Arbitration CAS 2007/A/1369 O. v. FC Krylia Sovetov Samara, award of 6 March 2008

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

Football
Termination of the contract of employment by the player without just cause during the protected period
Interpretation of a provision (art. 15 RSTP)
Determination of the compensation payable by the player to the club for early termination of the contract of employment

1. **When the player and the club have a perfectly peaceful relationship throughout the entire duration of the Employment Contract so far as compliance with the contractual terms is concerned and that at no time did the player claim or demand the payment of any sum in addition to the sums paid to him every month by the club, the player's claim that it be declared that he had just cause for the unilateral termination of the Employment Contract on the grounds of breach, by the club, of the payment terms agreed by the parties, cannot but fail. In this context, when there is no express provision stating that the sums referred to in the Employment Contract and in its Appendix are cumulative, the documents must be viewed in an integrated manner, as a whole, and not as two separate instruments with necessarily cumulative obligations.**

2. **With regard to the sporting just cause for the unilateral termination of the Employment Contract invoked by a player, the requirements of article 15 of the FIFA Regulations are cumulative:**

a. **the 'established professional' concept needs to be filled out not only on the basis of the player's age, but also on the basis of his sporting level as demonstrated during his career, in terms of an acceptable standard in the light of the specificity of the sport, the players legitimate expectations and what is expected of the player in terms of sporting performance. The relevant level for the definition of an established player is related to his development as a player, taking a common competitive standard into consideration, and not to the reality or competitiveness of the club for which the player plays from time to time.**

b. **In connection with the notion of appearance of a player in less than 10% of the matches, according to FIFA's Commentary RSTP, *"it is not the number of appearances in games but the minutes effectively played therein that is relevant"*. Although the Commentary is not binding, it is an interpretative approach, which is likely to give rise to a certain certainty among sports professionals. The aim of this article is to permit a player to terminate his employment contract unilaterally if he is in a situation in which he is prevented from exercising his professional activity with a reasonable frequency and is, as such, prevented for progressing professionally. If read literally, the limits imposed by this provision could be easily avoided by any club in**

relation to any player, for this it would suffice to put the player on the field in 10% of its official games, while only allowing him to play for 1 minute in each of these matches. Notwithstanding the letter of the law, the meaning of the provision is that actual time played rather than the number of games should be considered.

c. Even when the player's personal circumstances justify his intention to leave the club, the player should, in some way, during the season, have manifested his discontent with the way he was being treated by the club, *i.e.* the fact that he was little used in first team games.

3. The CAS Panel evaluates the facts found to have been proved and the aggravating and mitigating factors. When mitigating circumstances have been proved such as the club contribution to the cause of the player's discontent and to his decision to leave the club, as it did not allow him to play regularly in competitions, which circumstance is capable of amounting to the frustration of a legitimate expectation on the part of the player, given his professional history, the CAS should consider that the compensation due to the club by the player could be evaluated as not exceeding the unamortised portion of the investment made by the club with regard to the transfer of the player to its team.

O. (the "Appellant" or the "Player") is a professional football player, who was born in Nigeria in 1984 and is of Nigerian nationality.

The FC Krylia Sovetov Samara (the "Respondent" or the "Club") is a football club with its registered office in Samara, Russia and a member of the Russian Football Union (RFU), which is in turn a member of the Fédération Internationale de Football Association (FIFA).

This appeal was filed by the Player against the decision rendered by FIFA Dispute Resolution Chamber on 10 August 2007 in favour of the Club (the "DRC Decision").

On 20 August 2004, the Player was transferred from the Bulgarian Club PFC Levski Sofia to the Club. On the same date, the Player and the Club signed an employment contract, for a fixed term, valid until 31 December 2008 (the "Employment Contract").

The transfer fee regarding the transfer of the Player from the Bulgarian Club PFC Levski Sofia to the Club was USD 550,000, plus value added tax of USD 83,898, as per clauses 2.1 and 2.4 of the transfer contract. The said sum includes compensation for preparing, training and improving the skills of the Player.

On 20 August 2004, the Parties also signed appendix 1 to the Employment Contract for the purpose of *"(…) regulating the contents of Article 7 of the labour contract, dated August 2004"* (the "Appendix of the Employment Contract").

Article 6 of the Employment Contract stipulates that the Player's monthly salary shall be USD 9.000, payable in the Russian roubles according to the rate of the Central Bank of the Russian Federation on the payment day.

Article 7 of the Employment Contract stipulates a clause related to «*special conditions*», in which is stated that "*The special conditions shall be agreed upon by the Parties in Appendix 1 to this labour contract dated 20 August 2004*"; and the Appendix of the Employment Contract states the following:

"Article 7 «Special conditions»

1. *The Club shall pay the Player and advance payment of his salary in the amount of USD 265.000 (two hundred and sixty-five thousand US dollars) in 13 instalments,*
2. *The Club shall pay the Player a monthly payment of:*
   2004 – USD 9.000 (...)
   2005 – USD 11.000 (...)
   2006 – USD 12.500 (...)
   2007 – USD 14.500 (...)
   2008 – USD 17.000 (...)
3. *At the end of each calendar year the Club shall make a compensation of the Player's accommodation expenses in the amount of USD 1.000 (one thousand US dollars) per month for the period from March till November for each year of the contract validity.*
4. *In June 2005 the Club shall make a compensation of the Player's expenses on a car in the amount of USD 3.500 (three thousand and five hundred US dollars).*
5. *At the end of each calendar year the Club shall make a compensation of the Player's air ticket expenses on two (2) air tickets, twice (2) a year to Nigeria.*
6. *The present Appendix I is an inseparable part of the labour contract, dated 20.08.04, signed in Samara and having two copies of the same juridical power, one copy for each Party.*

(…)".

On 25 September 2006, the Player signed a two-year representation contract with the Player's agent Mr. Georgi Petrov Gradev (the "Player's Agent").

On 7 November 2006, the Player's Agent contacted the Club in order to organise the transfer of the Player to *"France or another country from Western Europe"* (cf. fax of the Player's Agent to the Club dated 7 November 2006, filed as document 1 of the Club's answer).

On 27 November 2006, all the Club's players, including the Player, left for holidays (winter break) and were asked to return to the Club by 8 January 2007 for the first training camp of the season.

On 27 November 2006, the Player's Agent sent a letter to FIFA Players' Status Committee, via the Bulgarian Football Union (BFU) stating mainly:

"In the quality of exclusive representative of the Nigerian football player [O.] by the means of FIFA Player's Agents Regulations and FIFA Status and Transfer Regulations, I would like to request termination of the labour contract between the Russian football club FC Krylia Sovetov Samara and my client on the grounds of sporting just cause (FIFA Status and Transfer Regulations – Chapter IV, art. 15).

My client [O.] has participated in the following Official Matches of FC Krylia Sovetov during the course of the whole 2006 Season (March – November 2006):

Krylia Sovetov – Dinamo	*64 min.*	*05-March-2006*	*Cup*
Lokomotiv – Krylia Sovetov	*45 min.*	*19-March-2006*	*Championship*
Krylia Sovetov – Rubin	*45 min.*	*27-March-2006*	*Championship*
Kuban – Krylia Sovetov	*44 min.*	*20-September-2006*	*Cup*
TOTAL:	*198 min*	*2006 Season*	

FC Krylia Sovetov has participated in 30 Championship matches (2700 min. in the total) and 4 Cup matches (390 min. in total – the 2nd match with Dinamo had extra time, so it lasted 120 min.) in 2006 Season. That is total duration of 3090 min. That is to show that my client TEMILE has participated in less than 10% of the Official Matches in which his club has been involved this season.

That is why, I would like to kindly ask you to accept my client's request for termination of his labour contract with FC Krylia Sovetov through sporting just cause. I am depositing that application only one day after the last match of the season, which was played yesterday (26-November-2006) in order to comply with the standing order of FIFA to request termination of contract through sporting just cause in the 15 days period following the last Offical Match of the Season of his present club.

Furthermore, I would like to ask the FIFA Player's Status Committee to impose an order upon FC Krylia Sovetov to pay the amount of USD 5000 (five thousand American dollars) to my client, which is part of his monthly salary for December 2005 still due by the club in concern. The contracted salary for December 2005 is USD 11.000 and the remaining part of USD 6000 was covered only today. I would like to kindly ask the FIFA Players' Status Committee to calculate the exact amount of training compensation, which will be due to Krylia Sovetov, when my client sign a new employment contract and to announce it officially".

On the same date, 27 November 2006, and with the same wording as the letter quoted above, the Player's Agent sent also a letter to RFU.

On 5 December 2006, and in response to the Player's communication dated 27 November 2006, FIFA sent a letter with the following contents to the Player, for the attention of the Player's Agent:

"We acknowledge receipt of your correspondence dated 27 November on the above reference matter, which we received from the Bulgarian Football Union on 30 November 2006, and have duly taken note of its contents.

In order to complete the file at our disposal, we kindly ask you to provide us, by 11 December 2006, with a copy of the employment contract concluded between the parties of the reference, as well as with a translation of such employment contract in one of the four official FIFA languages (English, Spanish, French or German). (…)".

On 15 December 2006, FIFA informed the RFU of the following:

> *"(…) The Nigerian player [O.] has submitted to FIFA a request to be released for sporting just cause from the employment contract apparently binding him to your affiliated club Krylia Sovetov Samara. Within the same petition the player concerned claims for the payment of a part of the monthly salary for December 2005. Please find enclosed a copy of the correspondence exchange in this matter so far, for your information.*
>
> *In view of the above, we hereby appeal of the good will of both parties involved in this matter and we hope that an amicable solution can be reached on the matter.*
>
> *In the event that an amicable solution cannot be found, your affiliated club concerned is hereby asked to present its position on the player's claim, as well as any documents that it may find useful in its support, translated if need to be into one of the four official FIFA languages (English, Spanish, French or German), by 27 December 2006. In this respect, the club in question is asked in particular to provide our services with a copy of the employment contract concluded between the parties of the reference. Moreover, your affiliated is asked to present its opinion regarding the future of its labour relationship with the player in question.*
>
> *Finally, and with respect to the player's request to FIFA to calculate the exact amount of training compensation his current club would be entitled to in case he would sign an employment contract with a new club, we hereby, by copy of this fax to the player, would like to inform that the latter that the Administration of FIFA is not in position to make any comments or to proceed to a calculation in a purely hypothetic case of training compensation. Only if such a matter would be formally submitted to the competent deciding body, the latter could express itself on it and determine, in case it would be necessary, the amount of training compensation payable to the player's current club (…)".*

Further to FIFA's communication dated 15 December 2006, the Player's Agent sent the following reply, on behalf of the Player:

> *"(…) Unfortunately, my client is not able to provide his original employment contract with FC Krylia Soveretov Samara, Russia due to the fact that it was lost with his luggage. He managed to provide only a copy of his financial annex, which is giving information that the employment contract was signed on 20 august 20004. I am positive that the Football Union of Russia has a registered copy of the employment contract, which FIFA could request from them. I am able to provide you also with the transfer contract between FC Krylia Sovetov and PFC Levsky Sofia, Bulgaria (the ex-club of the player), as well as with a copy of the player's passport enclosed herewith. (…)".*

On 27 December 2006, the Club replied to FIFA, in response to the communication sent by the Player's Agent to FIFA on behalf of the Player, regarding the *"(…) request termination of the labour contract (…)",* stating the following position:

> *"We have taken due note that [O.] intends to terminate his employment contract with our club and inform you that his claim is totally unfounded and, contrary to what the player concerned alleges, he has absolutely no just cause to terminate his contract.*
>
> *Besides, we would like to express our surprise as to the documents received and the way the procedure is conducted. Indeed, the letter dated 27 November 2006 submitted by the player's agent does not comply with the formal requirements for a claim to be admissible (cf. Art. 9 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber). It is stressed that Art. 9(2) of the Rules*

provides that petitions submitted by the parties that do not satisfy the formal requirements will be returned for redress.

The power of attorney is by far not sufficient to represent a player in an official procedure before FIFA. Furthermore, the claim of [O.] is not substantiated at all. We are therefore surprised that FIFA accepts such bold claim concerning a termination of contract and payment of the salary of December that was not even matured yet. Furthermore, it should not be the responsibility of our club, as respondent, to forward a copy of [O.]'s employment contract.

At the same time we would like to inform you that the agent has lodged on behalf of [O.] the same claim before the Arbitration Commission of the Russian Football Union on 27 November 2006, i.e. even before having lodged the claim before FIFA. Please find enclosed a copy of the letter addressed by Mr. Gradev before the competent Russian sport authorities. There is therefore already a litispendence before the Arbitration Commission of the Russian Football Union.

We insist that [O.] is currently in violation of his employment contract signed with Krylia Sovetov. Should [O.] not withdraw his letter and resume duty with Krylia Sovetov immediately, we would have no other choice than to lodge a formal claim in front of the FIFA DRC against the player for breach of contract without just cause asking for financial compensation for the breach and the suspension of the player as sportive sanction. We would also claim against his player's agent for instigation to contractual breach which is formally prohibited by the Players' Agent Regulations, consequence thereof are financial compensation for the damage suffered by our club and withdraw of his players' agent license.

In the event that [O.] refuses to resume his duty with Krylia Sovetov immediately, and in order to safeguard our right to be heard accordingly, we respectfully ask you to grant us an extension of time in order to enable us to prepare and submit a complete claim against [O.] and his agent for breach of contract and instigation to breach. (…)".

There were various informal contacts between the Parties with a view to the settlement of the dispute, which were unsuccessful.

The Club requested that the Player return and reassume his duties under the Employment Contract. By a communication dated 7 February 2007 addressed to the Appellant and RFU, FIFA stated as follows:

"We refer to the above-mentioned matter as well as to our former correspondence in this regard dated 26 January 2007. In this respect, we acknowledge receipt of correspondence dated 2 February 2007 from the Football Union of Russia, by means of which we were informed that the present matter is not pending before the deciding bodies of the latter. (…)

(…)

As the matter as stake appears not to be pending before the deciding bodies of the Football Union of Russia, the present procedure before the Dispute Resolution Chamber (DRC) will be continued.

(…) it appears that the labour relationship between the club Krylya Sovetov Samara and the player [O.] is seriously disrupted and that both parties are not interested in maintaining the labour relationship between them any longer.

In view of this situation, we advise the parties involved in this matter to consider their labour relationship as terminated and to focus on the financial aspects of the dispute. (…)

Finally, the club concerned is hereby asked to provide us, by 16 February 2007, with its position on the player's claim, as well as with any document that it may find useful in its support (…)"

On 16 February 2007, the Club rejected the Player's claim and, among other claims filed a counterclaim against the Player for breach of contract without just cause.

The Club considers that the Player has no just cause to terminate the Employment Contract because the alleged sporting just cause does not exist and because the salary allegedly unpaid was in fact paid.

In the alternative and subject to the rejection of its claim as detailed above, the Club requests that the Player be penalised and be ordered to pay legal expenses plus compensation for breach of contract during the protected period, in the sum of USD 996,685 calculated as follows:

- USD 296,685: amortisation of transfer compensation paid by the Club to the former club Levski Sofia, based on the following calculations [a: b x c = 296,685], being:

  a = transfer fee paid by the Club to Levski Sofia Club: USD 649,000;

  b = contract duration: 52.5 months;

  c = contract remaining period: 24 months.

- USD 700,000: estimated sporting and financial damages of the Club.

The Club explained that the alleged unpaid salaries were not correct because, as a general practice, the Club pays the salaries on the 20th day of the following month. Therefore the salary for November 2006 was to be paid on 20 December 2006 at the earliest, but since the Player was absent and never returned, the salary was deposited to the credit of a bank debit card issued to the Player.

With respect to the December 2005 salary the Club stressed that, contrary to the Player's claim, the amount of USD 3,540 has been set-off against two fines that were imposed on the Player, one of USD 3,000 (bad behaviour during a match) and another one of USD 1,000 (late arrival at pre-season training).

Regarding sporting just cause the Club stated that according to art. 15 of the Regulations for the Status and Transfer of Players – edition 2005 – ("FIFA Regulations"), none of the following four cumulative requirements were met. The four conditions that must be met are: *a)* that the player be an established professional; *b)* appearance in less than 10% of the official matches; *c)* player's circumstances; and *d)* termination notice given by the player within 15 days following the last match of the season.

On 2 March 2007, the RFU informed FIFA that the Club *"(…) played 34 official matches: 30 matches with the National Championship and 4 matches for the Russian Cup. The Player participated for the Club in 5 matches and effectively fielded 245 minutes (…)"* and on 7 August 2007, RFU informed FIFA that *"(…) the season 2006 started on the 11th of March 2006 with the match for the Super Cup of Russia, the matches of the National Championship started on the 17th of March 2007. The season finished on the 26th of November 2007".*

By mistake the RFU letter referred *"17th of March 2007"* and *"26th of November 2007"*, when it is clear from the context that they meant to refer to "17 March 2006" and "26 November 2006" as the starting and finishing dates of 2006 season.

On 22 March 2007, the Player submitted his reply, to the Club's answer to FIFA, stating as follows:

- The Player has no intention to return to the Club and the Club has breached the Employment Contract due to its failure to comply with its financial obligations;
- The salary agreed in art. 6 (USD 9,000 per month) of the Employment Contract is the basic monthly salary, and the salary stipulated in the Appendix of the Employment Contract has to be considered as *"extra salary"*. The basic monthly salary of USD 9,000 has been outstanding from 20 August 2004 until the end of the contract *i.e.* 31 December 2008 amounting to USD 471,193.55;

As a result, the Player considers that the Club has breached the Employment Contract and claims the total amount of USD 1,076,041.55 comprised in the following manner:

- USD 2,000: part of December 2005 salary;
- USD 3,193.55: *pro rata* basic salary of USD 9,000, from 20 August to 1 September 2004;
- USD 468,000: basic salary from September 2004 to December 2008 (52 months x USD 9,000);
- USD 120,000: bonuses from March 2007 until August 2008;
- USD 2,000: instalment of extra salary December 2005;
- USD 25,000: extra salary November and December 2006 (2 x USD 12,500);
- USD 174,000: salary for 2007 in accordance to Appendix of the Employment Contract (12 x 14,500);
- USD 204,000: salary for 2008 in accordance to Appendix of the Employment Contract (12 x 17,000);
- USD 18,000: accommodation 2007/2008 in accordance with Appendix of the Employment Contract, art. 3 (USD 9,000 per year);
- USD 7,848: air tickets for 2007/2008 in accordance with art. 5 of Appendix of the Employment Contract; and
- USD 54,000: additional financial compensation for breach of contract based on Swiss Code of Obligations 337(c)(III), correspondent to six basic monthly salaries (6 x USD 9,000).

The Player states that he does not have a MasterCard account and does not have a Russian visa in order to have access to the relevant amount and rejects the Club's allegations in this respect.

As far as the fines imposed by the Club are concerned, the Player accepted the fine of USD 3,000 (signed by him), but not the fine of USD 1,000 for late return after holiday, due to the lack of evidence or reason for such penalty. His late return to the Club was due to some problems with his

visa and, for this reason, the remaining part of USD 2,000 is still outstanding as December 2005 salary.

Regarding the daily fine amounting to USD 400 per day as from 8 January 2007 for every day of absence, the Player stressed that based on the Russian Labour Code a fine cannot exceed 50% of the monthly basic salary.

The Player considered that the decision of the Club violated Russian law and for this reason is null and void, since USD 400 x 30 days is equal to USD 12,000, more that the monthly salary of the Player (USD 9,000). He also stressed that the content of the document is false because the decision was taken on 8 January 2007 and the fine imposed was related to his absence from 8 to 13 January 2007.

The Player maintained, with regard to the November 2006 salary in the sum of USD 12,500, that the payment date is not expressly stipulated in the contract but that, as a general rule, it must be paid by the end of the month as happened in most cases and that the Club is accordingly in default with regard to this obligation.

The Player maintained that according to Russian law, in the case of holidays, the salary has to be paid in advance, and, therefore, the salaries from 27 November 2006 (USD 12,500 monthly salary 2006) to 8 January 2007 (USD 14,500 monthly salary 2007) were also outstanding.

Subsidiarily, the Player requested FIFA to declare the Employment Contract to be terminated for sporting just cause and that the following four legal requirements were fulfilled:

- Established player: an established player is a player that starts playing regularly in the first team of a club (FIFA Circular Letter 769 expressly contains an example which confirms that *"the player's establishment is over once he starts playing regularly in the first team of the club"*). The Player claims that he terminated his training period at the age of 19 prior to his transfer to the Club. A statement by the Bulgarian Football Union was filed as evidence that the Player participated in 27 official matches for the Bulgarian Championship and Cup, as a professional with PFC Levski Sofia during 2003/2004 season.
- Appearance in less than 10% of the official matches: the Player considers that the RFU statement is not accurate and coherent with the statistics provided by the Club in its website. The RFU considers that the Player played in 5 official matches (245 minutes) for the Club, while the Club's website states that the Player played 4 matches (198 minutes). The difference of one match is because RFU takes into consideration one match that he played for the second team of the Club. Therefore, the Player says to have played 4 matches (198 minutes on the field) out of 34 official matches (3090 minutes) with the main team and 5 matches (245 minutes on the field) out of 64 official matches (6150 minutes) with the second team.
- Player's circumstances: the Player rejected the argument regarding his illness and stressed that such an illness does not affect a player's ability to play football. The medical report does not contain any 2-week playing restriction and the Club recognises

that they unilaterally suspended the Player for two weeks. The medical report sent by the Club refers to the period 11-26 July 2006 while the Player had no official appearance in a match since 27 March 2006. In the Player's opinion, he was a substitute player for a long time before the illness occurred.

- Termination notice given by the player within 15 days following the last match of the season: the Player maintained that the termination notice was given within 15 days following the last official match of the season since the last match of the relevant season was on 26 November 2006 (Krylia vs. FC Spartak Moscow) and the letter of termination was dated and sent on 27 November 2006, one day after.

The Club, on the other hand, stressed that the Player had received a copy of the Employment Contract and that he was fully aware of all its provisions. The Player's assertion that he never received a copy shows his bad faith and contradicts his previous allegation that he did not have a copy of the Employment Contract because *"it was lost with his luggage"*.

The Club rejects the claim of a supplementary monthly amount of USD 9,000 on the basis of art. 6 emphasising that the monthly salaries were as stipulated in the Appendix of the Employment Contract art. 7.2..

The Club explained that the salary of November 2006 was deposited and with regard to the salary of December 2005, the amount of USD 3,540 (of a total of USD 5,000) remains unpaid, but should be set-off against the pre-existing fines and the daily fine of USD 400 as from 8 January 2007.

The DRC reviewed the facts and, based on the evidence produced, came to the conclusion that the Employment Contract and the Appendix of the Employment Contract reflect the spirit and the aim of both contractual parties to agree upon a *"start-salary"* of USD 9,000 for the first year, corresponding to the salary provided for in art. 6 of the Employment Contract and, thereafter, on a continuous increase as foreseen in the Appendix of the Employment Contract.

Between 20 August 2004 and 30 November 2006, the Club regularly paid the Player the monthly salaries in accordance with art. 7.2 of the Appendix of the Employment Contract and the Player never expressed his disagreement, *i.e.* he never claimed the payment of the additional amount of USD 9,000 as monthly salary from the Respondent, in accordance with art. 6 of the Employment Contract.

Consequently, DRC concluded that by the time the Player terminated the Employment Contract, if any, 1 ½ months salaries remained unpaid (part of the December 2005 salary and the November 2005 salary). Even though the Club owed the said salaries to the Player, the latter would not have had a justified and significant reason to consider the Club to be in breach of the relevant contract and terminate it with just cause.

In DRC's views, the Player terminated the Employment Contract prematurely without just cause and during the protected period, *i.e.* during the period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, provided that the contract was concluded prior to the professional player's 28th birthday.

So far as the Player's alternative claim regarding sporting just cause is concerned, the DRC pointed out that according to art. 15 of the FIFA Regulations an established professional who has, in the course of the season, appeared in less than 10% of the official matches, in which this club has been involved, may terminate his contract prematurely on the grounds of sporting just cause, but this cause must be established on a case-by case-basis.

DRC stressed that no case-law has been established so far about this issue and in its view the determination of sporting just cause has to be measured accurately and carefully, *i.e.* has to be established at a high level and under clear and objective conditions in order to preserve the legal security.

DRC remarked, on the basis of a grammatical interpretation of the relevant provision, that sporting just cause is established mainly on the basis of a maximum limit of 10% of the official matches in which the player in question participated, and not minutes.

DRC checked the available information regarding the matter, particularly the report submitted to FIFA by the RFU and concluded that the Player participated in 5 official matches played by the Club.

Consequently, the DRC considered that there is no sporting just cause in the matter, since 5 matches out of 34 is more than the 10% time limit required by art. 15 of the FIFA Regulations.

DRC decided unanimously that the Player did not have grounds to terminate the relevant labour relationship with the Club, and that there were neither any outstanding salaries, nor sporting just cause. Accordingly, the DRC decided that Player is liable to pay compensation to the Club because he terminated the Employment Contract during the so-called protected period, *i.e.* 2 years and 3 months after its signature, without just cause.

The DRC noted with regard to the Club's claims for compensation based on the Player's breach of contract, that the said claim amounts to USD 996,685 (USD 296,685 with regard to the expenses incurred in relation to the previous transfer of the Player amortised over the term of the contract; plus the sum of USD 700,000 as compensation).

Given the objective criteria listed in art. 17 para. 1 of the FIFA Regulations, the DRC decided that compensation of USD 446,685 is adequate in view of the fact that the relevant Employment Contract would still remain in force until 31 December 2008 and the Club had paid the sum of USD 649,000 to the previous club on the occasion of the transfer (August 2004). The DRC took into consideration that the contractual relation has been terminated by the end of November 2006.

DRC also decided to impose a 4-month ban on participation in any official football matches on the Player, in accordance with article 17 par. 3 of the Regulations.

In the light of all the facts and the matters pleaded by the Parties and the documents contained in the FIFA File, the DRC took the following decision:

> *"1. The claim of the Claimant, the player [O.], is rejected.*
>
> *2. The counterclaim of the Respondent, FC Krylia Sovetov Samara, is partially accepted.*
>
> *3. The Claimant, the player [O.], has to pay the amount of USD 446,685 to the Respondent, FC Krylia Sovetov Samara.*
>
> *4. The amount due to the Respondent has to be paid by the Claimant within 30 days as from the date of notification of this decision.*
>
> *5. In the event that the debt of the Respondent is not paid within the stated deadline an interest rate of 5% per year will apply as of expiry of the said time limit.*
>
> *6. A restriction of four months on his eligibility to play in official matches is imposed on the player [O.]. The sanction shall take effect as from the first day of the registration of the player with a new club.*
>
> *7. In case of non-compliance of the present decision within the relevant time frames, the matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *8. The Respondent is directed to inform the Claimant immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

On 31 August 2007, the Player filed the Statement of Appeal with the CAS, against the DRC Decision plus an application for a stay the DRC Decision in relation to the four-months suspension imposed on the Player, based on the grounds, among others, that the DRC Decision *"jeopardizing the Player's career and existence"* because he *"is not paid since 1 November 2006"*.

On 4 September 2007, the Player filed the Appeal Brief.

On 2 October 2007, the Club filed its Answer.

By letter dated of 24 September 2007, FIFA stated that it renounced its right to intervene in this procedure, stating however the following:

> *"Despite renouncing to intervene in the present matter, we would like to refer you to the fact that although part of the present challenged decision is one with a disciplinary character (i.e. the sporting sanction against the player concerned), the Appellant has not designated FIFA as a respondent to the present procedure. Considering these circumstances, we would like to emphasize that in accordance with CAS' own jurisprudence, any order that the CAS would pronounce against FIFA with regard to the relevant sporting sanction would not have any effect since FIFA is not a party to the present arbitration (cf. decision regarding the request for stay of execution in the matter 2005/A/850; in the same sense goes TAS 2006/A/1082 & 1104, p. 29). Therefore, the sporting sanction imposed on the Appellant, i.e. the player [O.], which is part of the appealed decision, shall not be at disposition of the CAS, but on the contrary, must be considered as having already become final and binding".*

On 2 October 2007, the Deputy President of the CAS Appeal Arbitration Division dismissed the Player's application for stay of the DRC Decision basically, because FIFA was not a party in the arbitration proceedings, although the CAS Court Office had expressly asked the Player if the appeal was directed against FIFA or only against the Club. In response to the said request the Player replied that the appeal was directed against the Club alone.

By a fax dated 18 October 2007, the Player informed CAS Court Office that he renounces the right to be heard, due to his extremely difficult financial situation and the bureaucracy associated with a visa application in order to travel to Lausanne, Switzerland.

By a communication dated 13 November 2007, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the decision will be rendered by Rui Botica Santos, attorney at law in Lisbon/Portugal, in his capacity of Sole Arbitrator appointed for that purpose.

The Sole Arbitrator noted the Player's position about the absence of a need for a hearing and his requests for production of several documents and late filing of documents. On 12 December 2007, the Sole Arbitrator notified the Parties of his decision regarding the said as follows:

> *"Dear Sirs,*
>
> *(…) considering the complexity of the case, the amount in dispute, the Respondent's claim and the need to clarify some of the facts at issue in this case, the Sole Arbitrator decides to hold a hearing".*

On 29 November 2007 FIFA was asked, by a letter from the CAS Court Office, to provide the CAS with a copy of the entire file relating to the decision rendered by the DRC in this case, on 10 August 2007.

On 31 December 2007, and following consultation of the Parties, the CAS Court Office sent a letter to the Parties confirming that the hearing would take place on 29 January 2008 at the CAS Headquarters in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 61 para. 1 of the FIFA Statutes and R47 of the Code of Sports-related Arbitration (the "CAS Code").

2. The Parties confirmed the jurisdiction of CAS by signing the order of procedure of 8 January 2008.

3. It follows that the CAS has jurisdiction to decide this dispute. The mission of the panel follows from Article R57 of the CAS Code, according to which the panel, in this case the Sole Arbitrator, has full power to review the facts and the law of the case. Furthermore, the same article provides that 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.

Applicable Law

4. Art. R58 of the CAS Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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".

5. Art. 60(2) of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarly apply the various regulations of FIFA [...] and, additionally, Swiss law".

6. The Employment Contract does not contain any choice-of-law clause and the Parties have not otherwise specifically agreed on the applicable law.

7. So far as the question as to which edition of the FIFA Regulations should be applicable to the substance of this matter, the Sole Arbitrator, as is also stated in the DRC Decision, stresses that the edition of the FIFA Regulations applicable to this case is the 2005 edition, as per art. 26 par. 1 and 2 of the FIFA Regulations (edition 2005), as the relevant contract at the basis of this dispute was signed on 20 August 2004 and the claim was filed at FIFA on 30 November 2006.

The Merits of the Dispute

8. There are three essential questions, which the Single Arbitrator has to decide in the light of the facts pleaded and the Parties' claims:

- Did the Player have just cause to terminate the Employment Contract with the Club and was the said termination effected in the legally prescribed manner, taking the following factors into consideration: (i) the non-payment of salaries; (ii) the sporting grounds; and (iii) the breach of the obligation to provide the Player with the visa he required in order to work?
- The credits and compensation claimed by the Parties.
- Sporting sanctions.

9. The Single Arbitrator makes the following preliminary comments before dealing with the above matters in detail:

- In his Appeal Brief (chapter 1, para. 6), the Player pleads that he did not receive the salary in respect of the month of December 2005 (USD 3,540) and the salary in respect of the month of November 2006. The claim for an award against the Club for the payment of the said sum was, however, withdrawn by the Player at the hearing. The Single Arbitrator will therefore not consider this claim, which is accordingly dismissed.
- Furthermore, all the comments made by the Player regarding the alleged formal or procedural defects of the DRC Decision appealed against are irrelevant for the purposes of the consideration of this appeal, as any previous formal defects would always be resolved via the reconsideration of the facts in the appeal proceedings (Article R57 of the CAS Code).
- This being so, and because of the manifest pointlessness and given the total lack of any documental or verbal evidence at the hearing, the Single Arbitrator will not consider the facts pleaded by the Player in Chapter II of his Appeal Brief, i.e. Violations of the procedural rules and unspecified considerations by the DRC.
- The Club claims general damages (cf. Answer, page 17, final paragraph), because the Player and/or his representative has, in its opinion, made defamatory allegations of corruption against FIFA, the DRC, the Club and its representative.
- So far as the said claim for general damages is concerned, (i) the Club failed to pay the fees with regard the claim, which amounts to a counterclaim by the Club, pursuant to article R64.2 of the CAS Code, and is accordingly deemed to have been withdrawn; (ii) in any event it should be noted that the claim for general damages should have been made in the proper forum as CAS has no jurisdiction to consider claims based on allegedly criminal acts; (iii) moreover such a claim could never be pleaded and made in these proceedings against persons, who are not parties in these arbitral proceedings, such as the Parties' legal representatives. There are accordingly sufficient grounds for the claim against the parties' representatives to be struck out, as they are not parties in these proceedings. The Club has also raised the question of a possible inducement by the Player's Agent of the breach of the Player's Employment Contract, contrary to the provisions of article 17.5 of the FIFA Regulations. It does not however do so with a view to the making of an award against the agent in these proceedings, but merely states that it hopes that he will be penalised by the Players' Status Committee. The Single Arbitrator will accordingly not consider the said matters.

10. We shall now consider each of the fundamental questions, which fall to be decided.

A. The existence of just cause for the rescission of the employment contract between the Player and the Club

11. The Player seeks the recognition of his right to terminate his Employment Contract with the Club unilaterally on the basis of the Club's non-compliance with the financial provisions agreed in the said Employment Contract.

12. The Player explains that two documents with differing and cumulative financial provisions having been signed (an Employment Contract and an annexe thereto – Appendix of the Employment Contract), the Club only complied with the provisions of the annexe and not with the provisions of clause 6 of the Employment Contract.

13. Moreover, the Player also considers that there was sporting just cause for his decision to rescind the Employment Contract between him and the Club.

14. And accordingly pleaded sporting just cause as he had played in less than 10% of the official games played by the Club in the 2006 season.

15. The Player finally pleaded just cause for the termination of the Employment Contract on the grounds that the Club failed to provide him with a valid work visa for Russia for the 2007 season.

a) Breach by Club of the financial terms agreed with the Player

16. The Player and the Club signed an Employment Contract, which was lodged in the proceedings and which contains two clauses with regard to the financial terms agreed between the parties (Article 6 *"Pay and Remuneration"* and Article 7 *"Special Conditions"*).

17. In article 6 of the Employment Contract, the Parties refer to the payment a monthly salary of USD 9,000 (nine thousand dollars).

18. In article 7 of Appendix of the Employment Contract, the Parties refer to the payment of certain sums to the Player, and, in point 2 of the said document agree on an annual salary update.

19. In his pleading, the Player claims that the remuneration terms in the two abovementioned documents are cumulative.

20. The Club however, pleads the non-existence of an agreement regarding the accumulation of the amount referred to in Article 6 of the Employment Contract with the provisions of the Appendix of the Employment Contract, and that point 2 of the said document merely stipulates the annual update thereof.

21. A less than careful reading of the documents could give rise to doubts as to whether the sum of USD 9,000 provided in Article 6 thereof is, or is not, cumulative with the annual amounts stipulated in point 2 of Appendix of the Employment Contract.

22. Given the doubt as to the proper construction, the decisor is required to apply the legal provisions regarding the construction of contracts. Article 18 of the Swiss Obligations Code provides that *"Pour apprécier la forme et les clauses d'un contrat, il y a lieu de rechercher la réelle et*

commune intention des parties, sans s'arrêter aux expressions ou dénominations inexactes dont elles ont pu se servir, soit par erreur, soit pour déguiser la nature véritable de la convention".

23. It is nowhere expressly stated that the sums referred to in the Employment Contract and in Appendix of the Employment Contract are cumulative. The Employment Contract and the Appendix of the Employment Contract must accordingly be viewed in an integrated manner, as a whole, and not as two district and separate instruments with necessarily cumulative obligations.

24. The terms employed in Article 6 of the Employment Contract and in number 2 of Appendix of the Employment Contract are substantially the same (*"monthly pay"* and *"monthly payment"*), with the intention to refer to the same basic salary payment – the monthly salary.

25. It is not common practice for there to be two monthly payments of the same type in an employment relationship, which are identical in the first year but in which one of them is updated annually, while the other is fixed for the entire duration of the contract.

26. The Single Arbitrator, in the exercise of his position as the interpreter of the Parties' intentions cannot but conclude that there is one and the same payment, which is stipulated in a single document, comprised by two parts: the contract *per se* and its annexe.

27. The evaluation made by the Single Arbitrator of the context of the Employment Contract and, above all, of the manner in which it was successively performed from August 2004 until the end of November 2006, lends weight to the understanding that the real intentions of the parties was that the payments stipulated in Article 6 of the Employment Contract and in the Appendix of the Employment Contract are the same payment and are not cumulative.

28. In general, the Club made the payments agreed in the said Appendix of the Employment Contract from the beginning of the employment relationship until November 2006.

29. During his time with the Club, the Player never demanded the payment of the sums provided in clause 6 of the Employment Contract, there is not even any mention of this claim in the notice sent on the 27th of November 2006.

30. The Player claims that does not have mastery of the Russian and English languages (in which the contract is written) and accordingly did not understand the provisions thereof and consequently that the Club had breached the same. The Player did not prove that he did not understand the English language and the Single Arbitrator noted that the declaration executed by the Player filed with the Answer (exhibit no. 4) is handwritten by the Player in the English language.

31. The Single Arbitrator also considers, in this regard, that it is not reasonable to consider that a professional football player would sign a professional contract without knowing exactly what he will earn at the end of the month. Furthermore, the difference in question here is not a matter of detail, but a difference of USD 9,000 (nine thousand dollars) a month.

32. In the light of the above, the Single Arbitrator cannot, assume that the Player was unaware of the payments terms of the Employment Contract he signed with the Club; otherwise he will be unable to presume the Parties' intentions.

33. It appears to be evident and inescapable that the figures in the said Appendix of the Employment Contract are nothing else but the annual updates of the Player's salary, commencing with the USD 9,000 (nine thousand dollars) provided in article 6 of the Employment Contract, for the first year of the duration of the contract, and increasing on an annual basis to USD 11,000 (eleven thousand dollars), USD 12,500 (twelve thousand five hundred dollars), USD 14,500 (fourteen thousand five hundred dollars) and USD 17,000 (seventeen thousand dollars) for the years until the end of the Employment Contract.

34. It is furthermore not possible to ignore the fact that the Parties had a perfectly peaceful relationship throughout the entire duration of the Employment Contract so far as compliance with the contractual terms thereof is concerned. At no time did the Player claimed or demanded the payment of any sum in addition to the sums paid to him every month by the Club.

35. Like the DRC in the decision under appeal, the Single Arbitrator considers that the financial agreement in Appendix of the Employment Contract is a true reflection of the Parties' intentions at the moment when the contract was signed.

36. It should also be noted that the case-law cited by the Player in his Appeal Brief is all based on cases in which the facts were substantially different from this case.

37. Notwithstanding the above, even if the said payments were outstanding, the Player could only terminate his Employment Contract unilaterally with just cause once he had demanded the outstanding payments from the Club and once the Club had nevertheless still not paid. The Single Arbitrator considers that even if it is admitted, for the sake of argument, that the salaries claimed are due, the dispensation with the need for a demand in circumstances of prolonged and evident breach (in which circumstances, the Appellant considers, as stated in the submissions at the hearing, that no demand is necessary) is only relevant if the fact, or facts, whether continued or not, are *per se* such that the continued existence of the employment relationship is immediately called into question, which is not the case in a case of outstanding salaries.

38. This being so, the Player's claim that it be declared that he had just cause for the unilateral termination of the Employment Contract on the grounds of breach, by the Club, of the payment terms agreed by the parties, cannot but fail

39. Accordingly, the claim that the Club be ordered to pay the Player the sum of USD 9,000 (nine thousand dollars) per month from the 20th of August 2004, plus default interest, must also fail.

b) Regarding Sporting Just Cause

40. Article 15 of the FIFA Regulations provides that:

"An established Professional who has, in the course of the Season, appeared in less than 10% of the Official Matches in which his club has been involved may terminate his contract prematurely on the grounds of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such cases. The existence of sporting just cause shall be established on a case-by-case basis. In such a case, sporting sanctions shall not be imposed, though compensation may be payable. A Professional may only terminate his contract on this basis in the 15 days following the last Official Match of the Season of the club for which he is registered".

41. It is accordingly necessary for four requirements to be complied with before a player can terminate his Employment Contract on the grounds of sporting just cause:

- That the player is an established professional;
- That he has played in less than 10% of the official matches in which his club was involved in the sporting season in question;
- The player's personal circumstances; and
- That he terminates his employment contract during the 15 days following the final official match in the season of the club with which he was registered.

42. We shall now consider each of these requirements individually:

aa) An established Professional

43. The Player was 22 years of age on the date of the termination of his Employment Contract.

44. He came to Europe from Nigeria when he was 17 years old.

45. In Bulgaria, the Player played in 27 matches (1988 minutes) for PFC Levski Sofia.

46. In Russia, the Player played in 19 games (1087) minutes in the 2005 season for the Club.

47. The Player was transferred to the Club in August 2004 for a transfer fee of USD 550,000 paid to his former club, PFC Levski Sofia.

48. The Single Arbitrator is of the opinion that the *"established professional"* concept needs to be filled out not only on the basis of the player's age, but also on the basis of his sporting level as demonstrated during his career, in terms of an acceptable standard in the light of the specificity of the sport, the players legitimate expectations and what is expected of the player in terms of sporting performance.

49. The applicable sporting regulations, *i.e.* the criteria considered therein, must also be taken into consideration in this interpretative exercise. Article 1 of Annexe 4 of the FIFA Regulations

provides a general indication, when it provides that compensation for training *"shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21"* (our underlining).

50. The Single Arbitrator interprets this provision so that there is a presumption that the conclusion of a player's training period occurs when the player reaches the age of 21.

51. Furthermore, the willingness evinced by the Player to pay training compensation to the Club does not *per se* amount to an admission that the Player is not yet an established professional, as this compensation is always due in cases of transfers or first registrations of players under 23, whatever their sporting or competitive level.

52. The Single Arbitrator considers further that the relevant level for the definition of an established player is related to his development as a player, taking a common competitive standard into consideration, and not to the reality or competitiveness of the club for which the player plays from time to time. Any other approach would be the same as saying that for a player not to be an established player it suffices that he plays for a certain club, while he would not be an established player if he played for a club with greater ambitions or a higher sporting level.

53. Accordingly, in the light of the considerations above and considering that:

a) the Player came to Europe from Nigeria with a professional sports contract at the age of 17;

b) in the 2003/2004 sporting season the Player had played in 27 games (1988 minutes) for PFC Levski Sofia, one of the most important football clubs in Bulgaria;

c) the Player was transferred to the Club in 2004 for a transfer fee of USD 550,000;

d) during the 2006 sporting season the Player received a monthly salary of USD 12,500, in addition to the other terms of the contract;

e) the Player played in 19 matches (1087 minutes) for the Club in the 2005 season; and

f) the Player was 22 years old when he rescinded his contract unilaterally;

in the light of all the facts, the Single Arbitrator considers that the Player was already an established professional on the 27th of November 2006 and this requirement in article 15 of the FIFA Regulations is accordingly complied with.

bb) Participation of the Player in less than 10% of the Official Matches played by the club

54. Legal theorists are not in agreement regarding the interpretation of this requirement. There are some who maintain that the player's participation must be considered in terms of the games in which the player played, while others maintain that this calculation must be done on the basis of the number of minutes the player was actually on the field of play.

55. The letter of the law is clear, as it expressly states *"in less than 10% of the Official Matches in which his club has been involved"*, and in its decision the DRC interprets this provision literally.

56. However, FIFA itself reflects the differences of interpretation referred to above, in its version of the Regulations for the Status and Transfer of Players, with commentary, which states that *"it is not the number of appearances in games but the minutes effectively played therein that is relevant"*. Although the said commentary is not binding it is an interpretative approach, which is likely to give rise to a certain certainty among sports professionals.

57. In the commentaries, FIFA appears to admit a teleological interpretation of the provision, *i.e.* an interpretation, which takes the objective of the provision into consideration, rather than a strictly literal application of article 15.

58. Indeed, if the text of the said article 15 is considered in detail, it appears to have been the intention of the creator of the provision to give decisors room for manoeuvre in the application of the concept, as the latter are required to decide on a case-by-case basis, taking into consideration such subjective factors as the player's circumstances.

59. The provision and specifically the question of the calculation of a 10% participation in official matches must accordingly be considered in the light of the *ratio* of article 15, even if this leads to a consequence other than would have been obtained via a literal analysis of the said provision.

60. In the Single Arbitrator's opinion, the aim of this article is to permit a player to terminate his employment contract unilaterally if he is in a situation in which he is prevented from exercising his professional activity with a reasonable frequency and is, as such, prevented for progressing professionally.

61. In football, as in most sporting activities, regular competitive play is fundamental for the player's development and for the maintenance of his physical and technical skills.

62. Indeed, the market value of a player is created taking into consideration how the player performs and what he produces on the field of play, so that it is naturally difficult for a player, who wishes to progress in his career, if he lacks visibility because he is not playing.

63. If read literally, the limits imposed by this provision could be easily avoided by any club in relation to any player, for this it would suffice to put the player on the field in 10% of its official games, while only allowing him to play for 1 minute in each of these matches.

64. This interpretation could defeat the intention underlying the approval of this provision, which essentially seeks to protect players from being prevented from actively continuing with their professional careers and from keeping up their levels of competitiveness.

65. It is therefore admitted that participation by the player in more or less 10% of the official matches played by his club during a certain sporting season is calculated, not only by taking

the number of matches in which the player did in fact play, but according to the time he was playing on the field.

66. Another aspect of the arithmetic calculation of the 10% requirement also needs to be clarified, i.e. what is the basis of the calculation, or what is the total number of games of the team, which must be taken into consideration?

67. First of all, it is necessary to expressly exclude matches played by second teams, or "B" teams, from this calculation. As this provision applies only to established professionals, the Single Arbitrator considers that it makes no sense to include such games in the calculation of either the total Official Matches played by the club, or in which the player played.

68. The Single Arbitrator considers in this regard that the first team games, which are relevant for the purpose of the calculation of the 10% envisaged in article 15 of the FIFA Regulations, do not have to correspond to all official matches played by the team during a certain sporting season. For there are certain games in which a player is not eligible to play and which should not be included in the calculation, *i.e.*:

    a. matches in which a player cannot play because he has been disqualified for unsporting behaviour, which has also been punished by the club internally; and

    b. matches in which a player was not eligible to play because of illness or injury, which was not a direct or indirect consequence of his professional activity as a football player.

69. Having made these preliminary comments, we shall now proceed to analyse the specific facts of this case:

70. It has been proved in these proceedings that the Player played in 4 (four) matches as a member of the Club's first team:

Krylia Sovetov – Dinamo	*64 min.*	*05-March-2006*	*Cup*
Lokomotiv – Krylia Sovetov	*45 min.*	*19-March-2006*	*Championship*
Krylia Sovetov – Rubin	*45 min.*	*27-March-2006*	*Championship*
Kuban – Krylia Sovetov	*44 min.*	*20-September-2006*	*Cup*

71. In the Single Arbitrator's opinion, the game that the Player played for the Club's second team should not be taken into consideration.

72. The total time on the field of play is 198 minutes.

73. During the sporting season in question, the Club had 34 official games with a total of 3090 minutes (90 minutes x 34 games + 30 extra time in the game against Dynamo).

74. The Player was not eligible to play for the first team for 2 weeks (during which the team played 3 official games, on 10, 17 and 23 of July 2006 against Dynamo, Alania and Terek, as was confirmed at the hearing and from public information available to the court), because of

illness unrelated to his professional activity and because he was also banned for 3 games because of unsporting conduct, for which the Player was also punished by the Club.

75. In the light of the above, the number of games to be taken into consideration for the purposes of the application of article 15 of the FIFA Regulations is not 34 games, but only 28 games. Likewise, the total time is not 3090 minutes, but only 2550 minutes (28 games x 90 minutes + 30 minutes of extra time in the match against Dynamo).

76. Although the Player played in 14.28% of the Club's official games for which he was eligible (4 out of 28 possible games), he only played for 7.76% of the minutes he was eligible to play (198 out of 2550 possible minutes).

77. According to the Single Arbitrator's interpretation of article 15 of the FIFA Regulations, he considers that notwithstanding the letter of the law, the meaning of the provision is that actual time played rather than the number of games should be considered.

78. In the light of the above, the Single Arbitrator considers that the second requirement in article 15 of the FIFA Regulations is complied with.

cc) Player's circumstances

79. Many of what the Single Arbitrator considers to be the player's circumstances have already been considered in the preceding point, *i.e.* with regard to his legitimate aspirations to develop his skills and advance in his professional career.

80. It is easy to understand that a 22 year old player from a country in which professional football is still at an incipient phase, to play in one of the main European Leagues has a great desire to show his skills, to play his football and to aspire to a high level career.

81. It is also easy to understand that it is on the field of play in competitive matches that this is done.

82. The aspirations and personal circumstances of each player vary not only according to age, but also according to his career progress and obviously according to his position on the field.

83. A player, who is hired as a second goalkeeper must be willing to play only when the first goalkeeper is injured or, at most, in cup matches. A third goalkeeper must be willing to pass a whole season without ever playing.

84. This is not, however, the case of the Player, who, is a 22 year old field player, for whom it is legitimate to want to do more than play sporadically for short periods in some games, when he played in 20 matches, for a total of 1087 minutes on field, during the previous year (viz. Annex 8 of the Appeal Brief).

85. Furthermore, the Single Arbitrator must take into consideration that it has not been proved that he ever, during the 2006 season, expressed the slightest discontent with regard to the lack of opportunity in his team's games or that he informed the Club that he wished to play in more first team games.

86. The Player's right to an effective occupation and to participate actively in competitions, to his technical, tactical and physical development cannot, in the Single Arbitrator's view, limit the freedom of action of clubs' technical departments, *i.e.* the club manager, in each game, to put on the field the players, which, in his opinion, as best suited to obtaining a positive result.

87. The technical management of the team is a matter for the club. This fact is undeniable. It is likewise undeniable that a player has a legitimate expectation of playing an active role in the life of the club and in the competitions in which its team plays.

88. We are also aware that a player's interests are not limited to the achievement of personal objectives to play. The winning of sporting titles, as a collective objective, is also achieved and depends on the team's good performance. The titles that a club can win because of its sporting merit necessarily revert as collective and individual laurels to all team members.

89. A player is not always in a physical and psychological condition in order to compete. The integration of a player in a team is not always consolidated. A player is not always able to become integrated within the culture of a club and to have relations of friendship and camaraderie with the other players, *i.e.* a player does not always integrate in what is commonly known as the "changing room". All these are factors and circumstances, which should be taken into consideration in the evaluation of the "effective occupation" of a player and the management of the team's performance that is required of the team's manager. We know from practical experience that a good player does not always do well in all teams and all clubs and that it is possible that the root cause of the non-integration or lack of motivation of a player may lie outside the club. This justifies the fact that the player may not be fielded in certain games or even that the player agrees to accept and agree to this treatment, because the player considers that he is not in good physical or psychological condition or that other players in the same team are performing better, in order to achieve a good result for the team.

90. For all of the reasons detailed above and in order to preserve contractual stability, the termination of an employment contract for sporting reasons cannot be accepted on the basis of mere compliance with the formal requirements referred to above, unless the player has during the performance of his employment contract made the Club aware of his dissatisfaction with the fact that he is not actively participating in the team's games. Silence can communicate a sense of resignation, acceptance or even accommodation to the situation and give the impression he lacked motivation.

91. The Club was accordingly not duly alerted to the player's dissatisfaction and so could not take corrective measures during the season with a view to an improved equilibrium between the Parties.

92. A player, who demonstrates by act or omission, during a sporting season that he is resigned to his position as an unused player, cannot subsequently avail himself of the said situation in order to justify the termination of his contract on the grounds of sporting just cause.

93. In the opinion of the Single Arbitrator, it has not been proved that the Player manifested any discontent with regard to his position as an unused player during the season, but more because of negligence than bad faith. There is not the slightest evidence that the Player was surreptitiously waiting for the end of the season and counting the minutes he played, in order to terminate the contract immediately.

94. It must accordingly be considered that the Player's personal circumstances justified his intention to leave the Club, but that the Player should, in some way, during the season, have manifested his discontent with the way he was being treated by the Club, *i.e.* the fact that he was little used in first team games. Thus, the Single Arbitrator considers that the "player's circumstances" requirement in Article 15 of the FIFA Regulations is not complied with.

dd) That the player terminates his employment contract during the 15 days following the last official game of the season the club with which he is registered

95. The notice of the Player's intention to terminate the Employment Contract on the grounds of sporting just cause was given in a fax sent to the RFU and FIFA via the BFU on the 27th of November 2006.

96. According to the general provisions of the law, notice of the rescission of a contract is effective once it is known to the other party, unless the other party intentionally placed itself in a position in which it could not become aware of the said notice.

97. So far as it is possible to say on the basis of the evidences provided by the parties, the Club only became aware of the player's intention when it was contacted by the RFU on the 19th of December 2006.

98. At the hearing, application was made to lodge a document, which is a photocopy of a fax transmission report of several transmissions between 10 and 27 November 2006, which contains a reference to the transmission of a 4-page fax to the Club's number at 17:36.

99. The lodging of the said document was opposed by the Club, although the Single Arbitrator had considered that the same was relevant to the discussion of the communication and awareness of the termination notice on the part of the Club. The Single Arbitrator stated further however that he did not consider that the document amounted to sufficient evidence that the said termination notice had been received. The Appellant has not provided the transmission report of the communication sent, which would include copy of the first page of the communication. Therefore, the Sole Arbitrator understands that the evidence provided cannot be accepted as a satisfactory proof of transmission or that the contents of the message were that which the Player sought to be upheld in this appeal.

100. Despite the fact that the Club, at the hearing, acknowledged that it had become aware, during the days following the sending of the communication dated 27 November 2006, that contacts were being made between the Player and FIFA, it is also true that it stated that it had been unaware of the exact nature of the contents of the said contacts/communications and of what it was that the Player wanted from FIFA.

101. The termination of a contract involves compliance with rigorous formal and material requirements with regard to the giving of notice thereof to the other party, given the inherent seriousness of the rescission of a contract and the particularly relevant consequences thereof. In this case it has not been proved that the notice was sent directly to the Club, or that the Club had direct notice of the contents thereof on the date on which the Player states he sent the notice. It is stressed in the latter regard, that in the notice sent by the Player, the Club appears only as a party to which the notice is notified and not as the party to which the notice is addressed, as is required. Finally it is also noted at the material level that the terms of the communication sent are imprecise as to the formalisation of the termination of the contract on sporting grounds. The communication sent does not amount to a clear formalisation of the decision to terminate the contract, but is rather a request for the termination of the contract, which is addressed to the persons to whom the communication itself is addressed. It appears that the Player was awaiting some confirmation, as can be inferred from the first paragraph of the said communication, which states *"(…) I would like to request termination of the labour contract between your affiliated club FC Krylya Sovetov Samara and my client on the grounds of sporting just cause (…)"*.

102. Accordingly, as the sporting season ended on the 26th of November 2008, the unilateral termination of the Employment Contract by the Player on the grounds of sporting just cause would have to have been received by the club no later than the 12th of December 2006.

103. In the light of the above, the Single Arbitrator considers that the Player did not terminate his Employment Contract with the Club within the 15-day period following the Club's final Official Game in the season and that the final requirement for the unilateral termination of the Employment Contract on the grounds of sporting just cause provided in article 15 of the FIFA Regulations has not been complied with.

ee) Conclusion

104. The Single Arbitrator considers with regard to the sporting just cause for the unilateral termination of the Employment Contract invoked by the Player, that:

a) the Player was already an established professional on the 27th of November 2006;

b) the Player had a match play time of less than 10% of the time for which he was eligible to play for his team during the 2006 season;

c) the player's personal circumstances do not, in this case, justify the unilateral termination of the Employment Contract on the grounds of sporting just cause; and

d) the Player also failed to rescind his Employment Contract with the Club during the 15-day period following the Club's last official game of the season.

105. This being so and as the requirements of article 15 of the FIFA Regulations are cumulative and two of them have not been complied with, the Single Arbitrator accordingly upholds the DRC Decision appealed against, although not on entirely the same *ratio* as is stated therein, and dismisses the claim for the unilateral rescission of the Employment Contract between the Player and the Club on the grounds of sporting just cause.

c) Regarding the unilateral rescission of the contract with just cause on the grounds that the Club failed to provide the Player with a valid Russian work visa for the 2007 season.

106. There is no fact pleaded and proved in these proceedings on the basis of which it can be concluded that the Player was prevented from returning to Russia and to the Club because he did not have the necessary work visa.

107. What is, on the contrary, evident is that the Club sought successively to convince the Player to return to Russia and to continue with his career and that the Player never evinced any desire or even willingness to do so.

108. Additionally, the question of the Player's visa only arose at a stage when the Player had already manifested his intention to rescind his Employment Contract with the Club and had decided not to return to the Club.

109. As the Player had taken the said decision and given formal notice thereof in a letter signed by his representative, the allegation that he was prevented from returning to Russia because of an act or omission on the part of the Club, *i.e.* that the Club had prevented him from obtaining the necessary visa, is inadmissible.

110. It has accordingly not been proved that the club was in breach of any obligation with regard to the visa that the Player required in order to return to Russia, so that this aspect of the Player's claim is also dismissed.

111. The Player's claim for the recognition of just cause for the unilateral termination of the Employment Contract by the Player is accordingly dismissed and, consequently, both the main and subsidiary claims made by the Player are dismissed.

B. Regarding the Compensation payable by the Player to the Club

112. In order to determine the amount of the compensation to be paid to the Club by the Player, the Single Arbitrator will: (i) determine the Player's obligation to compensate the Club; (ii) determine the facts, which are relevant to the question of the fixing of the compensation in the light of the criteria provided in article 17 of the FIFA Regulations; (iii) determine any

aggravating or mitigating factors; and (iv) assess the amount of compensation payable, taking the previous matters into consideration.

a) The obligation to compensate

113. The decision appealed against awarded compensation against the Player, in the Club's favour for breach of contract without just cause, in the sum of USD 446,685, plus default interest at the rate of 5%, as from the final date for the payment thereof, *i.e.* 30 days after service of the DRC Decision.

114. It has been duly established in these proceedings that the Player terminated his employment contract with the Club without just cause during the protected period (as defined in 7. of the Definitions of the FIFA Regulations).

115. According to the provisions of no. 1 of article 17 of the FIFA Regulations, regarding the termination of contracts without just cause, *"In all cases, the party in breach shall pay compensation. (…)".*

116. It having been established that the termination of the Employment Contract, by the Player, was without just cause, there is no other conclusion possible other than that the Player must pay compensation to the Club.

b) Regarding the facts relevant to the quantum of the compensation in the light of the criteria provided in article 17 of the FIFA Regulations

117. Article 17 of the FIFA Regulations provides that:

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, 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.

2. (…)".

118. It is hereby stated that the employment contract between the Club and the Player does not stipulate the amount of compensation payable.

119. It is accordingly necessary to fix the amount of the said compensation, taking into consideration the subsidiary criteria in the said article 17 of the FIFA Regulations, i.e.:

a) the law of the country in question;

b) the specificity of the sport; and

c) any other objective criteria. These criteria should include:

i. the remuneration and other benefits due to the player under the existing contract and/or the new contract;

ii. the time remaining on the existing contract up to a maximum of five years;

iii. the fees and expenses paid or incurred by the former club (amortised over the term of the contract); and

iv. whether the contractual breach falls within a protected period.

120. It is stated first of all, that the Single Arbitrator considers that the criteria stated above should be considered in the light of the circumstances and the specific case and that the said criteria are not necessarily cumulative. It should further be noted that the FIFA Commentary on the Regulations for the Status and Transfer of Players states that *"(…) The Regulations provide for some criteria that can be taken into account to establish compensation"* (cf. page 46, comment 1 – our underlining).

121. As regards the law of the country concerned, in accordance with the case-law adopted by CAS with respect to the calculation of compensation for a breach of contract committed by a player, the Sole Arbitrator will apply Swiss law, as the law of the country where the association taking the decision is domiciled (CAS 2005/A/902 & 2005/A/903), this means the Swiss Law. In particular, and in accordance to article 337(b) of the Swiss Code of Obligations, the Player has to reimburse the Club for damages suffered as a consequence of the early termination of the contract, which is, in any event, a general principle of law. Therefore, the amount of the compensation must be established according to the extent of the loss and damage.

122. Article 17 of FIFA Regulations also refers to the specificity of the sport, without however providing any indication as to the content of such factor. The Sole Arbitrator considers that the specificity of the sport must obviously take into consideration the independent nature of the sport, the free movement of the players and football as a market.

123. In relation to the criterion identified above as c.(i), the Single Arbitrator identifies two aspects, which are combined in this criterion: (i) the remuneration and financial benefits that the Player would have received until the end of the Employment Contract; and (ii) the financial benefit to be received as a consequence of the termination of the contract and the signing of a new contract with another club.

124. The following criteria, identified as c.(ii), is the time, not exceeding 5 years, during which a Club is unable to use a Player, who had no just cause to terminate his employment contract and also the time during which the Club could have improved and transferred the Player to another club and benefited financially there from. We consider in this regard that it is generally accepted that the longer the period between the termination and the end of the contractual term the greater is the potential increase in the Player's value.

125. The following criterion is a criterion, which involves essentially accounting factors, according to which the amount invested by the Club when it signs the Player is amortised over the contractual term. It has however to be established whether this amortisation is constant or whether it can be irregular, *i.e.* when the investment considered to have been amortised is not valued equally throughout the entire employment relationship. It is for the judge to decide upon the best way in which to deal with the amortisation of the investment on a case-by-case basis. The consolidated and generally accepted case-law has indicated a constant amortisation throughout the entire period of the contract's initial terms (CAS cases: CAS 2006/A/1141).

126. Finally, the protected period criterion is an objective criterion and it suffices to verify whether the breach of contract occurred during the period defined in the definitions in the FIFA Regulations.

127. Prior to linking the facts with article 17 of the FIFA Regulations, the reasons given by the DRC with regard to the fixing of the compensation and also the matters raised by the Club, should be borne in mind.

128. The DRC fixed the sum of USD 445,685, as compensation for the breach of contract and considered this sum to be *"adequate in view of the fact that the relevant employment contract would still run until 31 December 2008 and that the Respondent paid to the previous club of the player Temile in occasion of the transfer (August 2004) an amount of USD 649,000"*. Although the breakdown of the decision is not explained, the Single Arbitrator considers that it was fixed pursuant to article 42.2 of the Swiss Obligations Code, pursuant to which *"Lorsque le montant exact du dommage ne peut être établi, le juge le détermine équitablement en considération du cours ordinaire des choses et des mesures prises par la partie lésée"*.

129. The Club bases its claim as follows:

    a. The Employment Contract signed had a validity of 52.5 months (mid-August 2004 to December 2008). Therefore, 24 months of the Employment Contract, i.e. 45.7% thereof, was unexpired.

    b. The Club paid Levski Sofia compensation in the sum of USD 550,000 for the transfer of the Player. Thus, USD 251,428 of the transfer compensation paid is not yet amortized.

    c. The loss of a young promising Player, who had still a potential to develop further.

    d. The loss of the services of the Club until the end of the contract, *i.e.* two entire seasons.

    e. The loss of the opportunity to negotiate the transfer of the Player to another club if he wanted to leave.

    f. The costs of replacing the Player are an additional major investment for the Club, which it would not have incurred had the Player not breached his employment contract and left the Club.

g. As aggravating circumstances, it should be taken into consideration that the breach without just cause occurred during the protected period.

h. Art. 42 (2) of the Swiss Code of Obligations provides that if the existence or the exact amount of damages cannot be established, the judge shall assess them at his discretion, having regard to the ordinary course of events and the measures taken by the injured party in equity and on the basis of the ordinary course of the events. For this reason, the Club deems the compensation determined by the DRC in the amount of USD 446,685 to be correct and justified.

130. We shall now consider the facts considered by the Single Arbitrator to be relevant to the interpretation of article 17:

a. The Player signed an employment contract with the Club, which was valid until the 31st of December 2008;

b. The Club paid the sum of USD 550,000 for the transfer of the Player (at the hearing, the Club acknowledged that the amount of the transfer fee to be taken into consideration is only USD 550,000, and not USD 649,000 – which includes VAT, on which the DRC based its calculations);

c. The Player played in official first team matches for the Club for 1087 minutes in the 2005 season and 198 minutes in the 2006 season. In 2006, the Club, took part in competitions, which totalled 3090 minutes;

d. Between the 11th and 26th of July 2006, the Player was unable to play, on the recommendation of the Club's physician because he was undergoing medical treatment;

e. Following this period during which he was unable to play, the Player played one game with the Club's second team and refused to train with the second team;

f. On the 27th of November 2006, the Player sent a notice of termination of the Employment Contract on sporting grounds to the RFU and FIFA, via the BFU;

g. Until February 2007, the Club was willing and interested in the reintegration of the Player;

h. In February 2007, it became clear, following attempted conciliation under the auspices of FIFA, that the parties were unable to settle their differences extrajudicially, by agreement;

i. The Employment Contract makes no provision regarding any damages or compensation for wrongful rescission or breach of contract by either party;

j. There were 23 months between February 2007 and the final date of the contract (31st December 2008);

k. The remuneration due to the Player, between February 2007 and December 2008, the final day of the contractual term, was USD 485.500 (cf. Appendix of the Employment Contract);

l. The sending of the letter referred to in point f. above by the Player occurred at the end of the second season of the contract with the Club and within 3 years of the signing

thereof, which facts are relevant to the determination of the protected period for the purposes of the application of article 17 of the FIFA Regulations;

m. It has also been proved that the Player has not received any financial benefit as a consequence of the termination of his Employment Contract with the Club, as he has not, since then, carried on the occupation of professional football player;

n. It has not, on the other hand, been proved that the Club incurred any expense in respect of the replacement of the Player while it was deprived of his services;

o. It has not been proved that the Club incurred any type of sporting loss or damage as a consequence of loss of performance in the competitions in which it played.;

p. Finally, it has not been proved that there was any offer or possibility of a transaction, which was financially advantageous to the Club, which involved a possible transfer of Player, or that the Club was seeking the same.

131. If these facts are linked to the Club's arguments, it will be seen that the loss and damage pleaded by the Club in points *c)*, *d)*, *e)* and *f)*, in its pleadings, in its documental evidence and at the hearing have not been proved, i.e.:

a. The loss of a young promising player, who had still a potential to develop further;

b. The loss of the services of the Club until the end of the contract, i.e. two entire seasons.

c. The loss of the opportunity to negotiate the transfer of the Player to another club if he wanted to leave;

d. The costs of replacing the Player are an additional major investment for the Club, which it would not have incurred had the Player not breached his employment contract and left the Club.

We shall now consider the application of the relevant facts to the decision in this appeal, in the light of each of the criteria referred to in article 17 of the FIFA Regulations.

132. Taking into consideration the last sporting season during which the Player was with the Club, there is nothing to suggest that the Club considered the Player to be a valid option for its team, or that it considered that he had any particular potential. The fact that he played in very few games and was not a player, who the Club wished to develop and the fact that he was listed to play for the Club's second team, are indications that, contrary to what the Club now claims, it did not consider the Player to be a *"young promising player, who had still a potential to develop further"* (cf. page 15 of the Answer filed by the Respondent).

133. The fact that the Club was unable to use the Player also does not appear to amount to loss or damage, which can, in the light of the present circumstances, be compensated. The fact that he played in very few official games for the Club in 2006, clearly demonstrates that the Club did not regard the Player as a valid option for its squad.

134. It is likewise difficult in this context to consider that the Club has proved that it was prejudiced by the fact that it was unable to negotiate the transfer of the Player. There was no

evidence of any offers for the Player by third party clubs, or of ongoing negotiations with a view to such a transfer. It is not difficult to discern why this was so, as a Player who has played only 198 minutes is very unlikely to be coveted by other teams. There is nothing in the Club's attitude, which can lead to the conclusion that this situation would have altered during the two years until the end of the contract. It is accordingly not foreseeable that the Player's market value, which is what makes a transfer possible, would have increased significantly, which is why this factor has not been taken into consideration, in this case, in the calculation of the compensation due to the Club.

135. It is also noteworthy that the Club always expressed a wish that the Player be reintegrated. In the light of the facts stated above, the Single Arbitrator considers this to be a formal willingness on the part of the Club to perform the contract it had signed, rather than a material interest in the Player as a sporting asset.

136. In the submissions made at the hearing by counsel for the Club, the Club stated that the only rights the Player could claim were the right *"to train and be paid his salary"*. The Single Arbitrator considers, with all due respect, that there is one other right in addition to those mentioned, which also merit the protection of the law, *i.e.* the right to play and compete, or rather the right to an effective occupation, which right underlies the rule in article 15 of the FIFA Regulations.

137. Although it is not of particular relevance to this case, it can always be said, given the Player's income and the little use made of him during the 2006 season, that the cost of the Player substantially exceeded the income received by the Club in connection with him. Indeed, the early termination of the Employment Contract resulted in a "saving" of approximately USD 485,500 (given the financial commitments assumed to the Player in the Employment Contract) in respect of a Player, who, according to the Club, was not a possible squad member.

138. Finally, it was not proved that the Club incurred any expenses or costs in respect of the acquisition or maintenance in its service of any other player in order to replace the Player. No evidence has been adduced of any acquisition of a player for the same position or of the promotion of a replacement from the lower levels of the Club at an additional expense to the Club.

139. We shall now consider the arguments regarding the amortisation of the investment made by the Club in respect of the transfer of the Player.

140. The Player ceased to work for the Club on the 27th of November 2006.

141. Various contacts were made between the parties via FIFA between this date and February 2007 with a view to the amicable resolution of the dispute.

142. In February 2007, the Club definitively lost interest in the return of the Player, and acknowledged that the situation could not be resolved by negotiations.

143. There were 23 (twenty-three) unexpired months between the time in February 2007, when FIFA advised the Parties to consider their professional relationship to be definitively at an end, after which the Club ceased to seek to convince the Player to return to its team, and the end of the Employment Contract, which, it will be recalled, terminated on the 31st of December 2008.

144. The Club paid the total sum of USD 550,000, by way of a transfer fee, for the Player.

145. When the breach of contract by the Player occurred, 23/52.5 of the investment made by the Club, *i.e.* the equivalent of USD 240,952.38, calculated as follows:

amortisation of transfer compensation paid by the Club to the former club Levski Sofia, based on the following calculations [a: b x c = 240,952.38], being:

a = transfer fee paid by the Club to Levski Sofia Club: USD 550.000;

b = contract duration: 52.5 months

c = contract remaining period: 23 month

146. This sum is considered to have been proved and to be owed to the Club.

c) Aggravating and Mitigating Factors

147. It has been proved that the Player rescinded the Employment Contract without just cause during the protected period. However, the following mitigating factors must also be taken into consideration:

a. the Club contributed to the cause of the Player's discontent and to his decision to leave the Club, as it did not allow him to play regularly in competitions, which circumstance is capable of amounting to the frustration of a legitimate expectation on the part of the Player, given his professional history. It is necessary, when considering the proper compensation to be awarded to the Club not to ignore the fact that the most relevant material criterion for the confirmation of the existence of sporting just cause (participation in less than 10% of the Official Matches of his team) was complied with, for reasons imputable to the Club, even if it was fully entitled so to do in the exercise of its freedom to manage in the selection of the players, who will, or will not, play in its sporting competitions.

b. It also follows from the matters stated above that the Single Arbitrator is not convinced that the Player was a relevant asset of the Club, *i.e.* that he was a Player whom the Club valued.

c. The Single Arbitrator is convinced that the Player did not act in bad faith when he sought the rescission of his contract with the Club, as he was convinced that he had just cause. For, following the treatment, which the Player received between the 11th and 26th of June 2006, the Club insisted, in the Single Arbitrator's opinion, in an unjustified manner, that the Player train with the "Second Team", a situation, which the Player did

not accept. It has likewise not been established why the Club fielded the Player to play in the "Second Team", which only occurred once and which, given the specific circumstances of the case, certainly contributed to the Player's doubts as to the Club's convictions regarding his sporting qualities and capacities. Although the Employment Contract makes no mention of the specific manner in which the Player was engaged to play exclusively in the Club's first team, this conclusion can be drawn from the legitimate expectations that were legitimately created on the part of the Player, by the terms of his contract and his significant participation in the first team during the 2005 sporting season.

d. Finally, there is the fact that the Player did not benefit financially from the wrongful rescission of the contract, indeed, quite to the contrary, as he ceased to earn the significant remuneration to which he was entitled and which was being paid to him by the Club.

d) The fixing of the compensation payable to the Player by the Club

148. In the light of the matters hereinbefore stated and taking the Single Arbitrator's evaluation of the facts found to have been proved in these proceedings and the aggravating and mitigating factors into consideration, the Single Arbitrator considers that the compensation due to the Club should not exceed the unamortised portion of the investment made by the Club with regard to the transfer of the Player to its team, in the sum of € 240,952.38, plus default interest payable as from the date on which the contractual relationship is considered to have been breached, i.e. the 27th of November 2006, the date on which the rescission was invalidly effected by the Player.

C. Sporting Sanctions

149. The provisions of paragraph 3 of article 17 of the FIFA Regulations are clear when they provide that:

"In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season at the new club. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended".

150. The Appellant has filed the present appeal only against the Club and not against FIFA. The Sole Arbitrator agrees that an appeal against any sporting sanctions imposed by the FIFA competent bodies must also be filed against FIFA, in accordance to the CAS case-law.

151. On the other hand, the Single Arbitrator can see no reason which could justify the alteration of the appealed decision.

152. Therefore, the Sole Arbitrator upholds the DRC Decision with respect to this issue and confirms the imposition of a four-month restriction on playing in official matches. This sanction shall take effect as from the first day of the registration of the Player with a new Club.

The Court of Arbitration for Sport rules:

1. The appeal filed on 4 September 2007 by O. against the decision issued on 13 April 2007 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The counterclaim lodged by FC Krylia Sovetov is dismissed.

3. The decision issued on 13 April 2007 by the FIFA Dispute Resolution Chamber is partially reformed in the sense that O. is ordered to pay FC Krylia Sovetov the amount of USD 240,952.38, plus interest at 5% per annum starting on 27 November 2006 until the effective date of payment.

4. A restriction of four months on the player's eligibility to play in official matches is imposed on O. The sanction shall take effect as from the first day of the registration of the player with a new club.

(…).

7. All other or further claims and counterclaims are dismissed.