Arbitrations CAS 2019/A/6444 & 6445 Sociedade Esportiva Palmeiras & Egidio De Araujo Pereira Junior v. FC Dnipro, award of 14 December 2020

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Frans de Weger (The Netherlands); Mr Sofoklis Pilavios (Greece)

Football
Termination of the employment contract without just cause by the player
Need for a party to appeal in order to gain an advantage in the arbitration
Just cause
Reduction of the compensation for damages when the injured party helped to give rise to or increased the damage

1. **In the absence of a specific appeal by a party to the arbitration, any modification of the contested decision to the advantage of such party is not admissible. The only request can be to confirm the decision.**

2. **Just cause for termination of an employment contract exists when the relevant breach by the other party is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship. The existence of such situation is to be established on a case-by-case basis. Only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter. To be allowed to validly terminate an employment contract with immediate effect, a party must have warned the other party, in order for the latter to have the chance, if it deemed the complaint legitimate, to comply with its obligations. However, the duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning is necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.**

3. **According to Article 44 para. 1 of the Swiss Code of Obligations, compensation may be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage.**

I. BACKGROUND

1. Sociedade Esportiva Palmeiras ("Palmeiras"), a Brazilian football club, with seat in São Paulo, Brazil, is the Appellant in CAS 2019/A/6444. Palmeiras is affiliated to the Brazilian Football Confederation (*Confederacão Brasileira de Futebol* - "CBF") and is currently playing in the Brazilian

first division. The CBF is a member of the Fédération Internationale de Football Association ("FIFA"), the world governing body of football.

2. Egidio De Araujo Pereira Junior ("Egidio" or the "Player"), a professional football player of Brazilian nationality, born on 16 June 1986, is the Appellant in CAS 2019/A/6445.

3. Dnipro FC ("Dnipro" or the "Respondent"), a Ukrainian football club with seat in Dnipropetrovsk, Ukraine, is the Respondent in CAS 2019/A/6444 and in CAS 2019/A/6445. Dnipro is affiliated to the Ukrainian Association of Football ("UAF"), previously known as the Football Federation of Ukraine, which is also a member of FIFA.

4. Palmeiras and the Player are jointly referred to as the "Appellants"; the Appellants and the Respondent are the "Parties".

II. FACTUAL SUMMARY

5. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 4 January 2015, Dnipro transmitted to the Player a document named *"Financial Proposal"* (the "Proposal") to *"confirm the agreements that were concluded between the Club and Player … by Mr. Fabio Brito-agent"* regarding the following *"Player Conditions"*:

> *"1. 3 year contract, starting on January 2015 till January 2018.*
> *2. Salary-730,000 Euro (net) per year for the period of the contract.*
> *3. Bonuses as for all players of the team. according to the club policy.*
> *4. Car for the period of the contract*
> *5. Furnished apartment for the period of the contract.*
> *6. Air tickets for the player and his family Sao Paulo-Dnipropetrovsk-Sao Paulo".*

7. On 5 January 2015, according to the Player, he signed the Proposal for acceptance.

8. As a result, according to the Player, the Parties negotiated the terms of an employment contract (the "Draft Employment Contract"), *"valid from January "10", 2015 to December "31" 2017 (including)"* (Article 6.1), which would establish, *inter alia*, a total remuneration of EUR 2,190,000. In particular, the amount of EUR 150,000 would be paid *"in advance within five (05) days after the approval of the Athlete in the admission medical examinations"* and the remaining amount of EUR 2,040,000 in 36 equal instalments of EUR 56,666.67, with a first instalment due on 10 February 2015 (Article 4.2).

9. On 8 January 2015, a *"Contrato de Transferência"* (the "Transfer Agreement") was signed by

Dnipro and Cruzeiro Esporte Clube ("Cruzeiro"), the Brazilian club for which the Player was at that time registered, providing for the transfer of the Player from Cruzeiro to Dnipro.

10. On 10 January 2015, the Player and Dnipro signed an employment contract (the "Employment Contract"), valid as from 10 January 2015 until 31 December 2017 (Article 6.1). The Employment Contract contained *inter alia* at Article 4.2 the following provision:

"The Club assumes the following financial obligations regarding the Athlete:
- payment of the Athlete's wage, equivalent to Euros 60,833 (excluding taxes and other mandatory payments).
- The Club ensures that it will facilitate to the Athlete, during the whole term of the Agreement:
- a) payment of the apartment rental in the city …
- b) four plane tickets per year to the destination requested by the player, for him and his family;
- c) one car (property of the club). …".

11. On 11 February 2015, the amount of EUR 2,000,000 was transferred to Cruzeiro. According to Dnipro, that amount represented the transfer fee due to Cruzeiro under the Transfer Agreement. The SWIFT notification, indeed, referred to a *"PMNT for transfer player for FCD AC C. to transfer contract w/n dd 08.01.2015"*, with payment ordered by *"Pavanti Enterprises Ltd, Craigmuir Chambers, Road Town, Tortola, BVT"* on the Cyprus branch of Privatbank.

12. On 5 March 2015, the Player, through his counsel, sent to Dnipro the following letter:

"… while the Player has fully complied with all of his obligations, we are on his behalf notifying the Club that the Player has not received the agreed upon advance of payment in the amount of USD 150,000.00 (one hundred fifty thousand Dollars) as well as two monthly salaries, in a crass violation of the contractual terms that could seriously hinder the continuation of the employment relationship between the parties.
In light of the above, we herewith request the Club to provide the proper performance of the contractual obligations and pay the above-mentioned amounts, plus interests at a 5% rate, within 10 (ten) days after receiving this notification, that is to say 16 March 2014. …".

13. On 9 March 2015, the Player's counsel addressed to Dnipro a second letter as follows:

"Reference is made to the notification letter sent … on last 05 March 2015 and in this regard we would like to partially rectify it in the sense that the advance of payment was agreed between the parties in the amount of EUR 150,000.00 (one hundred fifty thousand Euros) and not of USD 150,000.00 (one hundred fifty thousand Dollars).
As such, the remaining terms of the notification remain fully valid, so that we herewith request again the Club to provide the proper performance of the contractual obligations and pay the above-mentioned advance of payment as well as the two outstanding monthly salaries, plus interests at a 5% rate, within the next 16 March 2014. …".

14. On 16 March 2015, the Player sent another letter to Dnipro, asking to be paid for the outstanding amounts by 20 March 2015 and reserving otherwise his right to terminate the Employment Contract, in the following terms:

"… we regretfully take note of the fact that F.C. Dnipro has not replied to any of the afore-mentioned letters

providing any possible legal ground to justify its contractual breaches, let alone deposit the amount due.

In line with art. 12-bis of the FIFA Regulations, the Player, having put F.C. Dnipro in default in writing and having granted a deadline of at least 10 days for F.C. Dnipro to comply with its financial obligations, is therefore now entitled to lodge a claim before the competent FIFA bodies, requesting the application of the proper sanctions.

In view of all the above-mentioned circumstances, the Player herewith request for the last time the Club to provide the proper performance of the contractual obligations and pay the above-mentioned advance of payment as well as the two outstanding monthly salaries, plus interests at a 5% rate, within the next 20 March 2014 [sic!]*, as otherwise, he will reserve his right of considering terminated the employment contract between the Parties with immediate effect. …".*

15. On 20 March 2015, Dnipro answered the Player's letters of 5, 9 and 16 March 2015, advising the Player's counsel that *"you do not have trustworthy information about the conditions of the contract between the player … and … Dnipro"*, that *"you carefully review the content of the contract of the player, which nothing is said about obligations regarding the advance of payment of the amount of EUR 150,000"*, and that *"as regards the payment of the salary, this issue will be resolved soon".*

16. On 23 March 2015, the Player sent a *"Final Notice"* as follows:

"In … first place, we should clarify how, as you are well aware, the Parties indeed had agreed an advance of payment in the amount of EUR 150,000.00 (one hundred fifty thousand Euros).

In second place, even admitting that such a payment was never agreed, or rather that the Player is now not in a position to proof such an agreement due the Club's bad faith in the moment when the employment contract was signed, all remaining terms of our notification letters remain valid.

In particular, we wish to highlight how the Player's situation is no longer sustainable, given that, since the entry into force of his employment contract with FC Dnipro and his arrival in Ukraine, the Player has not received a single payment by the Club.

During this time, the Player has been sustaining himself abroad, in a foreign and difficult context, making use of personal resources privately acquired. This is, nevertheless, causing the Player a situation of financial hardship and the Player's situation is no longer bearable.

The Player has already notified the Club three times, granting three different deadlines to comply with its obligations, and the Club, after ignoring the first two notifications, answered the third letter saying that "the issue will be resolved soon".

Taking note of this, the Player herewith grants an exceptional grace period and notifies for the last time the Club to provide the proper performance of the contractual obligations and pay all outstanding amounts, plus interests at a 5% rate, within the next 72 (seventy-two) hours as otherwise, he will reserve his right of considering terminated the employment contract between the Parties with immediate effect. …".

17. On 27 March 2015, the Player unilaterally terminated the Employment Contract, claiming that he had just cause to do so. The letter terminating the Employment Contract (the "Termination Letter") reads as follows:

"In our capacity of legal representatives for the Brazilian football player Egidio de Araujo Pereira Junior (hereinafter the Player), we refer to the 4 (four) notification letters sent on his behalf to Football Club Dnipro (hereinafter the Club) on 05 March, 09 March, 16 March and 23 March 2015, as well as to the Club's letter dated as 23 March 2015 (hereinafter the Club's Letter).

Upon receipt of the Club's Letter, the Player had replied granting the Club an exceptional grace period, notifying it for the last time to provide the proper performance of its contractual obligations and pay all outstanding amounts, plus interests at a 5% rate, within the following 72 (seventy-two) hours as otherwise, the Player would reserve his right of considering terminated the employment contract between the Parties with immediate effect.

The afore-mentioned deadline having expired yesterday 26 March 2015 at night, as a gesture of extreme good-faith and in a last attempt to try to avoid the collapse of the parties' employment relationship, the Player decided to further wait until the closure of the business day in Ukraine today to see whether the Club would pay him the outstanding amounts.

The Club having failed to do so, and taking into account that the Club failed to comply with any and all payments agreed as from January 2015, that the Player has not received any single payment since his arrival in Ukraine, a fact which you never denied, that in your letter dated 23 March 2015 you simply stated that "as regards the payment of the salary, this issue will be resolved soon", whereas 4 (four) further days has passed since then without any payment, the Player cannot any longer have faith that FC Dnipro will respect its obligations in the continuation of our employment relationship.

We are truthfully astonished with the situation with which the Player is obliged to deal and, particularly, by the manner in which, in your letter dated 23 March 2015, you dealt with the salary "issue" as a minor one, whereas it is the Club's main contractual obligation and the Club has simply continuously breached it since the moment the contract entered into force until now.

For these reasons, which we hope will be clear and comprehensible to you, the Player is left with no choice, in order to protect his situation as an employee and for his future professional career, than terminating his professional relationship with the Club.

As a consequence, please be informed that by means of this letter the Player herewith declares the termination with immediate effect of his employment contract with FC Dnipro with just cause, in view of all the afore-mentioned reasons and of those exposed in the letters previously sent. …".

18. In a letter dated 30 March 2015, Dnipro replied to the Player explaining that the payment delays were due to *"force-majeure"*, since procedures for Dnipro to open bank accounts for foreign players take more time when they arrive in Ukraine for the first time. In addition, Dnipro explained that the delays were caused also by *"double control"* to which the activities with foreign individuals were subjected because of the military conflict in the region. At the same time, Dnipro asked the Player to return within 3 days to resume his contractual obligations with Dnipro. Such letter reads as follows:

"Football player Egidio de Araujo Pereira Junior (Egidio) is Brazilian by nationality; consequently he is a foreign player. According to labor legislation of Ukraine certain procedure has to be done not only in connection with legalization of his job placement as foreign citizen, but also with acquisition of the right of the receipt of the salary with provision for tax legislation of Ukraine.

Thus, under auspices of the FC Dnipro labor relationship with Egidio as sportsmen-professional were officially finalized. Football player has received all necessary documents for the temporary residence on the territory of Ukraine.

At the same time, in order to fulfill payments of player's salary, Club has to open for the player banking account in Ukrainian bank. As well it has to be done to fulfill the requirements of the club as a tax agent of the player, so Club could make appropriate deduction in the state budget. At that, procedure of the opening of the banking account for the foreign citizen in Ukraine is of long duration that is usual for all foreign players who has signed

contact in Ukraine for the first time. Especially this procedure became longer in this hard period for Ukraine of military conflict in eastern part of Ukraine, all activities connected with foreign citizens now under the double control.

Therefore, since club was fully depended on actions of third party, in particular state body (regional Employment Center), FC Dnipro considers situation with the delay of the payments in favor of Egidio as a force-majeure, nevertheless, Club had done all the best to speed up this procedure.

Thus, we would like to pay your attention, that banking account in bank Privatbank on the name of the player was activated on 25 March 2015, and by 30 March 2015 player already has received his salary for the January, i.e. as soon as it was possible to transfer to the player salary for the first month of his work in the club, FC Dnipro without delay has fulfilled it.

Besides, in few days on the player's banking account will be transferred salary for the second month of his work in Club.

Therefore, we would like to assure you that FC Dnipro had done and doing all the possible and reliant from Club to timely and fully carry out its contract obligations with player Egidio.

We hope that this unpleasant situation for both parties will not lead to the crucial consequences, we invite player Egidio return to the club in order to resume fulfillment of the contractual obligations in 3 days as from the receipt of this letter. Also we kindly ask to let us know if there can be any problems with connections of flights of the player. Absence of such information will be considered by us as an attempt of Egidio to arrive to the Club within the named time limit".

19. On 31 March 2015, the Player and Palmeiras signed an employment contract valid as from 1 April 2015 until 31 December 2017 (the "New Employment Contract"), in accordance with which the Player was entitled to receive a monthly salary of BRL 120,000.

20. In a letter of 31 March 2015, Dnipro purports having informed Palmeiras *inter alia* of the fact that the Player was under contract with it and highlighted that the Player had no just cause to terminate the Employment Contract with Dnipro. Palmeiras however denies having received such letter. The letter in question reads as follows:

"From numerous Mass Media sources FC Dnipro found out that player Egidio, who is under the valid contract with FC Dnipro, at the moment, is at FC Palmeiras location. This information was also confirmed by other sources.

With the aim to avoid the situation in which your club could be found as the one who has induced professional to commit a breach of the contract without just cause, we deem it necessary to warn you, that information you could receive from the player's representative, apparently, delude you concerning the real fact of the situation with the player.

Anyway, we consider that it is our duty to inform you about the following:

As of today player has no "just cause" for the breach of the contract with FC Dnipro during the season in the protected period.

Information concerning debts of the FC Dnipro to player is not trustworthy.

In Ukraine, foreign player has to open banking account in Ukrainian bank to receive salary officially. Considering that banking system in Ukraine is not perfect, regretfully, this procedure is lengthy. Nevertheless, as soon as banking account for the player was opened, salary for the first month of the player work in club was at once transferred and by 30 March 2015 it was already on the account. Besides, the salary for the second month

of the player's work is already transferred on his banking account. Salary for the March, player will receive in time, on his banking account.

Egidio is not the first foreign player who had faced with this situation. This situation is common for the foreign players who have signed their first contract with FC Dnipro. Nevertheless, after overcoming by the Club of all difficulties linked with the opening of the according banking accounts, all players were receiving their salaried in time, that can be additionally confirmed by them in writing.

In addition, on 30 March 2015, FC Dnipro has sent to the Mr. Marcos Motta and Stefano Malvestio (representatives of the player) letter with earnest request to the player to return to the FC Dnipro location in order to resume fulfillment of the contractual obligations.

In case of non-fulfillment by the player of the lawful demands of the FC Dnipro, Club will have no other choice, but to apply to competent judicial bodies with initiation of the case on unilateral breach of the contract without just cause by the player during the season in protected period with demanding of enforcement of the financial and sporting sanction on the player for unilateral breach of the contract without just cause during the season in protected period.

At that, FIFA Regulations on the Status and Transfer of Players provides that if a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. …

Sincerely expect, that information stated in the letter will be useful for you and could save you from the legally unconsidered steps, that could lead irreparable consequences for the club and could damage reputation of such respected club as yours!".

21. On 1 April 2015, Dnipro informed the Player that his *"card account"* had been credited with the amount of Ukrainian Hryvna (UAH) 3,648,001.17. Dnipro, however, informed the Player that it had just received a letter from the CJSC SC CB PrivatBank (the "Bank") stating that debit transactions on his card account had been limited, since he had not signed the agreement with the Bank regarding the account services. At the same time, Dnipro confirmed to be *"extremely distressed about the fact that you temporarily do not have the opportunity to manage your funds"*, and that it would *"try our best to influence the situation"*. Finally, Dnipro further stated that it was *"definitely interested in* [the Player's] *services as a professional football player"* and was hoping *"for an early resumption of the employment relationship between us"*.

22. In a second letter to the Player of 1 April 2015, Dnipro referred to the letter sent on 30 March 2015, adding the following:

"At the moment we don't have any information from the player about the planned date of return to the location of the FC "Dnipro", and it is considered by us as a desire to arrive to the location of the club within the period specified in the letter of 30 March 2015.

We remind you that the period of three days from the date of receipt of the letter dated March 30, 2015 will expire on April 2, 2015 at 1.50 pm by Sao Paulo local time and 7.50 p.m. by Dnepropetrovsk local time.

Please also be advised that the club is ready to compensate to the player all costs associated with his return to the location of FC "Dnipro".

Once again we announce that the FC "Dnipro" is interested in the services of the player Egidio and looks forward to resume fulfillment of contractual obligations of the parties".

23. In a letter dated 1 April 2015 addressed to Dnipro, the Player however confirmed that the

employment relationship between the Parties had been terminated, and that the matter would be submitted to the competent football authorities.

24. On 2 April 2015, the Player lodged a claim before FIFA against Dnipro for breach of contract, maintaining that he had just cause to terminate the Employment Contract, and requesting:

    i. the payment of the total amount of EUR 2,190,000, plus 5% interest p.a. as from the respective due dates, detailed as follows:

        - outstanding remuneration of EUR 154,000 based on the Employment Contract, corresponding to two monthly salaries and 17 days, or EUR 295,444.45 based on the Draft Employment Contract, corresponding to the advance payment as well as two monthly salaries and 17 days;
        - compensation for breach of contract of EUR 2,036,000 based on the Employment Contract, or EUR 1,894,555.55 based on the Draft Employment Contract; and

    ii. the imposition of sporting sanctions on Dnipro, as well as the payment of the procedural costs and his legal fees.

25. On 11 May 2015, Dnipro replied to the claim and simultaneously lodged a counterclaim against the Player as well as against Palmeiras, for breach of contract without just cause, and requesting:

    i. compensation in the total amount of EUR 9,502,495, plus 5% interest p.a. as from the date of the breach of contract, detailed as follows:

        - EUR 2,007,497 corresponding to the residual value of the contract;
        - EUR 2,000,000 corresponding to the fee allegedly paid for the transfer of the Player;
        - EUR 630,000 corresponding to the agency fees allegedly paid in relation to the Player's transfer;
        - EUR 4,500,000 corresponding to alleged damages for the loss of the Player's services and the replacement cost;
        - EUR 364,998 corresponding to the specificity of sport criteria as per the CAS jurisprudence, equivalent to six monthly salaries of the Player; and

    ii. that the Player and Palmeiras be considered jointly and severally liable for all compensation to be awarded, that sporting sanctions be imposed on both the Player and Palmeiras, and that the Player bear all procedural costs.

26. In the course of the FIFA proceedings, the Player and Dnipro filed additional submissions, insisting in their respective claims and counterclaims. Palmeiras filed an answer to the claim brought by Dnipro, requesting its dismissal.

27. On 24 August 2018, the Dispute Resolution Chamber of FIFA (the "DRC") issued a decision (the "Decision") on the claim submitted by the Player and the counterclaim brought by Dnipro, as follows:

    "1. The claim of the Player, Egidio de Araujo Pereira Junior, is partially accepted.

2. The counterclaim of Dnipro is partially accepted.

3. Dnipro has to pay to the Player, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 11,597 plus 5% interest p.a. as from 1 April 2015 until the date of effective payment.

4. In the event that the aforementioned amount plus interest due to the Player is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Player is rejected.

6. The Player is directed to inform Dnipro immediately and directly of the account number to which the remittance under number 3. above is to be made and to notify the Dispute Resolution Chamber of every payment received.

7. The Player has to pay to Dnipro, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 1,564,745 plus 5% interest p.a. as from 11 May 2015 until the date of effective payment.

8. SE Palmeiras, is jointly and severally liable for the payment of the amount of EUR 1,564,745 to Dnipro.

9. In the event that the aforementioned amount plus interest due to Dnipro is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

10. Any further claim lodged by Dnipro is rejected.

11. Dnipro is directed to inform the Player and Palmeiras immediately and directly of the account number to which the remittance under number 7. above is to be made and to notify the Dispute Resolution Chamber of every payment received".

28. On 13 August 2019, the grounds of the Decision, based on the 2015 edition of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), were issued. They read, in the pertinent portions, as follows:

i. as to *"which of the documents on file should be taken into consideration in the assessment of the … matter"*:

"19. Having duly taken note of the documentation presented by the parties, the members of the Chamber held that the exact terms of the employment relationship between the player and Dnipro had to be established, beyond doubt, by sufficient and convincing documentary evidence. In general, the members of the Chamber held that they could not assume that an employment contract had been concluded by and between parties simply based on circumstances which are not certain to indicate the signing of a contract. In addition, the members of the Chamber agreed, in accordance with the longstanding jurisprudence of the Dispute Resolution Chamber, that the Chamber must be very careful with accepting documents, other than a signed employment contract, as evidence for the conclusion of a contract.

20. Within this context, the members of the Chamber understood that, in principle, the mutually signed contract should be presumed as the valid one since, unlike the other documents, it bears the signature of the relevant parties, and it is fundamentally uncontroverted between the parties.

21. Conversely, the Chamber understood that the submission of other documents lacking the signature

of both parties are not sufficient for the rebuttal of the aforementioned presumption.

22. *For the sake of completeness, the DRC observed, in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, which specific documents were uploaded in the TMS as an evidence of the employment relationship between the player and Dnipro.*

23. *In this respect, the DRC observed that the version of the employment contract uploaded in the TMS by Dnipro is the one signed by both parties on 10 January 2015. Thus, the members of the Chamber felt comforted that said situation reinforced the presumption established in the previous paragraphs.*

24. *As a result, the members of the DRC considered that, being the only employment contract signed by Dnipro and the Player, said contract, which contents are fundamentally uncontroverted between said parties, appears to be the document on which both parties intended to rely on for their future employment relationship.*

25. *In light of the above, the members decided to take into consideration the employment contract fully signed by both parties on 10 January 2015 for the assessment of the present matter"*;

ii. as to *"whether or not the Player had just cause to terminate the … employment contract on 27 March 2015"*:

"34. In this regard, the Chamber recalled that the Player considered having had just cause to terminate the contract, based essentially on the allegation that Dnipro had failed to pay him (i) the alleged advance payment of EUR 150,000 as well as (ii) the salaries of January and February 2015.

35. *At this stage, regarding the claim of the Player of the advance payment of EUR 150,000, the members of the Chamber recalled that the employment contract fully signed by the parties on 10 January 2015, taken into consideration to assess the present dispute, did not provide for such advance payment payable by Dnipro. Therefore, the DRC decided to reject the Player's argument and claim in this regard.*

36. *In continuation, the members of the Chamber deemed pertinent to point out that Dnipro acknowledged having delayed the payment of the Player's first two monthly salaries, but argued that it was due to force majeure invoking long administrative process to open a bank account in Ukraine for foreign players. The DRC noted that, according to Dnipro, it informed the Player that "this issue will be resolved soon". Moreover, the DRC took into account that Dnipro held that the Player had no just cause to prematurely terminate the contract, considering that at the time of the termination there were only two monthly salaries' payments outstanding.*

37. *Following the above, the Chamber deemed it necessary to analyse when the salary payments fell due. In this context, and after a thorough examination of the contract as well as the relevant arguments of the parties, the Chamber came to the conclusion that the employment contract signed by both parties on 10 January 2015 did not stipulate the due dates for the payment of the monthly salaries. As a consequence and in accordance with the well-established jurisprudence of this Chamber, it was considered that the monthly salaries fell due at the end of the respective month.*

38. *With regard to the salary for the month of March 2015, claimed on a pro rata basis by the Player, the Chamber concluded that said payment had clearly not fallen due yet on the date of the termination, i.e. 27 March 2015.*

39. *The Chamber took note that after having been put on default by the Player in March 2015, Dnipro reacted on 20 March 2015, rejecting the Players' claim for the advance payment as well as confirmed that it would pay the outstanding salaries. Shortly after the answer of Dnipro, on 23*

March 2015, the Player sent another default notice granting the club 72 hours to comply with the financial obligations. On 27 March 2015, the Player proceeded to terminate the contract and on 31 March 2015, he signed an employment contract with Palmeiras.

40. *The DRC further concurred that Dnipro had demonstrated with documentary evidence that it indeed paid the outstanding salaries claimed in two instalments respectively on 30 March and 31 March 2015, such circumstance having remained uncontested by the Player. Also on 31 March 2015, Dnipro reminded Palmeiras that the Player was still under contract with the Ukrainian club.*

41. *At this stage, the members of the DRC wished to emphasize that, according to the principle of contractual stability, the unilateral termination of a contract must be considered as ultima ratio, i.e. as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship. In what concerns financial obligations, one of the consequences of the aforementioned principle is that only a persistent and substantial non-compliance of these obligations could justify the unilateral termination of a contract.*

42. *Consequently, the members of the Chamber considered that, on one hand, by the time the Player terminated the contract on 27 March 2015, only two monthly salaries were effectively outstanding. The DRC further considered that the Player only put the club in default in March, granting Dnipro short deadlines for payment of the outstanding amounts. Dnipro reacted to the default notice dated 16 March 2015, explaining that the advance payment was not due and informing the Player that the salaries would be paid.*

43. *Consequently, the Chamber concluded that, on the date of the termination, i.e. 27 March 2015, the Player could not have reached a point where he could not reasonably expect that Dnipro would pay the two outstanding salaries in the next days.*

44. *On the other hand, the DRC took into consideration the fact that the Player returned to Brazil the day after having terminated the contract where he signed a new contract with Palmeiras on 31 March 2015, which is only four days after the date of termination.*

45. *Moreover, the DRC underlined that it appears clear from the documentation on file and from the chronology of the present facts that already during the time limit the Player had given Dnipro to pay his salaries, the Player was negotiating a contract with his new club, i.e. Palmeiras. In this respect, the Chamber duly noted that the Player invoked a loss of confidence in the future employment relationship as a reason to prematurely terminate the contract. However, the members of the Chamber were of the opinion that the Player rather terminated the contract since he was no longer interested in being employed by Dnipro as well as due to his apparent and sudden wish to sign with Palmeiras.*

46. *In light of the above, the Chamber came to the unanimous conclusion that the non-payment of two salaries for a relatively short period of time, under the particular circumstances of this particular matter, cannot be considered as a persistent and material non-fulfilment of Dnipro's contractual obligations, justifying the early unilateral termination of the contract by the Player. Again, the Chamber concluded that, on 27 March 2015, the Player could not have reached a point where he could not reasonably expect that Dnipro would pay the amount of EUR 121,666 (corresponding to two contractual monthly salaries) within the next days.*

47. *Accordingly, and taking into account the abovementioned considerations, the members of the Chamber decided that under the given circumstances the Player did not have just cause to*

unilaterally terminate the employment contract on 27 March 2015 and that, consequently, the Player is to be held liable for the early termination of the employment contract without just cause";

iii. as to the consequences of the finding *"that the Player is to be held liable for the early termination of the employment contract without just cause"*:

"48. … Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that Dnipro is entitled to receive from the Player an amount of money as compensation for breach of contract. Furthermore, in accordance with the unambiguous contents of article 17 par. 2 of the Regulations, the Chamber established that Palmeiras shall be jointly and severally liable for the payment of compensation.

49. Turning to the calculation of the amount of compensation for breach of contract in the case at stake, the members of the Chamber firstly reiterated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract(s), the time remaining on the existing contract up to a maximum of five years and whether the contractual breach falls within a protected period.

50. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the relevant employment contract between Dnipro and the Player contains a provision by means of which the parties had beforehand agreed upon an amount of compensation for breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

51. Bearing in mind the foregoing, in order to calculate the amount of compensation due to Dnipro in the present case, the Chamber firstly turned its attention to the remuneration and other benefits due to the Player under the existing contract and the new contract(s), which criterion was considered by the Chamber to be essential. In this context, the members of the Chamber deemed it important to emphasize that the wording of art. 17 par. 1 of the Regulations allows the DRC to take into consideration both the existing contract and the new contract(s) in the calculation of the amount of compensation, thus enabling the Chamber to gather indications as to the economic value attributed to a player by both his former and his new club(s).

52. In this regard, the DRC recalled, on the one hand, that the employment contract between the Player and Dnipro provided for a monthly salary of EUR 60,833. On the other hand, the Chamber noted that the Player was entitled to a monthly remuneration of BRL 120,000, corresponding to approximately EUR 34,000, according to the contract signed with Palmeiras. On the basis of the aforementioned financial contractual elements, and considering the remaining period of validity of the contract concluded between the Player and Dnipro, i.e. 33 months, the Chamber concluded that the average remuneration between the two contracts concluded by the Player respectively with Dnipro and Palmeiras over the relevant period, amounted to EUR 1,564,745.

53. The members of the Chamber then turned to the further essential criterion relating to the fees and expenses paid by Dnipro for the acquisition of the Player's services insofar as these have not been amortized over the term of the relevant contract. The Chamber took into consideration the supported documentation presented in this respect by Dnipro, i.e. (i) a copy of the relevant transfer agreement in Portuguese, without any translation in an official FIFA language as well as (ii) a

copy of a bank transfer order from an unknown company without any reference neither to Dnipro nor the name of the Player.

54. *In this regard, the Chamber recalled that in accordance with art. 12 par. 3 of the Procedural Rules, any party claiming a right on the basis of an alleged fact shall carry the burden of proof. In light of the above, after having analyzed the relevant documentation, in particular the bank transfer order, the DRC decided to set aside the request for compensation of Dnipro pertaining to the non-amortized fees.*

55. *What is more, the members of the Chamber turned their attention to Dnipro's request for agency fees to be included in the calculation of compensation. In this respect, after a thorough analysis of the documentation submitted, the DRC concluded that Dnipro did not present sufficient corroborating evidence, which could sustain said allegation in accordance with art. 12 par. 3 of the Procedural Rules.*

56. *In continuation, as regards the claim of Dnipro for compensation related to the specificity of sport, the Chamber referred to its longstanding and well-established jurisprudence and decided to reject Dnipro's request in this regard.*

57. *Subsequently, the DRC analysed the request of Dnipro corresponding to compensation for moral damages in the amount of EUR 4,500,000. In this regard, the Chamber deemed it appropriate to point out that the request for said compensation presented by Dnipro had no legal or regulatory basis and pointed out that no corroborating evidence had been submitted that demonstrated or quantified the damage suffered.*

58. *Consequently, on account of all of the abovementioned considerations and the specificities of the case at hand, the DRC decided that the Player must pay the amount of EUR 1,564,745 to Dnipro as compensation for breach of contract. Moreover, in strict application of art. 17 par. 2 of the Regulations, Palmeiras is jointly and severally liable for the payment of the relevant compensation.*

59. *In addition, taking into account Dnipro's request, the Chamber decided that the Player must pay to Dnipro interest of 5% p.a. on the aforementioned amount of compensation as of the date on which the counterclaim was lodged, i.e. 11 May 2015, until the date of effective payment.*

60. *In addition, as regards the claimed procedural costs, the Chamber referred to art. 18 par. 4 of the Procedural Rules as well as to its long-standing and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Dispute Resolution Chamber. Consequently, the Chamber decided to reject Dnipro's request relating to procedural costs.*

61. *In continuation, the members of the Chamber considered it important to recall that, although it had considered that the Player was to be held responsible for having terminated the contract without just cause, one should not omit the fact that Dnipro must, in any case, fulfil its obligations as per the employment contract until its termination in accordance with the general legal principle of "pacta sunt servanda".*

62. *Along these lines, the Chamber took into account the claim of the Player in relation to outstanding remuneration, according to which he was entitled to receive the total amount of EUR 154,000 corresponding to his salaries as of January 2015 up to 27 March 2015, date of termination. In this regard, the members of the Chamber took note of the two payment receipts presented by Dnipro respectively dated 30 March and 31 March 2015, by means of which it confirmed having remitted*

to the Player the total amount of EUR 142,403. The Player, for its part, did not deny having received the relevant amounts.

63. Consequently, in light of the aforementioned considerations, the DRC decided that Dnipro is liable to pay to the Player outstanding remuneration in the amount of EUR 11,597.

64. In addition and with regard to the Player's request for interest, the Chamber decided that the Player is entitled to 5% interest p.a. over the amount of EUR 11,597 as from 1 April 2015 until the date of effective payment.

65. Finally, the Chamber concluded its deliberations by rejecting any further claims of the Player and Dnipro".

III. PROCEDURE BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 2 September 2019, Palmeiras filed a statement of appeal with the Court of Arbitration for Sport (the "CAS"), pursuant to the Code of Sports-related Arbitration (the "Code"), to challenge the Decision. The statement of appeal filed by Palmeiras named Dnipro as Respondent and contained, *inter alia*, the appointment of Mr Frans de Weger as an arbitrator, as well as the request of consolidation with any of the appeals filed by the Player and/or the Respondent against the Decision. The proceedings started by Palmeiras were registered by the CAS Court Office as CAS 2019/A/6444 *Sociedade Esportiva Palmeiras v. FC Dnipro.*

30. On the same 2 September 2019, the Player filed with CAS a statement of appeal against the Decision. Also the statement of appeal filed by the Player named Dnipro as Respondent and contained, *inter alia*, the appointment of Mr Frans de Weger as an arbitrator, as well as the request of consolidation with any of the appeals filed by the Palmeiras and/or the Respondent against the Decision. The proceedings started by the Player were registered by the CAS Court Office as CAS 2019/A/6445 *Egidio de Araujo Pereira Junior v. FC Dnipro.*

31. On 11 September 2019, the CAS Court Office forwarded the statements of appeal filed by the Player and by Palmeiras to Dnipro. In a letter to the Parties, the CAS Court Office noted that, in addition to the appeals registered as CAS 2019/A/6444, *Sociedade Esportiva Palmeiras v. FC Dnipro* and CAS 2019/A/6445 *Egidio de Araujo Pereira Junior v. FC Dnipro*, an appeal against the Decision had been submitted by Dnipro and had been registered as CAS 2019/A/6446 *FC Dnipro v. Egidio de Araujo Pereira Junior & Sociedade Esportiva Palmeiras*, and requested whether the Parties agreed to the consolidation of the three proceedings.

32. On 11 September 2019, the CAS Court Office informed FIFA, by separate letters, of the filing of the appeals against the Decision, but not directed at FIFA. FIFA was therefore informed that it should file a request for intervention in the event it wanted to participate in the proceedings.

33. On the same 11 September 2019:

i. Dnipro informed the CAS Court Office *inter alia* that it agreed to the consolidation of the proceedings and appointed Mr Sofoklis Pilavios as an arbitrator;

ii. the Player confirmed his agreement to the consolidation and his appointment of Mr Frans de Weger as an arbitrator in the consolidated proceedings.

34. On 23 September 2019, FIFA informed the CAS that it renounced *"its right to request its possible intervention in the present arbitration proceedings"*.

35. On 3 October 2019, Palmeiras filed its appeal brief pursuant to Article R51 of the Code. The appeal brief had attached *inter alia* a witness statement signed by Mr Alexandre Mattos and contained the following request for evidentiary measures:

*"… we request the Hon. Panel that the FIFA file be produced as evidence in the procedure at hand. We point out that evidence was filed by the parties via courier as well as fax …, so that they are more legible in their original version rather than the digitalized copies. Also, Palmeiras has filed copies of an interview given by Mr. Alexandre Mattos, which is found on a CD ROM which is attached to the FIFA file [*Footnote*: "The online version of this interview is no longer available, hence why the available copy of the CD-Rom is necessary for the Panel's perusal"]. …".*

36. On 3 October 2019, also the Player filed his appeal brief pursuant to Article R51 of the Code, together with, *inter alia*, witness statements signed by the Player himself, by Mr Alexandre Uram, Mr Fabio Brito, Mr Douglas Silva Bacelar, Mr Leonardo de Matos Cruz and Mr Bruno Alexandre Vilela Gama.

37. On 19 November 2019, the Respondent requested that the pending procedures be suspended in light of the ongoing negotiation of a possible settlement.

38. On the same day, the Player and Palmeiras agreed to the suspension for a short period of time.

39. On 28 November 2019, the CAS Court Office notified to Dnipro the appeal briefs filed by the Player and Palmeiras. In the same letter, the CAS Court Office noted that CAS 2019/A/6446 *FC Dnipro v. Egidio de Araujo Pereira Junior & Sociedade Esportiva Palmeiras* had been deemed withdrawn and that the proceedings would continue only with respect to CAS 2019/A/6444 and CAS 2019/A/6445.

40. On 17 January 2020, the Respondent filed its answer, pursuant to Article R55 of the Code. The answer filed by Dnipro had attached *inter alia* declarations of Mr Andrii Rusol, Mr Maxym Afanasyev and Mr Gregory Kritzer and contained the request for production by the Player and Palmeiras of the following documents:

"N° 1: Any and all employment contract(s) (including subsequent renewals) concluded between the Appellants as well as any and all annexes to said contract(s);

N° 2: Any and all correspondence of whatsoever kind exchanged between the Player, his agents and legal representatives with any agents or legal representatives or officials of [Palmeiras] leading up to the conclusion of the afore-referred employment contract;

N° 3: Copy of any and all pre-contractual documents, offers, memorandum of understanding exchanged between the Player and his entourage and the New Club;

N° 4: Representation agreement signed between the Player and Mr. Eduardo Uram;

N° 5: Copy of the flight tickets used by the Player to return to Brazil after his premature termination without

just cause of the Employment Contract;

N° 6: Transfer agreement concluded between [Palmeiras] and Cruzeiro Esporte Clube in January 2018 in respect of the services of the Player".

41. By communication dated 3 February 2020, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Frans de Weger and Mr Sofoklis Pilavios, arbitrators.

42. On 4 March 2020, the Panel informed the Parties that a hearing in these consolidated proceedings would be held in Lausanne on 23 April 2020.

43. On 10 March 2020, the Parties requested jointly that the hearing be postponed due to the COVID-19 pandemic outbreak.

44. On 12 March 2020, the CAS Court Office informed the Parties that the Panel had decided to cancel the hearing scheduled to take place on 23 April 2020.

45. On 13 March 2020, the CAS Court Office advised the Parties that the Panel had considered the various pending production requests, as set out by the Parties in their submissions, as follows (underlining in the original):

> *"1. The Panel consents to Sociedade's request that FIFA to provide the case file, including a CD with an interview of Mr. Alexandre Mattos (Appeal Brief, § 134). A letter to FIFA in this respect will follow. Within 5 days receipt of the FIFA file, Sociedade shall specifically indicate with specificity the document(s) contained therein on which its intends to rely.*
>
> *2. FC Dnipro submits 6 evidentiary requests in its answer (Answer, § 162). Requests Nos. 1, 2, 3 and 6 are denied on the grounds that they are generic, explorative or not directly relevant. Request Nos. 4 and 5 are granted. Within 10 days, the Mr. Pereira and Sociedade, respectively, are directed to file the documents therein referred to".*

46. On the same 13 March 2020, in a separate letter, the CAS Court Office requested FIFA, on behalf of the Panel, to provide copy of the complete case file relating to these appeals.

47. On 19 March 2020, FIFA provided a link for the download of the case file.

48. On 23 March 2020, Palmeiras noted that the case file provided by FIFA did not include the CD ROM with the interview of Mr Alexandre Matos. It therefore insisted that FIFA should be invited to provide also such CD-ROM. At the same time, Palmeiras indicated that it had no access to the documents the production of which had been ordered by the Panel.

49. On 24 March 2020, therefore, FIFA was invited to provide copy of the CD-ROM requested by Palmeiras.

50. On 24 March 2020, the Panel informed the Parties that a hearing in these consolidated proceedings would be held in Lausanne on 24 June 2020.

51. On 27 March 2020, the Player produced copy of the representation agreement concluded with Mr Eduardo Uram and of the flight tickets used to return to Brazil after the termination of the Employment Contract.

52. On 19 May 2020, the Player's counsel requested guidance from the CAS Court Office as to the holding of the hearing, in light of the ongoing pandemic crises and the ensuing travel restrictions.

53. In a letter of 20 May 2020, the CAS Court Office informed the Parties that the Panel was inclined to proceed with a video-hearing, and proposed to hold it on 23 June 2020, in the afternoon, in order to take into account the different time zones of the Parties and their Counsel.

54. On 22 May 2020, the Player agreed with the Panel's proposal that the hearing be conducted by video conference. On the same day, also Dnipro confirmed its availability.

55. On 25 May 2020, Palmeiras' counsel insisted for a hearing in person, in light of the complexity and importance of the present case, and in order to allow the personal presence of the Player and of the witnesses, *"fundamental to the correct analysis of this dispute"*. Therefore, Palmeiras requested that the hearing be postponed until the impacts of the COVID crisis are controlled worldwide *"in order to secure Palmeiras' rights to full defence and its access to all means of evidence"*.

56. On 26 May 2020, the CAS Court Office, writing on behalf of the Panel, informed the Parties that a hearing in these consolidated proceedings would be held by video conference on 23 June 2020.

57. On 11 June 2020, Palmeiras again insisted in its request that the hearing be postponed until the COVID crisis is solved in order to allow a hearing in person in Lausanne or, at least, a video conference "in group", allowing counsel and representatives of Palmeiras to meet and attend from the same location.

58. On the same 11 June 2020, also the Player requested an adjournment of the hearing, indicating the importance of the case, and the organizational problems involved in the attendance at the hearing from a large number of locations.

59. On 15 June 2020, Dnipro insisted that the hearing take place as scheduled.

60. On 16 June 2020, the CAS Court Office, on behalf of the Panel, confirmed that the hearing would take place on 23 June 2020.

61. On 17 June 2020, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (the "Order of Procedure"), which, subject to some comments, was accepted and countersigned by the Parties. The Order of Procedure confirmed, *inter alia*, the CAS jurisdiction to hear the appeals brought by Palmeiras and the Player.

62. On 19 June 2020, the Player, in transmitting the Order of Procedure signed with comments, observed that he had requested the hearing to be in-person and that the Respondent had failed

to prove the timely filing of the exhibits accompanying its answer to the Player's appeal brief. An observation regarding the request that the hearing be held in person was also inserted in the text of the Order of Procedure signed by Palmeiras.

63. On 21 June 2020, the Player filed with the CAS Court Office some supporting documents for the testimony of Mr Douglas Silva Bacelar.

64. On 22 June 2020, Dnipro expressed in an email to the CAS Court Office its opposition to the introduction of new documents in the arbitration by the Player.

65. A hearing was held on 23 June 2020 by video link on the basis of the notice given to the Parties in the letter of the CAS Court Office dated 26 May 2020. The Panel was assisted at the hearing by Mr Brent J. Nowicki, Managing Counsel to the CAS.

66. The Panel was joined at the hearing by the following:

i. for Palmeiras: by Mr André Carvalho Sica, Mr Alexandre Ramalho Miranda and Ms Beatriz Chevis, counsel, and by Mr Alexandre Zanotta, Vice-President;

ii. for the Player: by Mr Marcos Motta, Mr Stefano Malvestio and Mr Rodrigo Morais, counsel, assisted by Ms Allana Paula Durand Pereira, interpreter;

iii. for Dnipro: by Mr Alfonso Leon Lleo and Mr Ivan Bykovskiy, counsel, and by Mr Andrey Stetsenko, CEO.

67. At the hearing, the Panel initially heard submissions by the Player, regarding the filing by Dnipro of the exhibits to the answer to the Player's appeal. The Panel confirmed that those documents were admitted, if the case pursuant to Article R56 of the Code, to the file of the arbitration. The Parties, then, made submissions in support of their respective cases. The Panel heard the depositions of the Player, Mr Alexandre Uram, Mr Fabio Brito, Mr Douglas Silva Bacelar, Mr Leonardo de Matos Cruz and Mr Bruno Alexandre Vilela Gama.[1] Mr Andrey Stetsenko and Mr Alexandre Zanotta rendered also some declarations as representatives respectively of Dnipro and Palmeiras. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

68. On 1 July 2020, Dnipro transmitted, *"for ease for reference and to avoid a possible confusion of the esteemed members of the Panel"*, three witness statements previously submitted by Dnipro in the FIFA proceedings, and part of the FIFA file, rendered by Mr Bruno Alexandre Vilela Gama, Mr Leonardo de Matos Cruz and Mr Douglas Silva Bacelar.

69. On 3 July 2020, Palmeiras expressed its opposition to the filing of the documents provided by Dnipro on 1 July 2020. The same opposition was expressed by the Player on 6 July 2020.

70. In consideration of the documents filed by Dnipro and the objections thereto by Palmeiras and

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1 The Panel emphasises that it considered the entirety of the declarations made at the hearing, even though no summary of such declarations is set out in this Award.

the Player, the Panel rejects the admission of these documents as untimely and unnecessary, and without a showing of exceptional circumstances, in accordance with Article R56 of the Code

IV. THE POSITION OF THE PARTIES

71. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of Palmeiras

72. In its statement of appeal, Palmeiras requested the CAS:

"(i) To enforce CAS' jurisdiction as competent to rule on the matter.
(ii) To set aside the Appealed Decision and replace it with a new decision;
(iii) To rule that the Player has terminated the contract executed with Dnipro with just cause;
(iv) To rule that Palmeiras is exempt of paying any compensation to Dnipro;
(v) To order the Respondent to pay a contribution towards the Appellant's legal fees and other expenses incurred in connection with the proceedings".

73. In the appeal brief, then, Palmeiras amended the relief sought and requested the Panel to rule as follows:

"(i) To enforce CAS' jurisdiction as competent to rule on the matter.
(ii) To set aside the Appealed Decision and replace it with a new decision;
(iii) To rule that the Player has terminated the contract executed with Dnipro with just cause;
(iv) To rule that Palmeiras is exempt of paying any compensation to Dnipro and not jointly liable with the Player;
(v) Alternatively, to reduce the amount of compensation due to Dnipro to EUR 0.00;
(vi) Alternatively, to reduce the amount of compensation due to Dnipro based on the specificity of sport;
(vii) To order the Respondent to pay a contribution towards Palmeiras' legal fees and expenses incurred in connection with the proceedings".

74. In other words, Palmeiras opposes the Decision, which it asks the Panel to set aside. In support of its position, Palmeiras invokes reasons relating to the unilateral termination of the Employment Contract with just cause by the Player, and to the absence of inducement by Palmeiras and of a joint liability to pay compensation. At the same time, Palmeiras advances submissions relating to its alternative request that the amount of compensation be reduced.

75. Before dealing with the merits of the appeal, Palmeiras, by way of a brief factual *"contextualization"*, underlines that it was only through the network of its scouts, and its ongoing

effort, as one of the most successful Brazilian teams, to take the market opportunities, that it came to know that the Player was a free agent, having terminated his contract with his former club. Palmeiras did not even expect to hire the Player: the Player was approached only after another player of Palmeiras had a serious injury and Palmeiras had come to know that the Player was a free agent.

76. With respect to the unilateral termination of the Employment Contract with just cause by the Player, Palmeiras submits that a few details emerging from the evidence presented show a lack of initiative and good faith by Dnipro:

    i. Dnipro did not pay the salaries of January and February 2015 due to the Player in a timely fashion. In fact, the Player sent 4 warnings requesting payment, while Dnipro just gave a short answer that the matter would be resolved soon, but did not immediately take one of the several possibilities it had to pay the overdue amounts;

    ii. Dnipro informed the Player that the January salary had been paid three days after the termination of the Employment Agreement: Dnipro deposited the Player's salary to the Bank account because the Player had terminated the Employment Contract and not to prevent such termination;

    iii. Dnipro was aware of the steps necessary to open bank accounts for foreign players, but paid the Player only after the termination of the Employment Contract;

    iv. Dnipro took two and a half months to open a bank account, which is not reasonable;

    v. the Player gave a total of 22 days for Dnipro to comply with its obligations;

    vi. the sum credited to the account with the Bank was not available to the Player, as indicated by Dnipro in its letter of 1 April 2015.

77. In Palmeiras' opinion, all the above means that Dnipro failed to comply with its main contractual obligation. Therefore, the Player was entitled to terminate the Employment Contract under the principles stated in the CAS case-law, confirming that a period of two months of late payment constitutes just cause for termination (CAS 2008/A/1447, CAS 2014/A/3584, CAS 2006/A/1180, CAS 2015/A/4055, CAS 2016/A/4664): the breach was substantial, and warnings of its default had been given to the debtor.

78. In any event, Palmeiras submits (i) that there was no inducement to breach the Employment Contract and (ii) that there is no basis to find its joint liability with the Player pursuant to Article 17.2 RSTP:

    i. as to the first point, an inducement to breach a contract can exist only when the inducing party intends to prevent the contracting party from carrying out the performance of a contract, by taking direct action to induce non compliance. In this case, however, at no time any approach or proposal was made to the Player by Palmeiras, while he was under contract with Dnipro: talks took place only after the Player had terminated the Employment Contract, and the Player's earnings under the New Employment Contract were much lower than the salary the Player was entitled to receive under the Employment Contract;

ii. no justification for the finding of a joint liability exists in this case, because:

a. Palmeiras did not profit from an alleged contractual violation by the Player, because the Player left Palmeiras as a free agent when the New Employment Contract expired and Palmeiras did not earn any transfer fee;

b. Palmeiras did not influence the Player's behaviour;

c. Dnipro had no damage;

d. finding otherwise would result in the imposition of an automatic and unconditional liability, without fault and without causation, and hinder the possibility of a player to find a new employer, as recognized by CAS 2013/A/3365 & 3366.

79. Alternatively, and finally, Palmeiras submits that in any case the amount of compensation awarded to Dnipro in the Decision should be reduced, in accordance with the criteria set by Article 17 RSTP. In that regard, Palmeiras remarks that (i) Dnipro saved more than EUR 2,000,000 in salaries, an amount that should be offset against the fee paid under the Transfer Agreement, (ii) Dnipro did not have to hire a replacement for the Player, (iii) Palmeiras did not earn a transfer fee when the New Employment contract expired, and (iv) the Player received for his services a much lower amount than the salary he was entitled to under the Employment Contract. Therefore, the amount of compensation to Dnipro should be equal to EUR 0.00, or in any case substantially reduced.

B. The Position of the Player

80. In his statement of appeal, the Player requested the CAS to:

"a) Admit the present appeal;

b) Grant the evidentiary requests to be specified in the Appeal Brief;

c) Uphold the present appeal and set aside the Appealed Decision, replacing it by an Arbitral Award which:

i. Dismisses all allegations put forward by FC Dnipro;

ii. Declares that the Employment Contract between the Parties was lawfully terminated by the Player with just cause on 27 March 2015, pursuant to article 14 of the FIFA Regulations on the Status and Transfer of Players;

iii. Declares that the Player shall pay no compensation to FC Dnipro;

iv. Holds FC Dnipro liable for breaching both article 12bis and article 17, paragraph 1 of the RSTP in light of its unjustified breach of contract;

v. Orders that FC Dnipro compensate the Player in light of FC Dnipro's foregoing breach of contract in the total amount of EUR 2,190,000.00 (two million, one hundred and ninety thousand Euros);

vi. Orders the payment of legal interest at a rate of 5% p.a. to the values due by FC Dnipro to the Player, starting to count on the date when each of them became due until effective payment;

Alternatively, in the event the Player is found liable to pay compensation to FC Dnipro:

vii. Establishes that the relevant amount (i) be deducted of any and all amounts saved by the latter

before and after termination of the Employment Contract; (ii) reduced under the criterion of specificity of sport and (iii) reduced under any and all other relevant criteria under FIFA RSTP and/or Swiss law and/or CAS jurisprudence;

In any case:

viii. Orders FC Dnipro to bear any and all CAS administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with this arbitration; and

ix. Grants the Player a contribution towards his legal fees and other expenses incurred in connection with the proceedings to be determined ex aequo et bono by CAS, pursuant to Article R65.3 of the CAS Code".

81. In the appeal brief, then, the Player slightly modified the relief sought (in the portion underlined by the Panel below) requesting the Panel to:

"a) Admit the present appeal;

b) Uphold the present appeal and set aside the Appealed Decision, replacing it by an Arbitral Award which:

i. Dismisses all allegations put forward by FC Dnipro;

ii. Declares that the Employment Contract between the Parties was lawfully terminated by the Player with just cause on 27 March 2015, pursuant to article 14 of the FIFA Regulations on the Status and Transfer of Players and Swiss law;

iii. Declares that the Player shall pay no compensation to FC Dnipro;

iv. Holds FC Dnipro liable for breaching both article 12bis and article 17, paragraph 1 of the RSTP in light of its unjustified breach of contract;

v. Orders that FC Dnipro compensate the Player in light of FC Dnipro's foregoing breach of contract in the total amount of EUR 1.428.000.00 (one million, four hundred and twenty-eight thousand Euros);

vi. Orders the payment of legal interest at a rate of 5% p.a. to the values due by FC Dnipro to the Player, starting to count on the date when each of them became due until effective payment;

Alternatively, in the event the Player is found liable to pay compensation to FC Dnipro:

vii. Establishes that the relevant amount (i) be deducted of any and all amounts saved by the latter before and after termination of the Employment Contract; (ii) reduced under the criterion of specificity of sport and (iii) reduced under any and all other relevant criteria under FIFA RSTP and/or Swiss law and/or CAS jurisprudence;

In any case:

viii. Orders FC Dnipro to bear any and all CAS administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with this arbitration; and

ix. Grants the Player a contribution towards his legal fees and other expenses incurred in connection with the proceedings to be determined ex aequo et bono by CAS, pursuant to Article R65.3 of the CAS Code".

82. In other words, also the Player requests the Panel to set aside the Decision that he submits is *"flawed both under a factual as well as a legal point of view"*. In support of this contention, the Player submits the following:

i. Dnipro agreed to pay the Player an advance of EUR 150,000, mentioned in the Draft Employment Contract. When the Employment Contract was signed, Dnipro confirmed that such advance would be paid within a week, even if not mentioned in the text. Dnipro, however, did not make such payment, did not provide the Player with a car (as stipulated in the Employment Contract) and failed to pay the salaries falling due. The situation became unbearable, as the Player had to use his personal finances to survive in Ukraine. He was therefore forced to return to Brazil, after sending no less than 4 reminders to Dnipro;

ii. the Decision, by considering that the non-payment of two salaries for a period of time of more than two months did not justify the early termination of the Employment Contract by the Player, went against well-established principles of FIFA and CAS jurisprudence and Swiss law. This is confirmed by the recent adoption of Article 14-*bis* of the RSTP, which, in circumstances even less egregious than those in which the Player found himself, codifies previous jurisprudence and recognizes the existence of just cause in the event that 2 monthly salaries are due and a deadline of at least 15 (fifteen) days has passed;

iii. the Decision considered facts that took place after the termination of the Employment Contract, where relevance was given to two payments (which the Player denies having received) supposedly made by the Club after the contractual termination, as well as to the fact that the Player subsequently signed the New Employment Contract with Palmeiras, which goes, again, against the consolidated jurisprudence of FIFA and CAS;

iv. the Decision considered that the Player could not have reached a point where he could not reasonably expect that Dnipro would pay the outstanding salaries in the next days, when Dnipro had overdue payables towards many other players and did not provide the Player with any justification whatsoever for the non-payment of the due amounts. Well to the contrary, no doubt can exist that the Player had just cause to terminate the Employment Contract. Indeed, the failure of Dnipro to pay the amounts due to the Player corresponded to a consistent practice of Dnipro, caused by the financial problems affecting it and not by the bureaucracy of the Bank, an institution controlled by the owner of Dnipro;

v. the Decision condemned the Player to the payment of an excessive compensation, failing to account for the savings made by Dnipro for not having to pay him a salary, the Club's significant and evident fault in the Player's termination of the Employment Contract and the principle of specificity of sport. In any case, the amount of compensation could be reduced pursuant to Article 44 of the Swiss Code of Obligations (the "CO"), as recognized by CAS 2014/A/3647 & 3648;

vi. in general, the Decision took the unfair step of harshly punishing the Player to pay a huge compensation for a breach of contract undoubtedly committed by Dnipro, when the Players' career was at stake and subsequent facts, including the circumstance that all his team-mates went into legal dispute with Dnipro and the fact that Dnipro finally went bankrupt, proved him right.

C. The Position of Dnipro

83. In its answer, Dnipro requested the CAS to:

> *"1. To dismiss all evidences presented by the Player in breach of article R57.3 to the CAS Code being unsustained the concurrence of any exceptional circumstance whatsoever – Exhibits VI to VV, XVII and XVIII, XXXIII to XXXXI. …*
> *2. To entirely dismiss the appeals filed by the Player and [Palmeiras].*
> *3. To uphold the decision of FIFA DRC and confirm that the Player prematurely terminated without just cause his Employment Contract with Respondent. To confirm that [Palmeiras] is jointly and severally liable for the payment of said compensation.*
> *4. To fix a sum of CHF 40,000/- to be paid by the … Player and [Palmeiras], to help the payment of the Respondent's legal fees costs.*
> *5. To condemn the Player and [Palmeiras] to the payment of the whole CAS administration costs and the Arbitrators fees".*

84. Dnipro, in other words, asks this Panel to dismiss the appeals brought by Palmeiras and the Player and to confirm the Decision. In essence, in fact, Dnipro submits that the Employment Contract was terminated by the Player without just cause, for a number of reasons, relating to the facts and the law.

85. As to the facts, Dnipro underlines, *inter alia*, the following:

i. the Player was very important for Dnipro: he had been granted one on the five places allowed for foreign players, and Dnipro made a significant investment (EUR 2,000,000 fully paid to his former club on 11 February 2015 under the Transfer Agreement) to acquire his services;

ii. the Player, advised by counsel, signed the Employment Contract fully informed of its content: the Employment Contract contains all the provisions applicable in the relations between Dnipro and the Player;

iii. the Player was repeatedly informed of the need to open a bank account to receive the payment of the salaries. The opening of a bank account for a foreign citizen requires some time. Indeed, for such purposes it was necessary for the Player to obtain a work permit in Ukraine, and the documents essential for the work permit could be prepared only by the end of January 2015. As a result, the work permit was obtained only on 9 February 2015;

iv. at the end of January 2015, the January salary of the Player fell due: however, the Player, advised by his counsel, refused to accept a payment in cash. At that time, in fact, the bank account could not be opened;

v. most of the month of February 2015 was spent by the Dnipro team in training camps abroad. Therefore, the procedure for the registration of his Ukrainian domicile could not be completed, and this was a formality necessary to open the bank account;

vi. on 27 February 2015, the Player, as well as his teammates, was offered a bonus payment

in cash of USD 5,000, but the Player refused to accept it;

vii. at the beginning of March 2015, while Dnipro was actively working to register the Player's domicile, in order to open the bank account and then pay the salaries, letters were received from the Player's counsel. When requested for explanations by Dnipro, the Player confirmed that he had no complaints and that he understood the situation;

viii. the registration of the Player's domicile was completed on 17 March 2015;

ix. the Player returned to Ukraine on 24 March 2015, after an away match in The Netherlands. The next day, 25 March 2015, the account with the Bank was opened, but, to Dnipro's surprise, the Player refused to sign the contract with the Bank;

x. on 26 March 2015, Dnipro made a first payment into the Bank account, followed by a second payment on 27 March 2015;

xi. on 28 March 2015, the Player did not attend the team's training session;

xii. on 30 March 2015 (a Monday), Dnipro found the Termination Letter, sent by the Player's counsel on Friday, 27 March 2015 after close of business, Ukrainian time;

xiii. in the following days, Dnipro became aware from the media that the Player had returned to Brazil to sign a contract with Palmeiras. Therefore, Dnipro sent a letter to Palmeiras to inform it of the contractual situation of the Player.

86. In light of the foregoing, Dnipro submits as to the law that:

i. the FIFA regulations applicable in this case are those contained in the 2015 edition of the RSTP. The application of the edition of 2018, invoked by the Player and Palmeiras, has no legal basis;

ii. the Employment Contract did not provide for an advance payment of EUR 150,000, and Dnipro never agreed to such payment;

iii. the non-payment of salaries does not automatically give raise to the possibility of termination for just cause of an employment contract. CAS has in a number of occasions specified, with reference to the law in force at the time the events disputed in this case occurred, that just cause existed only in the event of non-payment of more than 3 monthly salaries. In the present case, such condition was not met: when the Termination Letter was sent, only the salaries for 20 days of January 2015 and for February 2015 had been due, but were settled by the Club as soon as it could;

iv. in addition, in the present case, it is not possible to maintain that the Player was in a situation such that he could not have confidence in the future performance of the Employment Contract by Dnipro, as it could be comfortably assumed that the financial conditions of Dnipro allowed it to cover any payment due to the Player;

v. the short delays were caused by the complexity of the procedures, of which the Player was aware, but which he deliberately obstructed: by delaying the procedure for the opening and the operation of the bank account, the Player attempted to prevent Dnipro from satisfying his financial entitlements;

vi. the financial difficulties encountered by Dnipro arose much later, and did not impact on

the relations with the Player. In addition, there is no evidence that the Bank was controlled by the owner of Dnipro.

87. All the above, in Dnipro's opinion, justifies the conclusion not only that the Player terminated the Employment Contract without just cause, but also that the Player is responsible for the payment of an *"appropriate compensation"* to Dnipro, together with Palmeiras, jointly liable to make such payment.

88. With regard to the compensation to be paid for breach of contract, Dnipro submits that the Decision should be confirmed in full, even though its calculation is *"largely insufficient, amounting to a minimal partial recovery of the expenses incurred"* by Dnipro. In fact, Dnipro submits that the Decision failed to take into account the transfer fee paid under the Transfer Agreement and the commissions paid to the agent, *"not to mention the dramatic and non-repairable sporting loss"*.

89. With respect to the joint liability of Palmeiras, according to Dnipro, there are no reasons to depart from the strict application of Article 17.2 RSTP. Indeed, Palmeiras could sign the Player for free, and then enjoyed the services of the Player for a large number of matches. In addition, the timing of the Termination Letter as well as of the media coverage of the signature of the New Employment Contract show that Palmeiras induced the termination of the Employment Contract, as certainly the terms of the New Employment Contract had already been agreed while the Player was still in Ukraine.

V. JURISDICTION

90. The jurisdiction of the CAS, which is not disputed by the Parties, is based *in casu* on Article R47 of the Code and Articles 57 and 58 of the FIFA Statutes.

91. In detail, the provisions of the FIFA Statutes that are relevant to that effect are the following:

i. Article 57 [*"Court of Arbitration for Sport (CAS)"*]:

> *"1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.*
>
> *2. The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

ii. Article 58 [*"Jurisdiction of CAS"*]:

> *"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
>
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted.*
>
> *3. CAS, however, does not deal with appeals arising from: …*
>
> *4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.* […]*".*

92. In addition, Article 5.7 of the Employment Contract reads as follows:

"If there is no agreement between the Athlete and the Club, the dispute shall be submitted to the FFU Board of Litigation Resolution and/or the TAS (sports Arbitration Court, Lausanne, Switzerland)".

93. Moreover, the Panel notes that the Parties agreed to CAS jurisdiction when signing the Order of Procedure.

94. Therefore, the CAS has jurisdiction to decide the present dispute between the Parties.

VI. ADMISSIBILITY

95. The statements of appeal were filed within the deadline set in the FIFA Statutes and the Decision, and comply with the requirements set by Article R48 of the Code. No further recourse against the Decision is available within the structure of FIFA. Accordingly, the appeals filed by Palmeiras and the Player are admissible.

VII. SCOPE OF REVIEW

96. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

VIII. APPLICABLE LAW

97. Pursuant to Article R58 of the Code, the Panel is required to 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

98. Article 58.2 of the FIFA Statutes indicates that:

"… CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

99. As a result, the FIFA rules and regulations apply primarily, with Swiss law applying subsidiarily.

100. With regard to the FIFA regulations, the Panel agrees with the Decision that the RSTP, in their 2015 edition, fall to be applied in this case.

IX. MERITS

101. The dispute submitted to CAS in these proceedings concerns the Decision, which found a

breach of contract by the Player, having terminated the Employment Contract without just cause, ordered him to pay compensation to Dnipro and held Palmeiras jointly liable for such payment. The Decision is therefore challenged by the Player and Palmeiras, in separate appeals now consolidated. Such Decision was initially challenged also by Dnipro. The arbitration started by Dnipro, however, was deemed withdrawn and was therefore terminated by the CAS Court Office. As a result, Dnipro's only request in these proceedings is to confirm the Decision: indeed, in the absence of a specific appeal, any modification of the Decision to the advantage of Dnipro would not be admissible.

102. In light of the Parties' submissions and requests, the questions that the Panel has to answer are the following:

A. was the Employment Contract terminated by the Player with or without cause?

B. what are the consequences of the answer to the first question? In more detail:

a. has compensation to be paid to Dnipro by the Player, as found in the Decision, or by Dnipro to the Player, as requested by the Appellants?

b. if compensation has to be paid, in what amount?

c. if compensation is to be paid to Dnipro by the Player, is Palmeiras jointly liable to make such payment?

103. Before turning to the examination of those issues, the Panel has to briefly address two preliminary points, which were raised in the course of the arbitration.

104. The first point concerns an objection, submitted by the Player with respect to the timely filing by Dnipro of the documents referred to in its answer. The Player, in fact, requested the Panel to discard those documents as not timely filed.

105. In respect of the foregoing, the Panel notes that:

- on 17 January 2020, Dnipro submitted its answer;
- by letter dated 23 January 2020, the CAS Court Office notified the answer to the Appellants;
- on 30 January 2020, the CAS Court Office requested Dnipro to send *"any exhibits"*, since only the courier version of the answer had been received (without the announced exhibits), and in doing so to clarify whether these exhibits had been previously sent and in which form;
- on the same day, Dnipro forwarded to the CAS Court Office a series of emails attaching the exhibits to its answer and a Dropbox link for their download, indicating that those exhibits had been sent by email together with the answer;
- on 3 February 2020, the CAS Court Office sent to the Parties the exhibits in a series of separate emails due to their large size.

106. In light of the foregoing, the Panel considered (i) the Respondent's declarations and emails, the good faith of which there is no reason to doubt, (ii) the messages sent by the CAS Court Office

on 30 January 2020 and on 3 February 2020, (iii) the absence of prejudice to the Appellants, that were in any case in a position to consider the Respondent's exhibits well ahead of the hearing, (iv) the fact that those exhibits correspond to a very large extent (if not entirely) to documents already exchanged in the proceedings before FIFA, and/or were already known to the Appellants, (v) Article R56 of the Code gives wide discretion to the President of the Panel to accept documents even if filed past the applicable deadlines, if *"exceptional circumstances"*, as assessed by the President of the Panel, so allow. As a result, as announced at the hearing, the Panel concluded that the documents filed by the Respondent could be admitted.

107. The second point concerns the "status" of the FIFA file in this arbitration, which was somehow disputed at the hearing.

108. In that respect, the Panel underlines that on 13 March 2020 it consented to Palmeiras' request that FIFA be invited to provide copy of the case file. In the same letter, the Panel clarified (underlining in the original) that:

"Within 5 days receipt of the FIFA file, [Palmeiras] shall specifically indicate with specificity the document(s) contained therein on which it intends to rely".

109. On 19 March 2020, FIFA provided a link for the download of the case file, which was shared by the CAS Court Office with the Parties. Save for an observation regarding an interview with a witness submitted by Palmeiras, no specific request was made, by Palmeiras or any of the other Parties, for the inclusion in the file of this arbitration of any document from the FIFA file.

110. The Panel acknowledges that in its letter of 13 March 2020 only a reference to Palmeiras was contained, with the invitation to identify within 5 days the document contained in the FIFA file on which it intended to rely. Such reference was justified by the fact that only Palmeiras had requested that FIFA be invited to provide copy of the case file, but in any case appears revealing of the status of the FIFA file in this arbitration: it was not a part of the documents before the Panel, but only made available to the Parties to draw from it the documents (to be identified) on which they wished to rely. No objection or request (if the case of clarification) was made in that regard by the Player or Dnipro, which did not identify within the specified deadline the document contained in the FIFA file on which they intended to rely. In addition, the Panel notes that the instructions concerning the FIFA file were issued after the Parties had filed their written submissions and the supporting documents: there is no indication that the documents in the FIFA file were not already in the possession of the Parties; therefore, the Parties could produce any of them when submitting their briefs in these CAS proceedings.

111. As a result, the Panel confirms that for the purposes of this Award it will only consider the documents filed by the Parties together with their written submissions or as authorized by the Panel.

112. The Panel can now turn to the main disputed points, to be examined in sequence.

A. Was the Employment Contract terminated by the Player with or without cause?

113. The main disputed point concerns the termination of the Employment Contract by the Player, as declared on 30 March 2015, and chiefly whether the facts presented by the Player, mentioned in the Termination Letter, gave him just cause to terminate the Employment Contract.

114. In that regard, the Panel finds that the issue concerns the failure of Dnipro to pay the monthly salaries due under the Employment Contract, and more exactly whether such failure entitled the Player to terminate the Employment Contract. In the Panel's opinion, in fact, no claim could be advanced by the Player with respect to the "advance payment" of EUR 150,000 mentioned in the Draft Employment Contract. In fact, the signed text of the Employment Contract (in the same way as the Proposal accepted by the Player) did not mention such payment and provided (only) for a salary to be paid in monthly instalments of EUR 60,833 each, corresponding to the yearly salary of EUR 730,000 mentioned in the Proposal and to the total amount of EUR 2,190,000 over three years contemplated in the Draft Employment Contract.

115. The Panel notes that under Article 14 of the RSTP:

> *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".*

116. The RSTP does not provide a definition of "just cause". However, according to the Commentary to the RSTP (No 2 to Article 14):

> *"[t]he definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".*

117. The Panel also refers to relevant provisions of Swiss law, applicable to the interpretation of the RSTP (CAS 2014/A/3643; CAS 2008/A/1518). As such, Article 337 CO, para. 1, first sentence, which applies complementarily, provides that *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause".*

118. Under Swiss law, such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).

119. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter (CAS 2013/A/3091; CAS 2006/A/1062).

120. Consistent with CAS jurisprudence, non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee:

"If, therefore, he fails to meet his obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost" (CAS 2018/A/6050; CAS 2016/A/4693; CAS 2013/A/3398; CAS 2013/A/3091, 3092 & 3093).

121. With regard to outstanding salaries, the following example is provided by the Commentary to the RSTP (No 3 to Article 14):

"A player has not been paid his salary for over 3 months. (…) The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".

122. The Panel, however, does not consider the example contained in the Commentary to the RSTP (three months' delay in payment of salary) to be a final, decisive indication of a minimum period for a just cause to arise. In the Panel's opinion, a termination pursuant to Article 14 of the RSTP shall be established in accordance with the merits of each particular case, as set out above, and may under certain circumstances be justified even if the delay period is shorter than three months.

123. In fact, according to this Panel, and in accordance with the well-established CAS jurisprudence, which has constantly referred to the principles of Swiss law, "just cause" for termination of an employment contract exists when the relevant breach by the other party is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship. The existence of such situation is to be established on a case-by-case basis.

124. Indeed, in CAS 2006/A/1180, referred to in many other CAS awards, that panel held that:

"The non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated … – constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning.

In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract".

125. In the same way, the Panel observes that in principle, according to CAS jurisprudence (CAS 2016/A/4693), and in accordance with Swiss law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446), a party, to be allowed to validly terminate an employment contract with immediate effect, must have warned the other party, in order for the latter to have the chance, if it deemed the complaint legitimate, to comply with its obligations (CAS 2016/A/4884; CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; ATF 121 III 467, consid. 4d). However, the duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning is necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations (CAS 2018/A/5955 & 5981; CAS 2017/A/5465; CAS 2006/A/1180 and CAS 2006/A/1100). This also derives from the jurisprudence of the Swiss Federal Tribunal which clarifies that in case of a severe breach of a contract, the termination without prior warning is justified (e.g. SFT 127 III 153).

126. The Panel fully adheres to the legal framework, as set out above, and will therefore examine whether the Club's conduct was of such a nature that it could no longer be reasonably expected from the Player to continue the employment relationship with the Club. The Panel has to examine whether the Club was somehow in breach of the terms of the Employment Contract in such a manner that the Player had a just cause to put a premature end to the employment relationship, as he did.

127. On the basis of the foregoing, the Panel agrees with the Decision that, in light of the peculiar circumstances of this case, the Player did not have just cause to terminate the Employment Contract.

128. In that regard, the Panel notes the following:

i. the Player and Dnipro signed the Employment Contract on 10 January 2015. As the DRC correctly stated, the Employment Contract did not stipulate the due dates for the payment of the monthly salaries. Therefore, as the DRC also correctly underlined, the monthly salaries fell due at the end of each month. The conclusion reached by the DRC on the point has not been disputed by the Appellants on the basis of any applicable law;

ii. as a result, at the time the Termination Letter was sent, only the salaries due for January 2015 and February 2015 had not been paid. In fact, the March salary, payable on 31 March 2015, was not yet due. More exactly, considering that the Employment Contract entered into force on 10 January 2015, Dnipro did not comply with its financial obligations towards the Player for a period of less than two months (in fact, only 22 days in January and the entire month of February 2015). Indeed, when the first "warning" letter was sent to the Club on 5 March 2015, the February salary had just fallen due;

iii. although the current RSTP is not applicable to this case, the leading principle under its Article 14*bis* (with which, according to the Player's counsel, the Decision would be in contradiction) is that the delayed payment of an amount by the club to a player is equal

to at least two months. In the Panel's opinion, it is fair to say that for the purposes of such provision the outstanding salaries must cover an entire period of two months, as otherwise a just cause could exist if the Employment Contract entered into force on, for example, 29 January 2015. Under that scenario, two months would be outstanding, but *de facto* only 31 days would not have been paid (3 days in January and 28 days in February);

iv. the Player's letters of 5, 9 and 16 March 2015 put a specific emphasis, to warn Dnipro of the possible consequences of its failures, on the contended obligation to pay an advance of EUR 150,000 – a payment that was not stipulated in the Employment Contract;

v. on 20 March 2015, Dnipro indicated to the Player that the issue of the salary payment would be *"resolved soon"*. And within 10 days (around the time the Termination Letter was sent) the monthly salaries due to the Player were credited to a bank account;

vi. in the letter of 23 March 2020, sent after Dnipro had reminded the Player that it had no obligation to pay an advance payment in the amount of EUR 150,000, the Player gave Dnipro 3 days (72 hours) to pay the outstanding salaries;

vii. the Player was quick to find a new club (Palmeiras) after the termination of the Employment Contract – possibly to take advantage of a Brazilian pre-season transfer window. In other words, it seems to the Panel that the termination was "hurried up" not because the situation with Dnipro had become unbearable, but because the Player wanted to secure alternative employment.

129. In summary, in the Panel's opinion, at the time the Termination Letter was sent, the delay of Dnipro to pay the outstanding amounts, objectively construed, had not reached such a level of seriousness that (i) the essential conditions under which the Employment Contract was concluded were no longer present and (ii) the Player could not in good faith be expected to continue the employment relationship.

130. As a result, the Panel finds that the Player had no just cause to terminate the Employment Contract.

B. What are the consequences of the answer to the first question?

131. The Panel notes that it is a common ground between the Parties that, should the termination of the Employment Contract be held a breach of the same (which the Appellants deny), Article 17 of the RSTP would have to be applied. The Appellants, however, disagree with the DRC's application of such rule in the case at stake. As a result, the Panel has to determine the amount of damages (if any) to be paid to the Respondent under that rule. Article 17(1) of the RSTP in fact sets the principles and method of calculation of the compensation due by a party in the event of breach or unilateral and premature termination of a contract.

132. In this respect, also considering well-established CAS jurisprudence (see, *inter alia*, CAS 2016/A/4605 and CAS 2017/A/5180), it clearly follows from Article 14(5) and (6) of FIFA Commentary, that a party *"responsible for and at the origin of the termination of the contract is liable to pay the compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*.

133. According to Article 17(1) of the RSTP, primary role is played by the parties' autonomy. In fact, the criteria set in that rule apply *"unless otherwise provided for in the contract"*. Then, if the parties have not agreed on a specific amount, compensation has to be calculated *"with due consideration"* for:

- the law of the country concerned,
- the specificity of sport,
- any other objective criteria, including in particular:
  - √ the remuneration and other benefits due to the player under the existing contract and/or the new contract,
  - √ the time remaining on the existing contract up to a maximum of five years,
  - √ the fees and expenses paid or incurred by the former club (amortised over the term of the contract), and
  - √ whether the contractual breach falls within a protected period.

134. In the absence of an agreement between the Parties in the Employment Contract, the DRC applied the criteria set by Article 17(1) of the RSTP to determine the amount of compensation to be paid by the Player (and Palmeiras) to Dnipro for breach of contract, and ordered the Player (and Palmeiras) to pay to Dnipro the amount of EUR 1,564,745.

135. The Panel finds, however, that in the light of the peculiarities of this case the amount of compensation to be paid to Dnipro should be reduced to 0 (nil), as requested in the alternative by the Appellants. In the Panel's opinion, in fact, the Player was led to breach the Employment Contract by the behaviour of Dnipro. Dnipro, actually, even though not to the level of giving rise to a just cause for termination, breached the Employment Contract, as it was undeniably late in paying the salaries of January and February 2015. In addition, the Panel is not convinced that Dnipro took all diligent steps to open (or assist the Player to open) a bank account for the payment of the amounts due before the end of March 2015. In addition, Dnipro could have done more to convince the Player that the outstanding amounts would be paid soon, also considering that no payments were made as from the beginning of the Employment Contract. Prior to 27 March 2015, in fact, Dnipro only in the letter on 20 March 2015 indicated that the issue with the payment of salary would be resolved soon. However, in that letter Dnipro could have explained to the Player why no payment had been made and that the difficulties with the opening of the Bank account were the cause of it. In addition, it appears to the Panel that Dnipro saved an important salary (EUR 2,190,000 over three years) to be paid to the Player, and no evidence of a replacement expense had been offered.

136. The Panel is led to this conclusion on the basis of Article 44A [*"General principles – Grounds for reducing compensation"*] of the CO, referred to by the Player at the hearing and applicable in the context of contractual liability pursuant to Article 99A(3) of the CO. Such provision reads as follows:

> *"[a] Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for it,*

the court may reduce the compensation due or even dispense with it entirely.

2 The court may also reduce the compensation award in cases in which the damage was caused neither wilfully nor by gross negligence and where payment of such compensation would leave the liable party in financial hardship".

137. The Panel observes that CAS jurisprudence (CAS 2014/A/3647 & 3648, §121 of the abstract published on the CAS website) determined the following in respect of the application of Article 44(1) of the CO:

"[…] according to Article 44 para. 1 CO, compensation may be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage".

138. As a result, the Panel finds that no compensation for breach of the Employment Contract should be paid to Dnipro: Dnipro, in fact, heavily contributed to the (however wrongful) termination of the Employment Contract. As a result, circumstances attributable to Dnipro helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for the breach: therefore, the Panel decides to dispense with compensation entirely. For this reason, there is no need to address the issue of the joint liability of Palmeiras.

139. As to the outstanding remuneration, the Panel observes that the Player did not request to be paid with outstanding salaries under the alternative part of its Request for Relief. This was only requested by the Player under the primary part of the Requests for Relief, and so under the scenario that the Employment Contract is terminated with just cause. However, as set out above, the Panel finds and has concluded that the Player had no just cause to terminate the Employment Contract. As such, and considering the alternative part of the Requests for Relief where no such request for outstanding remuneration has been made, the Panel is not in the position to establish that outstanding remuneration is due in excess to the amount as is awarded in the Decision, regardless the question whether these amounts are due. Consequently, the Panel confirms the decision of the DRC that Dnipro is liable to pay to the Player outstanding remuneration of EUR 11,597.

140. In light of the foregoing, the Panel finds that the appeals brought by Palmeiras and the Player against Dnipro with respect to the Decision are to be partially granted and the Decision modified accordingly.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Sociedade Esportiva Palmeiras and by Egidio De Araujo Pereira Junior with the Court of Arbitration for Sport against the decision issued on 24 August 2018 by the Dispute Resolution Chamber of FIFA are partially upheld.

2. The decision issued on 24 August 2018 by the Dispute Resolution Chamber of FIFA is partially modified and points 7 to 11 of its operative part are set aside.

3. Egidio De Araujo Pereira Junior terminated without just cause the Employment Contract entered into with FC Dnipro on 15 January 2015. However, Egidio De Araujo Pereira Junior shall pay no compensation to FC Dnipro for his termination without just cause of the Employment Contract entered into on 15 January 2015.

4. (…).

5. (…).

6. All other prayers for relief are dismissed.