. 5.2 letters b) and c) and art. 5.4 of the RFF RSTJ, as well as art. 14 and 30 of the Internal Regulations of the Club.
99. The Contract provides that “2. *The Player undertakes: - To perform the football activity under the conditions and quality required by the Club (through participation in trainings and official or friendly games), as well as all the program, as it was settled by the Club; [...]*”.
100. The Club’s internal regulations contained the following relevant provisions:

“Art. 14. The unjustified absence of the player from training sessions, friendly matches and official matches is strictly forbidden.

(...)

Art. 30. Medical assistance

(...)

The Player who is medically excused will attend the training sessions, wearing the appropriate equipment, and will have a special training schedule, unless indicated otherwise. A complete medical release exists only if the doctor of the team indicates this.

The Player is consulted and treated only by the doctor of the team. A check-up or treatment done by another doctor is allowed only if the player received a referral from the team's doctor.

(...)

The Player is obliged to immediately inform the coach or the doctor with regard to the appearance of some symptoms or affections, with regard to any other medicine or substance assimilated by him, prescribed by another doctor, as well as the proposed treatment plan. It is strictly forbidden to consume any kind of medication without the written approval of the team's doctor.

The Player is obliged to communicate toward the management of the club all the documents regarding his health and all the documents regarding the medical treatments followed by the player and that are still in his possession.

(...)"

101. Art. 5 of the RFF RSTJ provides the following:

"Article 5. Rights and obligations of players

(...)

2. Main obligations of amateur players:

(...)

b) to take part in the official and friendly matches of the club which they are registered, according to their skills, training and physical condition, and the needs of the club.

c) to comply with the Statutes of FRF, LPF, CFA, and of the club, as well as other regulations and rules or decisions of FRF, LPF, CFA, as well as the requirements of the internal regulations of the club.

(...)

4. Professional players have, beside the obligations of amateur players, the following obligations:

a) to abide by their contractual clauses;

(...)"

102. In the present matter, having considered all the facts, allegations, legal arguments and evidence submitted by the Parties, the Sole Arbitrator finds that:

- i. The Player's health problems, which started in May 2017 are undisputed by the Club. In this regard, Mr Ungur Adrian, who submitted the Reports, acknowledged that "*the reports have been done [...] to inform the club of the situation and not because we suspect the player could not have medical problems*".
 - ii. It is not disputed by the Respondent that the Player was present at the Matches, even if he did not play.
 - iii. According to the Reports established by Mr Ungur Adrian:
 - The Player informed the coach of the Club's second team of the fact that he could not play the match of 26 August 2017 due to his back pain;
 - The Player informed the coach of the Club's second team that he refused to play the match of 2 September 2017 because he was undergoing antibiotic treatment;
 - iv. Concerning the matches of 9 and 16 September 2017, the Sole Arbitrator notes that the Player has not been registered as a "player" in the official match sheets but as a "masseur". However, the Club did not provide any explanation as to why the Player was registered as a "masseur" for those two matches and not as a player.
 - v. The file contains no evidence demonstrating that the Club contested the legitimacy of the Player's medical certificates and requested further medical checks in order to assess whether the Player was fit to play the Matches.
 - vi. The file contains no evidence that the Player's refusals to play the Matches were unjustified.
103. It results from the foregoing findings that (1) the Club does not contest that it was aware of the Player's health problems and that (2) the Club did not convincingly demonstrate that the Player committed the alleged contractual violation.
104. Consequently, the Sole Arbitrator finds that the Financial Sanctions are not sufficiently substantiated.

B. Conclusion

105. In view of the foregoing analysis on the merits, the Sole Arbitrator concludes that the Club was not permitted to impose the Financial Sanctions against the Player after its unilateral termination of the Contract, *i.e.* after 1 July 2017.
106. In any event, the Sole Arbitrator is also in the opinion that the Club has failed to demonstrate that the alleged contractual violation by the Player has occurred.

107. Consequently, the appeal of the Player must be upheld and the financial sanctions issued by the Club shall be annulled.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 20 July 2018 by Mr Alin Gligor against the decision issued on 24 May 2018 by the Appeal Board of the Romanian Football Federation is upheld.
2. The decision issued on 24 May 2018 by the Appeal Board of the Romanian Football Federation is set aside.
3. The Financial Sanctions imposed by AFC UTA Arad on 25 September 2017 on Mr Alin Gligor are annulled.
4. (...).
5. (...).
6. All other prayers or requests for relief are dismissed.