Arbitration CAS 2009/A/1963 Thiago Alberto Constancia v. S.C. Dinamo 1948 S.A., award of 11 June 2010

Panel: Prof. Petros Mavroidis (Greece), President; Mrs Margarita Echeverria (Costa Rica); Mr Olivier Carrard (Switzerland)

Football
Termination of contract without just cause
Termination of a labour agreement according to Romanian law
Termination of a labour agreement without just cause and contractual stability
Principle of positive interest for the compensation of unjustified termination of a valid contract

1. **According to article 14 of the Romanian physical education and sport Law n°69/2000, the employment contracts involving professional athletes are subject to the general Romanian labour law. Pursuant to article 161 par. 1 of the Romanian Labour Code (LC), the salary must be paid at the date specified in the work contract. Article 161 par. 4 LC states that in case of late-payment of salaries, the employee is entitled to ask for damages from the employer. However and unless otherwise provided in the labour agreement, article 79 LC reserves the right to terminate the contract upon 15 days prior written notice, it is not possible to terminate the contract with immediate effect without notice and without any warning.**

2. **The termination of a labour agreement without just cause is a serious violation of the obligation to respect an existing contract and goes against the principle of contractual stability, which is crucial for the well functioning of the international football.**

3. **The compensation for the unjustified termination of a valid contract is to be defined according to the principle of the so-called positive interest (or "expectation interest"). Hence, it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. The amount of fees and expenses paid or incurred by the club, and in particular those expenses made to obtain the player's services, is an objective element that must be taken in consideration. Such expenses should be amortised over the whole term of the contract.**

Mr Thiago Alberto Constancia (the "Player") is a professional football player. He is born on 21 December 1984 and is of Brazilian nationality.

S.C. Dinamo 1948 S.A. ("Respondent" o the "Club") is a football club with its registered office in Bucharest, Romania. It is a member of the Romanian Football Federation, itself affiliated to the Fédération Internationale de Football Association (FIFA) since 1923.

Since the 2006/2007 football season, the Player was registered as a professional player for the Moldavian club F.C. Sheriff Tiraspol.

On 23 June 2008, F.C. Sheriff Tiraspol contractually accepted to transfer the Player to the Respondent for a sum of EUR 450,000. The Respondent had to pay an additional EUR 50,000 to Mr Pirnau Nicolae, the football agent involved in this transaction. The payment of those amounts was duly established and is not disputed.

On 24 June 2008, the Player signed with the Respondent an employment contract, which contains the description of each party's respective obligations. It is a fix-term agreement for three years, effective from 23 June 2008 until 30 June 2011, with an option to extend the contract for two more seasons. The main characteristics of this document can be summarised as follows:

- The Respondent agreed to pay to the Player the following net amounts:
  -- EUR 100,000 for the first year, payable in 12 instalments of EUR 8,333.33;
  -- EUR 110,000 for the second year, payable in 12 instalments of EUR 9,166.66;
  -- EUR 120,000 for the third year, payable in 12 instalments of EUR 10,000.
- The monthly wages were to be paid in Romanian Lei, at the rate determined by the national bank of Romania on the day of the payment which was to occur, *"maximum until 15th day of the following month after the one for which the payment is done"* (article 4.1 of the contract).
- The Player was entitled to a contribution of USD 500 towards the rent of an apartment, two round trip tickets Bucharest - São Paulo per year, and bonuses in accordance with the Respondent's incentive-scheme.
- Pursuant to article 3.3 of the contract, *"From the amounts due to the Sportsman, the Club may retain taxes, fees as well as any other sporting penalties as per the rules of the Romanian Soccer Federation and the Internal Regime Regulation, according to the law"*.
- Regarding the applicable law, *"The present contract will be governed and interpreted according to the physical education and sport Law n°69/2000, the expedition Ordinance n°205/2005 and the rules of the Romanian Soccer Federation and according to the Romania labor legislation"* (article 9 of the contract).

In December 2008, the Player left Romania to fly to Brazil, allegedly to undergo some medical treatment. Whether the Player was authorised by his employer to leave for Brazil is not an issue in the present case.

The Player did not appear at the first 2009 training session of the Respondent, which took place on 12 January 2009.

By means of a fax dated 12 January 2009, the Player notified in writing the Respondent of the fact that he had terminated their contractual relationship with immediate effect, because of the Club's persistent payment delays of his salaries. In his termination notice, the Player claimed that the wages of September to December 2008 had not been paid, causing him great damages. According to the Player, the Respondent's reiterated non-compliance with its contractual obligations constituted a just cause for him to put an immediate end to the labour agreement. He summoned the Respondent to pay his wages for the months of September to December 2008 within three days.

It is not disputed that the Player had never complained about any late or non-payment of his salary before 12 January 2009. Prior to this date, he had never given a deadline to the Respondent to settle the outstanding debts or warned his employer about the fact that he would not tolerate any delay anymore.

It is the Respondent's case that it has always paid to the Player his salary, sometimes in advance, sometimes in a timely manner and occasionally with some acceptable delay.

According to the Respondent, the Player's remuneration was paid directly (i.e. in cash or by means of electronic transfers) or indirectly (in the form of deductions from the wages to cover the various expenses paid by the Club on behalf of the Player).

The Respondent claimed to have made the following direct or indirect payments in favour of the Player:

- EUR 1,000 on 30 June 2008 in cash as an advance payment;
- EUR 1,000 on 30 June 2008 in cash as an advance payment;
- EUR 325 deduction on 2 July 2008 for the flight ticket paid at the Player' request;
- EUR 52 deduction on 11 July 2008 for phone calls made by the Player;
- EUR 1,050 deduction on 5 August 2008 for the exceeding rental costs of August, September and October 2008;
- EUR 223 deduction on 5 August 2008 for the Player's meals at the Phonencia hotel;
- EUR 226 deduction on 15 August 2008 for phone calls made by the Player;
- EUR 4,683 of salary paid on 20 August 2008 on the Player's bank account;
- EUR 5,110 on 25 August 2008 in cash as advance payment of the contract;
- EUR 248 deduction on 27 August 2008 for the flight ticket of the Player's girlfriend;
- EUR 330 deduction on 27 August 2008 for the flight ticket of the Player's girlfriend;
- EUR 125 deduction on 16 September 2008 for phone calls made by the Player;
- EUR 2,201 of salary paid on 16 September 2008 on the Player's bank account;
- EUR 602 of salary paid on 16 September 2008 on the Player's bank account;
- EUR 233 deduction on 24 September 2008 for the Player's meals at the Phonencia hotel;

- EUR 243 deduction on 14 October 2008 for phone calls made by the Player;
- EUR 7,404 of salary paid on 16 October 2008 on the Player's bank account;
- EUR 468 deduction on 28 October 2008 for the exceeding rental costs of November 2008;
- EUR 318 on 06 November 2008 in cash as advance payment;
- EUR 78 deduction on 12 November 2008 for phone calls made by the Player;
- EUR 1,784 deduction on 22 November 2008 in relation with the fine imposed upon the Player in the disciplinary internal proceedings 1814;
- EUR 397 deduction on 24 November 2008 in relation with the fine imposed upon the Player in the disciplinary internal proceedings 1813;
- EUR 460 deduction on 10 December 2008 for the exceeding rental costs of December 2008;
- EUR 1 deduction on 10 December 2008 for the Player's work permit;
- EUR 2,616 of salary paid on 11 December 2008 on the Player's bank account;
- EUR 246 deduction on 15 December 2008 for phone calls made by the Player;
- EUR 398 deduction on 15 December 2008 for additional apartment costs (electricity, water etc.);
- EUR 653 deduction on 12 January 2009 for phone calls made by the Player;
- EUR 858 of salary paid on 16 January 2009 on the Player's bank account;
- EUR 8,333 of salary paid on 16 January 2009 on the Player's bank account;
- EUR 3,856 of salary paid on 23 January 2009 on the Player's bank account;
- EUR 4,477 of salary paid on 23 January 2009 on the Player's bank account.

Since January 2009, the Player has not played for any other club, allegedly because he was not able to find an employer willing to take the chance to hire him with the consequences of being found to be jointly and severally liable for the payment of compensation in favour of the Respondent, in accordance with the applicable FIFA Regulations.

The Player asserts to be currently jobless and without an agent.

On 28 January 2009, the Player initiated proceedings with the FIFA Dispute Resolution Chamber (DRC) to order the Respondent to pay in his favour *"EUR 50.000,00 concerning the remaining period of the 2008/2009 sporting season, the annual net salary in the amount of [EUR] 510.000,00 which he was contractually entitled to receive until the end of the 2010/2011 sporting season (…) plus all the match bonuses in the amount of USD 33.000,00"* (par. 14 of the Player's claim lodged before FIFA). The Player also requested the DRC to award him an amount of EUR 100,000 in financial and moral damages as well as an amount of EUR 20,000 as a contribution towards his legal fees and other expenses.

With decision of 15 May 2009 (the "Appealed Decision"), the DRC rejected the Player's request and concluded that the Respondent was entitled to the payment of EUR 300,000 notably on the following grounds:

- The DRC accepted that the documents submitted by the Respondent in support of the payments allegedly made in favour of the Player were authentic. Consequently, it admitted them into evidence. At the date of the unilateral termination of the labour agreement (i.e. 12 January 2009), the Player was entitled to receive EUR 41,665. The DRC held that, at that moment, the total amount of EUR 32,474 was actually paid to him by the Respondent.
- The amount of EUR 32,474 can be broken down as follows:
  -- EUR 17,506 had been transferred to the Player's bank account.
  -- EUR 7,428 had been paid in cash. The cash payments were established by receipts bearing the Player's signature: *"(…) since the [Player] at no point put into question the authenticity of his own signature on the relevant payments receipts, the members of the Chamber concluded that the [Player] had indeed received all four cash payments"* (par. 13 page 10 of the Appealed Decision).
  -- EUR 7,540 had been deducted from the Player's salary. After careful analysis of the documents filed by the Respondent, the DRC accepted that the deductions were indeed linked to expenses caused by the Player (i.e. phone bills, flight tickets, exceeding rental costs, meals at the restaurant and fines). Although the employment contract did not contain a provision allowing the Club to retain amounts from the Player's wages, the DRC *"endorsed the argument of the Respondent according to which it had become the creditor of the [Player] (…) and since the relevant costs had been incurred by the Respondent on behalf of the [Player], they could be rightly deducted by the Respondent from the [Player's] salary"* (par. 17 page 11 of the Appealed Decision).
- Given a) that on 12 January 2009, only EUR 9,191 were still due to the Player, b) that under the specific circumstances of the case and contrary to the Player's submissions, the Respondent could not be considered as having constantly failed to perform its contractual obligations, c) that the Player had not established or even alleged that he had ever complained about the delays in the payments of the salaries, and d) that three days after the termination notice, the Respondent transferred EUR 9,191 to the Player's bank account and again, on 23 January 2009, an additional EUR 8,333, the DRC reached the conclusion that the Player had had no just cause to terminate his employment contract with the Respondent.
- The DRC accepted that the transfer fee (EUR 450,000) and agent commission (EUR 50,000) paid by the Respondent in relation with the litigious labour agreement were satisfactorily established. It held that the Respondent was able to amortize only 1/6 of the costs of its investment as the Player had rendered his services during 6 months out of 36, thereby causing a financial damage to the club of EUR 416,667. However, it was of the opinion that the consequences of the breach of the employment contract by the Player were to be mitigated given the Respondent's delays in making *"some of the payments due under the contract for a short period of time. Thus, the Chamber concluded that the overall compensation to be paid by the [Player] should accordingly be reduced and could not be awarded in full. Consequently, the*

members of the Chamber agreed that the amount of compensation to be paid by the party in breach of contract should be reduced by EUR 116,667" (par. 30, page 14 of the Appealed Decision).

As a result, on 15 May 2009, the DRC decided the following:

"1. The claim of (…) Alberto Thiago Constancia, is rejected.

2. The counterclaim of (…) FC Dinamo 1948 Bucuresti, is partially accepted.

3. (…) Alberto Thiago Constancia, has to pay the amount of EUR 300,000 to (…) FC Dinamo 1948 Bucuresti, ***within 30 days*** *as from the date of notification of this decision.*

4. Any further claim lodged by (…) FC Dinamo 1948 Bucuresti, are rejected.

5. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.

6. (…) FC Dinamo 1948 Bucuresti is directed to inform (…) Alberto Thiago Constancia, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".

On 4 September 2009, the Parties were notified of the Appealed Decision.

It is undisputed that, to date, the Player has not paid any compensation to the Respondent.

On 25 September 2009, the Player filed a statement of appeal with the Court of Arbitration for Sport (CAS). On 5 October 2009, it submitted an appeal brief, containing a statement of the facts and legal arguments accompanied by supporting documents. It challenged the above mentioned Appealed Decision with the following request for relief:

"(…)

(i) In order to present to the arbitrators a complete set of exhibits/documents that were not sent by the former legal representatives of the Player to its undersigned attorney, it is requested that the Club shall present them attached to its response for the present appeal, particularly the letter sent by the Club to the DRC-FIFA dated 13 February 2009;

(ii) The TAS-CAS shall reverse the DRC-FIFA's findings that the Player had no just cause to terminate the labour contract;

(iii) The TAS-CAS shall reverse the compensation awarded to the Club by absolving the Player to pay the compensation awarded by the DRC-FIFA;

(iv) The TAS-CAS shall award the Player with the completion of the monthly salaries of September, October, November and December 2008 (equating to a total amount of 33,333€), as well as compensation for the breach of contract by Dinamo amounting to the remaining value of the contract (50,000€ for the remaining period of the 2008/2009 season and 510,000€ for the 2009/2010 to 2012/2013 seasons); and

(v) Alternatively, the TAS-CAS shall review the awarded amount of compensation to the Club by reducing it to a sum that do not hinder the Player to continue his career, taking into consideration all the particularities of the case".

On 29 October 2009, the Respondent filed an answer, submitting the following request for relief:

"Therefore, in the consideration of the abovementioned arguments and of the documents submitted to the case file, we hereby request the rejection of the appeal filed by the player Thiago Alberto Constancia, maintaining the decision passed by the Dispute Resolution Chamber, which is legal and justified, as it demonstrates the judicious argumentation contained in its motivation".

A hearing was held on 5 May 2010 at the CAS premises in Lausanne. All the members of the Panel were present. The Parties did not raise any objection as to the constitution and composition of the Panel.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from article R47 of the Code of Sport-related Arbitration (the "Code"). It was confirmed by the Player and by the Respondent at the hearing as well as by the order of procedure duly signed by the Parties.

2. It follows that the CAS has jurisdiction to decide on the present dispute.

3. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

4. Article R58 of the Code provides the following:

"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. Based on article 9 of the labour agreement signed by the Parties, *"The present contract will be governed and interpreted according to the physical education and sport Law n°69/2000, the expedition Ordinance n°205/2005 and the rules of the Romanian Soccer Federation and according to the Romania labor legislation".*

6. As a result, the above mentioned legal provisions shall apply to the present dispute.

Admissibility

7. The appeal was filed within the deadline stated in the Appealed Decision issued by the DRC on 15 May 2009. It complied with all the other requirements of article R48 of the Code.

8. It follows that the appeal is admissible.

Merits

9. It is undisputed that the contractual relationship between the Player and the Respondent was prematurely terminated without agreement between the parties to this effect. Both the Player and the Club are of the view that the other party must take responsibility for the breach of the labour agreement and both assert to be entitled to compensation.

10. In view of the above, the main issues to be resolved by the Panel are:

    A. What was the amount the Player has been effectively paid before unilaterally terminating his contract?

    B. Did the Player have a just cause to terminate the labour contract concluded with the Respondent?

    C. What are the financial consequences of the breach of the labour agreement?

A. What was the amount the Player has been effectively paid before unilaterally terminating his contract?

11. It is undisputed that for the 2008/2009 season, the Player was entitled to a monthly salary of EUR 8,333.33 to be paid on or before the 15th day of the following month after the one for which the Player had worked.

12. On 12 January 2009, when he terminated the contract, the Player should have received the equivalent of five months of wages (July to November 2008, 5 x EUR 8,333,33 = EUR 41,666.65). As a matter of fact, the salary for December 2008 was due on 15 January 2009, i.e. three days after the Player put an end to the labour agreement.

13. According to the Respondent, the Player's remuneration was paid in different ways: a) by means of electronic transfers, b) in cash, or c) through deductions made from his salary.

a) Payments wired on the Player's bank account

14. Pursuant to article 4.2 of the labour contract, those payments were made in Romanian Lei, taking into account the official exchange rate of the date of payment, as determined by the national bank of Romania.

15. At the hearing held in Lausanne on 5 May 2010, the Player confirmed to the Panel that he had indeed received from the Respondent all the amounts transferred on his bank account, including the ones wired between 16 and 23 January 2009. He only applied a fixed rate (EUR 1 / RON 4,25) to calculate the equivalent sum in Euros. This approach is inconsistent with the clear terms of the contract and must be dismissed without further consideration.

16. Taking into account the official rate on the date of each payments made as well as the unchallenged bank statements, the Player received on his account the equivalent of EUR 17,506 until December 2008 and of EUR 17,524 between 16 and 23 January 2009.

b) Payments in cash

17. In his submissions filed with the CAS, the Player contested having received from the Respondent the alleged payments in cash.

18. The Respondent produced original receipts to evidence four cash payments, which were made to the Player respectively on 30 June 2008 (EUR 1,000 and EUR 1,000), on 25 August 2008 (EUR 5,1000) and on 6 November 2008 (EUR 318). Those documents bear the Player's signature.

19. The Panel observes that the Player has never put into question the authenticity of his own signature on the said receipts. In addition, at the hearing held in Lausanne on 5 May 2010, the Panel asked the Player how he managed to cover his daily expenses, in particular during the months of July and November 2008, where he received no direct remuneration. Genuinely, the Player told the Panel that he was able to afford his every day life only because of the Respondent's cash payments.

20. Under the above circumstances, and from the moment the Player admittedly received at least some payments in cash, the Panel does not see any reason not to conclude that he actually received all four cash payments duly documented by the Respondent.

c) Deductions

21. According to the Respondent, the wages deductions were meant to cover the various costs incurred by the Player but paid on his behalf by the Club. They related to the Player's airplane tickets, his rental costs which exceeded USD 500, his restaurant and cell phone bills as well as the disciplinary fines imposed upon him by the Respondent.

c.1 Airplane tickets

22. Contractually, the Player was entitled to two round trip tickets Bucharest - São Paulo per year.

23. On 2 July 2008, the Respondent disbursed a sum equivalent to EUR 325 for an airplane ticket attributed to the Player for a flight which did no concern the Bucharest - São Paulo route. Likewise, on 27 August 2008, it paid for two airplane tickets for the Player's girlfriend. Their price was respectively EUR 248 and EUR 330. Those travel expenses were duly documented and the Player has not tried to contest the purchase by the Respondent of those tickets.

24. Those costs were obviously generated by the Player and fell outside of the scope of the employment relationship. Apparently, they were paid by the Respondent at the express request of the Player. Otherwise, the Panel does not see why the Respondent would have bothered to buy airplane tickets for the Player's girlfriend.

c.2 The rental costs

25. According to the terms of the employment contract, the Player was entitled to a contribution of USD 500 towards the rent of an apartment.

26. At the hearing held in Lausanne on 5 May 2010, the Player told the Panel that he knew that his rent was higher than USD 500 and that he had to cover the exceeding charges.

27. On the basis of the detailed documentary evidence produced by the Respondent and of the Player's declarations, the Panel accepts the Respondent's allegation according to which the additional rental costs attributed to the Player amounted to EUR 2,366.

c.3 Phone and restaurant bills

28. The labour agreement makes no reference to such costs. In particular, there is no indication that phone and restaurant bills would be covered by the Respondent.

29. At the hearing held in Lausanne on 5 May 2010, the Respondent explained that it provided each member of its squad with a mobile phone and a specific phone number. The Club affirmed that it was the only possible way for a foreigner to have access to a cell phone in Romania. The Respondent claimed that it expressly drew the Player's attention to the fact that he would be responsible for the payment of his phone calls.

30. The Panel notes that the phone calls made by the Player were substantiated by lists filed by the Respondent but established by the concerned phone company. Those documents mention the Player's name as well as the details of all his phone calls and of their costs. It appears that the Player made numerous long distance calls.

31. The Player did not give any reason to the Panel to cast a doubt upon the authenticity of those detailed invoices. In addition, he did not deny having received a cell phone and having made the alleged phone calls. It is common knowledge that phone calls on cell phones can generate

considerable costs, in particular if the calls are international. Under such circumstances, the Player could not, in good faith, believe that he would not be charged for unlimited phone calls to his relatives, friends and other acquaintances, living far apart. He actually did not provide any evidence of an agreement between him and the Club to the effect that the latter had accepted to pay his phone bills, beyond a mere assertion. Furthermore, nowhere does the contract signed make reference to such an obligation assumed by the Club.

32. Likewise, the Player could not expect to eat at the restaurant for free, without any limitation. Here again, the Respondent produced convincing evidence, such as restaurant bills and receipts, bearing the Player's signature. In the view of all the circumstances, the Panel is convinced of their authenticity.

33. Phone bills amounting to EUR 1,623 and restaurant bills amounting to EUR 456 must be attributed to the Player.

c.4 Fines

34. Supposedly, the Respondent initiated disciplinary proceedings against the Player because of his misconduct. The latter was sanctioned with a USD 500 fine on 15 November 2008 and with a USD 1,500 fine and EUR 750 on 18 November 2008.

35. As the Respondent has not established that the said decisions were notified to the Player, on what basis they were imposed upon the latter, if he was able to exercise his right to be heard, the Panel concludes that the deduction related to those fines were unjustified or not sufficiently established. Hence, they cannot be taken into account in the present dispute.

d) Conclusion

36. The Panel observes that the Player actually did not deny having generated the above costs. Save for the disciplinary fines, the proof of their existence and their link to the Player were appropriately established and very well documented by the Respondent. In this regard, the Panel notes that the Player had not provided any documentary evidence at all in order to substantiate his case or to reply to the Respondent's allegations. Fundamentally, the Player mainly submitted that the Respondent had no legal/contractual right to make deductions from his salary. However, the Player's position does not appear convincing for two reasons.

37. Firstly, given the nature of those costs (such as the girlfriend's airplane tickets, acknowledged additional rental costs, phone bills), the Player could not expect the Club to assume them. In other words, the Player could not ignore that, ultimately, he would have to reimburse the Respondent for the said expenses it incurred on his behalf. Under those circumstances, the Player was most likely aware that there would be some kind of deduction from his wages and was not opposed to it. In any event, considering that the Player had never complained about

the alleged payment delays of the Respondent before 12 January 2009, the latter was entitled to believe that the Player's consent to the deductions was implied.

38. Secondly, whether the Respondent was legally authorized to extinguish the reciprocal obligations by compensation is irrelevant. The issue at stake is whether the Player had received his salary, which consisted of a periodic payment from his employer. The fact that the Player chose to be paid in kind (for instance when he requested his employer to buy airplane tickets for his girlfriend) cannot be used as an argument against the Respondent in any manner.

39. Based on the foregoing, the monthly payments made to/on behalf of the Player by the Respondent can be summarized as follows:

June 2008

EUR 1,000 on 30 June 2008 in cash as an advance payment;

EUR 1,000 on 30 June 2008 in cash as an advance payment.

Total paid EUR 2,000

July 2008

EUR 325 deduction on 2 July 2008 for the flight ticket paid at the Player' request;

EUR 52 deduction on 11 July 2008 for phone calls made by the Player.

Total: EUR 377

August 2008

EUR 1,050 deduction on 5 August 2008 for the exceeding rental costs of August, September and October 2008;

EUR 223 deduction on 5 August 2008 for the Player's meals at the Phonencia hotel;

EUR 226 deduction on 15 August 2008 for phone calls made by the Player;

EUR 4,683 of salary paid on 20 August 2008 on the Player's bank account;

EUR 5,110 on 25 August 2008 in cash as advance payment of the contract;

EUR 248 deduction on 27 August 2008 for the flight ticket of the Player's girlfriend;

EUR 330 deduction on 27 August 2008 for the flight ticket of the Player's girlfriend.

Total: EUR 11,870

September 2008

EUR 125 deduction on 16 September 2008 for phone calls made by the Player;

EUR 2,201 of salary paid on 16 September 2008 on the Player's bank account;

EUR 602 of salary paid on 16 September 2008 on the Player's bank account;

EUR 233 deduction on 24 September 2008 for the Player's meals at the hotel.

Total: EUR 3,161

October 2008

EUR 243 deduction on 14 October 2008 for phone calls made by the Player;

EUR 7,404 of salary paid on 16 October 2008 on the Player's bank account;

EUR 468 deduction on 28 October 2008 for the exceeding rental costs of November.

Total: EUR 8,115

November 2008

EUR 318 on 06 November 2008 in cash as advance payment;

EUR 78 deduction on 12 November 2008 for phone calls made by the Player.

Total: EUR 396

December 2008

EUR 460 deduction on 10 December for the exceeding rental costs of December 2008;

EUR 2,616 of salary paid on 11 December 2008 on the Player's bank account;

EUR 246 deduction on 15 December 2008 for phone calls made by the Player;

EUR 398 deduction on 15 December 2008 for additional apartment costs (electricity, water etc.).

Total: EUR 3,720

January 2009

EUR 653 deduction on 12 January 2009 for phone calls made by the Player;

EUR 858 of salary paid on 16 January 2009 on the Player's bank account;

EUR 8,333 of salary paid on 16 January 2009 on the Player's bank account;

EUR 3,856 of salary paid on 23 January 2009 on the Player's bank account;

EUR 4,477 of salary paid on 23 January 2009 on the Player's bank account.

Total: EUR 18,177

40. The Panel observes the following:

- In August 2008, the Player was entitled to EUR 8,333 but received at that time EUR 14,247 (EUR 2,000 in June + EUR 377 in July + EUR 11,870 in August).
- In September 2008, the total added sum paid to the Player should have equalled EUR 16,666 but at that time he received EUR 17,408 (EUR 14,247 + EUR 3,161).
- In October 2008, the total added sum paid to the Player should have equalled EUR 24,999 but at that time he received EUR 25,523 (EUR 17,408 + EUR 8,115).

- In November 2008, the total added sum paid to the Player should have equalled EUR 33,332 but at that time he received EUR 25,919 (EUR 25,523 + EUR 396).
- In December 2008, the total added sum paid to the Player should have equalled EUR 41,665 but at that time he received EUR 29,639 (EUR 25,919 + EUR 3,720).

B. Did the Player have a just cause to terminate the labour contract concluded with the Respondent?

41. By means of a fax dated 12 January 2009, the Player notified in writing the Respondent of the fact that he terminated their contractual relationship with immediate effect, because of the Club's persistent payment delays of his salaries.

42. In a recent case (CAS 2006/A/1180 issued on 24 April 2007), the CAS ruled that the *"non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criterion is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100 marg. no. 8.2.5 et seq.)".*

43. In the case CAS 2006/A/1180, the Panel was of the opinion that both prerequisites were met and that the player validly terminated the employment contract for just cause. Not only did the employer fail to comply with a major part of its payment obligation during the first 4 months of the labour contract, but the player was regularly providing his services up until the termination of the contract. Furthermore, the player warned several times in writing his employer about the fact that he would not tolerate the said breaches of obligation in the future. In his last warning letter, the player gave one last deadline to settle the outstanding debts. It is only after the expiry of the deadline that the player terminated the contract.

44. The facts of the present case considerably differ from the ones of the case CAS 2006/A/1180.

45. As a matter of fact, it appears that until October 2008, the Player's wages were paid either in advance or in a timely manner. It is only starting November 2008, that the Respondent was late. The Player has not demonstrated that he made any complaints regarding the late payment of his salaries nor how it affected his situation to a point where he could not be expected to remain in a contractual relationship with the Respondent. From the beginning of his relationship with the Club, his salaries were paid either directly or indirectly. The Player was certainly aware of the Club's payment system as the bank statements he received showed that the amounts

transferred on his account were inferior to what was contractually agreed. In the absence of any protest, the Player appears to have accepted such practice.

46. Altogether, it appears that the Player was entitled to less than a month and a half of salaries when he actually terminated unilaterally his contractual relationship with the Respondent (EUR 41,665 – EUR 29,639 = EUR 12,024). Such a delay of payment cannot justify the unilateral termination of the contract by the Player.

47. Furthermore, according to article 14 of the Romanian physical education and sport Law n°69/2000, the employment contracts involving professional athletes are subject to the general Romanian labour law (Labour Code and special labour regulation). Pursuant to article 161 par. 1 of the Romanian Labour Code (LC), the salary must be paid at the date specified in the work contract. Article 161 par. 4 LC states that in case of late-payment of salaries, the employee is entitled to ask for damages from the employer. However and unless otherwise provided in the labour agreement, article 79 LC reserves the right to terminate the contract upon 15 days prior written notice.

48. Article 79 LC, which is mandatory, was obviously not respected by the Player. On the contrary and without notice and without any warning, he decided not to return to the Respondent, he terminated the contract with immediate effect and he summoned the Club to pay his wages for the months of September to December 2008 before 15 January 2009. Within a week and a half following the receipt of the Player's fax dated 12 January 2009, the Respondent transferred on his account EUR 17,524.

49. In view of the circumstances, the Panel comes to the conclusion that the Player was not entitled and did not have a just cause to terminate the employment contract unilaterally and with immediate effect. .

C. What are the financial consequences of the breach of the labour agreement?

50. The termination of a labour agreement without just cause is a serious violation of the obligation to respect an existing contract and goes against the principle of contractual stability, which is crucial for the well functioning of the international football (CAS 2008/A/1519 – 1520 par. 80; CAS 2005/A/876; CAS 2007/A/1358, N 90; CAS 2007/A/1359, N 92; CAS 2008/A/1568, N 6.37).

51. Regarding the compensation for the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"). Hence, it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. The amount of fees and expenses paid or incurred by the Club, and in particular those expenses made to obtain the Player's services, is an objective element that must be taken in consideration. Such expenses should be amortised over the whole term of the contract.

52. In order to obtain the Player's services, the Respondent accepted to pay to the Moldavian club F.C. Sheriff Tiraspol a transfer fee of EUR 450,000 and to the football agent, Mr Pirnau Nicolae, a commission of EUR 50,000. The payment of those amounts is not disputed.

53. The non-amortised fees and expenses must be calculated on the amount of EUR 500,000. The Parties signed a fix-term agreement for three years. The contract was terminated without just cause by the Player approximately 6 months after the beginning of the labour relationship. As a result, by terminating prematurely the labour contract, the Player did not allow the Respondent to amortize the cost of its investment, thereby causing a financial damage to the club of EUR 416,666 (EUR 500,000 ./. 36 x 30).

54. The Respondent did not provide any evidence of further financial damages suffered by it in connection with the unilateral termination of the labour contract by the Player. On the contrary, in its answer filed with the CAS, it declared that it was satisfied with the Appealed Decision, according to which the Player is ordered to pay in its favour the amount of EUR 300,000, plus interests.

55. Based on the above and in the absence of any reason provided by the Player justifying a further reduction of the compensation awarded by the DRC, the Panel finds that the Appealed Decision must be affirmed in its entirety, without any modification.

The Court of Arbitration for Sport rules:

1. The appeal filed on 25 September 2009 by Mr Thiago Alberto Constancia is dismissed.

2. The decision issued on 15 May 2009 by the FIFA Dispute Resolution Chamber is affirmed.

3. Therefore, Mr Thiago Alberto Constancia has to pay to S.C. Dinamo 1948 S.A. the amount of EUR 300,000. If this amount is not paid within 30 days from the notification of the present award, an interest rate of 5% per year will apply.

4. (…).

5. (…).

6. All other and further claims are dismissed.