Arbitration CAS 2021/A/8334 Puskás Futball Club Kft v. Golgol Tedros Mebrahtu, award of 11 November 2022

Panel: Mr Fabio Iudica (Italy), President; Mr Attila Berzeviczi (Hungary); Mr Gareth Farrelly (United Kingdom)

Football
Termination of an employment contract without just cause by the club
Applicable law
Just cause to terminate the contract
Nature of a "contract explanation"
CAS' scope of review regarding the financial consequences of the club's breach

1. **It follows from Article R58 of the CAS Code that the "applicable regulations", i.e. the statutes and regulations of the sports organisation that issued the appealed decision are applicable to the dispute irrespective of what law the parties have agreed upon. The parties cannot derogate from this provision if they want their dispute to be decided by the CAS. Article R58 of the CAS Code takes precedence over conflicting aspects of direct choice-of-law clauses and thus *in casu* the FIFA rules and regulations apply primarily. Swiss law applies for the interpretation and construction of the respective FIFA regulations. Subsidiarily, questions not covered by the FIFA regulations shall be considered by the CAS panel under the national law referred to in the employment contract insofar as the appellant has cooperated with the panel in ascertaining the relevant content of the law applicable to the merits.**

2. **A club is not authorized to terminate an employment contract entered into with a player that is injured at that time and whose absence from training in the relevant period is justified by his health condition.**

3. **A "contract explanation" may equate to the content and the purpose of a side letter or side agreement, namely, an agreement by which the parties addressed issues which were not covered by the employment contract in order for the club to clarify issues discussed during the negotiations but which the parties agreed not to include within the terms of the employment contract.**

4. **Without prejudice to Article R57 of the CAS Code, which confers CAS with the full power to review the facts and the law of the case, CAS panels are nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the CAS panels to decide all claims submitted by the parties and, at the same time, prevents CAS panels from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita.* Unspoken requests may be considered "virtually contained" in other requests which**

were expressly formulated, only provided that they are connected with each other by the same grounds, namely, by the same reasons in fact and in law (so that the main legal issue to be resolved by the adjudicator is the same). Otherwise, the principle of *ne ultra petita* would be circumvented.

I. INTRODUCTION

1. This appeal is brought by Puskás Futball Club Kft against the decision taken by the Dispute Resolution Chamber (The "DRC") Judge of the Fédération Internationale de Football Association ("FIFA") on 18 August 2021 (the "Appealed Decision"), regarding an employment-related dispute with the player Golgol Tedros Mebrahtu.

II. PARTIES

2. Puskás Futball Club Kft (also referred to as the "Club" or the "Appellant") is a professional football club based in Felcsút, Hungary, affiliated with the Hungarian Football Federation, which in turn is affiliated with FIFA.

3. Mr Golgol Tedros Mebrahtu (also referred to as the "Player" or the "Respondent") is a professional football player of dual citizenship of Australia and Eritrea, born in Khartoum, Sudan, on 28 August 1990.

4. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

III. FACTUAL BACKGROUND

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

A. The employment relationship between the Parties

6. On 27 June 2019, the Player signed an employment agreement with the Club as a professional football player, to be valid from 1 July 2019 until 30 June 2021.

7. According to Chapter XII of the Employment Contract, the Player was entitled to receive a monthly salary of HUF 4,695,000, gross, each payable on the 10th day of the following month.

8. On 20 June 2019, a few days before the Employment Contract was concluded, the Club, in the person of its Director, Mr Balázs Toth, sent a letter to the Player whose subject matter was "Contract explanation" (the "Contract Explanation"), reading as follows:

*"The amount included in the contract is gross **4 695 000** Ft, which is net **3 963 185** Ft. This net **3 963 185** ft we should be divided with by **322.21** (1 € is 322.21 hungarian forint) and we receive the net euro amount which is **12.300** € (12.000 € salary and 300 € apartment rental contribution).*

Apart from this the player shell be provided with a car, and two two-way business class tickets per season. These points we not write in the contract" [emphasis in original].

9. Among the rights and obligations of the Parties under the Employment Contract, Chapter II, point 10 provided that *"The professional management or the management of the Employer may determine in his sole discretion at what team – or in line with the content of sub-point 8.a) – individually, or otherwise shall the Employee perform his training work, or in the matches of what team he is obliged to participate"*.

10. In accordance with Chapter IX, point 38 of the Employment Contract, the Parties stipulated that *"The Employer or the Employee may terminate the employment relationship with immediate effect, if the other party breaches its obligations in connection with the employment contract intentionally, or with gross negligence and seriously or otherwise in showing a behaviour which makes the maintenance of the employment relationship impossible"*.

11. In this respect, according to Chapter IX, point 39, the following behaviours of the Player, *inter alia*, would represent serious breach of the Employment Contract:

- *"the breach by the Employee of obligations contained in Chapter II of the work contract or specifically formulated by the employment contract […]";*
- *"unjustified absence without serious reasons from any matches, trainings, preparation programmes, or other preliminary defined events, the Employee may exempt himself from this with presenting proper certification […]";*
- *"the Employee returns from his vacation with a delay of more than 4 calendar days, or arrives for the winter or summer preparation with a delay a of more than 4 calendar days, except if the reason for delay is external circumstances provingly unavoidable by the Employee"*.

B. The Player's injury

12. According to the medical reports on file, the Player had a first injury of the adductor (partial tear) back in 2012, he received conservative treatment and had no symptoms. Again, in October 2019, the Player suffered an injury to his adductor (tear) which was not detected and, as such, the Player continued to play and train.

13. In December 2019, he was subject to a further injury to the muscle which most likely caused the tear, for which he received conservative treatment and could still play.

14. However, in June 2020, the adductor became sensitive again.

15. On 3 July 2020, during the summer leave, the Player arranged to be examined by Dr Jürgen Lutz, at the Centre for Radiology in Munich, Germany, apparently without informing the Club in advance. According to the summary of the medical report, Dr Lutz's opinion was the following:

"Findings consistent with athletic pubalgia, on the basis of chronic avulsive stress of the left symphysis and an old (subtotal) tear of the adductor longus tendon, presumably at the myotendinous junctino with consecutive atrophy of the muscle belly on the right".

16. Soon after, the Player informed the Club of the relevant medical examination and findings, following which, the Club requested the Player to return to Hungary in order to undergo an MRI scan and see a specialist appointed by the Club.

17. On 21 July 2020, an MRI scan of the Player's both hips were conducted under the Club's indications at the Medical Point in Budapest. The exam detected *"degenerative changes in the symphysis, the surfaces of joints are of uneven contours. The contours of the bone are especially uneven at the origin of the left adductor longus, but no oedema is visible at the moment (previous injury? No clinical information is available about that). On the right, the adductor longus tendon shows a somewhat non-homogenous signal intensity and there is a minimal oedema in the proximal-ventral region of the muscle". The medical opinion reads as follows: "Pathological amounts of fluid in the hip joints were not seen. On the left, previous injuries are suspected at the origin of the tendons (to be assessed by clinicians, no clinical information is available about possible previous injuries). There is a minimal oedema on the right in the proximal part of the adductor longus".*

18. On 23 July 2020, the Club's Director, Mr Balázs Tóth, wrote to the Player stating that he had to continue his trainings with the Club's second team because of the decision of the Club's management and included a training schedule as from 24 July 2020 until 2 August 2020. The letter reads as follows:

Because of the decision of the management of Puskás FC Kft, Golgol Mebrahtu (born 28 August 1990.) have to continue the trainings with the second team of Puskás FC.

It is obligatory for Golgol Mebrahtu to appear on the training sessions and games in the Puskás Akademy (8086 Felcsút, Fő út 176.) from 24 of July 2020.

Coach: Ádám Nagy

PAFC II Program

24 July 2020. 10:00 o'clock - Training
25 July 2020. 10:00 o'clock – Training
26 July 2020. 12:15 o'clock – Departure, 17:00 o'clock ADMIRA WIEN – PAFC II
27 July 2020. – Free
28 July 2020. 16:00 o'clock – Training
29 July 2020. 10:00 o'clock – Training, 16:00 o'clock – Training
30 July 2020. 10:00 o'clock – Training
31 July 2020. 10:00 o'clock – Training, 16:00 o'clock – Training
01 August 2020. 10:00 o'clock – Training
02 August 2020. 11:00 o'clock – Competition match, PAFC II – MTE Móvár

19. On 24 July 2020, at the Club's instruction, the Player was examined by Dr Geza Abkarovits at Szent Gyorgy University Teaching Hospital of the Fejer County, Hungary. With regard to the right thigh, the examination revealed the following: *"The musculature of the right thigh adductor is partially torn three finger widths from the gastrocnemius where the pain is mild, but the most severe pain is in the origin of the adductor which moderately increases on provocation. The adductor can be considered intact three finger widths from its origin, the tear is below that point"*. The final medical opinion suggested the following with respect to the right adductor: *"On the right: where a partial, but more extensive muscle tear occurred half a year ago, the patient has symptoms in the origin of the muscle where the inflammation is caused by weight bearing. Considering that the patient could play sport for half a year without any pain, for now conservative treatment is recommended and operative treatment can be considered only if symptoms persist. The rehabilitation will take six to eight weeks. Follow up in six weeks"*.

20. Following this, the Player decided to further consult a physician of his own choice, Dr David A Young, orthopaedic Surgeon of the Melbourne Orthopaedic Group. On 26 July 2020, Dr Young provided a report for the Club on behalf of the Player, based on his medical history. The report reads as follows: *"Mr Mebrahtu is a professional soccer player known to me through soccer circles and his treating physiotherapist Mr Tim Schleiger of the 2Good physiotherapy clinic, here in Melbourne. I have reviewed his history and radiology (MRI scan of his groins) with Mr Schleiger and it is apparent he has troublesome osteitis pubis. His symptoms and radiological changes suggest the time has come for surgical intervention. This will necessitate 4 months of strength training and NO exertional running and soccer training. With cross training he will be ready to fully train at 4 months and play at 6 months post surgery. It is a common problem in Australian Rules Football and less common in Soccer. Treatment is the same and about 5% troublesome cases require surgery. This has been a common operation in my practice over the last 30 years*

being based in Melbourne the centre of Professional Australian Rules Football. I am happy to discuss this case further with your medical staff but would be confident of curing his problem once and for all. I look forward to your reply. Best wishes, Dr David A Young".

21. Also on 26 July 2020, via WhatsApp message, the Player provided a copy of Dr Young's report to the Club's Director, Mr. Balázs Toth, and requested permission to return to Australia to receive the proposed surgical treatment.

22. In response thereto, Mr Toth urged the Player to resume training in accordance with the schedule which was previously communicated to him and to comply with his contractual obligations, apparently disregarding the issue concerning the injury and the Player's request to undergo surgery.

23. In the subsequent WhatsApp exchange, in the following days, the Player replied that he was unable to attend training sessions because of the Club's failure to provide him a with a car, considering the distance between his residence address and the training ground and also due to his injury and inability to train and play, adding that the Club had also failed to provide him indications about his rehabilitation program in this respect: *"I asked – since the club management "decision" was for me to be removed from the first team – for the details of the medical staff with whom I can coordinate treatment for my injury but [I] have received no response from you. I have also provided you with a letter by a qualified physician Dr. David Young of my urgent need of surgical intervention for my injury to which I have had no response to. Because I have tried reasonably to communicate with you but have been repeatedly ignored for almost 2 weeks now, I feel completely mistreated and discriminated against"* (Appellant's Annex No. F/6). As a consequence of the Club's disregard for his requests, the Player informed the latter that he had decided to seek legal assistance from Angela Collins, attorney-at-law at Professional Footballers Australia (PFA).

24. On 30 July 2020, the Player's representative wrote to the Respondent requesting, *inter alia*, that the Claimant was reinstated in the first team since his demotion to the second team was unjustified, provided a car in order for him to reach the Club's premises, and be granted permission to travel to Australia to receive the surgical treatment suggested by Dr. Young. In case of denial of such permission, the Club was requested to provide a report from a medical expert explaining the reason why the Player should not have surgery; a proposed comprehensive treatment plan for the Player's recovery and the Club's willingness to have a conference call with Dr Young in order to discuss the Player's treatment plan. Finally, the Player reserved his right to take action against the Club for its failure to provide adequate and necessary medical care and to seek the intervention and opinion of a FIFA Medical Centre of Excellence with the relevant costs to be borne by the Club. The letter in question remained unanswered. The Panel specifies that the Appellant denies having received such letter which has been apparently sent via e-mail.

25. Also on 30 July 2020, the Club's Managing Director, Mr. László Mészáros, wrote to the Player with regard to his absence from trainings, denying that it was the Club's contractual obligation to provide him with a car. Mr. Mészáros requested the Player's attendance at training within 4 August 2020, stating that in case of failure to do so, he would be considered responsible for

severe breach of contract. The Player was further advised that, due to his unjustified absence, he would not be paid his wages for the duration of his absence, as from 24 July 2020.

26. On 31 July 2020, the PFA wrote another letter to the Club on the Player's behalf, in reply to the Club's letter of 30 July 2020. The letter referred to the provision under the Contract Explanation according to which the Club must provide the Player with a car or alternatively, that the Club arrange appropriate means of transportation so that the Player could attend trainings. According to the Player's representative, the Club was deliberately acting with the purpose of frustrating the Player's ability to comply with his obligations in order to place him in the position to breach the contract; therefore, should the Club decide to terminate the Employment Contract, such termination would be without just cause. This letter has also remained unanswered. Again, the Panel specifies that the Appellant denies having received such letter which has been apparently sent via e-mail.

27. On 8 August 2020, the PFA wrote a further letter to the Club, claiming *inter alia*, that the Player had not been contacted by the Club's medical staff in relation to his injury and therefore requesting the Club's immediate permission for the Player to travel to Australia to seek treatment by Dr. Young as described in his report, namely surgical intervention. In particular, the letter stated that *"should the Club fail to respond to this letter by* ***Tuesday 11 August 2020****, its silence would be deemed as permission"* [emphasis in original]. The Club did not reply to this letter and denied having received it as well.

28. On 11 August 2020, the Club sent a notice of termination to the Player, claiming just cause based on the Hungarian Labour Code and on the Player's alleged violation of Chapter IX, point 39, in conjunction with Section II point 8, subsections a), f), i), and p) of the Employment Contract, in consideration of the Player's failure to resume training after the summer leave, with a delay of more than 4 days, without any justified reasons. With regard to the Player's injury, the Club maintained that according to the Club's physician, surgery was not necessary and that the medical report by Dr David Young was not reliable since it was solely based on the Player's previous medical history and diagnostic reports. Moreover, there was no evidence that the Player was not able to perform his professional activity or appearing at the workplace due to the injury. In addition, the Club had no obligation to provide a car to the Player who was therefore personally responsible for ensuring his transfer to the workplace. In view of the Player's alleged violations, the Club claimed that the continuation of the employment relationship had become impossible and therefore, it terminated the Employment Contract with immediate effect.

29. On 18 August 2020, the Player purchased a flight back to Australia from Budapest, departing on 13 September 2020 and on 13 October 2020 he underwent surgery performed by Dr Young at Melbourne Orthopaedic Group. Surgery findings revealed a *"*[…] *significant defect about a hands breadth below the adductor longus insertion […]" "*[…] *with a lot of thickening and scar tissue in the area of visible defect".*

IV. PROCEEDINGS BEFORE THE FIFA DRC

30. On 24 March 2021, the Player filed a claim before the FIFA DRC, requesting the following:

"The Player respectfully requests that the DRC: (a) award the Player the following amounts:

i. HUF 997,812 as outstanding salary for the period 24 July 2020 to 31 July 2020 (plus 5% interest from 10 August 2020, being the due date of payment);

ii. HUF 36,349,580 being the Mitigated Compensation for the Club's breach of the Contract (plus 5% interest from 11 August 2020, being the termination date);

iii. EUR 766.83 and AUD 13,282.85 for the reimbursement of medical expenses;

iv. HUF 2,100,190 for the reimbursement of flight expenses, made up as follows:

a. HUF 1,737,700 being the cost of the flight ticket; and

b. HUF 362,490 being the excess baggage cost".

31. The Player submitted that the Club terminated the Employment Contract without just cause. With regard to his conduct towards the Club, the Player maintained he was transparent about his injury in compliance with his obligations to *"submit himself to medical tests and treatments"* and about the reason why he could not attend training, i.e., because of the Club's failure to comply with its obligation to provide him with a car or with an alternative means of transportation. The Player disputed the Club's assertion that *"the Player acted in such a way that made the maintenance of the ongoing employment relationship impossible"* and denied that the termination by the Club can be considered an *ultima ratio* measure, in contrast with FIFA well-established jurisprudence.

32. In its reply, the Club argued that it had no contractual obligation to provide a vehicle nor flight tickets to the Player, since the Contract Explanation was not binding and only constitutes a phase of the Parties' negotiations, thus having the effect of mere proposals. In support of the above, the Club provided a written statement by a Hungarian intermediary who was involved in the negotiations for the Player's hiring. In fact, the Club had promised to provide a car out of the vehicles provided by the Club's sponsors as long as they were available based on the sponsor agreement concluded by the Club, and this was fulfilled by the Club until the moment that such availability ended. In addition, the Player *"did not seek any help from the Club to rent a car in order that Player could travel to his place of work"*; in any event, the Player could afford the rent of a car and could have easily managed to rent a car independently from the Club. The Club also maintained that it only became aware of the Player's health condition during the summer leave, since the Player did not immediately disclose his injury nor his intention to undergo medical examination in Germany. Moreover, the medical report by Dr Young provided by the Player was not reliable (since no visit was conducted on the Player), nor accurate. The letters sent by the Player's counsel on 30 and 31 July 2020 were not received by the Club, nor did the Player provide any proof of receipt. The Club argued that the Player did not show up at work and that his absence was unjustified since the Player failed to provide evidence of unavoidable external circumstance that could exempt him from complying with

his contractual obligations. By no longer showing up at work, the Player also did not carry out his rehabilitation program. Therefore, and because the continuation of employment relationship with the Player had become impossible, due to the latter's unjustified absence for more than 4 days, the Club was forced to terminate the Employment Contract on 11 August 2020. Besides, the reason for moving the Player to the Club's second team was solely of sporting nature and in any case, the Club was allowed to such a change in accordance with Chapter II section 10 of the Employment Contract. With regard to the Player's outstanding salaries as from 24 July 2020 until the date of termination, the Club maintained that it rightfully withheld payment since the Player had failed to perform his activity and was therefore not entitled to salary. Finally, the reimbursement of the medical expenses incurred by the Player in Australia was not due since the Player failed to submit documentation supporting such expenditure.

33. In conclusion, the Club submitted its request for relief as follows: *"the Claim is completely, i.e. both in terms of legal grounds and in value, unfounded, therefore I kindly request herewith the complete dismissal thereof"*.

34. On 18 August 2021, the DRC judge rendered the Appealed Decision, ruling as follows:

"1. The claim of the Claimant, Golgol Tedros Mebrahtu, is partially accepted.

2. The Respondent, Puskás Futball Club Kft, has to pay to the Claimant, the following amounts:

- Hungarian Florin ("HUF") 997,812 as outstanding remuneration plus 5% interest p.a. as from 10 August 2020 until the date of effective payment.

- HUF 36,349,580 as compensation for breach of contract without just cause plus 5% interest p.a. as from 24 March 2021 until the date of effective payment.

- HUF 2,100,190; EUR 766.83 and Australian Dollar ("AUD") 13,282.85 as reimbursement of expenses.

3. Any further claims of the Claimant are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

5. Pursuant to article 24 bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid ***within 45 days*** *of notification of this decision, the following* ***consequences*** *shall apply:*

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.

6. The consequences ***shall only be enforced at the request of the Claimant*** *in accordance with article 24 bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players"* [emphasis in original].

V. GROUNDS OF THE APPEALED DECISION

35. The grounds of the Appealed Decision were notified to the Parties on 2 September 2021 and can be summarized as follows.

36. First of all, the DRC Judge considered that he was competent to deal with the present matter in accordance with Article 24(1) in combination with Article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (the FIFA RSTP) and that the February 2021 edition of the RSTP was applicable to the present dispute as to the substance.

37. With regard to the merits, the DRC Judge considered that it was undisputed that the Club unilaterally terminated the Employment Contract on 11 August 2020 with immediate effect and that his task was to determine whether the Club's termination was with or without just cause and the consequences of such termination.

38. In this respect, it was observed that on 30 July 2020, the Club sent a formal notice to the Player emphasising that he had been absent from work since 24 July 2020 and that he was expected to attend training before 4 August 2020. In addition, in the said letter, the Club argued that it was not its obligation to provide a car to the Player.

39. While the obligation to provide a car was not contained in the Employment Contract, the DRC Judge noted that it was certainly included in the Contract Explanation. With regard to such document, the DRC Judge observed that the Club had not challenged its authenticity although it maintained it belonged to the contract negotiations. Based on the wording *"these points we not write in the contract"* which was contained in the Contract Explanation with reference to the use of a car for the Player's benefit and other allowances, the DRC Judge was persuaded that the Parties had decided not to write down those benefits but since the Contract Explanation and the Employment Contract *"were negotiated concomitantly, the DRC Judge was comfortable to determine that the contract Explanation forms an integral part of the Contract and thus, as a valid and binding document on the parties, the benefits agreed therein should have been provided to the Player"*. As a result, by failing to provide a car to the Player, the Club committed breach.

40. Moreover, it was observed that the Club' default notice of 30 July 2020 was not clear and failed to provide a reasonable deadline for the Player to comply with the Club's requests.

41. The DRC Judge did not consider the Player's misconduct to be sufficiently severe to justify the termination of the Employment Contract (such that the continuation of the employment relationship cannot be reasonably expected), in line with the longstanding jurisprudence of

the DRC: *"62. […] Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an* ultima ratio *measure".*

42. As a consequence, the DRC Judge established that the Club had no just cause to unilaterally terminate the Employment Contract.

43. With regard to the legal consequences of such termination, firstly, it was found that the Club was liable to pay to the Player HUF 997,812 corresponding to outstanding salaries at the time of termination, plus 5% interest p.a. as from 10 August 2020 until the date of effective payment. In addition, as to the Player's request for reimbursement, the DRC Judge considered that the Player had provided evidence of the relevant medical and travel expenses and therefore decided that the Club had to pay HUF 2,100,190; EUR 766,83 and AUD 13,282,85 in the light of the Club's general obligation to provide adequate medical support to its employees and the contractual obligation to pay flight tickets to the Player.

44. In continuation, the DRC Judge referred to Article 17 of FIFA RSTP and in the absence of a compensation clause in the Employment Contract, decided to grant an amount for compensation for breach based on the residual value of the Employment Contract (HUF 43,535,013) mitigated by the alternative salaries earned by the Player under the new employment contract signed with the Australian club Brisbane Roar FC in the overlapping period (corresponding to approximately HUF 7,245,433).

45. In view of the above, the Player was granted an amount of HUF 36,349,580 net as compensation for breach of contract, plus 5% interest p.a. as from the date of claim, i.e. 24 March 2021.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

46. On 21 September 2021, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2021 edition (the "CAS Code"). The Appellant requested that the present matter be submitted to a panel of three arbitrators and nominate Dr Attila Berzeviczi, Attorney-at-law in Budapest, Hungary, as an arbitrator in the present matter.

47. On 29 September 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

48. On 1 October 2021, the Respondent requested to the CAS Court Office that pursuant to Article R 55.3 of the CAS Code, the time limit for the filing of the Respondent's Answer be fixed after the payment by the Appellant of the entire advance of costs of the present proceedings in accordance with Article R64.2 of the CAS Code. Moreover, the Respondent

nominated Mr Gareth Farrelly, Solicitor in Liverpool, United Kingdom, as an arbitrator in the present case.

49. On 6 October 2021, the Respondent informed the CAS Court Office that he was not going to pay his share of the advance of costs of the present arbitration proceedings.

50. On 7 October 2021, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

51. On 26 October 2021, the Respondent requested the CAS Court Office an extension by 10 days of the time limit to file his Answer, which was granted.

52. On the same day, the CAS Court Office informed the Parties that the Panel appointed to decide the present case had been constituted as follows:

53. President: Mr Fabio Iudica, Attorney-at-law in Milan, Italy

Arbitrators: Dr Attila Berzeviczi, Attorney-at-law in Budapest, Hungary

Mr Gareth Farrelly, Solicitor in Liverpool, United Kingdom

54. On 16 November 2021, the Respondent filed his Answer in accordance with Article R55 of the CAS Code. The Respondent expressed his preference for the Panel to issue an award based solely on the Parties' written submissions.

55. On 23 November 2021, the Appellant informed the CAS Court Office that it preferred that a hearing be held by the Panel in the present case.

56. On 16 February 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present case.

57. On 23 February 2022, after consultation with the Parties, the CAS Court Office informed them that a hearing would take place in the present matter on 26 April 2022 at the CAS Court Office, Palais de Beaulieu, in Lausanne, Switzerland.

58. On 1 April 2022, the CAS Court Office forwarded the Order of Procedure to the Parties, which was returned in duly signed copy on 4 April 2022 by the Appellant and the Respondent respectively.

59. On 26 April 2022, a hearing took place in these proceedings.

60. At the hearing, besides the Panel and Ms Sophie Roud, Counsel to the CAS, the following persons were present:

For the Appellant: Dr Dányi Szilárd, counsel, Ms Ágota Tomorszkiné Mátyásfȍldi, interpreter, Mr Krisztián Bolla, Deputy Executive, Mr Balázs Toth and Mr ZoltánVasas, witnesses.

For the Respondent: The Player himself, participating by video-conference and Dr Lucien W. Valloni, counsel.

61. At the hearing, the Parties were given full opportunity to present their case, hear the witnesses, submit their arguments and submissions and answer the questions from the Panel.

62. At the outset of the hearing, the Parties confirmed that they had no objection in relation to the composition of the Arbitral Tribunal and that the Panel has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.

63. The Player, Mr Balázs Toth and Mr ZoltánVasas were heard by the Panel as witnesses and the Parties were given the opportunity to question them.

64. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

VII. SUBMISSIONS OF THE PARTIES

65. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not comprise each and every contention advanced by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in this summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

66. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief, may be summarized as follows.

67. As to the facts of the present case, the Appellant relied on the following circumstances to sustain that it had just cause to terminate the Employment Contract:

a. The Player did not inform the Club in due course (and, in any case, not before the summer leave) about having any kind of injury that would need treatment or that could affect the Player's fulfilment of his contractual obligations;

b. The Player also did not announce his intention to travel to Germany in order to undergo a medical examination and did not immediately forward the relevant report to the Club;

c. The results of the medical examination arranged by the Club which was conducted on 24 July 2020 (and suggested conservative treatment) did not contradict the report by

the German physician, although the latter had failed to provide any opinion with regard to the required treatment;

d. Dr David A. Young suggested surgery based solely on the review of the Player's medical history and radiological reports without visiting him;

e. The reason put forward by the Player to justify his absence from training was that the Club had not provided him with a car;

f. The granting of a car was not a contractual obligation for the Club, but an extra benefit conditional upon the conclusion of separate agreements between the Club and its sponsors and subject to availability;

g. In any case, the Player failed to provide a medical certificate stating his inability to work.

68. As a consequence of the foregoing, the Player's failure to attend training within the given time limit in accordance with the Employment Contract resulted in the Player's breach of contract and also prevented the Club from taking care of his rehabilitation.

69. With regard to the Contract Explanation, the Appealed Decision wrongly established that it was part of the Employment Contract. In fact, the document is dated 20 June 2020, and can only be considered as a proposal made by the Club in the intermediate phase of the negotiations which did not finally merge in the Employment Contract. This was also confirmed by the witness statement by Mr Zoltán Vasas, an intermediary who acted on behalf of the Club during negotiations. In addition, the DRC Judge did not take into account that the Contract Explanation was signed by Mr Balázs Tóth who had no representative powers to undertake such an obligation on behalf of the Club. The Employment Contract does not include any provision according to which the Club has any obligation to provide the Player with a car, nor with flight tickets, which is a sign that there was no agreement in this respect.

70. Consequently, the Club did not commit any breach of contract by not providing a car to the Player, and the Appealed Decision was wrong to state the opposite.

71. The Club should also not be obliged to bear the Player's medical expenses since the Player has acted independently on his own initiative and did not follow the indications of the Club's physician according to which surgical treatment was not necessary at the time of the medical examination. In addition, the Player refused to follow the rehabilitation program arranged by the Club, despite the latter's several requests. In this respect, the Club's formal notice dated 30 July 2020 was clear in requesting the Player to show up at the training ground within the deadline of 4 August 2020.

72. Therefore, in light of the Player's conduct, the DRC Judge did not consider that under the provisions of the Employment Contract (Chapter IX Section 39) as well as under Hungarian Labour Code, the Club had just cause for termination with immediate effect, besides the fact

that the circumstances of the present case suggested that continuation of the employment relationship between the Parties had become impossible.

a) The Appellant's witness testimonies at the hearing

73. With specific regard to the Player's injury, at the hearing, the Club's Director, Mr Balázs Tóth, testified that the Player had not reported any health issue to him before the summer leave, and that, on the other hand, the Club had been aware of the previous injuries in October and December 2019 when the Player received conservative treatment from the Club's medical staff and followed an individual training plan with no participation to regular trainings or matches. Only after the Player's leave for the summer break, to his surprise, he declared having received a phone call by the Player, when the latter referred, he was injured and that he had undergone medical examination in Germany at the beginning of July 2020, while he was on vacation. On that occasion, Mr Balázs Tóth requested the Player to come back to Hungary to undergo medical examination by the Club's medical staff. The witness also confirmed he personally did not authorize the Player to move to Australia in order to receive surgical treatment since it was the responsibility of the Club to take care of his health condition. By answering the Panel's question whether the Club had provided a rehabilitation plan or individual training for the Player's recovery, Mr Balázs Tóth stated that, after the Player's injury in June 2020, the Club's intention was that his rehabilitation would take place at the same time when the other players of the second team was taking part in their training sessions.

74. In relation to the Player's demotion to the second team, at the hearing, Mr Balázs Tóth specified that it was a Club's decision based on professional reasons and on the reorganization of the squad. At the same time, the witness testified that the Player was told he could receive assistance from the Club in order to find another club where he could play in the future.

75. During their deposition at the hearing, Mr Zoltán Vasas and Mr Balázs Tóth confirmed the following circumstances with regard to the issue concerning the provision of a car to the Player: a) the Club only "promised" to make its best effort to provide the Player with a car but there was no contractual undertaking in this respect given that there weren't as many cars available as the players in the Club; b) with regard to the fact that the Explanation Contract was signed by Mr Balázs Tóth, the latter clarified that in his role within the Club and according to the Club's practice, he usually forwards offers to potential players and signs letters to players in order to convey the Club's will and decisions; c) the Explanation Contract was drafted upon request of the Player's intermediaries during the first phase of negotiations in order to encourage the Player who was still in Australia to travel to Hungary and engage in deeper negotiations finally leading to the conclusion of the Employment Contract; d) at a later stage, when the Player moved to Hungary and during the negotiation meetings, it was made clear that his entitlement would be conditional upon the availability of sponsor cars; e) during the second negotiation meeting, the Player accepted that the offer of a car was only potential based on the Club's availability and that flight tickets would be provided at the discretion of the Club's General Manager and therefore, that such benefits would not be included in the terms of the Employment Contract; f) soon after the signing of the Employment Contract, the Player actually received a car from the Club which was then returned upon request of the

Club just before the end the sporting season 2019/2020; g) the Player did not receive a new car in the following sporting season because there was no sponsor car available for him at that time, due to the termination of the relevant sponsorship agreements.

76. In its Appeal Brief, the Appellant submitted the following requests for relief:

"1. The Acceptance of the Appeal.

2. The changing of FIFA Dispute Resolution Chambre Judge Decision No. FPSD-2140 passed on 18 August 2021, i.e. the passing of a new decision.

3. In such new decision, the rejection of Respondent's Claim, in consideration of the fact that Appellant lawfully terminated its contract concluded with Respondent, based on a just cause.

4. To order the reimbursement of Appellant's costs, which Respondent would be obligated to settle".

B. The Respondent's Submissions and Requests for Relief

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

78. As to the main facts of the present case, the Respondent did not dispute the occurrence of the events as put forward by the Appellant. However, the Player argued that the Club did not meet its contractual obligations and that the Employment Contract was unilaterally terminated without just cause.

a) The Club's failure to provide the Player with a car

79. With regard to the nature and the purpose of the Contract Explanation, the Respondent argued that after receiving the first proposal of the Employment Contract, on 20 June 2019, from Mr David Zika, an intermediary who took part in the negotiations on his behalf, the Parties further discussed the Player's request to obtain additional benefits, i.e., the right to be provided with a car as well as two business class flight tickets per season. During the negotiations, the Player received legal advice from his representative that such benefits should be included in the Employment Contract in order to secure his entitlement; however, Mr Zika reassured the Player that the Club would forward an "extra document" confirming that he would be provided with the additional benefits. Accordingly, the Player received the Contract Explanation confirming the Player's entitlement but expressly stating that the provisions regarding the additional benefits would not be included within the Employment Contract. Contrary to the Appellant's allegation, such document was intended to be a side agreement between the Parties which has not been superseded by the Employment Contract. In addition, in contrast with the Appellant's argument, the Club's obligation to provide the Player with a car was not conditional upon availability or the existence of any sponsorship agreement.

80. With regard to the Club's allegation that Mr Balázs Tóth was not vested with the necessary representative powers to engage the Club by signing the Contract Explanation, the Respondent maintained that at any stage did the Club disputed the authenticity of the Contract

Explanation; moreover, Mr Balázs Tóth signed the document as the "Club Director" and the Player had no reason to presume that the latter did not have the proper authorization to act on behalf of the Club. In any event, the Club confirmed *de facto* the content of the Contract Explanation by paying the flight tickets and providing the car to the Player during the first sporting season of the Employment Contract, and by contributing to the Player's apartment rental expenses in the amount of EUR 300 as specified in the same Contract Explanation. In such circumstances, it appears to be irrelevant who exactly signed the contract on behalf of the Club, as already confirmed by CAS jurisprudence in a similar case (CAS 2017/A/5092). Therefore, the Contract Explanation should be considered valid and binding.

b) The Player's injury

81. As regards the injury, the Respondent argued that when the symptoms of the muscle tear in his right thigh reappeared in June 2020, he was unsatisfied with the Club's approach in relation to the suggested treatment. As a consequence, he arranged to be examined in Germany by Dr Lutz during the summer leave. After the MRI scan and subsequent medical examination arranged by the Club on 21 and 24 July 2020 respectively, the Player decided to seek a further medical opinion from his treating physician in Australia who finally provided a report based on the Player's medical history and recent reports. The medical opinion was forwarded to the Club on 26 July 2020 along with the request of permission to travel to Australia in order to undergo surgery. In such context, the Club completely failed to address the issue of the Player's injury: it failed to provide the Player with any treatment plan or to discuss with the Player any other plan in relation to the injury, it suddenly decided to demote the Player to the second team, persistently ignored the Player's request to be provided with a car and completely disregarded the Player's request for permission to travel to Australia to undergo surgery.

82. In view of the foregoing, the Player did not commit any serious breach which could give rise to termination pursuant to Chapter IX Section 39 of the Employment Contract. In fact: a) the Player correctly informed the Club of his injury and complied with the contractual obligations to submit himself to medical examinations, tests and treatments; b) the Player declared his intention to undergo surgery and start his rehabilitation as soon as possible in order to be a productive member of the Club's first team; c) on the contrary, the Club refused to liaise with the Player in relation with the injury and relevant rehabilitation treatment, either by ignoring his request of permission to undergo surgery in Australia or by proposing a different treatment plan, thus demonstrating that it had no genuine interest in ensuring the Player's rehabilitation and in retaining the Player's services.

83. On the contrary, the Club's behaviour shows its intention to frustrate the Employment Contract and place the Player in breach.

84. However, since the Player's absence from training was directly due to the Club's breach of its obligations towards the Player, the absence can only be considered as justified. Moreover, it is true that the Club has failed to assist and cooperate with the Player in order for the latter to remain within the Club.

85. In addition, the maintenance of the Employment Contract was not impossible as claimed by the Club, given that the Player always behaved in compliance with his obligations and clearly confirmed his intention to be a productive member of the Club.

c) The Player's testimony at the hearing

86. With regard to the Contract Explanation, the Player testified that, although during the first approach to the Club he had requested to be granted a car and flight tickets as additional benefits, the first proposal received from the Club did not include them. Therefore, he spoke to the intermediary, Mr Zika, in order to obtain the inclusion of the benefit within the terms of the contract, and only when he was reassured, he would receive a side letter to that purpose, he finally decided to travel to Hungary and engage in further negotiations with the Club. The Player also denied having been told during the negotiation meetings about the fact that the provision of a car would be conditional upon the Club's availability in connection with the signing of sponsorship agreements and stated that after the return of the car at the end of the sporting season 2019/2020 he was the only player in the Club who did not receive the car back for the following season. Answering the Panel's question why he did not consider renting a car by himself (with further request for reimbursement to the Club) or finding an alternative solution, the Player explained he is not comfortable when it comes to dealing with practical matters since he has no experience of this kind and all his previous employers had taken care of such things and in addition, he had been recommended by the Club that public transportation would not be a safe solution for him as a foreigner.

87. With regard to his demotion to the second team, he declared he only became aware that he would no more be included in the first team after the summer leave, when he received the Club's letter dated 23 July 2020.

88. With regard to his health condition, the Player clarified that following his injuries in October and December 2019, according to the Club's doctor, the issue was not serious and therefore he was recommended rest and conservative treatment (sonar, physio, ultrasound) and he missed only a few matches. Then pain relapsed again severely in June 2020 in the same adductor muscle (although the Player did not precisely recall whether during a match or during training). The Player declared he had informed the Club's head coach and the Club's physician of his muscular pain and that he was disappointed by the approach of the Club's doctor as the latter minimized the injury saying it was not serious and suggesting rest. At that point, since it was the third occurrence of the same injury, the Player decided by his own initiative to consult with the specialist in Germany while he was on the summer leave and to further seek the opinion of Dr Young in order to find a definitive solution, since he was not confident with the Club's medical advice that he should receive 6/8 weeks rehabilitation. In addition, the Player denied having received any rehabilitation plan from the Club and testified that he was still requested to train with the second team, although he could not since he had severe pain and notwithstanding this request was against the medical advice from the Hungarian and Australian specialists.

89. In his Answer, the Respondent submitted the following requests for relief:

(a) dismiss, in full, the appeal filed by the Appellant on 21 September 2021;

(b) affirm the Appealed Decision in full;

c) order the Appellant to pay all costs incurred in relation to the appeal; and

d) order the Appellant to pay all legal expenses of the Respondent in relation to the appeal.

VIII. JURISDICTION

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

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

91. In its Statement of Appeal, the Appellant relies on the FIFA Statutes as conferring jurisdiction to the CAS Article 57 (1) of FIFA Statutes (edition May 2021) provides the following: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

92. The jurisdiction of the CAS was not contested by the Respondent.

93. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed. Moreover, at the hearing, the Parties confirmed they had no objection to the jurisdiction of CAS.

94. Accordingly, the Panel is satisfied that CAS has jurisdiction to hear the present case.

IX. ADMISSIBILITY OF THE APPEAL

95. Article R49 of the CAS Code provides the following:

96. *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

97. According to Article 57(1) of FIFA Statutes (edition May 2021), the time limit to file an appeal to the CAS shall be 21 days of receipt of the decision in question.

98. The Panel notes that the Appealed Decision was rendered on 18 August 2021 and notified to the Parties on 2 September 2021. Considering that the Appellant filed its Statement of Appeal on 21 September 2021, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was filed in timely manner.

99. The admissibility of the appeal is not disputed by the Respondent.

100. Accordingly, the Panel is satisfied that the appeal is admissible.

X. APPLICABLE LAW

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

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

102. Moreover, Article 56(2) of the FIFA Statutes provides the following: *"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"*. It follows from this provision that the (primarily applicable) FIFA regulations shall be interpreted, construed and applied in light of Swiss law.

103. As to the applicable law, the Appellant refers to the FIFA Regulations and to Hungarian Law and the Hungarian Labour Code based on the Employment Contract.

104. On the other hand, the Respondent refers to FIFA regulations and additionally, Swiss law as the law applicable to the present dispute.

105. The Panel observes that, according to Chapter XI, Section 50 of the Employment Contract, *"The Parties apply the rules of the Hungarian law to their legal relationship. Matter not regulated by this employment contract shall be governed by the Labour Code, the Sports Law and other relevant legislative rules, as well as by the rules of the Employer, MLSZ, UEFA and FIFA"*.

106. According to CAS jurisprudence, *"It follows from Article R58 of the CAS Code that the "applicable regulations", i.e. the statutes and regulations of the sports organisation that issued the appealed decision are applicable to the dispute irrespective of what law the parties have agreed upon. The parties cannot derogate from this provision if they want their dispute to be decided by the CAS. Article R58 of the CAS Code takes precedence over conflicting aspects of direct choice-of-law clauses and thus in casu the FIFA rules and regulations apply primarily"* (CAS 2017/A/5374).

107. In consideration of the above and pursuant to Article R58 of the CAS Code, the Panel holds that the present dispute shall be decided principally according to FIFA RSTP; the Panel will apply Swiss law for the interpretation and construction of the respective FIFA regulations. In a second step, and subsidiarily, only for questions not covered by the FIFA regulations, the Panel shall consider Hungarian law insofar as the Appellant has cooperated with the Panel in ascertaining the relevant content of the law applicable to the merits (see CAS 2017/A/5111).

XI. LEGAL ANALYSIS

108. The present case revolves around the termination of the Employment Contract based on the breach allegedly committed by the Player due to his failure to resume training after the summer leave at the end of July 2020.

109. The following facts have remained undisputed between the Parties:

a) the Employment Contract was unilaterally terminated by the Club on 11 August 2020;

b) the Player, who had been previously injured in 2019 when conservative treatment had been recommended by the Club's medical staff, suffered from a new injury and (re)tore his right adductor in June 2020;

c) based on the decision of the Club's management communicated to the Player by letter dated 23 July 2020, the Player was removed from the first team and requested to continue training with the second team starting from 24 July 2020;

d) the Player did not resume training after the summer leave as from 24 July 2020 until the termination of the Employment Contract.

110. The Panel considers that, in order to decide the present dispute, the main issue to be resolved is whether the Club had just cause to terminate the Employment Contract on 11 August 2020.

111. The Appellant relies on the Player's failure to resume training after the summer leave, with a delay of more than 4 days, as the justification for terminating the Employment Contract with immediate effect, in accordance with Chapter IX, Section 39, in conjunction with Chapter II point 8, subsections a), f), i), and p) of the Employment Contract. According to the Appellant in fact, the Player's absence from training was unjustified.

112. The Panel notes that, under the Employment Contract, the Club was in principle allowed to terminate with immediate effect in the event of intentional or serious breach or gross negligence of the Player or in case of the Player's behavior making the maintenance of the Employment Contract impossible. The Panel recalls that the following behaviors, among others, are considered serious breach for the purpose of immediate termination under Chapter IX Section 39 of the Employment Contract: a) unjustified absence without serious reasons from any matches, trainings, preparation programs, or other preliminary defined events; unless the employee presents proper certification; b) the employee returns from his vacation with a delay of more than four calendar days, or arrives for the winter or summer preparation with a delay of more than four calendar days; except if the reason for delay is external circumstances proving as avoidable by the employee.

113. On the other hand, the Player contends that the Club abusively terminated the Employment Contract since his absence from training was justified based on the following reasons:

a) The Club's failure to provide him with a car, or an alternative means of transport, in order for him to reach the Club's training ground given that he had no other alternative means to travel to the workplace;

b) The recurrence of the Player's injury in June 2020 which, according to the Player's physician, required surgical treatment.

114. The Panel notes that, according to the Appealed Decision, the Club was found having committed a breach towards the Player for failing to provide him with a car pursuant to the Contract Explanation and moreover, the Club's formal notice dated 30 July 2020 did not provide the Player with a reasonable deadline to comply with the Club's requests. Conversely, the Panel observes that in the reasoning leading to establishing the Club's breach, the DRC Judge did not address the issue relating to the Player's injury.

115. After careful consideration of the circumstances of the present case, and the positions of the Parties, the Panel finally reached the same conclusion as the DRC Judge, although from a different perspective. In this respect, in fact, the Panel believes that the Club was not authorized to terminate the Employment Contract on 11 August 2020 given that the Player was injured at that time and his absence from training in the relevant period was justified based on his health condition, irrespective of any further consideration of the failure by the Club to provide the Player with a car, which issue will be addressed in any case later on in the present award.

116. Entering into the merits of the main issue of the present matter, the Panel observes that, although the Appellant and the Respondent disagree as to the necessary treatment that the Player should undergo to recover from the injury which occurred in June 2020, relying on conflicting medical opinions, it is undisputed that the Player was injured at that time when the Employment Contract was terminated, as it was also assessed by the Club's medical staff. Moreover, even if in terms of the specific diagnosis, the physicians consulted by the Player and by the Club, respectively, differ in their conclusions, at least they concur that the Player suffered from a tear in his right adductor muscle which caused him pain.

117. More specifically, according to the medical examinations and tests conducted under the Club's authority on 21 and 24 July 2020, it emerges that there were degenerative changes in the affected area (Annex No. F/7 submitted by Appellant) and the Player suffered from an ongoing inflammation in the right adductor muscle (Annex No. F/7 submitted by Appellant).

118. The Panel recalls that the controversy between the Parties started from that moment in relation to the treatment plan that the Player would have to follow in order to recover from the injury. In fact, the Player declared he was dissatisfied with the therapy suggested by the Club's physician (Dr. Geza Abkarovits) according to which 6/8 weeks rehabilitation was recommended and surgery could be considered at a later stage only if the symptoms persist. In such context, the Player decided to seek a second opinion and consulted Dr David A. Young who reviewed his medical history and radiology and diagnosed the Player with *"troublesome osteitis pubis"* suggesting that surgery was needed in order to definitively cure the injury since conservative treatment was no longer deemed effective.

119. Moreover, the documentation on file shows that the Player had already received conservative treatment in the past, when the muscle problem first occurred in October 2019 and later on in December 2019, but the therapy did not prove to be successful, and indeed the injury got worse and finally the symptoms reappeared more intensively in June 2020. At that point in time, it was the third time that the Player suffered from an injury in the same area, and he was not confident with the Club's medical advice that conservative treatment could bring definitive healing, based on the past experience.

120. In this respect, the Panel believes it to be comprehensible and reasonable that the Player wanted to seek a second opinion from the moment that the Club was suggesting the same remedy which had already demonstrated not to bring results. The Panel is comforted by previous CAS jurisprudence in this sense: *"If a player has followed all the medical instructions of the club, but after a few months still has not resolved his physical problems in spite of the treatment followed on the club's indication, it is lawful for him to seek an alternative and independent medical opinion in order to protect and guarantee his fundamental right to health"* (CAS 2015/A/4327).

121. Moreover, the Panel emphasizes that the Club completely failed to support the Player in that situation and completely ignored his request to try a different treatment or to further discuss his case with his physician, Dr. Young who had been willing to do so.

122. In this respect, reference is made to the general principle of good faith in the execution of a contract, in the obligation of clubs in general to take care of the health condition of their players, as well as to the specific provision under Chapter II, Section 12 of the Employment Contract which was completely disregarded by the Club and which provides the following: *"If the Employee contests the opinion of the physical appointed by the Employer, he has the right of a second opinion by an independent medical specialist. If there are differences in the medical opinions, or the opinion of the experts differ, the parties agree on an independent third opinion, which will be binding"*.

123. Accordingly, the Panel finds that the Club has not at least demonstrated its cooperation to the Player.

124. Moreover, the Panel observes that the Appellant completely failed to submit any evidence that it had provided the Player (or at least that it had prepared) any specific rehabilitation plan or specific individual training aimed at the Player's recovery based on the medical opinion by Dr Geza Abkarovits on which the Club relied.

125. On the contrary, the Panel notes that the schedule included in the letter sent by Mr Balázs Toth to the Player on 23 July 2020, involved his participation in regular training and even in a competition match. Therefore, the Panel has no element to believe that the Club was willing to support the Player in a suitable rehabilitation process and instead, the documentation on file shows that the Club insisted that the Player continue his training with the second team, as it was also confirmed by the Player at the hearing. In this respect, the Panel finds that the Appellant's argument at the hearing according to which the plan of the Club was that the Player's rehabilitation was meant to take place at the same time when the other players of the second team was training, is unsustainable. In this respect, the Panel recalls that it was claimed that the decision to demote the Player to the Second Team was performance related, and that

the Club was willing to let the Player leave. It was admitted by Balázs Toth that the Club would assist him in securing a transfer away from the Club.

126. For all these reasons, the Panel reaches the conclusion that the Player's absence from training, or the Player's failure to follow the schedule included in the letter dated 23 July 2020 and subsequent requests as per the Club's formal notice on 30 July 2020, taking into account the circumstances of this case, did not constitute a breach of the Employment Contract and thus the Appellant did not have just cause to terminate the Employment Contract on that basis. Such conclusion is also supported by previous CAS jurisprudence which has established that: *"If a player cannot provide his club with his working capacity due to illness or injury, this does not constitute a breach of contract or a just cause for early termination of contract"* (CAS 2015/A/4327).

127. In addition to the foregoing, turning its attention to the Club's failure to provide the Player with a car, the Panel believes that the relevant circumstance is a further symptom of the uncooperative attitude of the Club towards the Player, although the Panel considers it to be a minor violation committed by the Club in the present case when compared to the Club's fundamental breach of obligation for co-operation in relation to the Player's injury as discussed above.

128. The Panel recalls that the Parties have engaged in extensive discussions on this issue given that the Appellant strongly rejects the Respondent's argument that there was a contractual obligation on the Club with regard to the benefit in question, deriving from the Contract Explanation.

129. After examining the Parties' positions, the Panel agrees with the Respondent's position that the Contract Explanation corresponds to the content and the purpose of a side letter or side agreement, namely, an agreement by which the Parties addressed issues which were not covered by the Employment Contract in order for the Club to clarify the specifications of the Player's salary and to confirm the Player's entitlement to some benefits which were discussed during the negotiations but which the Parties agreed not to include within the terms of the Employment Contract.

130. Although the Club's testimonies at the hearing suggested that the content of the Explanation Contract was finally superseded by the subsequent negotiations between the Parties and that the Player finally accepted that the benefits referred to in the Contract Explanation would be submitted to conditions, during his testimony, the Player strongly rejected such circumstance. In light of this, the Panel believes that the Appellant has failed to provide conclusive evidence that the Contract Explanation, which had been signed by both Parties, was in fact substituted by a different agreement between the Parties at a later stage of the negotiations.

131. In addition, the Panel rejects the Appellant's argument that the Club was not bound to the Contract Explanation since Mr Balázs Tóth had no signing authority. In fact, it emerged from the testimony at the hearing that according to the Club's common practice, Mr Balázs Tóth usually acts on behalf of the Club, by forwarding proposals to the players and generally conveying the Club's will and decisions, as confirmed by Mr Balázs Tóth at the hearing. As a consequence, the Panel believes that the Player could reasonably and in good faith impute

authority upon the Club's Director who signed the Contract Explanation in order to rely on the fact that it originated from the Club. Therefore, the Appellant cannot escape responsibility for the statements contained in the Contract Explanation given that Mr Balázs Tóth disposed of apparent authority to act on the Club's behalf. Therefore, the Club was bound by the Contract Explanation.

132. In view of the considerations above, in the opinion of the Panel, the Club has not demonstrated that the Parties had agreed that such benefit would be conditional upon the Club's availability of sponsor cars deriving from the conclusion of sponsorship agreements. Therefore, the Panel is persuaded that under the Contract Explanation, the Club unconditionally undertook the obligation (in writing) to provide the Player with the benefit of a car for each season of duration of the Employment Contract. Likewise, the Club was also obliged to provide flight tickets to the Player for each season of duration of the Employment Contract.

133. That being established, the Panel believes that the obligation to provide a car to the Player was an ancillary obligation to the essential obligations of the Club deriving from the Employment Contract. Therefore, in the Panel's view, the Club's failure to provide the car to the Player, considered alone, would not have exempted by itself the Player from performing his football activity for the Club. Furthermore, it is noted that the Club did provide the Player with a car for the duration of his first year. The Player returned the car at the end of the season, as requested, expecting the car back. However, despite the other players receiving the cars, there was no car for him. Incidentally, the Panel notes that, in fact, under different circumstances, the Player could have considered other alternative ways to compensate the Club's failure to provide him a car in order to reach his place of work (car rental or driver service with subsequent request for reimbursement, for example).

134. However, in view of the considerations set forth above in the present award, the Panel has already reached the conclusion that the Player's absence from training was fully justified based solely on his injury and that the Club's termination of the Employment Contract based on the Player's absence corresponds to a breach of contract.

135. On the other hand, the failure by the Club with respect to the benefit of the car increases the Panel's persuasion that the Club did not act in good faith towards the Player, did not show any serious interests in keeping the Player after his injury and finally unlawfully put the Player in the condition to not comply with his obligations.

136. In conclusion, the Panel abide by the Appealed Decision that the Appellant did not have just cause to terminate the Employment Contract on 11 August 2020.

137. With regard to the financial consequences of the Club's breach, the Panel observes that the Appellant only requested the CAS to reject the Player's claim based on the Club's alleged termination with just cause of the Employment Contract but did not submit any request for relief aimed at reducing the amounts awarded to the Player by the Appealed Decision.

138. The Panel observes that, without prejudice to Article R57 of the CAS Code, which confers CAS with the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the Parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel from granting more than the Parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita* (see also CAS 2016/A/4384).

139. For the sake of completeness, the Panel is aware of the fact that, according to Swiss doctrine and case law, a judicial body may be authorized to adjudicate also on "implicit requests", i.e. on requests other than that expressly submitted which may be considered as virtually "contained" or "included" in the latter or implicitly formulated: *"Dans certains cas, la loi ou la jurisprudence autorisent le juge à statuer sur la base de conclusions implicites, pour autant que les faits qui les justifient aient été allégués et les moyens de preuve offerts régulièrement et en temps utile (cf. infra N 1316 ss). Ces conclusions sont implicites en ce sens que, sans être formellement exprimées, elles sont virtuellement contenues dans celles qui le sont et peuvent en être tirées par déduction"* (HOHL F., Procédure civile, Tome I, Introduction et théorie générale, 2e éd., Berne 2016, para. 1200).

140. The above can be freely translated into English as follows: *"In certain cases, a statute or case-law authorises a court to decide on the basis of implicit prayers of relief, provided that the facts justifying them have been alleged and the evidence offered regularly and on time (cf. infra N 1316 et seq.). Such prayers of relief are implicit in the sense that, without being formally expressed, they are virtually contained in those that are stated and can be drawn from them by deduction".*

141. However, the Panel believes that unspoken requests may be considered "virtually contained" in other requests which were expressly formulated, only provided that they are connected with each other by the same grounds, namely, by the same reasons in fact and in law (so that the main legal issue to be resolved by the adjudicator is the same). Otherwise, the principle of *ne ultra petita* would be circumvented. In the present case, on the contrary, the Panel notes that the relevant requests for relief submitted in the Appeal Brief (the rejection of the Player's claim in its entirety) are grounded on the assumption that the Club terminated the Employment Contract with just cause, while the unspoken request (the reduction of the amounts awarded to the Player) are clearly based on the opposite assumption (i.e. that the Club committed breach) (see CAS 2020/A/6950).

142. Besides the foregoing, after having carefully reviewed the Appealed Decision, the Panel agrees with the assessment of the financial consequences of the Appellant's breach made by the FIFA DRC Judge, and with the corresponding calculations.

143. In consideration of the conclusions above, the Appealed Decision is confirmed in its entirety.

144. Any other issue and all other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Puskás Futball Club Kft on 21 September 2021 against Golgol Tedros Mebrahtu with respect to the decision passed by the FIFA Dispute Resolution Chamber Judge on 18 August 2021 is dismissed.

2. The decision passed by the FIFA Dispute Resolution Chamber Judge on 18 August 2021 is confirmed.

3. (…).

4. (…).

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