Arbitration CAS 2011/A/2331 SC FC Rapid Bucuresti SA v. Philippe Léonard, award of 7 July 2011

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

Football
Unilateral termination of the employment contract without just cause by the club
Wrong information regarding the possibility to challenge the FIFA decision
Jurisdiction of the FIFA DRC
Exception to the principle "pacta sunt servanda"
Principles for compensation of the damage suffered by a player

1. **The protection of good faith ceases when a party or its legal representative could and should have realized that the notification given by FIFA was incorrect by simply consulting the applicable regulations. The document called "Directions with respect to the appeals procedure before CAS", sent with the FIFA decisions, is a summary of the applicable procedure provided by the Code of Sports-related Arbitration; however, it does not constitute an official CAS document and furthermore states that *"[i]n case of discrepancy between the present document and the Code, the provisions of the Code shall prevail"*. Therefore, a party wishing to obtain clear and reliable information on the possibility to challenge a FIFA decision should not only rely on this document, but should seek confirmation of the information provided in this document, by checking the relevant provisions of the Code, which are readily available on the website of CAS.**

2. **According to the law of the seat of the present arbitration, namely Swiss law, a plea of lack of jurisdiction must be raised prior to any defence on the merits (Art. 186 par. 2 of the Swiss Federal Statutes on Private International Law). In consequence, if a party is entering into the merits before FIFA, without raising objection to the jurisdiction of the FIFA Dispute Resolution Chamber, it must be deemed to have waived its right to challenge the jurisdiction of FIFA in a subsequent CAS procedure.**

3. **The general rule is that a contract has to be fulfilled upon its term, if the parties do not agree on the contrary. The only exception to this core principle is an early termination of the contract for a *"just cause"*, according to Arts. 14 and 15 of the FIFA Regulations on the Status and Transfer of Players. There is no other possibility provided by the relevant regulations for early termination of a contract.**

4. **When a player is dismissed in breach of contract, the damage suffered by the player as a result of the *"lost term of the contract"* is the main factor. The player has a claim to the full contractually agreed remuneration. The amount which the player has saved or earned elsewhere, in consequence of the early termination of the employment or could have earned elsewhere had the player made reasonable efforts, is to be deducted from the player's damages, so that the Player is not enriched or over-compensated.**

SC FC Rapid Bucuresti ("the Club" or "the Appellant") is a football club with its registered office in Bucharest, Romania. It is a member of the Romanian Football Federation, which has been affiliated with the Fédération Internationale de Football Association (FIFA) since 1923. The latter is an association established in accordance with Art. 60 ff of the Swiss Civil Code and has its seat in Zurich, Switzerland.

Mr Philippe Léonard ("the Player" or "the Respondent") is a Belgian citizen, born in 1974. He has played as a professional for various football clubs in Belgium and France, and has also played for the Belgian national football team.

In January 2008, the Player was offered the opportunity to play for the Club, from 18 January 2008 until 18 June 2009.

A draft Employment Agreement was submitted to the Player. This draft Agreement contained, amongst others, the following elements:

- Period of validity: 18 January 2008 until 18 June 2009.
- Remuneration: EUR 79.000 for the period between 18 January 2008 and 18 June 2008 and EUR 205.000 for the period between 19 June 2008 and 18 June 2009.
- The right for the Club to cancel the convention until 25 April 2008.

Although signed by the Player, the Agreement was not countersigned by the Club.

Despite the absence of a countersigned Agreement, the Player started to provide his services for the Club on 18 January 2008 and immediately played with the first team of the Club in the Romanian national championship.

In February 2008, the Player was presented with a slightly modified Agreement by the Club, which was signed by the parties on 22 February 2008 and registered with the Romanian professional football league.

This second Agreement, entitled *"Civil Convention for the performance of sports services"*, provides the following material provisions:

> *"(…)*
>
> *2.1 The present contract is valid for the period from 18.01.2008 till 18.06.2009, under the following cumulative conditions for validity:*
>
> *a) The Romanian Football Federation should grant the Player the Professional Football Player Licence;*
>
> *b) The proof of the health capacity as professional football player.*
>
> *Art. 3. PRICE OF THE CONVENTION*
>
> *3.1 In due consideration of the sports services provided by the Sportsman under this Convention, namely the services indicated in Art. 1.2, letter a), the Club shall pay him the following sums:*
>
> *1/ Convention duration: 18.01.2008 – 18.06.2009*

2/ For the period 18.01.2008 – 18.06.2008 the Player LEONARD will receive EUR 64.000,- net, EUR 10.000,- at 21.02.2008 and EUR 10.800,-/month (during months February-June).

3/ For the period 19.06.2008 – 18.06.2009 the Player LEONARD will receive EUR 205.000,- net, EUR 25.000,- at 20.06.2008 and EUR 15.000,-/month (during 12 months).

4/ All the amounts are net and will paid (sic) at the exchange rate of the Romanian National Bank for Lei in Euros from the day the payment is made.

5/ For winning the championship, winning the Romanian Cup, participation in UEFA Champions League Group Stage, participation in UEFA group stage, winning matches in Romanian championship, the Player will receive bonuses in conformity with Intern Regulation.

6/ SC FC Rapid S.A. undertakes to provide the Player a car for the contract period.

7/ The Player will receive two flights tickets Bucharest – Brussels – Bucharest per competitional (sic) year.

8/ SC FC Rapid S.A. has the right to cancel this Convention til 25.04.2008

(…)

Art. 9 SETTLEMENT OF DISPUTES

9.1 Any dispute between the parties arising from or in connection with this contract, including disputes regarding its validity, interpretation, execution or termination shall be settled amicably. Should the parties hereto fail in the attempt of amiable (sic) settlement, disputes shall be subject to settlement by the competent bodies of the Romanian Football Federation and of the Professional Football League.

Art. 10 FINAL PROVISIONS

(…)

10.4 This Convention shall be duly completed with the provisions of the Regulations regarding the statutes and transfers of the Players and of the other Regulations of the Romanian Football Federation and the Professional Football League.

(…)".

The parties agree that the Player has received from the Club a total amount of EUR 71.738 as remuneration. The parties however disagree as to what has been paid as instalments provided by the Agreement and what has been paid as premiums for the matches. According to the exhibits provided by the Appellant, the following amounts have been paid, on the following dates and with the following causes:

- On 6 March 2008, EUR 4.500 as *"Game Bonus"*
- On 17 March 2008, EUR 10.000 as *"Indemnity contract March 2008"*
- On 1st April 2008, EUR 10.800 as *"Indemnity contract February 2008"*
- On 3 April 2008, EUR 14.038 as *"Game bonuses and indemnity contract March"*
- On 30 April 2008, EUR 10.800 as *"Indemnity Contract April 2008"*
- On 2nd June 2008, EUR 10.800 as *"Contract May and partially June 2008"*
- On 21 August 2008, EUR 10.800 as *"Contract June 2008"*

The Player submits that the amount transferred on April 2008, of EUR 14.038 was paid as match bonuses only. The Player further submits that the first amount of EUR 4.500 corresponds to a part of the first instalment of EUR 10.000 which was to be paid on 21 February 2008, according to Art. 3.1 of the Contract.

The Player played for the Club until the end of the season 2007/2008, participating in the last game, on 7 May 2008, against FC Vaslui. At the end of the season, the Player left Bucharest to return to Belgium, after signing an extension of the Lease Agreement of the apartment in which he stayed in Bucharest until May 2009.

On 21 April 2008, the Club issued a document entitled *"Notification"*, the material part of which reads as follows:

> *"(…)*
>
> *In attention to*
>
> *LIGUA PROFESSIONISTA DE FOOTBALL*
>
> *Mr. Leonard Philippe*
>
> *NOTIFICATION*
>
> *At the Civil Convention for the performance of Sport Services No. 51/18.01.2008, registered at LPF No. 256/22.02.2008*
>
> *(…)*
>
> *By this mention SC FC Rapid Bucuresti S.A. express oneself the option to cancel this Convention no 51/18.01.2008, registered LPF no 256/22.02.2008 ended with the sportsman Léonard Philippe.*
>
> *This notify* (sic) *will be sent to the sportsman Léonard Philippe and will be sent to LPF.*
>
> *This notify is dated today 21.04.2008 in three originals copy.*
>
> *(…)".*

According to the exhibits provided by the parties, this document was received by the Romanian professional football league on or about 23 April 2008. According to the Player, the document was sent to his agent, by fax, on 9 May 2008. There is no evidence that the Player was informed or notified of the intention of the Club to terminate the Contract, before the receipt of this notice of termination, by his agent, on 9 May 2008.

On 2 June 2008, a Belgian lawyer instructed by the Player sent a letter to the Club, contending that the notice of termination of the Contract had been sent to the agent of the Player on 8 May 2008 and challenging the validity of the termination of the Contract.

The Club did not answer this letter, nor did it answer two further letters sent to the Club on behalf of the Player on 4 July 2008 and 20 August 2008.

The Player submitted that he has not played as a professional football player after his dismissal from the Club. No evidence to the contrary was adduced to the Sole Arbitrator.

On 17 September 2008, the Player lodged a claim with FIFA for breach of contract against the Club. The Player requested payment from the Club of the total sum of EUR 394.800 plus interest at the legal rate from 18 September 2008.

On 5 February 2010, the FIFA Dispute Resolution Chamber issued a decision ("the Decision") on the claim presented by the Player, stating as follows, in relevant parts:

> *"(…)*
>
> *2. Subsequently, the members of the Chamber referred to Art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition 2009) the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment – related dispute with an international dimension between a Belgian player and a Romanian Club.*
>
> *(…)*
>
> *6. In this context, and before examining the question of the early termination of the employment contract, the Chamber noted that the Respondent had not contested the allegation of the Claimant according to which he had not received the amount of EUR 5.000,- which was due on 21 February 2008.*
>
> *7. The Dispute Resolution Chamber therefore held that, in accordance with the basic legal principle of* pacta sunt servanda*, the Respondent must fulfil its obligations as per the Contract entered into with the Claimant and, consequently, pay the outstanding remuneration in the amount of EUR 5.000,- which is due to the latter.*
>
> *8. Based on the foregoing, the members of the Dispute Resolution Chamber decided that the Claimant was to receive the amount of EUR 5.000,-, as outstanding remuneration, to be increased with interests at the rate of 5 % per year as from 18 September 2008 until the date of effective payment.*
>
> *(…)*
>
> *10. In this regard, the Chamber considered that the possibility granted to the Respondent by this clause to prematurely to terminate the Contract without having to invoke any reason for such termination is clearly unilateral and to the benefit of the Respondent only, as well as abusive. What is more, it leaves an unacceptable discretion to the Respondent to decide whether it wishes to continue the contractual relationship. In the light of such abusive and even potestative character of the pertinent contractual clause, the members of the Chamber agreed that Art. 3.1.8 of the employment contract is not valid and cannot thus be validly invoked nor constitute a legal basis to unilaterally terminate the employment contract.*
>
> *(…)*
>
> *14. Having established that the Respondent is to be held liable for the early termination of the employment contract without just cause, the Chamber lent particular emphasis to the consequences of such breach of contract. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that the Claimant is entitled to receive from the Respondent an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract.*
>
> *(…)*

19. Having recalled the aforementioned, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the contract as well as the time remaining on the same contract, as well as the professional situation of the Claimant after the early termination occurred until the present moment. In this respect, the Chamber took into account that the monthly salary of the Claimant was of EUR 10.800,- at the time of the unilateral termination of the Contract (i.e. the first year of Contract), and that his earnings would have been in the amount of EUR 15.000,- during the second year of the Contract, these amounts being increased by various bonuses and advantages. Furthermore, the Chamber pointed out that more than one year of Contract was remaining at the time of its unilateral termination by the Respondent. Finally, the Chamber remarked that the Claimant had apparently remained unemployed until the expiry date of the Employment Contract, i.e. 18 June 2009, and that the termination of the employment relationship with the Respondent had meant his retirement from professional football.

(…)

24. In the view of all the above, the Chamber concluded that bearing in mind art. 17 par. 1 of the Regulations as well as the circumstances of the case at hand, the amount of compensation of EUR 150.000,- would appear fair and appropriate.

25. As a consequence, the Dispute Resolution Chamber concluded its deliberations on the present dispute by deciding that the Respondent has to pay a total amount of EUR 155.000,- to the Claimant, consisting of EUR 5.000,- of outstanding remuneration and of EUR 150.000,- as compensation for breach of contract and that any further claims lodged by the Claimant are rejected.

(…)".

For the above mentioned reasons, the FIFA Dispute Resolution Chamber decided the following:

"1. The claim of the Claimant, Philippe Léonard, is partially accepted.

2. The Respondent, SC FC Rapid Bucuresti, has to pay to the Claimant outstanding remuneration amounting to EUR 5.000, plus 5 % interest per year as from 18 September 2008 until the date of effective payment, within 30 days as from the date of notification of this decision.

3. The Respondent, SC FC Rapid Bucuresti, has to pay to the Claimant compensation for breach of contract in the amount of EUR 150.000 within 30 days as from the date of notification of this Decision. In the event that this amount of compensation is not paid within the stated time-limit, interest at the rate of 5 % per year will fall due as of expiry of the time-limit until the date of effective payment.

4. In the event that the amounts due to the Claimant are not paid by the Respondent within the stated time-limit, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.

5. Any further request filed by the Claimant is rejected.

6. The Claimant, Philippe Léonard, is directed to inform the Respondent, SC FC Rapid Bucuresti, immediately on the bank account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".

By fax dated 20 December 2010, the FIFA Dispute Resolution Chamber served the Decision on the parties and to the Romanian Football Federation. Enclosed with the Decision served by fax on 20

December 2010 was a document entitled *"Directions with respect to the Appeal's procedure before CAS (Code of Sports Related Arbitration, 2004 edition)* [emphasis added]*"*. On the second page of this document, the old Art. R55 of the Code was quoted stating that *"Within twenty days from the receipt of the Appeal Brief, the Respondent shall submit to the CAS an Answer containing the following elements: (…) any counterclaim (…)"*.

On 10 January 2011, the Club filed a Statement of Appeal with the Court of Arbitration of Sport (hereinafter *"CAS"*). It submitted the following prayers for relief:

> *"1/ To annul the Decision issued by the Dispute Resolution Chamber of FIFA in case IFA09-00435, on February 5, 2010.*
>
> *2/ To condemn the Respondent to the payment in favour of the Appellant of legal expenses incurred, including the costs of the arbitration procedure"*.

On 20 January 2011, the Club filed its Appeal Brief, with exhibits.

The Player filed an Answer on 9 February 2011. In the Answer, the Player requested the CAS to review the Decision and to order the Club to pay the following amounts:

> *"- EUR 5.500 corresponding to the outstanding remuneration for the period from January 2008 to June 2008.*
>
> *- A bonus provided for in the Contract for the qualification of the UEFA Championship and set, according to the Player, to EUR 25.000.*
>
> *- EUR 205.000 corresponding to the total remuneration he should have been paid until the end of his contract.*
>
> *- EUR 1.000 corresponding to the security deposit he could not recover for surrendering the lease after renewal.*
>
> *- EUR 5.000 as additional compensation for the damage suffered (moving, flight tickets, surrounding the car, etc.)"*.

The payment of the above mentioned amounts was requested with interest at 5 % per year from 18 September 2008.

In addition, the Player requested confirmation of the Decision.

A hearing was held on 10 May 2011, in Lausanne.

At the outset of the hearing, the Sole Arbitrator drew the attention of the parties to the fact that Art. R55 of the Code, edition 2010, precludes a respondent from adducing a counterclaim in the answer. The attention of the parties was also drawn to the content of the Directions of FIFA enclosed with the Decision, which erroneously quoted the old CAS regulations mentioning that the respondent to an appeal lodged at CAS could submit an answer containing, *inter alia*, any counterclaim. The parties were given the opportunity to present oral submissions on the admissibility of the Player's counterclaim. The Club refused to accept the admissibility of the counterclaim. On behalf of the

Player, it was submitted that, if the counterclaim is to be considered as inadmissible, the full confirmation of the Decision was requested.

Both parties were given the opportunity to present their submissions at the hearing and at the conclusion confirmed that they had no objections regarding their right to be heard and to be treated equally in the arbitration proceedings.

LAW

CAS Jurisdiction

1. The proceedings have been initiated by CAS on 12 January 2011, following the filing of the Statement of Appeal on 10 January 2011. Consequently, according to Art. R67 of the Code of Sports-related Arbitration (the "Code"), the provisions of the 2010 edition of the Code are applicable.

2. Art. R47 of the Code provides that an appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body. *In casu*, the jurisdiction of CAS is based on Art. 63 par. 1 of the FIFA Statutes and is confirmed by the signature of the Order of Procedure dated 31 March 2011 and 7 April 2011, whereby the parties expressly declared the CAS to have jurisdiction to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS general jurisdiction.

3. The mission of the Sole Arbitrator follows from Art. R57 of the Code, according to which the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, Art. R57 of the Code provides that the Sole Arbitrator may issue a new decision which replaces the challenged decision or may annul the decision and refer the case back to the previous instance.

Applicable law

4. Art. R58 of the Code provides that:

   "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. 62 par. 2 of the FIFA Statutes provides for the application of the various regulations of FIFA and, additionally, Swiss law.

6. In the present proceedings, the appeal is directed against a decision of FIFA and the jurisdiction of CAS is to be found in the FIFA Statutes, as stated above. The provision of the second sentence of Art. 62 par. 2 of the FIFA Statutes is in consequence to be respected and the Rules and Regulations of FIFA shall apply primarily and Swiss law shall apply complementarily. Furthermore, Art. 10.4 of the Agreement signed between the parties refers to the *"Regulations regarding the statute and transfer of football players and of the other regulations of the Romanian Football Federation and of the Football Federation and the Professional Football League"*, which is to be construed as an agreement to chose the FIFA Regulations as applicable, as implicitly confirmed by the parties during the proceedings, in which both based their submissions on the FIFA Regulations.

7. As stated by the FIFA Dispute Resolution Chamber in its Decision, the claim of the Player was lodged on 17 September 2008, so that the 2008 edition of the Regulations on the Status and Transfer of Players (RSTP) are applicable to the present case, according to Art. 26 of the said Regulations.

Admissibility

8. The Statement of Appeal filed by the Club was lodged within the deadline provided by Art. 63 of the FIFA Statutes, namely 21 days from the notification of the Decision. The Appellant complied with all the other requirements of Art. R48 of the Code, including the payment of the Court Office fee.

9. It follows that the appeal filed by the Club is admissible, which is undisputed.

10. The admissibility of the counterclaim raised by the Player in the Answer is disputed. In relying on the directions enclosed with the Decision, the Player possibly considered that he was able to file a counterclaim. It is however clear that that possibility was abolished in the 2010 edition of the Code. Art. R55 has been modified and the wording, *"Any counterclaim",* has been withdrawn from par. 1 of the said Article.

11. Even if clearly not admissible, according to the rules in force, the Sole Arbitrator afforded the opportunity to the parties to question whether the counterclaim should be admitted on the basis that the Player was misled by the content of the *"Directions"* referring to the CAS rules in force prior to 1 January 2010 ("2004 edition"), enclosed by FIFA with the notification of the Decision. In that respect, it could be considered that the Player acted in good faith and that good faith has to be protected, as provided by Art. 9 of the Swiss Constitution. According to the case law rendered by the Swiss Supreme Court in this respect, the protection of good faith ceases when a party or its legal representative could and should have realized that the notification given by FIFA was incorrect by simply consulting the applicable regulations (see Decision of the Swiss Supreme Court dated 12 March 2009, published in DTF 135 III 374,

cons. 1.2.2.1). A party which is not represented by a lawyer or who has no previous procedural experience will, by a contra indication, be deemed to have been more easily misled.

12. In the present case, the FIFA Directions, sent with the challenged Decision, are a summary of the applicable procedure provided by Art. R47 and following of the Code, albeit they are out of date and incorrect. It is not an official CAS document. Furthermore, it is stated in the Code that *"In case of discrepancy between the present document and the Code, the Provisions of the Code shall prevail"*. In consequence, it follows that a party wishing to obtain clear and reliable information on the possibility to challenge the Decision should not only rely on this document, but should seek confirmation of the information provided in this document, by checking the relevant provisions of the Code. These provisions are readily available on the website of CAS. It was not difficult for the Player and his legal representative to ascertain firstly, that the 2004 edition of the Code had been replaced by a 2010 edition and, secondly, that the possibility of lodging a counterclaim in the Answer had been withdrawn from Art. R55 of the Code.

13. In view of the above, the Sole Arbitrator is of the opinion that the Player's counterclaim cannot be deemed admissible, even after due consideration of the principle of protection of good faith. It follows that the counterclaim and that the prayers for relief contained in the Answer should be disregarded, save for the prayers for relief requesting the dismissal of the appeal and confirmation of the Decision.

Main issues

14. The main issues to be resolved by the Sole Arbitrator are:

    a) Did the FIFA Dispute Resolution Chamber have jurisdiction to rule on the claim lodged by the Player?

    b) Has the Club fulfilled all its monetary obligations towards the Player for the sporting season 2007/2008?

    c) Has the contract been validly terminated?

    d) Is any compensation to be paid to the Player for the second year of the Contract and, if so, to what extent?

A. Did the FIFA Dispute Resolution Chamber have jurisdiction to rule on the claim lodged by the Player?

15. The Club submits that the FIFA Dispute Resolution Chamber had no jurisdiction to rule on the matter, referring to the second sentence of Art. 9.1 of the Agreement signed between the parties on 22 February 2008, which reads as follows:

    "Should the parties hereto fail in their attempt of amiable (sic)*, disputes shall be subject to settlement by the competent bodies of the Romanian Football Federation and of the Professional Football League".*

16. The Club asserts that the *"Commissions"* within the Romanian professional football league have exclusive jurisdiction to settle the case.

17. It is undisputed between the parties and confirmed by FIFA that FIFA's alleged lack of jurisdiction to issue the Decision was not raised by the Club during the proceedings in front of the FIFA Dispute Resolution Chamber. This point was raised for the first time in front of CAS.

18. According to the law of the seat of the present arbitration, namely Swiss law, a plea of lack of jurisdiction must be raised prior to any defence on the merits (Art. 186 par. 2 of the Swiss Federal Statutes on Private International Law). In consequence, it is not accepted that a party entering into the merits before FIFA, without raising objection to the jurisdiction of the FIFA Dispute Resolution Chamber, could object to the jurisdiction of FIFA in a subsequent CAS procedure. It is noted however that there is no provision in the FIFA Rules governing the procedures of the Players Status Committee and the Dispute Resolution Chamber similar to Art. 186 par. 2 of the Swiss Federal Statutes on Private International Law. The above mentioned FIFA Rules provide that the FIFA Dispute Resolution Chamber shall examine its jurisdiction *"ex officio"*, in the light of the relevant provisions of the RSTP. Nevertheless, a party proceeding before the FIFA Dispute Resolution Chamber without raising any objection as to jurisdiction of FIFA must be deemed to have waived its right to challenge the jurisdiction of the arbitral tribunal (see CAS 2005/A/937, award of 7 April 2006, No. 8.2).

19. The above mentioned considerations can be left undecided, as the issues brought by the Appellant are in the present case insufficient to reverse the FIFA Dispute Resolution Chamber with respect to jurisdiction.

20. In that respect, as pointed out by the Appellant in the Appeal Brief, the relevant provision is Art. 22 (b) of the 2008 edition of the RSTP. This provision provides that FIFA is competent to hear *"employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the players and the clubs has been established at a national level within the frame work of the association and/or a collective bargaining agreement"*.

21. In the present case, it is undisputed that the matter in issue is an employment-related dispute between a club and a player, of an international dimension. The Club however submits that FIFA was not competent to hear the dispute because the parties would have chosen another body to settle their case.

22. In the view of the Sole Arbitrator, in order to successfully challenge the jurisdiction of FIFA, it is insufficient to submit that the parties could have validly chosen another body to settle their case. The wording of Art. 22(1)(b) of the RSTP is clearly expressed and whereby the jurisdiction of FIFA only be waived in favour of alternative jurisdiction of another body, where that other body is deemed to be *"an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of the players and the clubs"* and *"established international level within the frame work of the association and/or a collective bargaining agreement"*.

23. In the present case, the submissions of the Club are limited to assert that the parties would have elected the *"competent bodies of the Romanian Football Federation and of the Professional Football League"* in order to settle the case. The Club did not nominate these *"competent bodies"* and did not adduce any reference to any regulatory provision from which these *"competent bodies"* could derive any right to exist and more importantly, that such *"competent bodies"* are vested with the right to settle cases in employment-related disputes between a club and a player of international dimension. If such *"competent bodies"* of the Romanian Football Federation do exist, it is suspected that their jurisdiction is limited to internal disputes and do not compete with the jurisdiction of FIFA.

24. Furthermore, in order to have the jurisdiction of FIFA set aside, it would be necessary to evidence that the competent bodies validly chosen by the parties offer the guarantees provided by Art. 22(1)(b) RSTP, namely fair proceedings and the respect of the principle of equal representation of players and clubs. As the Club, in the present case, did not mention which or what is the *"competent body"*, it does not satisfy the necessary requirements to establish that the above-mentioned guarantees would be safeguarded.

25. In the light of the above, the Sole Arbitrator is firmly of the opinion that the Decision was correct on the question of the jurisdiction. There is no evidence that the parties would have validly chosen an independent arbitration tribunal, which jurisdiction would have to be preferred over FIFA, according to the conditions of Art. 22(1)(b) of the RSTP.

B. Has the Club fulfilled all its monetary obligations towards the Player for the 2007/2008 season?

26. The Player has been awarded an amount of EUR 5.000 by the FIFA Dispute Resolution Chamber, as payment for the outstanding remuneration due for the period starting from 18 January 2008 until the end of the 2007/2008 sporting season.

27. It is undisputed between the parties that, for this period, the Player should have received an amount of EUR 64.000 net, as fixed income.

28. The Club submits that, between 6 March 2008 and 21 August 2008, it paid the Player a total amount of EUR 71.738, of which EUR 64.000 would have been paid as fixed income and EUR 7.738 as bonuses for the results achieved by the Player with the Club, according to its internal regulations. The Player submits that the Club did not pay the full amounts due as fixed income, and that only EUR 4.500 was paid out of the amount of EUR 10.000 due as first instalment for the fixed income.

29. In order to evidence the fulfilment of its payment obligations, the Club adduced in evidence bank statements. These bank statements show various transfers of money to the Player. The subject matter of the payment is referenced in the statements.

30. Of the seven bank statements produced, five of them provide by way of explanation of the payment, *"Indemnity Contract"* or *"Contract"*. One statement, dated 6 March 2008, refers to *"Game*

bonus" and one statement, dated 3 April 2008, mentions *"Game bonuses and indemnity contract March 2008"* and a statement, dated 17 March 2008, mentions *"Indemnity Contract March 2008"*.

31. It follows that it is unclear what has been paid as fixed income and what has been paid as match bonuses. In particular, for the payment dated 3 April 2008, of EUR 14.038, it is impossible to distinguish between payments of bonuses and fixed income.

32. In their submissions, neither the Club nor the Player mentioned the amount of bonuses that were due to the Player and the Club failed to provide any explanation of how bonuses were calculated pursuant to Art. 3.1.5 of the Agreement signed between the parties on 22 February 2008, which provides that *"The Player will receive bonuses in conformity with Internal Regulations"*.

33. In consequence of the aforementioned, of the payment of EUR 71,738 the Sole Arbitrator cannot distinguish what represents payment for the fixed minimum wage and what represents bonuses.

34. According to Art. 8 of the Swiss Civil Code (which applies additionally), and to Art. 12 par. 3 of the Rules governing the procedures of the Players Status Committee and the Dispute Resolution Chamber (which is a relevant regulation applicable to the present proceedings), and according to Art. R58 of the Code and 62 par. 2 of the FIFA Statutes, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*.

35. In the present case, the claim for the payment of a fixed minimum wage of EUR 64.000 is duly evidenced by the Contract and undisputed between the parties. It is for the Club to evidence the performance of this payment obligation and the Club carries the burden of proof of the payment of the minimum fixed wage.

36. In the light of the aforementioned, the Sole Arbitrator considers that the Club did not evidence payment of all its monetary obligations as regards the minimum fixed wage. In particular, the payment dated 3 April 2008, in the sum of EUR 14.038, would appear to include the transfer of the indemnity due for March 2008, under the Agreement, given that a previous payment, dated 17 March 2008, is also referenced as *"Indemnity Contract March 2008"*. In consequence, the Club's submission that an amount of EUR 10.800 has been paid for the minimum fixed wage, on 3 April 2008, from the total payment of EUR 14.038, has not been duly evidenced.

37. The Player submits that EUR 5.500 remains unpaid, which is EUR 500 more than has been awarded in the Decision. However, on the basis of the fact that the Player's counterclaim is not admissible, the Sole Arbitrator is unable to grant this claim and to increase the amount awarded by the FIFA Dispute Resolution Chamber. The Decision will in consequence be confirmed on this point, without further consideration as to whether the counterclaim of the Player was justified or not.

C. Has the contract been validly terminated?

38. The Club submits that the Decision erroneously stated that the Agreement had been cancelled on 28 April 2008, and that the right to cancel the Agreement up to and including 25 April 2008, as provided by the Agreement in Art. 3.2.8, does not infringe the FIFA Regulations protecting the principles of contractual stability between professionals and clubs.

39. The Agreement signed between the parties on 22 February 2008 provides that *"The present contract is valid for the period from 18 January 2008 until 18 June 2009 (…)"*. In the view of the objective meaning of this clause, the Contract signed between the parties is a fixed term contract, for 18 months. However, Art. 3.1.8 of the Agreement provides the Club the right to cancel the Agreement, until 25 April 2008. In the light of this provision and Art. 2.1 of the Agreement, it appears that this provision can only be exercised by the Club, within a certain deadline, namely by 25 April 2008.

40. The FIFA Dispute Resolution Chamber, correctly determined that this provision does not respect the relevant regulations of FIFA in that Art. 13 of the 2008 edition of the RSTP provides that *"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement"*. It is thus clear that the general rule is that a contract has to be fulfilled upon its term, if the parties do not agree on the contrary. The only exception to this core principle is an early termination of the contract for a *"just cause"*, according to Arts. 14 and 15 of the 2008 edition of the RSTP. There is no other possibility provided by the relevant regulations for early termination of a contract.

41. The Sole Arbitrator is clearly of the opinion that Art. 3.1.8 of the Agreement signed by the parties is contrary to the relevant FIFA regulations and has to be disregarded. As the Club does not assert the existence of a just cause to terminate the Contract, it is considered that the Club has not validly terminated the Agreement and that it has breached the Contract.

42. Additionally, even if Art. 3.1.8 was to be considered valid, the Sole Arbitrator notes that this clause has not been exercised according to what was foreseen in the Agreement. The right to early termination could only have been exercised if notified to the Player up to 25 April 2008. Any other interpretation of Art. 3.1.8 would be contrary to its objective meaning.

43. In the present case, it is undisputed that the first communication from the Club to the Player, purporting to terminate the Agreement pursuant to Art. 3.1.8, is the letter sent by fax to the Player's Agent on 9 May 2008. Irrespective of the question whether such notification would operate to validly terminate the Agreement, it is clear that the date of notification, 9 May 2008, is later than provided for in the Contract and does not meet the deadline of 25 April 2008. In consequence, even if the Club was correct in its submission that termination pursuant to Art. 3.1.8 is valid, it cannot be accepted that the Agreement has been validly terminated, according to its provisions.

44. The Sole Arbitrator accordingly considers that the Agreement signed between the parties has not been validly terminated and that the Club is therefore in breach of the Agreement.

D. Is any compensation to be paid to the Player for the second year of the Contract and, if so, to which extent?

45. The Club submits that the compensation awarded by the FIFA Dispute Resolution Chamber to the Player is inappropriate. The Club alleges that it had paid all its monetary obligations until the end of the first contractual year and that after termination of the Agreement the Player failed to mitigate his loss in refusing potential offers from other clubs.

46. The FIFA Dispute Resolution Chamber considered that, pursuant to Art. 17 par. 1 of the 2008 edition of the RSTP, the Player was entitled to compensation and determined that the monthly salary was of EUR 10.800 at the time of the unilateral termination of the Agreement and that during the second year of the Agreement the earnings of the Player would have been EUR 150.000, plus bonuses. *"Bearing in mind Art. 17 par. 1 of the Regulations as well as the circumstances of the case"*, the FIFA Dispute Resolution Chamber considered that an amount of compensation of EUR 150.000 would appear fair and appropriate.

47. The Sole Arbitrator finds that if one party terminates a contract without just cause, the consequences under Art. 17 RSTP apply. Thus, when a player is dismissed in breach of contract, the damage suffered by the player as a result of the *"lost term of the contract"* is the main factor (see HAAS U., Football Disputes between Players and the Clubs before the CAS, *in* BERNASCONI/RIGOZZI (eds), Sport Governance, Football Disputes, Doping and CAS Arbitration, Berne 2009, p. 242). There are clear and numerous CAS decisions which refer to Art. 337 c of the Swiss Code of Obligations and it is considered that the player has a claim to the full contractually agreed remuneration (see HAAS, *op. cit.*, p. 242-243, footnote 139). This includes monthly salary including other remuneration components such as, for example, a company car and board or accommodation. The amount which the player has saved or earned elsewhere, in consequence of the early termination of the employment or could have earned elsewhere had the player made reasonable efforts, is to be deducted from the player's damages, so that the Player is not enriched or over-compensated (see HAAS, *op. cit.*, p. 243, footnote 142).

48. In calculating the proper level of compensation it is appropriate to assess the level of remuneration due to the Player for the balance of the Contract. It is undisputed that the Player should have been paid the sum of EUR 205.000 for the period from 19 June 2008 until 18 June 2009 according to Art. 3.1.3 of the Agreement. The Player would also have been entitled to match bonuses and to a car (Arts. 3.1.5 and 6 of the Agreement). However, no submissions were made by either party as to the level of the match bonuses to which the Player would have been eligible.

49. The Sole Arbitrator is of the opinion that the compensation due to the Player, as to loss of earnings be fixed at a minimum level of EUR 205.000.

50. Whether the Player could have mitigated his loss by playing with another club is unclear. The Club produced in evidence an extract from an interview of the Player, in which the Player claimed to have received several offers, but not from first league teams such that he decided to

give up professional football. There is however no clear evidence as to the existence of such offers, nor as to the value of these offers.

51. The Sole Arbitrator notes that the FIFA Dispute Resolution Chamber reduced the amount of the compensation awarded to EUR 55.000, instead of minimum remuneration due to the Player for the second year of Agreement. The Sole Arbitrator is of the opinion that this reduction is disproportionate having regard to the CAS case law on compensation due to the players in case of unjustified early termination and further maintains that the Club, which carries the burden of proof, did not offer any explanation or evidence as to the amounts earned, or which could have been earned by the Player during the rest of the term of the Agreement.

52. In the light of the above, the Sole Arbitrator is of the opinion that there is no reason to decrease the amount of compensation awarded to the Player in the challenged decision. However, as the Player's counterclaim is not admissible, the Sole Arbitrator will not consider whether the amount of the compensation awarded should have been raised and the Decision will be confirmed.

Conclusion

53. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Sole Arbitrator finds that:

    (a) the FIFA Dispute Resolution Chamber had jurisdiction to rule on the matter;

    (b) the Club did not prove that the full amount of the minimum wage was paid to the Player until the end of the season 2007/2008;

    (c) the Club unilaterally breached the agreement contrary to the FIFA Regulations and of the provisions of the said Agreement; and

    (d) there is no reason to decrease the amount of the compensation awarded to the Player.

54. The Appellant's appeal shall therefore be dismissed.

The Court of Arbitration for Sport rules:

1. The Appeal filed on 10 January 2011 by SC FC Rapid Bucuresti S.A. against the decision issued on 5 February 2010 by the FIFA Dispute Resolution Chamber is dismissed.

2. The counterclaims filed by Philippe Léonard on 9 Feburary 2011 in the Answer to the appeal filed by SC FC Rapid Bucuresti S.A. are not admissible.

3. The Decision issued on 5 February 2010 by the FIFA Dispute Resolution Chamber is confirmed.

(…)

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