Arbitration CAS 2011/A/2461 Ivan Laurentiu Marian v. C.S. Otopeni, award of 31 January 2012

Panel: Mr Quentin Byrne-Sutton (Switzerland), Sole Arbitrator

Football
Contract of employment between a club and a player
Absence of proof of the existence of a subsequent agreement reducing the financial rights of the player
Interests

1. **In principle, a party invoking a fact has the burden of establishing it. With respect to the existence of a subsequent agreement modifying a contract of employment between a club and a player by reducing the financial rights to which the player was initially entitled, if the player has brought convincing elements of proof and in the absence of any expert evidence relating to the authenticity of the subsequent agreement, the player has discharged his burden to establish that he did not agree to forego a significant part of his contractual financial rights.**

2. **If (i) a contractual debt is derived from a contract subject in part to national law, (ii) is between an entity and an individual having the same nationality and (iii) the place of performance of the debt is the same country as the country of citizenship of the contracting parties, failing a specific provision regarding interest for late payments in the contract, it is the relevant national rules and rate prevailing in the relevant country that should apply in determining the mode and rate of paying interest. However, absent any explanations or evidence brought by the creditor regarding the conditions under which interest is allowed under national law or regarding the statutory or market rates in the relevant country, it is not possible to determine whether the interest rate claimed is correct and admissible, and a request for payment of interest must be rejected.**

Mr. Ivan Laurentiu Marian (the Appellant, also referred to as the "Player" or "Ivan Marian") is a professional football player born in 1979.

Clubul Sportiv Otopeni (the Respondent, also referred to as "C.S. Otopeni" or "the Club") is a football club affiliated to the Romanian Football Federation (RFF).

On 24 July 2008 the Player was transferred to the Club.

On 21 July 2008, the Player and the Club entered into a fixed-term contract (entitled *"Conventie Civila Sportiva"* and registered under n° 948 on 24 July 2008) for the period running from 21 July 2008 to 30 June 2011, i.e. covering three football seasons ("the Contract").

The Contract provided that the Player would be paid as follows:

- For the 2008 – 2009 season: a total of EUR 68,000, with EUR 20,000 being paid on 10 August 2008, and a further 12 monthly instalments of EUR 4,000.
- For the 2009-2010 season: a total of EUR 58,000, with EUR 10,000 being paid on 10 August 2009, and a further 12 instalments of EUR 4,000.
- For the 2010 – 2011 season: a total of EUR 58,000, with EUR 10,000 being paid on 10 August 2010 and a further 12 instalments of EUR 4,000. The monthly instalments were to be paid on the 25th of each month.

The Player alleges that in August 2010, the Club informed the team that in order to obtain some sponsorship and better guarantee its financial engagements it had made an arrangement with *BancPost Bank* (Otopeni Branch), whereby the players would each receive a new bank account onto which wages would be paid and a corresponding bank card.

The Player further alleges that in mid-October 2010, after *BancPost Bank* had provided the bank cards to the Club, the latter's representatives (Mr. Porumbacu Mugurel and Mr. Stoica Nicusor) met with the players and asked them all (24 players), separately and individually, to sign the same single-page document entitled *"Tabel Nominal"* (the "Nominal Table"), in order to acknowledge receipt of the bank cards. According to the Player, no other page or any form of contractual engagement was attached or linked to the Nominal Table and originally the document was not on the Club's letterhead, was not countersigned by a Club representative, did not include the Club's stamp and contained no page number.

As proof of the circumstances and the month (October 2010) in which the Nominal Table was signed and of the nature of that document, the Player has adduced various elements of written evidence, including witness statements by his teammates I. (notarized statement of 7 June 2011) and B. (notarized statement of 7 June 2011) and a copy of an agreement dated 25 October 2010 signed between another teammate (K.) and the Club, whereby that teammate's employment contract was terminated by mutual consent and he was given leave to *"… transfer to any team from the country or abroad starting on 25.10.2010"*, together with extracts of the passport of K. including a customs' stamp indicating that he left Romania and arrived in the Cameroon on 30 October 2010.

The Club contends that in fact the Nominal Table was not what the Player alleges, but was rather the second page of an agreement dated 1 December 2010 (the "Amendment") between the Club and the 24 Players (signatories of the second page entitled "Tabel Nominal"), whereby the latter accepted, among others, to renounce their outstanding wages relating to the past season (2009-2010) and to reduce by 50% their wages for the season underway (2010-2011).

As evidence of its position, the Club indicates that an original of the Amendment was formally adopted by itself under n° 2008/01.12.2010 and lodged/registered with the RFF under n°

3582/16.12.2010 and, upon the request of the Sole Arbitrator, filed what it alleges to be the original Amendment, which bears the date 1 December 2010, is contained on the Club's letterhead, is signed on both pages (each page being numbered, respectively as page 1 and page 2) by a representative of the Club next to a stamp of the Club and bears a registration stamp dated 16 December 2010 of the RFF. The Club also refers to an agreement (filed by the Player) dated 3 March 2011 between the Club and one of the signatories (C.) of page 2 of the Amendment, whereby the Club accepted that the Amendment be declared null.

On 16 December 2010, due to belated wage payments, the Player initiated proceedings before the National Dispute Resolution Chamber of the RFF ("the Dispute Resolution Chamber") invoking the Contract and claiming EUR 35,500 due for the 2009-2010 season as well as EUR 10,000 (which had become due on 10 August 2010) and EUR 16,000 (corresponding to four outstanding monthly instalments of EUR 4,000 which had become due between July and October 2010) due for the 2010-2011 season.

The next day, on 17 December 2010, the Player received a written notification from the Club indicating it intended to terminate the Contract by mutual consent and requiring him to present himself at a meeting on 10 January 2011, at 12:00, for that purpose.

On 10 January 2011, the Player informed the Club by fax that he did not agree to terminate the Contract.

On 11 January 2011, the Club wrote to the Player stating: *"Following your refusal to terminate the Game Contract* […] *we inform you that on 11.01.2011, the C.S. Otopeni Board decided that the Player IVAN LAURENTIU to train himself separately according to the Romania Football Federation Regulation, starting from 17/01/2011 until the expiry of the Game Contract on 30.06.2011"* and indicating that he would receive a training programme from the Club.

On 27 January 2011, the Player completed his claim by requesting EUR 8,000 (corresponding to two outstanding monthly instalments of EUR 4,000 which had become due between November and December 2010).

In its decision n° 11 dated 17 February 2011, the Dispute Resolution Chamber decided that the parties had entered into an agreement that had been registered with the RFF, and that by that agreement the Player had waived his entitlement to the payment in relation to the 2009-2010 season, and had agreed a reduction by 50% in relation to the payments for the 2010-2011 season.

Further, the Dispute Resolution Chamber noted that the Club had paid EUR 2,000 in October 2010, and therefore it deducted this amount from the total amount payable to the Player.

Therefore the Player was awarded half of the contract amount of EUR 34,000 payable in respect of the 2010-2011 season up to December 2010, being EUR 17,000, less the amount of EUR 2,000 already paid. The Player was therefore awarded EUR 15,000.

The Player appealed this decision to the Recourse Commission of the Romanian Football Federation ("the Recourse Commission"). The Recourse Commission issued decision no 39/CR/2011 on 13 April 2011 in which it rejected the appeal by the Player by a majority of three to two ("the decision under appeal").

The dissenting opinion determined that the Player should be paid EUR 67,500 being EUR 35,500 for the 2009-2010 season, the EUR 10,000 due on 10 August 2010 and six monthly payments of EUR 4,000 for the months of July to December 2010 as claimed by the Player.

This decision of the Recourse Commission was notified on 6 May 2011 to the Player, who appealed it to the Court of Arbitration for Sport (the "CAS").

On 26 May 2011 the Player filed his Statement of Appeal with CAS against the decision of 13 April 2011 of the Recourse Commission.

In his Statement of Appeal, the Player requested that a Sole Arbitrator be appointed.

This Statement of Appeal was notified to the Club on 1 June 2011.

On 13 June 2011 and within the deadline as extended by CAS, the Player filed his Appeal Brief.

The Player's Prayers for relief in his Appeal Brief are as follows:

"XII. The prayers of relief of a financial nature

1. *The request for the amount of 20.500 Euros formulated at Chapter III, point 2, letter a) of the Appeal is with reference to the remaining financial rights for 2009/2010 season.*
2. *By the original claim, I requested 35,500 Euros representing the remaining financial rights for 2009/2010 season. For that season, I was entitled to receive the total amount of 58,000 Euros. From that amount, I received only 22,500 Euros. The amount of 22,500 Euros includes also the sum of 3000 Euros that Club paid in October 2010.*
3. *Since the decision rendered by NDRC became enforceable (it was confirmed by Recourse Commission), the Respondent paid the amount of 15,000 Euros admitted by the first instance.*
4. *The amount of 15,000 Euros is deducted from the oldest debt, thus it was deducted from the financial rights owed for 2009/2010 season. Therefore, from the amount of 35,000 Euros, only 20.500 are still due by the club at this moment.*
5. *The interest of 5%/year requested for this amount (Chapter III, point 3, letter d of the Appeal) should be calculated from 25 August 2010 (the last payment date for the season 2009/2010) until the full payment of the sum.*
6. *The amount of 34,000 Euros, requested at Chapter III, point 2, letter b) of the Appeal, represents the financial rights owed by the Respondent for the period July – December 2010 (season 2010/2011), respectively the instalments for 6 months (4000 Euros each) and the individual instalment of 10.000 Euros due on 10 August 2010. This amount (34.000 Euros) was requested in front of NDRC and I am entitled to receive it according to the contract concluded with the Respondent.*

7. I also requested CAS to oblige the Respondent to pay me the amount of 20.000 Euros (Chapter III, point 3, letter c of the Appeal) which represent the financial rights for the period January 2011- May 2011 (5 months of 4000 each). These amounts where not requested in front of the national tribunals since they were not due at the moment when the dispute was settled.

8. Since the club "forgot" to pay my financial rights, it is obvious that I suffer a real prejudice from this delay. The damage resulting from the delayed payments is equal to the interests for the amount unpaid, calculated from the date the amount was due until the payment day. The interest rate of 5% is accepted, as a fair satisfaction for delayed payments, by Dispute Resolution Chamber of FIFA and by CAS.

9. The dispositions of Article R58 of the Code and those prescribed by article 34.15 of RSTJF [Annexe 29] are relevant with respect to this new requests (revenues reached maturity and interests).

Article 34.15 of RSJTF (edition 2010) establishes that: "The capacity of the parties, the case and the purpose of the initial petition cannot be changed during the review proceedings, nor can a new petition be introduced. New interests, instalments, overdue revenues or any other damages may, however, be requested after the passing of the decision by the first instance body".

This provision clearly shows that any claim for revenues reached maturity and for interests are accepted at a later stage of the proceedings.

At this stage of the proceedings the requests for the financial rights reached maturity and interests for the unpaid amounts are definitely legal and grounded for the fact that CAS is ruling de novo in the present matter and this new requests are closely linked to the object of the dispute.

Nevertheless, another claim for this amounts cannot be formulated before impartial national instances. It seems that I had no other opportunity, except CAS, to claim any contractual rights.

XIII. Conclusion

In conclusion, I kindly ask CAS to analyze also the merits of these prayers for relief.

In conclusion to all described in this brief, I underline that the decisions appealed were issued by sports tribunals that lacks of impartiality (NDRC and RC of RFF). The decisions are manifestly unfounded and issued against generally accepted principles of law.

The contractual behaviour (breach of contract due unpaid salaries) of the Respondent and his actions in tort (the fraudulent creation of a document) should not remain confirmed, with force of res judicata. The document created by the Respondent is null and void and could not be taken into consideration.

My financial rights are clear and well grounded and must be paid by the club in order to respect my work as a professional player and the force of the contract".

It should be noted that there is a typographical error at point 3(e) of the Prayers for relief in that the last 5 amounts of interest should run from the respective months in 2011 rather than 2010 as stems logically from the Player's pleadings and the corresponding documentary evidence adduced.

The Player submitted that as the Club had paid EUR 15,000 pursuant to the decision under appeal, the original amount that had been sought in the underlying proceedings was reduced.

The Player also outlined that his financial rights had continued to accrue in terms of instalments due under the original contract between the parties of 21 July 2008. He therefore claimed payments up to

and including May 2011 pursuant to Article R58 of the Code of Sports Related Arbitration and Mediation Rules ("the CAS Code") and Article 34.15 of the Statutes and Regulations of the Romanian Football Federation ("the Romanian Statutes"), which is quoted as stating that *"The capacity of the parties, the case and the purpose of the initial petition cannot be changed during the review proceedings, nor can a new petition be introduced. New interests, instalments, overdue revenues or any other damages may, however, be requested after the passing of the decision by the first instance body"*.

On 7 July 2011, the Club filed its Answer containing the following Prayer for relief: *"We cannot agree this brief* [the Player's Appeal brief] *and, for this purpose, we kindly request you to dispose the total rejection of the affirmations included in Chapter XII – "The prayers for relief of financial nature" formulated by the player Laurentiu Marian Ivan, being groundless …"*.

On 10 July 2011, the Appellant submitted a letter dated 11 July 2011 showing his payment of a proportion of the advance of costs in the proceedings, referring to his Appeal Brief and submitting a Romanian Border Police letter and a press article.

On 1 August 2011, the Player made a further submission with requests to the Sole Arbitrator. The Player paid in full the advance costs of the arbitration, and indicated that a further payment of EUR 4,000 due to him under the contract that he had signed with the respondent had fallen due on 25 July 2011. He therefore asked the Sole Arbitrator to include this claim, together with associated interest, in his award.

The Player reasoned in this request that as the national sports bodies were lacking in impartiality, the only avenue for this additional claim was in the appeal before the CAS, and referred to his Appeal Brief with respect the possibility to add such requests arising from the same "juridical report" and closely linked to the matter.

The Player also made submissions on aspects of the Defence of the Respondent. He made submissions in relation to the EUR 15,000 paid by the Respondent on foot of the decision under appeal, and in relation to whether interest was payable on any award, quoting case law of the CAS. He also made submissions in relation to the registration of the document relating to the player K., in relation to the reason that the Respondent deemed the agreement of 2008 with the Player C. null, in relation to the pagination of the documents by the Respondent and legal steps undertaken by the Player in relation to his allegation of fraud.

On 4 August 2011, a Panel composed of Mr Quentin Byrne-Sutton as Sole Arbitrator was duly constituted.

On 8 August 2011, the Sole Arbitrator acknowledged the correspondence of the Appellant and invited a response from the Respondent within one week.

The Respondent replied by letter dated 16 August 2011, refuting the request of the Appellant to augment his claim before the CAS with the addition of a claim for EUR 4,000 in relation to the monies that he stated fell due on 25 July 2011. It was submitted that such a claim should only come before

the CAS by way of appeal after it had been brought to the national decision-making bodies in Romania.

The Respondent also cited Article R56 of the Code submitting that the Appellant should not be authorized to supplement or modify his requests or proofs. The Respondent submitted that the requests of the Appellant should be dismissed for the reasons that had been set out in its Answer.

On 1 September 2011, the Sole Arbitrator indicated that the admissibility of the new requests of the Appellant of 1 August would be decided in the final award. The Respondent was granted the opportunity to file a substantive answer to the merits of the new request of the Appellant without prejudice to the decision of the Sole Arbitrator in relation to its admissibility.

The Sole Arbitrator also ruled that the commentaries of the Appellant of 1 August 2011 would be admitted, pursuant to Article R56 of the Code. The Sole Arbitrator indicated that as the Appellant would have been entitled to respond to any of the submissions of the Respondent in a hearing, but that it had been decided not to hold a hearing in the case, the Appellant's commentaries would be admitted into the CAS file, while at the same time the Respondent was allowed the opportunity to respond to the commentaries of the Appellant within two weeks.

In that letter, the Sole Arbitrator also ruled on the requests for evidentiary measures as requested by the Appellant in his Appeal Brief and made requests of the Respondent, FIFA, the RFF and the Cameroon Football Federation for the production of a variety of documents.

By letter dated 16 August 2011, the Respondent provided the document requested, and in response to the additional requests and commentaries, referred the Sole Arbitrator to its previous correspondence and its Answer.

By letter dated 18 September 2011, the Appellant made further submissions in relation to the composition of the national dispute mechanism in Romania; the alleged fraud by the Respondent concerning the player K.; and the agreement dated 1 September 2010. Together with this correspondence, the Appellant submitted his correspondence with the Association of Amateur and Non-amateur Footballers from Romania (AFAN), two circulars received from AFAN and an email from K. and a photocopy of his passport.

By letter dated 7 October 2011, the parties were each provided with the other party's correspondence of the 16 September 2011 and 18 September 2011 respectively, together with copies of FIFA's letter of 8 September 2011 and the letters of 7 October 2011 from CAS to the RFF and the Cameroonian Football Federation.

The Appellant was invited to file his position and/or observations on the correspondence of the Respondent and FIFA insofar as it concerned the original requested documentation and the attached exhibits, and the Respondent was invited to file, within the same deadline, its position and/or observations on FIFA's letter and the Appellant's letter.

By letter dated 14 October 2011, the Appellant responded and made submissions in relation to the letter of FIFA of 8 September 2011 and the letter of the Respondent of 16 September 2011. He attached excerpts from webpages in relation to the player K.

By letter dated 14 October 2011, the Respondent commented on the letter of FIFA and the submission on the Appellant, and repeated its previously expressed view in relation to the Appellant that, without the agreement of the parties or the permission of the President of the Panel, the parties are not authorised under Article R56 to modify their petitions at this stage of the proceedings.

Further to CAs request, the RFF filed, on 17 October 2011, an original copy of the Amendment that it registered.

On 2 November 2011, the parties were written to again on behalf of the Sole Arbitrator. The parties were provided with correspondence between the Cameroon Football Federation and the CAS and between the RFF and the CAS and were given an opportunity to file comments on the correspondence.

By way of the same correspondence, the parties were informed that the Sole Arbitrator had considered the objections to the admissibility of the Appellant's statements under points III and IV of his letter of 18 September 2011, which related to the fraud alleged against the Respondent by the Appellant in relation to the player K. The Sole Arbitrator informed the parties that, as the Appellant had requested the filing of the passport of K. in his Appeal Brief and as this had been refused as being premature on 1 September 2011, those exceptional circumstances justified the late filing of the submission under section III of the Appellant's letter of 18 September 2011. The letter of the Appellant of 18 September 2011 was admitted to the CAS file, bearing in mind that the submission of the Appellant in point IV of the letter of 18 September 2011 had been superseded by the information received by the Cameroon Football Federation. The Respondent was given the opportunity to make any observations it wished to make in relation to section III of the letter of the Appellant of 18 September 2011.

The Appellant filed further submissions on 11 November 2011 in relation to the correspondence between the CAS and the Cameroon Football Federation, and between the CAS and the RFF. The Respondent filed further submissions on 15 November 2011 acknowledging the decision of the Sole Arbitrator in relation to the admissibility of further arguments by the Appellant, and re-stating its defences as set out in the Answer.

A Procedural Order was issued to the parties on behalf of the Sole Arbitrator on 15 December 2011, in which it was confirmed to the parties, inter alia, that the Sole Arbitrator would decide the case based on the parties' written submissions. Both parties have duly signed this Order.

On 6 January 2012, and further to the opportunity provided to both parties to submit a statement of costs, the Appellant filed a statement.

LAW

CAS Jurisdiction

1. Article 47 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 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.

   An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance".

2. In this case, the parties have accepted and confirmed the jurisdiction of CAS under an Order of Procedure dated 15 December 2011 and signed by them on 21 December 2011, indicating under its clause 1 that: *"The jurisdiction of the CAS in the present case is based on Article 36.17 of Regulation on the Status and Transfer of Football Players (RSTP) adopted by the Romanian Football Federation (RFF) and on Article 57 of the RFF Statutes".*

3. Consequently, the CAS has jurisdiction to adjudicate this appeal.

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. In this case it stems from clause L of the Contract and its nature that it is governed by the regulations of the RFF, the Law 69/2000 of physical education and sport, the Emergency Ordinance 205/2005 and more generally, if relevant, by the regulations of FIFA and by Romanian law.

Admissibility

6. Having been filed within the 21-day deadline provided by Article R49 of the Code, the appeal is admissible.

7. Article R56 of the Code stipulated the following:

   "Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor

to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer".

8. In relation to the Appellant's submissions that relate to the updating the quantum of his claim, the extract of Article 34.15 of the Romanian Statutes that was quoted by him in his Appeal Brief, and is reproduced above, is applicable. It is clear that the basis of the claim remained the same, and that its quantum claim was simply increased by the Appellant in line with his original appeal and in accordance with the additional instalment which became contractually due during the proceedings. This was not a supplementation of argument as envisaged by Article R56 of the Code but simply an updating of the amount being claimed in a form and at a time that did not create any unfairness. It is therefore admissible.

9. As regards the commentaries and submissions made by the Appellant after the filing of the Answer by the Respondent, and certain additional comments by the Respondent, the Sole Arbitrator considered that in a case where no hearing was to be held it was in the interest of its proper adjudication that such submissions be accepted provided that – for reasons of due process and equality of treatment – the other party was afforded the opportunity to reply, which was the case. Consequently, all of both parties' submissions have been taken into account and are deemed admissible.

10. Moreover, it should be noted that part of the additional evidence that was submitted and commented on after the Answer was provided in response to enquiries ordered by the Sole Arbitrator in relation to preliminary requests for document production made by the Appellant.

Merits

11. A preliminary substantive issue to examine in this case is which party has the burden of proof with respect to what relevant facts, bearing in mind that a party invoking a fact has, in principle, the burden of establishing it.

12. The existence and content of the Contract between the parties is not, as such, in question.

13. What is at issue under the claim forming the appeal is whether or not the Club and the Player entered into a subsequent agreement – the Amendment – that modified the Contract by reducing the financial rights to which the Player was initially entitled.

14. The Club is contending that the two-page document it invoked in front of the lower instances and that it filed in this proceeding, which was allegedly signed on 1 December 2010, constituted a valid agreement between the parties to amend the Contract.

15. Consequently, the Club has the burden of proving that the two-page document encompasses all the elements of form and content of a valid contractual agreement by which both parties would have agreed, in a meeting of the minds, that the Contract should be amended.

16. With respect to the elements of form, the Sole Arbitrator finds that the Amendment has a number of characteristics that tend to establish its valid formal existence: it is dated, contains two consecutively numbered pages on the Club's letterhead and on each of them is the Club's stamp and the signature of a representative of the Club. Moreover, it appears to have been recorded within the Club under a document number and to have been filed and registered with the RFF. It also contains on page 2 the signatures of 24 members of the team, including the signature of the Player.

17. However, there are two elements of form that do raise questions, one of which is relatively significant.

18. First, it would appear from the written evidence adduced in this proceeding that there only exists one alleged original version of the Amendment, although it was allegedly entered into between 25 parties (the Club and the 24 players).

19. Second, and more significantly, the first page of the Amendment, which contains all the substantive terms of the Amendment whereby the players allegedly agreed to forego a significant part of their contractual financial rights, is signed only by the Club, i.e. is neither signed nor initialled by any of the players who are giving up their financial rights. Inversely, the second page of the Amendment, entitled "Nominal Table", contains no contractual terms whatsoever, in fact no text at all, but does contain the signatures of both the Club, on the one hand, and of all the Players, on the other.

20. In theory, it could be argued that there was no room on the first page for the players to sign. Nevertheless, that would be a relatively weak argument because it would have been possible to modify the layout of the Amendment and/or adapt its number of pages so that the substantive terms were spread over several pages and/or that the players could at least have room to initial if not sign each page.

21. Initialing all the pages of a contract is not a universal practice but is a common one. What is highly unusual is to have the signature or initials of only one party on any given page of a contract. Indeed, either all the parties sign or initial certain pages – to demonstrate their common agreement - or none.

22. For the above reasons, the Sole Arbitrator has doubts regarding whether it has been established by the Club – absent any signature or the initials of any of the Players on page 1 of the Amendment - that the substantive terms contained on that page 1 have been consented to by the Player, i.e. that a meeting of minds has been proven.

23. That said, the question of whether the Club has met its burden of proving that a valid Amended exists between it and the Player, i.e. that the latter accepted/consented to page 1 of the Amendment, can be left open, since, for the reasons that will now be examined, the Sole Arbitrator finds that the Player has convincingly established that the first and second page of the Amendment were not joined as one document/agreement when the Player signed the Nominal Table.

24. In that relation, the Sole Arbitrator considers that if the Player is alleging that the Club added page 1 of the Amendment to the Nominal Table after the latter was signed and without his knowledge, it is in principle for him to prove the manoeuvre in question.

25. The Sole Arbitrator finds that a combination of all of the following elements of evidence convincingly establishes that the Nominal Table initially existed as a stand- alone document to which the Club subsequently added another page in order to form the Amendment:

- The fact that, during the 2009-2010 season, the Club was experiencing financial difficulties, is well established.
- The fact that the Club reached some form of sponsorship arrangement in 2010 with BancPost Bank under which the players would have an account in such bank and receive a bankcard, is well established.
- The fact that, as a result, in October 2010 all the players signed the "Nominal Table" in exchange for the opening of their individual bank accounts and the receipt of their corresponding bankcard, is well established among others by the following elements of proof: the witness statements of two other players (I. and B.) corroborating the Player's allegations in that respect and the agreement dated 25 October 2010 of another player (K.) with the Club indicating that he was leaving the Club on that date and the stamps in his passport indicating that he left Romania and entered Cameroun on 30 October 2010, meaning that he was not present (absent proof of the contrary) to sign the Amendment on 1 December 2010 and would have had no reason to do so.
- The established fact that on 17 December 2010 the Club notified the Player that it wished to meet him in January 2011 to sign an agreement whereby they would mutually agree to terminate his Contract to liberate him as a Player, while at the same time there is written evidence on record that the Player did not wish to leave the Club and in particular there is no logical reason or explanation/evidence on record of the reasons for which the Club would have wanted to terminate his Contract on 17 December if a few weeks earlier on 1 December 2010 the Player had accepted by means of the Amendment to fully forego all the financial rights the Club wished him to give up.
- The first page of the Amendment containing all the alleged substantive terms of agreement is neither initialled nor signed by the Player (nor by any other player).
- The second page of the alleged Amendment, which the Player contends was merely a Nominal Table signed in exchange for the receipt of the bankcards, contains no substantive terms but is signed by all the players including himself.
- Although in this proceeding, after receiving the Player's Statement of Appeal and Appeal brief, the Club had the opportunity to file with its Answer any form of evidence it wished to contest the Player's allegations, and despite the Club having been given the opportunity to express itself on the Player's subsequent letters/requests in this proceeding, it did not at any moment file or request to file any written proof in the form of statements by other players to contest the Player's position.

26. There is one element of the Player's position that the Arbitrator finds unclear, i.e. the allegation that he originally signed in October 2010 a Nominal Table that was on a white sheet of paper containing neither the Club's header nor a page number, whereas page 2 of the Amendment filed by the Club as well as by the RFF, and including the title "Nominal Table" above the players' signatures does include the Club's header and a page number on its bottom left side.

27. Nevertheless, given all the elements of proof mentioned above brought by the Player and the absence of any expert evidence relating to the authenticity of the Amendment as a single two-page document elaborated/signed on the same date, the Sole Arbitrator considers that the Player has convincingly established that he signed a one-page Nominal Table in October 2010 that did not form part of a broader document, i.e. that did not include another page.

28. For the above reasons, the Sole Arbitrator considers that the Player is entitled to the payment of all the financial benefits that are outstanding from the Club under the terms of his Contract of 21 July 2008, which remain valid and applicable, and that decision of the Recourse Commission that is being appealed must be set aside.

29. The quantum of the amounts contractually due and outstanding under the Contract is not disputed and is, in any event, established by the documents on record. Those amounts correspond to the sums being claimed by the Player. Furthermore, as indicated above, the Arbitrator finds that the Player was entitled during this proceeding to supplement the amount being claimed because corresponding contractual due dates had matured. Thus, the Player will be awarded the full amount he is claiming.

30. As for the interest being claimed on each of the amounts, the Sole Arbitrator considers that because the contractual debt is derived from a contract subject in part to Romanian law and is between a Romanian entity and a Romanian individual while the place of performance of the debt is also Romania, failing a specific provision regarding interest for late payments in the Contract it is the relevant Romanian rules and rate prevailing in Romania that should apply in determining the mode and rate of paying interest.

31. Since the Player has not provided any explanations or adduced any evidence regarding the conditions under which interest is allowed under Romanian law or regarding the statutory or market rates in Romania, the Sole arbitrator is unable to determine whether the 5% interest rate being claimed is correct and admissible.

32. Consequently and because the Sole Arbitrator is not entitled to speculate as to the applicable interest rate, the Player's request for payment of interest is rejected for lack of proof.

The Court of Arbitration for Sport rules:

1. The appeal is partially admitted.

2. The decision of 13 April 2011 of the Recourse Commission is set aside and replaced by the present award.

3. Clubul Sportiv Otopeni is ordered to pay Mr. Ivan Laurentiu Marian for outstanding contractual salaries a total amount of EUR 74,500 (seventy four thousand five hundred).

(…)

6. All other requests for relief are rejected.