Arbitration CAS 2013/A/3089 FK Senica, A.S. v. Vladimir Vukajlovic & Fédération Internationale de Football Association (FIFA), award of 30 August 2013

Panel: Mr José Juan Pintó (Spain), Sole Arbitrator

Football
Termination of an employment contract
Just cause
Calculation of the compensation

1. **In accordance with the principle *exceptio non adimpleti contractus*, a party cannot request the fulfilment of the other party's contractual obligations if it is in breach of its own obligations for not having paid the other party's salary, and therefore has no just cause to terminate the contract.**

2. **The compensation resulting from the termination of a contract without just cause is to be calculated duly keeping in mind the specificity of sport, *i.e.* the specific nature of sport and also the specific sporting circumstances of the case at stake.**

I. THE PARTIES

1. FK Senica A.S. (hereinafter also referred to as "Senica" or the "Appellant") is a football club with its registered office in Senica, Slovakia. It is a member of the Slovak Football Association (hereinafter also referred to as "SFA"), affiliated to the Fédération Internationale de Football Association since 1994.

2. Mr. Vladimir Vukajlovic (hereinafter also referred to as the "Player" or the "First Respondent") is a professional football player of Serbian nationality.

3. Fédération Internationale de Football Association (hereinafter also referred as "FIFA" or the "Second Respondent") is the governing body of football at worldwide level and has its registered office in Zurich, Switzerland.

II. FACTS AND PROCEEDINGS BEFORE FIFA AND THE CAS

4. A summary of the facts and background giving rise to the dispute will be developed below based on the parties' submissions and the evidence taken. Additional background may be also

mentioned in the legal considerations of the present award. In any case, the Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

II.1 THE AGREEMENT SIGNED BY SENICA AND THE PLAYER AND THE EVENTS GIVING RISE TO THE DISPUTE

5. On 7 September 2009, the Player and Senica entered into an agreement (hereinafter referred to as the "Agreement") comprising, among others, the following clauses:

"Article V The Player's Remuneration

1. The Contract parties agreed on the Player's remuneration which shall be paid to the Player by the Club in the amount of EUR 3.000 per month.

2. The Player's remuneration in the amount 1/12 of annual remuneration according to the preceding section is payable within 15 days of a month following the month in which the remuneration is payable, i.e. to the Player's bank account shown in the preamble of this contract.

3. The Contract Parties agreed that in addition to the Player's remuneration according to section 1 of this article, the Club will:

a) Pay the player extraordinary remuneration in the amount of EUR. 17.000 payable upon signing of this contract by both contracting parties.

b) Provide the Player a standard flat in Senica to 30/09/2009, whereas the rent will be paid by the Club during the whole period of validity of the contractual relationship.

c) Provide a player a car VW Golf to 31/10/2009

4. The contracting Parties agreed on a match bonus for the Player which will be paid based on conditions stipulated in an internal document of the Club.

5. Special bonus for player for a 5 goals + 8 straight assistance for goal in season 2009/10 in case of CORGON LIGA matches is valid 15.000 Euro.

Article VI Duration of the contract and its cessation

1. This Contract is signed for a definite Contract Period, i.e. from 07.09.2009 to 30.06.2011.

2. The Contract Parties agreed that the Contract may be terminated before expiration of the agreed contract period based on:

a. Written agreement of the Contract Parties; or

b. Withdrawing from the Contract either by the Club or the Player.

3. The Club has the right to withdraw from the Contract if the Player, despite minimum two written notices keeps on breaching provisions of this Contract whereas minimum 15 days period provided by the Club for remedies expired or the Player unreasonably refuses to perform sporting activities. The Club has also the right to withdraw from the Contract if the Player is not able or capable of performing sporting activities for more than six months.

4. The Player has the right to withdraw from the Contract if the Club is delayed in payment of the remuneration to the player for more than 45 days whereas the Club notified in writing about the fact, i.e. The Player's intention to withdraw from the Contract due to delayed payment of the Player's remuneration. Moreover, the Player has the right to withdraw from the contract if he makes a decision to finish his sporting activities, whereas the Player has no right to play football on either professional or amateur level for any other football club after withdrawing from the Contract because of the aforementioned reason. If the Player is in breach of this obligation, i.e. abstain from performance either professional or amateur sporting (i.e. football activities) for another club, then the Player shall pay the Club contractual penalty in the amount ten times the Player's income based on this contract for the last twelve months preceding the breach of the secured obligation.

5. The rights and obligations of the Contracting Parties arising during the Contract validity do not extinct upon termination of the Contract.

6. In case of common agreement of all three sides- agent, players, club is possible to cancel contract immediately, in case to create new contract with new another club. Condition for cancel will be clarify before a contract cancelling and they will be acceptable for all three sides.

Article VIII Mutual Agreements and declarations

1. The Contracting Parties hereby agree that they will respect and follow current regulations of the Slovak Football Association and international football organizations (FIFA, UEFA)

[…]

Article XII Common and Final Provisions

1. The rights and obligations not covered by this contract are governed by corresponding previsions of the Civil Code and other legal regulations valid in the Slovak Republic

[…]

4. *This contract does not establish any labour relation between the Player and the Club, i.e. the Player shall pay taxes on the income resulting out of this contract, as well as the premium for health and social insurance.*

5. *This contract comes into force and becomes efficient on the day of its signing by both the Contracting parties.*

6. *In the case of any misunderstanding, dispute or disputable claim respectively, the Contracting parties agree to solve them by mutual agreement without any reasonable delay.*

7. *All disputes arising out of this Contract including disputes on its validity, interpretation or termination, will be solved by arbitration of SFZ according to its internal regulations – so called Arbitration Clause. If the Arbitration Clause proves to be invalid legal agreement, the District Court in Trencin will be a relevant court. The legislation valid in Slovak Republic is governing legislation, whereas the wording of conflicting rules of law of current Slovak legislation are not taken into consideration".*

6. On 21 November 2009, conversations were held between Senica and the Player concerning the future of their relationship. However, the versions given by both parties on the terms of these conversations differ. On the one hand, Senica sustains that it requested the Player to amicably terminate the Agreement as of 31 December 2009, and offered the Player not to request any compensation for his transfer to the new club of his choice. On the other hand, the Player asserts that the Appellant informed him that his services were no longer needed since it was not satisfied with his sporting performance, and invited him to leave the club. Furthermore, the Player also contends that on the basis that his visa had already expired, Senica threatened him to call the police in case he refused to leave the country.

7. On 26 November 2009, an agreement was reached between Senica and the Player by means of which the latter was allowed to temporarily leave the club in order to look for a new club. Nevertheless, on 6 January 2010, the Player was supposed to return to Senica in the event he did not find a new club.

8. On 6 December 2009, Senica played its last match before the beginning of the winter break.

9. Senica did not pay to the Player his salary corresponding to the month of November 2009.

10. On 6 January 2010, the Player did not appear at the Appellant's headquarters for the beginning of the training sessions.

11. By letter dated 14 January 2010, Senica communicated to the Player its decision to early terminate the Agreement. The pertinent part of this letter reads as follows:

"Within the meaning of the Professional Contract for the performance of football sport activities (hereinafter referred as to the "Contract") concluded on 07/09/2009, registered in the Registry of the Slovak Football Association under the nº 4724/09 on 17/09/2009 in accordance with Section 51 of Act nº 40/1964 Z.z of the Civil Code, as amended, between the contractual parties:

FK Senica

And

Vladimir Vukajlovic

It has been agreed to terminate the Contract between the above specified contractual parties.

The Club may terminate the Player's contract in accordance with art. V (e) of the Contract, which stipulates the following:

The Club may terminate the Contract if the Player repeatedly falls to meet a commitment arising from the Contract and his basic monthly remuneration has been reduced by an aliquot part (or has not been paid at all in case of total absence) because of unexcused absence from the activities stated in art. I (a) i.e. active participation of the Player at competitions of the Club's teams, trainings, and training camps for which he has been nominated, whereas the Player is obliged to make all reasonable efforts in these activities, according to his abilities and skills, to achieve the Club's goals in the field of sports.

Mr. Vladimir Vukajlovic, you have repeatedly and in total contradiction to the Contract breached the above defined provision of the Contract. On the basis of tour acts that are contrary to the contract, we have been reducing your monthly remuneration by an aliquot part since November 2009.

On the basis of the above stated facts, we hereby terminate the contract concluded on 07/09/2009.

In accordance with article V of the contract, the contract is terminated in writing. The notice period is 2 months and starts on the first day of the month following the delivery of the written termination".

12. In a letter dated 18 April 2010, the Player complained about the early termination of the Agreement by Senica, and announced the filing of a claim. This letter, in the pertinent part, reads as follows:

"You have terminated the contract with him unilaterally due to unsatisfied performances during a transfer period on 14 January 2010. According to the FIFA Regulations for Status and Transfer of Players, art. 14, a contract can be withdrawn unilaterally during a season only with just cause. Your reason for the unilateral termination is definitely and unambiguously without just cause. Consequently, according to art. 17, there is a compensation admissible in the favour of the claimant.

Moreover, you even did not settle the debt to the player until the termination of the contract as follows:

1) Salary for November 2009 EUR 3.000 due on 15/12/2009
2) Salary for December 2009 EUR 3.000 due on 15/01/2010
3) Salary until 14/01/2011 EUR 1.400 due on 15/02/2010
Total: 7.400

Due to the unilateral termination of the contract without just cause, there is no basis given for a further collaboration. Therefore, we will be forced to claim for the rest of the contract from 15/01/2011 until 30/06/2011 in the amount of EUR 52.200 plus an interest rate of 5% per annum.

In order to avoid inconvenient legal procedures against your club we are kindly asking you for a statement until Friday, 23 April 2010. Therefore, we are still interested to find an amicable way to solve this dispute without interventions of third parties".

13. On 5 May 2010, the Player sent a new letter to Senica in the same terms as the one of his previous one. A 7-day term was given to the Appellant to provide its position with respect to such letter.

14. By means of a letter dated 7 May 2010, the Player requested to the Slovak Football Association to forward the abovementioned letters dated 18 April and 5 May 2010 to its affiliated club Senica.

15. On 12 May 2010, the Player informed Senica that he intended to lodge a claim against it before FIFA.

II.2 THE PROCEEDINGS BEFORE FIFA

16. On 8 July 2010, the Player filed a claim against Senica before FIFA requesting the payment of the amount due until the date of the termination of the Agreement as well as a compensation of EUR 52.600.

17. By letter dated 26 July 2010, FIFA notified Senica of the claim filed by the Player via the Slovak Football Federation.

18. Senica did not file any response to the Player's claim before FIFA and remained silent during all the proceedings at the FIFA stage.

19. On 2 October 2012, the FIFA Dispute Resolution Chamber (hereinafter also referred as to the "DRC") decided to partially uphold the Player's claim. The operative part of this decision reads as follows:

    1. *The claim of the Claimant is partially accepted.*

    2. *The Respondent FK Senica, has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of 3.000 euros, plus 5% interest p.a. on said amount as from 14 January 2010 until the date of effective payment.*

    3. *The Respondent has to pay to the Claimant within 30 days as from the date of notification of this decision, compensation for breach of contract amounting to EUR. 40.000 plus 5% interest p.a. on said amount as from 14 January 2010 until the date of effective payment.*

4. In the event that the amounts due to the Claimant in accordance with the abovementioned numbers 2 and 3 are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the DRC judge of every payment received.

20. The DRC considered sufficiently proven that the Agreement was terminated without just cause by Senica on 26 November 2009 and understood that Senica had to compensate the Player as regards this termination. Nevertheless, the Player's claim was only partially granted since he had concluded a new employment contract with the Serbian club Fk Slobodo Point Sevojno in force as of 1 September 2010 until 30 June 2011 in exchange of EUR 17.000. Therefore, the DRC took into account such remuneration to mitigate the damages caused by Senica and, thus, to reduce the amount of compensation to be granted to the Player. As a result, the DRC considered that the amount of compensation to be paid by Senica to the Player was only EUR 40.000 and not the amount of EUR 52.600 (i.e. amount initially claimed by the Player as compensation).

II.3 THE PROCEEDINGS BEFORE THE CAS

21. On 8 February 2013, Senica decided to appeal the abovementioned decision (hereinafter referred as to the "Appealed Decision") before the CAS and thus filed a Statement of Appeal with the following requests for relief:

- *To annul the appealed decision of the FIFA DRC.*

- *To order the Respondents to bear all costs incurred by the Appellant with the Appeal arbitration procedure and to cover all legal expenses of the Appellant related to the Appeal Arbitration Procedure.*

22. On 18 February 2013, Senica filed its Appeal Brief.

23. On 6 May 2013, the Player filed his Answer, requesting that an award be rendered in the following terms:

1. On 6 May 2013, the Player filed its Response before TAS, with the following request for relief: To confirm the jurisdiction of FIFA and its rendered decision dated on 18/01/2013.

2. To order the Appellant to pay towards to the Respondent the amount as follows:

(i) EUR. 3000 for outstanding remuneration within 30 days as from the date of notification of the decision;

(ii) 5% interest p.a. on said amount of EUR 3.000 as from 14 January 2010 until the date of effective payment.

(iii) EUR. 40.000 as compensation for breach of the contract within 30 days as from the date of notification of the decision, resp. without prejudice to consider the exact amount of the compensation in regards to point 75. and Swiss law CO art. 361 and 362.

(iv) 5% interest p.a. on said amount of EUR 40.000 resp. in light of the above art. iii) as from January 14 2010 until the date of effective payment;

(v) An appropriate contribution towards to the legal and other costs in this arbitration.

24. On 6 May 2013, FIFA filed its Answer, in which it requested to the CAS to render an award in the following terms:

- *To reject the present appeal against the decision of the Dispute Resolution Chamber (DRC) judge (hereafter also, the DRC judge) dated 2 October 2012 and to confirm the relevant decision in its entirety.*

- *To order the Appellant to cover all the costs incurred with the present procedure.*

- *To order the Appellant to bear all legal expenses of the second Respondent related to the procedure at hand.*

25. The Sole Arbitrator dealing with this case is Mr. José Juan Pintó Sala. None of the parties raised any objection as to the appointment of the Sole Arbitrator.

26. The hearing took place in Lausanne on 23 July 2013. The Sole Arbitrator was assisted by Mr. William Sternheimer, CAS Managing Counsel & Head of Arbitration.

27. At the beginning of the hearing, the Sole Arbitrator invited the parties to try settling the dispute, but after some discussions, they did not reach an agreement. Thereafter, and in light of the petitions made by the parties and the discussions held concerning the jurisdiction of FIFA to decide on the dispute and thereafter the possibility to file an appeal to the CAS, the Sole Arbitrator asked to the parties if they agreed that he renders a decision on the merits of this case in a final and binding way. All the parties agreed. Thereafter, the parties' counsel made their respective opening statements, after which Mr. Viktor Blazek, legal counsel of the Appellant, and the Player (by conference-call) were cross-examined. The Player gave his testimony in Serbian and was translated by his representative Mr. Zoran Rasic. The Appellant objected to such translation, considering that it was not possible to determine whether it was accurate. The Sole Arbitrator took note of said objection. In fact, as it results from the developments below under the merits section of the present award, the declaration given by the Player has not been considered relevant by the Sole Arbitrator to reach his decision. According to the Sole Arbitrator, the Player did not provide any relevant and convincing argument. Additionally, it is to the party to provide a translation that fulfils the conditions established by the Code of Sports-related Arbitration (hereinafter, the "CAS Code") and the party which does not fulfil such conditions has to bear the consequences. Finally, the parties' respective counsel made their closing statements.

28. Both at the beginning and at the end of the hearing, the parties expressly declared that they were satisfied with the way in which the proceedings had been conducted, with the only exception of the above-mentioned objection regarding the translation of the Player's oral statement.

III. SUMMARY OF THE PARTIES' POSITIONS

III.1 SENICA

29. FIFA was not competent to deal with this case since the Appellant and the Player agreed to submit any eventual dispute that may arise from the Agreement to the Arbitral Tribunal of SFA, which is an independent arbitration court.

30. The Appellant terminated the Agreement with just cause on 14 January 2010 on the grounds that the Player did not attend to the training sessions of the team since 26 November 2009. As a result, the Player was the only party who indeed breached the Agreement. The Appellant did not send any written communication to the Player with respect to his contractual breach since it did not know where to contact him.

31. In accordance with clause XII of the Agreement, the present dispute shall be exclusively solved in the light of Slovak Law. Therefore, the validity of the Agreement's termination shall be solely assessed under such Law.

32. The Player never told to the Appellant that his Slovak visa had expired and threatened him of calling the police, as the Player contends.

33. In addition, Senica was not responsible for the issuance of the Player's work permit.

III.2 THE PLAYER

34. FIFA was competent to deal with this case since (i) the dispute between the Appellant and the Player has an international dimension and (ii) the Arbitral Tribunal of the Slovak Football Association does not fulfil the requirements to be deemed as an independent arbitration court in the light of article 22 b) of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "FIFA RSTP").

35. The Appellant had no grounds to validly terminate the Agreement. In fact, the Appellant did not warn the Player in writing before the termination of the Agreement.

36. The Appellant failed to provide the Player with a work permit. It was the Appellant's duty to arrange the Player's work permit in accordance with article 18.4 of the FIFA RSTP. Therefore, the Player was not able to return to Slovakia and, as a result, was prevented to work for the Appellant.

37. The Appellant failed to pay the Players' salaries since 15 December 2009, breaching the Agreement even before its termination without just cause.

38. Due to the Appellant's termination of the Agreement without just cause, compensation is due to the Player in accordance with FIFA Regulations and Swiss Law.

III.3 FIFA

39. Taking into account that (i) this dispute has an international dimension and (ii) the Appellant did not file any evidence which sustains the alleged independence of the Arbitration Court of the SFA, FIFA had jurisdiction to deal with this case.

40. By informing the Player on 21 November 2009 that his services were no longer needed, a fact that remained uncontested during the proceedings in front of FIFA, the Appellant terminated the Agreement without just cause.

41. The Appellant did not submit any evidence which sustains the alleged Player's breach of the Agreement. In fact, the one who was in breach of the Agreement was the Appellant.

42. The Appellant wanted to get rid of the Player since it already admitted the he was not good enough to play for its team.

43. In accordance with article 18.4 of the FIFA RSTP, the responsibility to obtain the relevant residence permit prior to the signing of an employment contract or during its period of validity is incumbent to the club, *in casu*, the Appellant.

IV. LEGAL CONSIDERATIONS

IV.1 CAS JURISDICTION

44. The jurisdiction of the CAS to decide on the present case arises out of the FIFA Statutes and Article R47 of the CAS Code. In addition, CAS jurisdiction has been expressly accepted by the parties, which both signed the Order of Procedure of the present case. It is also to be mentioned again that both parties agreed at the hearing that the Sole Arbitrator renders an award on the present dispute in a final and binding way.

45. Therefore, the Sole Arbitrator considers that CAS is competent to decide on this case.

IV.2 APPLICABLE LAW

46. Article R58 of the CAS Code reads as follows:

"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".

47. The Sole Arbitrator notes that in the Agreement, the Appellant and the Player have agreed upon, unfortunately not clearly, certain provisions with regard to the choice of law.

48. Clause VIII.2 of the Agreement states the following:

"The Contracting Parties hereby agree that they will respect and follow current regulations of the Slovak Football Association and international football organizations (FIFA, UEFA)".

49. Clause XII. 2 of the Agreement stipulates the following:

"The rights and obligations not covered by this contract are governed by corresponding provisions of the Civil Code and other legal regulations valid in the Slovak Republic".

50. The Sole Arbitrator acknowledges that in accordance with the above-mentioned provisions, on one side, the Appellant and the Player have agreed to respect and follow the regulations of the football bodies, among others, FIFA. However, on the other side, it seems that the Appellant and the Player have also agreed to call for the applicability of Slovak law.

51. The Sole Arbitrator also notes that the Appellant argued that the present dispute shall be solved exclusively on the grounds of Slovak law, and that in contrast, both Respondents considered that the present dispute shall be solved in accordance with the FIFA Regulations and, subsidiarily, Swiss law.

52. The Sole Arbitrator is of the opinion that given that (i) the Appellant has not called for the applicability of any specific provision of Slovak Law in any manner (with the only exception of the Slovak Act on Arbitral Procedure in general, without pointing out to any specific article of it), and (ii) all the parties, in fact, have relied on and called for the applicability of the FIFA RSTP, the present dispute shall be decided in accordance with the FIFA RSTP and, subsidiarily, Swiss law.

IV.3 ABOUT THE DISPUTE SUBMITTED TO THE CAS BY THE PARTIES

IV.3.1. The object of the dispute

53. According to the parties' written submissions and the arguments raised by them at the hearing, the object of the dispute may be briefly summarized as follows: the Appellant considers that it terminated the Agreement with just cause and that no amount is due to the Player, while the Player understands that the Appellant had no valid ground to terminate the Agreement, and thus intends to get compensation from Senica as regards such termination.

IV.3.2. The termination of the Agreement by the Appellant. Just cause or not.

54. The Sole Arbitrator shall firstly examine whether the Appellant terminated the Agreement with just cause or not.

55. In its written submissions, the Appellant contends that on 14 January 2010, it terminated the Agreement with just cause since the Player abandoned the Club without authorization as of 26 November 2009. The Player contests this approach and argues that the club did not want him to come back and in any case he was not able to return to Slovakia since (i) his visa had already expired and (ii) he did not have the relevant work permit.

56. Nevertheless, the Sole Arbitrator notes that at the hearing, the Appellant admitted that permission to leave the club and the country was given to the Player until the end of the winter break in Slovakia (i.e. 6 January 2010) to enable him to look for a new club, and that if he did not find a new club, he was expected to return to the Appellant's training sessions as of 6 January 2010.

57. Notwithstanding the above, the Sole Arbitrator shall also stress that within this period, the Appellant did not pay to the Player his salary corresponding to November 2009 and thus, from 15 December 2009 onwards, Senica was in breach of the Agreement.

58. The Sole Arbitrator also observes that on 6 January 2010, the Player, who had not found any new club, did not return to the Appellant's training sessions and, thus, from that moment onwards, was also in breach of the Agreement. However, it is to be noted that at that time, the Appellant was already in breach of the Agreement as salaries were due to the Player and remained unpaid.

59. In addition, it is to be emphasized that in accordance with clause VI.3 of the Agreement, certain conditions should be previously met to terminate the contract, namely the following:

> *"The Club has the right to withdraw from the Contract if the Player, despite minimum two written notices keeps on breaching provisions of this Contract whereas minimum fifteen day period provided by the Club for remedies expired or the Player unreasonably refuses to perform sporting activities".*

60. The Sole Arbitrator notes that these prerequisites were not met by Senica, The Appellant terminated the Agreement by means of a letter dated 14 January 2010, without having sent any written notice to the Player requesting him to duly fulfil his obligations under the Agreement and, logically, not giving him any term for remedying his breach. It is also stressed that the termination letter was sent during the 8th day of the Player's breach of the Agreement.

61. In addition, the Sole Arbitrator also considers pertinent to refer at this stage to article 82 of the Swiss Code of Obligations (CO), which reads as follows:

> *"Celui qui poursuit l'exécution d'un contrat bilatéral doit avoir exécuté ou offrir d'exécuter sa propre obligation, à moins qu'il ne soit au bénéfice d'un terme d'après les clauses ou la nature du contrat".*

The abovementioned article can be informally translated into English as follows:

"A party to a bilateral contract may not request performance until he has discharged or offered to discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date".

62. In accordance with the referred article 82 of the CO, which incorporates the general contractual principle *exceptio non adimpleti contractus,* when the termination letter was sent, the Appellant was not even in the position to request to the Player the fulfilment of his contractual obligations since it was already in breach for not having paid the Player's salary of November 2009 (expected to be paid on 15 December 2009).

63. Therefore, for all the reasons above, the Sole Arbitrator considers that the Appellant was not entitled to terminate the Agreement with just cause and thus, that the termination executed by the Appellant is to be considered without just cause.

IV.3.3. The consequence of the termination of the Agreement without just cause

64. At this stage, the Sole Arbitrator shall analyze the financial consequences resulting from the termination of the Agreement without just cause.

IV.3.3.1. Salaries due to the Player

65. First, the Sole Arbitrator considers that the Appellant has to pay the Player's outstanding salaries until the date in which the Agreement was terminated, i.e. 14 January 2010.

66. Therefore, the Appellant has to pay the Player's salaries corresponding to the months of November and December 2009 and also 14 days of January 2010, which amount to EUR 7.400 plus 5% interest per annum on said amount as from 14 January 2010 until the date of effective date of payment (in accordance with articles 102 and 104 of the CO).

IV.3.3.2. Is the Player entitled to compensation?

67. As already explained, the present dispute is primarily governed by the FIFA Regulations, which in fact provide for financial compensation in case of contract's termination without just cause.

68. Article 17 of the FIFA RSTP rules the consequences that may arise due to agreements' termination without just cause. This article reads, in its pertinent part, as follows:

"Article 17 Consequences of Terminating a Contract without just cause.

The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided in the Contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

69. The Sole Arbitrator is aware that the termination of a contract is a serious violation of the obligation to respect an existing contract and shall trigger the consequences set out in the referred article 17.1 of the FIFA RSTP, i.e. the payment of compensation to the injured party.

70. The Sole Arbitrator notes that one of the issues to be taken into account for the calculation of compensation following a contractual breach is the so-called *specificity of sport*.

71. This means that the Sole Arbitrator shall assess the amount of compensation payable by a party under article 17.1 of the FIFA RSTP, duly keeping in mind the specific nature of sport and also the specific sporting circumstances of the case at stake.

72. In the Sole Arbitrator's opinion, the present dispute is a very atypical one, in light of the very specific circumstances that took place.

73. First, the Player argues that he could not return to the Appellant's training sessions because (i) his visa was already expired and (ii) he had not obtained the relevant authorization to work in Slovakia. The Appellant, on the other hand, contends that the Player was the sole responsible for obtaining such authorization.

74. Regarding the Player's visa, the Sole Arbitrator considers it not only unproven but also very unlikely that the Appellant had threatened the Player with calling the police in case he did not leave the country, since the conversation between both parties was held on 21 November 2009 but the Player only left the country 5 days after, i.e. 26 November 2009. Moreover, the Player was not arrested but only fined at the Slovak's border for leaving once his visa had already expired.

75. Furthermore, the Sole Arbitrator notes that the Player, with or without visa, would have left the country in any case since he already agreed to it with the Appellant in order to try to find a new club more easily.

76. Regarding the Player's lack of work permit, article 18.4 of the FIFA RSTP provides that:

"The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit".

77. Therefore, in accordance with the abovementioned provision, the Sole Arbitrator considers that it was up to the Appellant to procure to the Player the relevant work permit to play for its team.

78. This being said, the Sole Arbitrator notes that the Appellant has not filed any evidence which may demonstrate that it has carried out any activity aiming to procure the referred work permit to the Player. Nevertheless, the Player has neither filed any evidence which may show a minimum interest for obtaining the referred work permit. For instance, the Player could have sent written notices to the Appellant in order to remind its obligation to obtain the issuance of the work permit.

79. Hence, the Sole Arbitrator is of the view that neither the Appellant nor the Player was in fact interested in the issuance of the relevant work permit.

80. Furthermore, on the one side, the Sole Arbitrator is aware that the Appellant, despite the Player's absence at the training sessions during more than one week, did not make any effort to contact the Player in order to request him to rejoin its team. The Appellant simply terminated the Agreement, showing in the Sole Arbitrator's view that it was no longer interested in the Player's services.

81. On the other side, the Sole Arbitrator is also aware that, contrary to what it would be expected, the Player, despite not being paid since November 2009, did not claim the payment of the salaries due to the Appellant until April 2010, i.e. more than 4 months after this breach took place.

82. Given the above circumstances, the Sole Arbitrator shall conclude that a tacit agreement of termination between the parties took place. By means of this tacit agreement, the Player was released of its obligation to train with the Appellant's team in order to look for a new club and, in return, the Appellant would no longer have to pay the Player's salaries.

83. Therefore, the Sole Arbitrator considers that in these circumstances, where neither the Appellant nor the Player were longer interested in maintaining their labour relationship and taking the principle of the specificity of sport into account, no compensation shall be awarded to the Player.

IV.3.4 Decision

84. On the basis of the above, the Sole Arbitrator considers that the Appealed Decision shall be set aside and replaced by the present award, and that the Appellant shall be ordered to pay to the Player the amount of EUR 7.400 plus 5% of interest per annum as of 14 January 2010 until the effective date of payment.

85. Finally, the Sole Arbitrator notes that the testimony given by the Player at the hearing, which was later on objected by the Appellant due to a lack of an independent translator, was not considered relevant to reach this decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by FK Senica A.S. is partially upheld.

2. The Decision of the FIFA Dispute Resolution Chamber dated 2 October 2012 on the claim filed by Mr. Vladimir Vukajlovic against FK Senica A.S. is set aside.

3. FK Senica A.S. is ordered to pay to Mr. Vladimir Vukajlovic the amount of EUR 7.400 (seven thousand four hundred Euros) plus 5% interest per annum on said amount as of 14 January 2010 until the effective date of payment.

4. (…)

5. (…).

6. All other or further petitions and claims are dismissed.