Arbitration CAS 2011/A/2344 Ruslan Aleksyeyevich Ajinjal v. PFC Krylia Sovetov & Russian Football Union (RFU), award of 10 August 2011

Panel: Mr Mark Hovell (United Kingdom), President; Mr José Juan Pintó (Spain); Mr Ivaylo Dermendjiev (Bulgaria)

Football
Termination of the contract of employment due to "poor performance" of the player
Obligations of employers according to the Russian Labour Code
Termination of the contract without just cause
De novo review and claim for interest before CAS

1. **Under the Russian Labour Code, there are obligations on employers to provide work for employees and very limited grounds for an employer to suspend (or to "forbid to perform job functions") an employee, and poor performance is not one of them.**

2. **It is not possible for a club to dismiss a player based on poor performance in a match or for having a poor attitude if the contract between the club and the player does not provide any express provision enabling the club to do so, and if under national law poor performance is a potential ground for dismissal only if it is for repeated offences and previous disciplinary punishment. If there was only one instance of poor performance (i.e. a solitary violation) and it appears that no formal disciplinary procedure was followed, the termination of the contract was without just cause.**

3. **Under Article R57 of the CAS Code, a CAS panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one. It is therefore acceptable for the appellant to make an additional claim for interest, even if such request had not been claimed before the first instance body.**

Mr Ruslan Aleksyeyevich Anjinjal (the "Player" or the "Appellant") is a professional football player.

PFC Krylia Sovetov (the "Club" or the "First Respondent") is a football club with its registered office in Samara, Russia. It is a member of the Russian Football Union and plays in the Russian Premier League.

Russian Football Union (RFU or as the "Second Respondent") is the national football association of Russia and a member of UEFA and FIFA.

The Appellant is a professional football player of Russian nationality. On 1 January 2009, he signed a labour contract with the Club for the duration from 1 January 2009 until 15 December 2010 ("Contract").

At the end of the 2009 season the Player lodged a claim with the RFU Dispute Resolution Chamber (RFU DRC) due to the non-fulfilment of certain obligations and payments by the Club.

On 1 February 2010 the RFU DRC ordered the Club to pay the Player the amount of RUB 10,781,458 plus USD 172,414.

On 23 March 2010 the Club and the Player concluded an "Agreement of Indebtedness Redemption Plan" ("Redemption Agreement") according to which the Club had to pay RUB 8,002,102 to the Player by no later than 26 March 2010 and all the other remaining amounts no later than 1 August 2010. The first payment was duly made on 26 March 2010.

The Club however failed to pay the outstanding remaining amounts due under the Redemption Agreement on the due date.

On 18 September 2010, the Club lost their match against FC Amkar 1-2.

On 21 September 2010 Mr Viktor Razveev, the General Manager of the Club and Mr Alexander Tarkhanov, the Head Coach of the Club met with the Player. This meeting is the heart of the dispute – the Player states he was informed of the Club's intention to immediately terminate the Contract; the Club state that they informed the Player of their decision to suspend him. The Club also issued the Player with a letter stating that the Player was "*suspended from training classes and other events of the club*". Contrary to this, the Club published an article on its website that stated that they had terminated the Contract.

On 22 September 2010 the General Manager of the Club met with the other players and it is alleged that he announced to them that the Club had terminated the Contract. Further the General Manager and the Head Coach gave interviews to the media that were published on the Club's website and on the Russian Premier League's website, discussing the dispute.

On 8 October 2010 the Player wrote to the Club putting them on notice to pay immediately all the outstanding debts to the Player, in accordance with the Contract.

On 14 October 2010 the Club responded to the Player's telegram with their own telegram and notified the Player that the Contract was not terminated, that he was to report to training and that his wages were available for collection from the Club.

On 15 October 2010 the Club announced on its website that the Player was to attend training and stated that the Contract had not been terminated.

The Player sent a second telegram on 18 October 2010, confirming his opinion that the Contract had been terminated and restitution was impossible.

On 25 October 2010 the Player's representative wrote to the Federal Service for Employment-State Employment Inspection in Moscow requesting a legal clarification about the relationship between the Player and the Club.

On 27 October 2010 the Player wrote again to the Club stating that the outstanding amounts remained unpaid.

On 22 November 2010 the Head of Federal Service for Employment Inspection issued its decision and reported to the Player that the Club had *"illegally deprived of their possibility to work"*.

On 25 November 2010 the Player filed a claim to the RFU DRC and sent a further letter to them on 8 December 2010, amending his claim.

On 9 December 2010 the Club wrote to the Player notifying the Player of the upcoming termination of the Contract.

On 15 December 2010 the Club signed an administrative order stating that the Player was dismissed on 15 December 2010 due to the expiry of the Contract.

On 13 January 2011, after 3 hearings, the decision of the RFU DRC ("Appealed Decision") was notified to the Player. The Appealed Decision stated, as follows:

"1. Declare the claim to reimburse the arrears of PFC Krylia Sovetov JSC to football player R.A. Adzhindzhal reasonable in the amount specified below:

- *USD 172,414.00 – the amount of debt under the Redemption Agreement dated 23 March 2010.*
- *RUB 2,779,56.00 – the amount of debt under the Redemption Agreement dated 23 March 2010.*
- *USD 24,955.00 – unpaid amount of the salary of the period from 01 to 21 September 2010*
- *USD 234,574.00 – average salary from 22 September to 10 December (calculated in accordance with Article 139 of the Employment Code of the Russian Federation).*

2. Admit the claim for redemption of R.A. Adzhindzhal to PFC Krylia Sovetov JSC unreasonable concerning payment of compensation for early termination of the Agreement and payment till the next transfer window under Clause 8.3 of the Employment Agreement to the amount of USD 517,236.00 and USD 284,482.00 respectively; USD 172,414.00 – the amount of debt under Clause 5.1 of Article 5 of Appendix 1 to Employment Agreement dated 01 January 2010.

3. Suspend PFC Krylia Sovetov JSC from registering new football players pending the redemption of the existing arrears to the football player of PFC Krylia Sovetov JSC, R.A. Adzhindzhal including registration (transfer) periods, stipulated by the Regulations of the Russian Football Union on the Statue and Transfer of Player.

4. The parties shall report to the Dispute Resolution Chamber of the Russian Football Union on the course of the fulfilment of obligations to football player R.A. Adzhindzhal by 01 February 2011.

5. The present Decision comes into effect as of the date on which it is passed".

On 28 February 2011 the Club paid the Player the net amount of RUB 12,665,279.21.

On 3 February 2011, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS). He challenged the above mentioned Appealed Decision, submitting the following request for relief:

"The decision issued on 13 January 2011 by the Dispute Resolution Chamber of the Russian Football union is annulled in part.

Ruling de novo

PSC Krylia Sovetov is ordered to pay to Ruslan Aleksyeyevich Ajinjal USD 1,406,075 (one million four hundred and six thousand and seventy five US Dollars) and RUB 2,779,356 (two million seven hundred and seventy-nine thousand three hundred and fifty-six Russian Rubles) plus interest at 5% from 21 September 2010.

All the arbitration costs shall be borne by PFC Krylia Sovetov and by the Russian Football Union, which shall be ordered to reimburse Ruslan Aleksyeyevich Ajinjal their minimum court office fee of CHF 500.

PFC Krylia Sovetov and the Russian Football Union are ordered to pay to Ruslan Aleksyeyevich Ajinjal a contribution towards his legal and other costs relating to these proceedings in an amount to be determined at the discretion of the Panel".

On 23 February 2011, the Appellant filed his appeal brief. In this he modified his second prayer for relief, as follows:

1. "PSC Krylia Sovetov is ordered to pay to Ruslan Aleksyeyevich Ajinjal USD 1,518,557 (one million five hundred and eighteen thousand five hundred and fiftyseven US Dollars) and RUB 2,779,356 (two million seven hundred and seventy-nine thousand three hundred and fifty-six Russian Rubles) plus interest at 7.75% from 22 September 2010".

On 21 March 2011, the First Respondent filed its answer, with the following request for relief:

"1. to reject the appeal lodged by the Appellant;

2. to establish that the First Respondent has not terminated the employment contract with the Appellant before time;

3. to establish that the First Respondent has no indebtedness to the Appellant;

4. to establish that the arbitration costs as well as the legal fees and other expenses shall be borne by the Appellant as the only responsible of this trial;

5. to oblige the Appellant as the only responsible of this trial to pay in favour of the First Respondent for the legal and other expenses incurred by the First Respondent".

The Second Respondent, save for providing the CAS with its views on jurisdiction, declined to participate in this arbitration and filed no answer.

In summary, the Appellant claimed, as follows:

	Head of Claim	**Amount**
1.	Arrears under Red Agreement	USD 172,414
2.	Amount due under Red agreement	RUB 2,779,356
3.+ 4.	Unpaid salary 1.9 to 21.9 and Average salary 22.9 to 15.12	USD 301,721
5.	Bonus under Contract	USD 172,414
6.	Comp for early termination	USD 517,236
7.	Payment until next transfer window	USD 354,772
	Totals	USD 1,518,557 and RUB 2,779,356

In addition to that, the Appellant claimed that interest should be added to any sum awarded from the date of termination and at the Russian rate of 7.75%, pursuant to Article 236 of the Labour Code. In the alternative, at 5%, in accordance with CAS jurisprudence.

A hearing was convened on 19 May 2011 at the Court of Arbitration for Sport, Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

The Appellant was not personally present but his representatives called for a legal expert, Professor Olga Shevchenko and a witness, Mr Alexander Zotov, both to be heard by way of video conference.

The First Respondent was present and represented by Mr Ilia Kedrin, the Head of the Legal Department at the Club. The Second Respondent was neither present nor represented.

At the hearing, the parties and the Panel accepted the production by the Appellant's representatives of an English copy of Articles 76 and 81 of the Labour Code.

The Appellant's witness and expert were called to testify and were examined by the Panel and the representative of the First Respondent. Professor Schevchenko gave her testimony from the same room as Mr Zotov, using the video conference facilities. The Panel were concerned by the fact that towards the end of her testimony they could hear voices (off camera) which appeared to prompt her. The representative of the Respondent also complained to the Panel, as he felt she was "biased". The Panel listened to what Professor Schevchenko said, but ultimately did not rely on it to any great degree, as the Appellant had summarised the Russian Law position in his statement of Appeal and a copy of the relevant Articles of the Labour Code were made available to the Panel and the parties at the hearing.

After the parties' final arguments, the President of the Panel closed the hearing and announced that the award would be rendered in due course. Upon closure, the parties expressly stated that they did

not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

LAW

CAS Jurisdiction

1. Article R47 of the Code provides as follows:

   "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 as 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".

2. The Panel noted that the jurisdiction of the CAS was contested by the First Respondent and later by the Second Respondent too. Their first contention is that any appeal from the RFU DRC should go to the Committee of the RFU for the Status of Players. Article 49(4) of the RFU Regulations states:

   "The Chamber's resolution may be appealed by any of the parties to the Committee of the RFU for the Status of Players within seven calendar days from the date of adoption of such resolution".

3. All the parties acknowledged the provisions of Article 50(6) of the RFU Regulations, which states:

   "The Chamber's resolution may be appealed in the Court of Arbitration for Sport in accordance with article 59 of the FIFA's Charter".

4. Article 59 of the FIFA Statutes, states:

   "FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and Players' agents".

5. The Respondents argued that with the ability for a party to go to the Committee of the RFU for the Status of Players, the conditions of Article R47 of the Code had not been fulfilled and the Appellant had not *"exhausted the legal remedies available to him prior to the appeal".*

6. The Panel noted that since these Articles of the RFU Regulations were adopted in 2006, firstly the FIFA Statutes had been updated and secondly, the RFU have now (since 1 May 2011) adopted a new single article dealing with appeals from RFU DRC, Article 30(2) which states:

   "The decision of the Dispute Resolution Chamber can be appealed against in the Players' Status Committee. The decision of the Players' Status Committee can be appealed against at CAS…".

7. The Panel noted that within the old Article 60 of the FIFA Statutes (now Article 63), is Article 60(2), which states:

"Recourse may only be made to CAS after all other internal channels have been exhausted".

8. Article 11 of the Contract provides that *"any disputes shall be solved according to the regulations of RFU about status and transitions (transfer) of football players"* and indeed the dispute was heard by the RFU DRC, which issued the Appealed Decision. According to Article 10(9) of the statutes of the RFU, its members must recognise the Court of Arbitration for Sport in accordance with the statutes of FIFA and UEFA.

9. The Panel noted that in *CAS 2009/A/905* and *CAS 2009/A/1874* the CAS confirmed that jurisdiction derived from Article 50(6) of the RFU Regulations, although the Panel noted in those cases the ability to appeal by two different routes was noted and accepted by the parties.

10. The Panel noted that the Appellant had chosen to bring his appeal straight to the CAS citing Article 50(6) of the RFU Regulations.

11. The CAS, by way of letter dated 8 April 2011, invited the parties to make further submissions in relation to jurisdiction. The Appellant, by way of letter dated 15 April 2011, made submissions on the same. The First Respondent made submissions by way of letter dated 11 April 2011. Finally, the Second Respondent made its submissions on 12 May 2011.

12. The Panel notes that Article 186(1) of the Swiss Private International Law Act (PILA), applicable to the present proceedings, provides that *"The arbitral tribunal shall rule on its own jurisdiction"*. Accordingly, the CAS has jurisdiction to decide any issues relating to its own jurisdiction.

13. The Appellant submitted that Article 50(6) of the RFU Regulations gave him a choice and he chose to bring his appeal directly to the CAS. The wording of both Articles 50(6) and Article 49(4) is "may" or "can", not "must". As such, a choice existed. That choice has now gone with the adoption of the new RFU Regulations, but it is the previous version, that was in force at the time of the appeal, that remains applicable to this matter.

14. The Appellant cited RIGOZZI A. (*L'Arbitrage International en Matière de Sport, Basel, 2005 § 1024)*, which states *"the obligation of exhaustion set forth at Article R47 of the CAS Code only relates to the previous instances provided as mandatory by the applicable regulations"*. "May" or "can" are not mandatory.

15. The Panel considered all of the above and determined that the RFU regulations did offer the parties a choice and the Appellant chose to bring his appeal directly to the CAS. The Panel notes the confusion of having 2 possible appeal routes and that Article 50(6) of the RFU Regulations refers to Article 59 (now 62) of the FIFA Statutes. However, that FIFA Statute does not affect the route to the CAS. It is possible that the RFU intended the reference to be

to Article 60(2) of the FIFA Statutes, but Article 50(6) did not state this and in summary, the Panel has determined it has the jurisdiction to deal with this appeal.

Applicable law

16. 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".

17. In light of the fact that both parties to the contract have their registered offices and residence, respectively, in Russia and according to the basic principles of private international law it must be assumed that the contract is subject to the laws of Russia even if not expressly stated in the Contract. Further, the "Federation" in the sense of Article R58 of the Code is domiciled in Russia, the fact that also requires that Russian Law be applicable. Finally, given that both parties are domiciled in Russia the Panel would have to, in the absence of any other submission, decide that Russian Law shall apply to the merits of the case.

18. The Panel noted that the Contract refers to the regulated documents of FIFA, UEFA, RFU and RPL, as well as regulations of acting legislations of the Russian Federation. It follows that the RFU Regulations, Russian Law as well as FIFA Regulations, are applicable to the present dispute.

19. Regarding the issue at hand, the Panel is of the opinion that whilst the parties have not agreed on the application of any specific national law, it is comforted in its position by the fact that, in the Contract reference is made to Russian legislation and to *"the norms of FIFA"*. As a result, subject to the primary application of the Russian Law, the various regulations of FIFA shall also apply subsidiarily.

Addmissibility

20. The appeal was filed within the deadline provided by Article R49 of the Code, the RFU regulations appearing to be silent on any such deadline. They complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court office fees.

21. It follows that the appeal is admissible.

Merits

22. The Panel had to determine the following:

A. Was the Contract terminated on 21 September 2010 or was the Appellant suspended on that day?

B. *If it was terminated was it with or without just cause?*

C. *If without just cause, then how should the compensation be calculated?*

a) In particular, is there any valid liquidated damages clause?

b) What is the position regarding the performance related bonus?

c) What is the position under the Labour Code?

D. *Has the injured party an obligation to mitigate its position?*

E. *Should interest accrue on any compensation and, if so, at what rate and from what date?*

F. *Any other prayers for relief?*

A. *Termination or suspension?*

23. The Panel were surprised that neither the Player himself nor the General Manager or Coach of the Club were called to give their testimony at the hearing, as these were the only people who could give a direct account of what was said at the meeting between the three on 21 September 2010. However, that is the parties' decision and the Panel must weigh up the evidence, facts and relevant contractual and legal provisions before it.

24. On the one hand, the First Respondent in its submissions argues that the Club suspended the Player along with other players due to their poor performance and poor attitude after a key relegation match. The General Manager and the Coach saw the Player on 21 September 2010 and told him this and provided him with a letter dated that day which referred to "suspension", not "termination". The First Respondent argues that if it had terminated the Contract, then under Article 84.1 of the Labour Code it would have issued the Player with an order and made the appropriate entries in his labour records. This was not done, and indeed the appropriate order was prepared and sent to the Player on the expiry of the Contract on 15 December 2010 and that order was attached to the First Respondent's Answer before the Panel. Further, under Article 4 of the RFU's Regulations on the Status and Transfer of Players, the Player has an obligation to notify the RFU of any termination of contract within 3 days, which was not done.

25. The First Respondent commented on the various extracts from interviews given by the General Manager that appeared on various websites and extracts of which appeared in the Appellant's Appeal. None of these expressly referred to the Club having terminated the Contract, more that it was a possibility and was being explored.

26. Finally, the First Respondent also pointed to their telegram of 14 October 2010, when it ends the suspension and calls the Player back to work. Within this telegram it confirms that all salary to date had accrued and was available for the Player to collect.

27. On the other hand, the Appellant submitted that he was told by the General Manager and the Coach that he was dismissed in their meeting on 21 September 2010. The same day, the First Respondent put a statement on its own website stating *"Football Club "Krylya Sovetov" decided to*

terminate contracts with … Ruslan Adjindjal …"; The Head of the PFUR, Mr Zotov, provided testimony at the hearing that the General Manager confirmed to him that the Player had been dismissed, when they met on 22 September 2010; and two other players at the Club provided written statements that the General Manager addressed the rest of the team on 22 September 2010 and told them *"Mr Victor Razveev and … Mr Alexander Tarkhanov announced in front of all players of the team that the club has terminated the labour contract with Ruslan Adzhindzhal …"*.

28. The Appellant argued that on 8 October 2010 he sent a telegram to the First Respondent claiming what was due to him as a result of the termination by the Club. Only after that did the Club start to "back track" and talk about suspension and then write to the Player and ask him back – it realised the contractual consequences of terminating the Player's Contract. As such, the telegram of 14 October 2010 was an attempt to rescind the termination.

29. The Panel had some key questions to put to those present on 21 September 2010. Why didn't the Player say something when if he's just been dismissed he's handed a letter that says he's "suspended"? Why didn't he notify the RFU in accordance with Article 4 of the RFU's Regulations on the Status and Transfer of Players? Why do the Club state on their own website that they have terminated the Player's Contract, if they had only suspended him? But ultimately, the Panel was faced with conflicting evidence and had to weigh all this up without examining the key people.

30. The Panel noted that there were no provisions under the Contract giving the Club the ability or right to suspend the Player for poor performance, or whatsoever. Under the Labour Code, there are obligations on employers to provide work for employees and very limited grounds under Article 76 for an employer to suspend (or to *"forbid to perform job functions"*) an employee and poor performance was not one of them. In addition, the letter of 21 September 2010, whilst referring to "suspension" was not limited by any time – this wasn't a week's suspension or 14 days, it was unlimited and there were only a couple of months left to run on the Contract; there was no right to appeal this "suspension"; it appears the salary was stopped and only offered a month later and then to be collected, not paid into the Player's bank account. Despite the use of the word "suspension" in the letter, the Panel determined the true construction of the letter was a "termination". The fact that the First Respondent did not comply with the requirements of the Labour Code in issuing the correct order and amending the Player's employment records should not go against the Player, nor should the fact that he failed to act under Article 4 of the RFU Regulations to notify the RFU (it's a joint obligation upon the clubs too and the Panel doubted whether every player would be aware of the RFU's Regulations in this level of detail), there was still a dismissal, whether the post-dismissal procedures were followed by either party or not. Weighing up what evidence was made available to the Panel, it has determined that the Player was dismissed on 21 September 2010.

B. Was the termination with or without just cause?

31. The Panel noted the Contract did not provide any express provision enabling the Club to dismiss the Player for poor performance in a match or for having a poor attitude, only for instances where the Player is banned from playing in Russian professional football competitions. Further, whilst poor performance is a potential ground for dismissal under Article 81, it should be for "repeated" offences and after previous "disciplinary punishment" – only certain express single violations can trigger a dismissal and poor performance/attitude was not one of these. Further, as Professor Shevchenko confirmed, she would have expected a series of warnings, reprimands, internal hearings etc concerning repeated poor performance before any dismissal.

32. On the facts presented to the Panel by the First Respondent, there was one instance of poor performance. Whilst it was in a key game, it was still a solitary violation. The decision was taken by the Coach and the General Manager on the performance in that game alone and no reference was made to other games (indeed the Player had been picked to play in most games that season and was the captain of the team) and it appears no formal disciplinary procedure was followed, rather the Player was called into a meeting and dismissed. The Panel have determined this was a termination without just cause.

C. How should the compensation be calculated?

33. The Panel noted that the Appellant had initially claimed 7 heads of compensation before the Russian DRC. These 7 heads were again referred to in the Appellant's Appeal. The Russian DRC determined that the first 4 of these should be paid in full and the First Respondent stated that it had made this payment, which was confirmed by the Appellant's representatives at the hearing. However, the Appellant's representatives sought to increase 2 of these heads before the CAS and therefore claimed additional sums were due. The table below sets out the position with the first 4 heads:

	Head of compensation claimed before Russian DRC (and the CAS)	Amount claimed before DRC, now paid	Amount claimed before the CAS	Balance alleged outstanding
1.	Arrears under Redemption Agreement	USD 172,414	USD 172,414	-
2.	Amount due under Redemption agreement	RUB 2,779,356	RUB 2,779,356	-
3.	Unpaid salary 1.9. - 21.9.10 (revised to be included in head 4 below)	USD 24,955	-	(USD 24,955)
4.	Average salary 22.9. -10.12.10 (revised to run from 1.9 – 15.12.10 and to include Art 5.1 of Appendix 1)	USD 234,574	USD 301,721	USD 67,147
			Total	USD 42,192

34. The Panel reviewed the Appellant's changed claim from that put before the RFU DRC and initially before the CAS. The difference appeared to be due to the use of the bonus in Article 5.1 of Appendix 1 of the Contract and extending the days from 10 December to 15 December 2010 in calculating the average salary. The Panel noted that Appellant was already claiming the entire performance bonus under Article 5.1 of Appendix 1, as the 5th head of claim, so could not allow this double counting. The Panel however noted the Contract would have expired on 15 December 2010, not 10 December 2010, so should have been awarded an extra 5 days of average salary. The daily rate calculated as USD 2,932 contained the counting of the performance bonus, not just monthly salaries. The Panel determined that the indemnity only referred to the salaries and as such reduced the daily rate to USD 2,362. As such, the extra 5 days equates to, ie USD 11,810. The Panel notes the remainder under these 4 heads was awarded by the RFU DRC and has already been paid by the First Respondent.

35. The 5th head is the Appellant's claim for the performance bonus he argues he would have earned if the Club had not terminated his contract without just cause. The Panel noted that the Player had, in accordance with Article 5.1 of the Appendix of the Contract to have played in 60% of the Club's official championship games during the season to trigger the payment of a bonus in the sum of USD 172,414. At the date of the termination of the Contract, 21 September 2010, the Club had played 21 games and the Player had participated in 16 of these. At that stage the Player had participated in approximately 76% of the Club's games. The Club played 30 games in total, so the Player would have needed to play in 2 of the final 9 games to have achieved the bonus.

36. The Appellant's representatives made reference to Article 156 of the Swiss Code of Obligations, which states that *"a condition is deemed to be fulfilled if its occurrence has been prevented by one party acting in bad faith"*. The Panel note that Swiss Law is not the applicable law in this matter and that this Article is applicable to "bad faith" by one party, but in any event determine that the termination, without just cause of the Contract deprived the Player from the opportunity of playing in those 2 games. The Player was the team captain; the Club ask him to come back (with 4 games left to play) and at the hearing acknowledged that he would have played the extra 2 games he required; and there was no evidence of injury – as such, the Panel has no doubt that the Player would have played the games to have triggered this bonus, had the Club not terminated the Contract and as such determine to award the bonus as part of the compensation for the termination without just cause.

37. The 6th and 7th heads claimed are the contractual penalty or indemnity under the Contract. Article 8.3 sets out the indemnity equal to *"the amount of average monthly salaries which would be due to the Football-player from the moment of cancellation of the Contract until the beginning of the nearest registration period"* and *"the amount of six average monthly salaries of the Football-player"*. The Appellant calculated this as USD 517,236 and USD 284,482 before the Russian DRC and before the CAS.

38. The calculation was not challenged by the First Respondent. Its only argument was that it suspended the Player and that the Contract ran its course until 15 December 2010, so this clause was not triggered. The Panel, however note that the Appellant, in calculating these sums have

included the performance related bonus. The Panel noted that the average monthly salaries are the USD 15,000 under Article 6 of the Contract and the USD 56,839 under Article 2 of the Appendix to the Contract. As such, the sum due for 6 months average salaries is USD 431,034. In addition, the Appellant claimed that the sum due from the termination of the Contract until the next registration period (based on 121 days) should be USD 354,772. However the Panel noted this was calculated by the Appellant looking at the salaries and the performance bonus and as such needed to reduce the claim to USD 284,484, as originally claimed before the RFU DRC. Having already determined that the Contract was terminated by the First Respondent, the Panel determine to award the sums of USD 431,034 and USD 284,482 as further compensation for the termination.

39. As such, the Panel determine to award the total sum of **USD 899,740** (being USD 11,810 + USD 172,414 + USD 431,034 + USD 284,482) as compensation for the First Respondent's termination of the Contract without just cause. For the avoidance of doubt, this amount is net of the amount already paid pursuant to the Appealed Decision.

D. Has the Player an obligation to mitigate its position?

40. The Panel noted that the First Respondent did not enquire as to whether the Player had mitigated his position. In any event, there were only a couple of months between the termination of the Contract and its expiry, which was all outside the normal period for clubs seeking players (the next registration window opened on 20 January 2011). As such, mitigation was not deemed an issue by the Panel.

E. Interest

41. In the parties' submissions, the right for the Appellant to claim interest was disputed by the First Respondent, as the same had not been claimed before the RFU DRC. Under Article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one. The parties confirmed this position by all signing the Order of Procedure in this matter. The Panel noted it is therefore acceptable for the Appellant to make this additional claim for interest.

42. The Appellant claimed the rate at 7.75% or, in the alternative at the rate of 5%, as is consistent with CAS and FIFA jurisprudence. The Panel noted the claim for 7.75% was not based an the Labour Code, but rather an instruction of the Central Bank of Russia in an Order that appeared to be more applicable to credit organisations and as such determined to follow the normal CAS jurisprudence and to award interest at the rate of 5%.

43. As such, the Panel determines that the compensation awarded shall bear interest at 5% from 22 September 2010.That date being the first day following the date on which the player's Contract was terminated. The Panel noted the Appellant, at the hearing, expressly stated that he was not seeking interest on the sums already paid by the First Respondent.

F. Other Prayers for Relief

44. The Panel determines that following the above conclusions, it makes it unnecessary for the Panel to consider the other requests submitted by the parties to the CAS. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Ruslan Aleksyeyevich Ajinjal on 3 February 2011 against the decision of Russian Football Union's Dispute Resolution Chamber dated 13 January 2011 is allowed and the decision is set aside.

2. PFC Krylia Sovetov is liable to pay Mr Ruslan Aleksyeyevich Ajinjal an amount of USD 899,740 as compensation for termination of his contract without just cause, with interest at 5% a year from 21 September 2010. For the avoidance of doubt, this amount is net of the amount already paid by PFC Krylia Sovetov pursuant to the decision of Russian Football Union's Dispute Resolution Chamber dated 13 January 2011.

3. (…).

4. (…).

5. All other or further claims are dismissed.