



Arbitration CAS 2009/A/1978 David Rodríguez Sánchez v. FC Timisoara, award of 19 April 2010

Panel: Mr Stuart McInnes (United Kingdom), Sole Arbitrator

Football

Contract of employment between a club and a player

Breach of contract by the club

Termination without just cause by the club

- 1. An alleged breach of contract regarding a player's refusal to participate in training sessions which is not upheld cannot entitle a club wishing to terminate a contract to initiate a disciplinary process or to sanction the player if pursuant to the contract any dispute should first be resolved by friendly negotiation. Consequently, by initiating a disciplinary process whereas the player attempts to resolve the dispute amicably and by sanctioning the player, the club unjustifiably breaches the contract.**
- 2. The club's breach of the contract of employment justifies the player considering the contract terminated without just cause.**

The Appellant is a professional football player, born on 25 July 1982 in Sevilla (Spain).

The Respondent is a football club with its registered office in 2 Regele Ferdinand 1 Boulevard, Timis County, Romania, which is affiliated to the Romanian Federation of Football.

On 23 July 2008, the Appellant and the Respondent concluded an Agreement (the "Agreement") for five seasons from 23 July 2008 until 30 June 2013 as a professional football player.

The relevant parts of the Agreement read as follows:

"(...) II. The object of the hereby convention.

2.2 The hereby civil convention does not imply any work accounts but it involves the professional football-player obedience and subordination according to the sports statutes and rules.

(...) IV. The Parties rights and duties. A. The professional football players rights:

4.1.1 The right to have proper training conditions and football matches attendance conditions.

4.1.2 The right to be paid both the honorary as agreed as well as other financial rights that both parties have agreed on.

4.1.3 *The right to receive any material rights that are mentioned in the hereby civil convention.*

4.2 *The professional football-player's duties:*

4.2.4 *The duty to strictly respect the training schedule as well as any other sports schedules set by FOTBAL CLUB TIMISOARA S.A., according to the sports activity he performs.*

4.2.6 *The duty to attend, under no conditions, the official football matches, the friendly football matches, the training and any other team's action, according to the schedule set by FOTBAL CLUB TIMISOARA S.A. or by its trainers.*

4.2.12 *To fully respect the FOTBAL CLUB TIMISOARA S.A. internal rules and regulations.*

4.3 *FOTBAL CLUB TIMISOARA S.A. rights:*

4.3.3. *The right to notice the disciplinary facts that are not respected.*

4.4 *FOTBAL CLUB TIMISOARA S.A. duties:*

4.4.1 *The duty to offer the FOOTBALL-PLAYER proper conditions in order for him to execute the hereby civil convention.*

(...) VI. Guarantees

6.2 *By the hereby convention, the professional football-player states that he has been completely, correctly and precisely informed and that he knows all about both the hereby civil convention rules and the FOTBAL CLUB TIMISOARA S.A. internal rules and regulations, as an integral part of the hereby civil convention.*

(...) VIII. Transfer

8.1 *The transfer of the professional football player from FOTBAL CLUB TIMISOARA S.A. to another club is done according to the sports statutes and rules, without infringing the rights and the duties mentioned in the hereby civil convention.*

8.2 *During the temporary transfer, the hereby civil convention is suspended, and the football-player will not enjoy any right mentioned in the hereby civil convention or in its appendixes.*

(...) X. Football-players Pay and Payment methods

10.1 *For the performed activity the football player will be paid with the following net amounts: After the medical test, the favourable answer of the medical team and the transmission of the ITC, the player will get:*

- *During the period 23.07.2008-30.06.2009 the amount of 180.000 euro net.*
- *During the period 01.07.2009-30.06.2010 the amount of 200.000 euro net.*
- *During the period 01.07.2010-30.06.2011 the amount of 220.000 euro net.*
- *During the period 01.07.2011-30.06.2012 the amount of 250.000 euro net.*
- *During the period 01.07.2012-30.06.2013 the amount of 300.000 euro net.*

Every year at 01.12 the Club will grant 50.000 Euro which will be deducted from the yearly payment. The Club FOTBAL CLUB TIMISOARA S.A. reserves the right to give its football-player other amounts of money in function of his performances, according to R.O.I. RULES.

10.2 FOTBAL CLUB TIMISOARA S.A. can deduct from these amounts taxes, fees as well as any other kind of sports penalties, according to the Romanian Football Federation, Professional Football League and R.O.I. rules.

10.3 All the amounts mentioned in the hereby Civil convention will be paid in monthly installments in function of the FOTBAL CLUB TIMISOARA S.A. financial possibilities at according to the euro-leu exchange rate established by BNR the day the amounts are paid.

XI. Responsibilities and Penalties

11.1 If the football-player does not properly accomplish, totally or partially, his responsibilities and duties, the fact can lead to the hereby civil convention termination by paying the damage interests and other penalties mentioned in special rules in the field.

11.2 In the cases of the football-player serious lapse in behavior from the Romanian Football Federation and from the Professional Football League Statutes and Rules or from the FOTBAL CLUB TIMISOARA S.A. interior rules and regulations, the FOTBAL CLUB TIMISOARA S.A. executive board can start legal action, if necessary, to the Romanian Football Federation and to the Professional Football League, in order for them to withdraw the football-player's membership card, and in this case the hereby civil convention can be unilaterally terminated by FOTBAL CLUB TIMISOARA S.A.

11.4 Just in case the hereby civil convention is terminated because of the exclusive football player's guiltiness, this one is obliged to restore the FOTBAL CLUB TIMISOARA S.A. a part of the financial rights that he enjoyed according to the FOTBAL CLUB TIMISOARA S.A. Administrative Board decision.

11.8 If the football-player leaves the team or misses training for no reason for more than 3 (three) days leads to the possibility to terminate the hereby civil convention, and the football-player is obliged to restore to a part of the financial rights that he enjoyed according to the FOTBAL CLUB TIMISOARA S.A. Administrative Board decision. Just in case we notice, according to the coach's reports, the football-player's malice or passive attitude when it comes to solving the match problems, this one can be suspended for a period of time established by the a part of the financial rights that he enjoyed according to the FOTBAL CLUB TIMISOARA S.A. Administrative Board decision, and the hereby civil convention can be terminated and he can be forced to restore to a part of the financial rights that he enjoyed according to the FOTBAL CLUB TIMISOARA S.A. Administrative Board decision. If the football-player does not respect the R.O.I. and the duties he agreed on in the hereby civil convention or the Romanian Football Federation or the Professional Football League rules and regulations, as well as the behavior code, it represents a lapse in behavior and it is punished according to its seriousness. The main coach proposes some punishments to the executive board and the Administrative board agrees on them.

(...) XVII. Notifications

17.1 Any notification sent by a party to the other party will be considered as received if it is sent to the addresses mentioned below.

17.2 If such a notification is sent by the post mail, it will be sent as registered letter with an acknowledgement of receipt and it will be considered as received by the notified party the working day right after the transmission date.

(...) XVIII. Applicable law

18.1 The applicable law is Romanian law.

18.2 *The hereby civil convention will be considered as signed in Romania and all the disputes, the controversies and the misunderstandings related to the hereby civil convention will be governed, interpreted, understood and solved according to the currently Romanian legislation in force, as well as according to the sports statutes and rules*

18.3 *The contractual responsibility, the damage and the punishments setting are regulated by the civil law, the sports statutes and rules as well as by the hereby civil convention appendixes.*

XIX. Dispute solving

19.1 *The unfulfillment or the bad fulfillment of the duties taken by the hereby civil convention leads the responsibility of the guilty party, except for the exemption cases mentioned by the law.*

19.2 *The parties will do their best to friendly solve any dispute related to the hereby civil convention. If it is not possible, the dispute will be handed to be solved by the Romanian Football Federation and Professional Football League sports jurisdiction authorities.*

XX. Hereby civil convention termination

20.1 *The hereby civil convention is terminated if:*

- *it gets to its term by FOTBAL CLUB TIMISOARA S.A. initiative, in justified cases mentioned by the law or by the hereby civil convention.*
- *other conditions mentioned in the hereby convention, in the FOTBAL CLUB TIMISOARA S.A. ulterior rules and regulations or any normative papers that regulate the professional sportsmen activity.*
- *FOTBAL CLUB TIMISOARA S.A. is entitled to terminate the hereby civil convention just hi case the football-player stops his activity or refuses his membership card or if it withdrawn”.*

The Sole Arbitrator noted that the Agreement did not stipulate the Appellant’s address for notification pursuant to Clause XVII of the Agreement.

It was mutually agreed between the parties that the Appellant commenced playing for the Respondent on or about 23 July 2008 and thereafter regularly trained and played either with the 1st or with the 2nd team and that he played for the first team on at least 2 occasions.

It is claimed by the Appellant that from the commencement of the Agreement the Respondent failed to make payment of his contractual wages and other out of pocket expenses.

It was further mutually accepted that by an agreement dated 25 February 2009 the Appellant entered into a professional Player Contract No 374/25.02.2009 with FC Gloria Buzau SA for a term of nearly 4 months until 15 June 2009.

It is also mutually accepted that on expiration of the agreement dated 25 February 2009, the Appellant returned to Spain. It is submitted by the Appellant that, on or about 25 June 2009, through his agent, he contacted the Respondent to ascertain his required return date to the Club and that he was advised to take an extended holiday. The Appellant also alleged that his agent claimed arrears of salary and other expenses. This was not confirmed in writing. The Appellant contends that the Respondent declined to return to Romania.

It is accepted that the Appellant returned to Romania on or about 27 June 2009 and that he attended the Respondent's training facility on 29 June 2009. It is alleged by the Appellant that on arrival he discovered that his locker had been removed and that there was no official training kit available to him. Notwithstanding the Appellant submits that he reported for training but was expressly prohibited from training and was told to return to the changing room where he was told that he would meet a member of the club who wished to talk to him. This allegation is contested by the Respondent.

The Appellant alleges that he was told by the President of the club that he was not thereafter allowed to train with the club but should return to his hotel to await further orders. This allegation is denied by the Respondent.

On the same day, the Appellant's Representative (hereinafter: "Garrigues") sent a communication to the Respondent, asking that it clarify the situation and requesting that it allow the player, within a period of 48 hours, to join the team and to train normally, as specified in the Agreement. Moreover, Garrigues noted the apparent intention of the Respondent to terminate the Agreement with the Appellant, and asked the latter to contact it to discuss the situation.

By communication dated 30 June 2009, Garrigues informed the Respondent of its disagreement with the decision ordering the Appellant to train with players who didn't belong to the first team. Garrigues also requested the Respondent to allow the Appellant to join the first team for the stage in Hungary. However, it confirmed that the player would participate in the training session scheduled for that day.

On 1 July 2009, Garrigues sent a further communication to the Respondent, observing that the Club was in breach of the Agreement by preventing the player from joining the first team for the competition in Hungary and repeated its request to permit the Appellant to take part in this competition. Garrigues also noted that the Respondent apparently had no intention to remedy the breach of the Agreement amicably and reserved the legal rights of the Appellant.

By letter dated 2 July 2009, Garrigues informed the Respondent that as it had not responded to its earlier communications and/or requests about the player's status and as the player was still obliged to train with the second team, the Appellant would not undertake further training until written communication from the Club clarifying the player's situation with the club had been received.

On 3 July 2009, Garrigues sent a fax to the Respondent, requesting that any correspondence or notices to be directed to the Appellant, be addressed to Garrigues.

By letter dated 14 July 2009, Garrigues formally requested that the Respondent hold a meeting with the player, within 24 hours of the date of the letter, in order to amicably resolve the dispute.

On 15 July 2009, in the absence of any answer from the Respondent, Garrigues filed a complaint with the Romanian Professional Football League (Committee for the Player's Status). The Sole Arbitrator noted that Complaint was not acknowledged by either the Respondent or the Romanian Professional Football League (Committee for the Player's Status) and that it appears to remain unresolved.

On the same day, the Respondent informed Garrigues that the Appellant was called to appear before the Board of Directors of the Club on 24 July 2009.

By letter to the Respondent dated 17 July 2009, Garrigues expressed its astonishment that its requests made in its six earlier letters had been persistently ignored, but that notwithstanding The Respondent alleged in its Notice to attend to the meeting of the Board of Directors, that the Player was in breach of the Agreement dated 28 July 2008. Garrigues confirmed that as the matter had been referred to the Professional Football League, Committee of the Player Status for resolution that the Appellant would not attend the meeting scheduled on 24 July 2009.

On 24 July 2009, at the meeting of the Respondent's Board of Directors and in the absence of the Appellant, it was decided that the Appellant had repeatedly and culpably breached the contractual obligations set out in the Agreement dated 28 July 2008 and the Internal Regulations of the Club; and that in such circumstances it should apply a sports fine in the amount of Euro 45.000. and suspend the player for a period of three months or pending the deliberation of the Romanian Professional Football League - Committee for the Player's Status - (to which they referred the matter for resolution) whichever was the shorter.

On 29 July 2009, the Respondent filed a complaint against the Appellant with the Romanian Professional Football League Discipline Commission. No evidence was brought concerning the outcome of this complaint.

On 12 August 2009, the Appellant replied to the complaint.

On 19 August 2009, the Romanian Professional Football League Discipline Commission ratified the decision adopted by the Respondent's Board of Directors dated 24 July 2009.

On 28 August 2009, the Appellant submitted an appeal to the Romanian Professional Football League Appeal Commission against the decision rendered by the Romanian Professional Football League Discipline Commission.

On 25 September 2009, the Romanian Professional Football League Appeal Commission ratified the decision given by the Romanian Professional Football League Discipline Commission, determining that the dispute was solely the result of the player's unhappiness with the fact that he had to train with the Respondent's second team club and that the player was in breach of the Agreement dated 28 July 2008 by so refusing to train, which justified the unilateral termination of the Agreement as well as the financial sanction applied.

On 16 October 2009, the Appellant filed his statement of appeal.

On 26 October 2009, the Appellant filed his appeal brief.

On 20 November 2009, the Respondent filed its answer.

On 10 December 2009, considering articles R33, R52, R53 and R54 of the Code of Sports-related Arbitration (“the Code”), the CAS designated Mr Stuart McInnes, Solicitor in London, England, as sole arbitrator.

On 4 January 2010, the CAS informed the Parties that a hearing was listed for 5 February 2010 at the CAS headquarters in Lausanne.

On 20 January 2010, the Appellant transmitted his list of witnesses to be heard at the hearing.

On 21 January 2010, the Respondent transmitted its list of witnesses to be heard at the hearing.

A hearing was held on 5 February 2010 at the CAS headquarters in Lausanne.

LAW

CAS Jurisdiction

1. According to article 88 of the Romanian Professional Football League Rules (PFL), *“the decisions made by the Commission of Appeal of FRF and AJF can be disputed by CAF or by TAS. Recourse to CAF expels the right of appeal to TAS and the other way around”*.
2. It follows that the CAS has jurisdiction to decide upon the appeal that relates to the decision No. 18/CR/2009 rendered by the Romanian Professional Football League Appeal Commission.
3. Under article R57 of the Code, the Panel has full power to review the facts and the law. The Sole Arbitrator therefore held a hearing de novo evaluating all facts and legal issues involved in the dispute.

Applicable Law

5. The 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 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”.
6. In the present case the parties are bound by the statutes and regulations of the Romanian Football Federation, which can thus be considered as the *“applicable regulations”* under article R58

of the Code. In addition, as the Romanian Football Federation is domiciled in Romania, and as the Agreement dated 23 July 2008 expressly provides for the application of Romanian Law, both parties are subject to law of the Republic of Romania.

Merits

7. The main issues to be resolved by the Sole Arbitrator are the following:
 - Was the Agreement dated of 23 July 2008 breached by either party and was the Respondent entitled to implement the disciplinary process?
 - Were the PFL and the Romanian Professional Football League Appeal Commission correct in ratifying the decision of the Respondent's Board of Directors dated 24 July 2009?
8. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made by the parties, the Sole Arbitrator decides that:
 - (1) The article 19.2 of the Agreement requires that the parties must do their best to resolve any dispute by friendly negotiation and that if the dispute cannot be so resolved it should be resolved by the Romanian Football Federation and Professional Football League sports jurisdiction authorities.
 - (2) There is evidence in the form of 6 letters dispatched by Garrigues of attempts made by the Appellant to resolve the dispute by negotiation.
 - (3) There is also evidence of the Appellant that he was told that the club wished to terminate the Agreement. This allegation was not challenged by the Respondent.
 - (4) There is no evidence provided by the Respondent's witnesses that any attempt had been made by the Respondent or its representatives to resolve the matter amicably. Moreover, the evidence of the Appellant which was not challenged or discharged was that instead of attempting to solve the dispute amicably, the Respondent implemented an administrative process in which the Appellant did not participate, paying no regard to the effort made by the latter through his representative to resolve the matter by negotiation.
 - (5) The Sole Arbitrator considers that the Appellant's alleged breach of contract that he refused to participate in training sessions is not upheld and that consequently the Respondent was not entitled to initiate a disciplinary process nor to sanction the Appellant.
 - (6) The Sole Arbitrator instead considers that the club unjustifiably breached the Agreement, upon which breach the Appellant was entitled to rely and that the Player's attempt to resolve the matter both amicably and then through submission of a complaint to the PFL, in accordance with the terms of the Agreement, were incorrectly overlooked by the PFL and the Romanian Football Federation Appeal Committee.
 - (7) That the Respondent was in breach of the Agreement, justified the Appellant considering the Agreement terminated without just cause.
 - (8) In the light of the foregoing, the Sole Arbitrator deems that the issue concerning the publication of the internal regulation is irrelevant in the present matter.
 - (9) Consequently, the Appeal should succeed and the decision of the Romanian Professional Football League Appeal Commission No 18/CR/2009 confirming the decision of PFL (NR 3 File No. 25/CD/2009) shall be annulled.

The Court of Arbitration for Sport rules:

1. The appeal filed on 16 October 2009 by Mr David Rodriguez Sanchez against the decision NR 18/CR/2009 issued on 25 September 2009 by the Romanian Professional Football League Appeal Commission is upheld.
2. The decision NR 18/CR/2009 rendered on 25 September 2009 by the Romanian Professional Football League Appeal Commission is annulled and its conclusion is replaced by the following:
 - Mr. David Rodriguez Sanchez was not in breach of the Agreement dated 23 July 2008.
 - S.C. Football Club Timisoara S.A. was not entitled to implement a disciplinary process against Mr. David Rodriguez Sanchez.

(...)

5. All other claims are dismissed.