



**Arbitration CAS 2014/A/3765 Club X. v. D. & Fédération Internationale de Football Association (FIFA), award of 5 June 2015**

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

*Football*

*Termination of the employment contract during the protected period*

*Ex officio imposition of sporting sanctions against the club*

*Principles governing the application of its rules by a federation*

*Proportionality of the sanction*

1. Although it follows from a literal interpretation of article 17(4) of the FIFA Regulations on the Status and Transfer of Players that it is a duty of the competent body to impose sporting sanctions whenever a club is found to have breached an employment contract during the protected period, there is a well-accepted and consistent practice of the FIFA DRC not to apply automatically a sanction, but to leave it to its free discretion to evaluate the particular and specific circumstances on a case by case basis. This discretion is also contemplated in the FIFA Commentary, according to which the imposition of sporting sanctions on a club breaching an employment contract within the protected period is not mandatory.
2. As held by CAS case law, the “principle of legality” (“*principe de légalité*”) requires that the offences and sanctions must be clearly and previously defined by law and must preclude the “adjustment” of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable (“predictability test”). The principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision. Furthermore, an association may be estopped from invoking a certain rule or exercising such rule in a certain fashion if precedent representations induce a subordinate or member to believe something resulting in that person’s reasonable and detrimental reliance on such belief (“estoppel by representation”). Finally, CAS case law has held that inconsistencies in the rules of a federation will be construed against the federation (*contra proferentem* principle).
3. Article 17(4) of the FIFA Regulations does not provide the decision-making body with discretion as to the severity of the sporting sanctions to be imposed but merely determines that if sporting sanctions are to be imposed on a club, they shall consist of a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

## **I. PARTIES**

1. Club X. (hereinafter: the “Appellant” or the “Club”), is a football club with its registered office in Turkey. The Club is registered with the Turkish Football Federation (hereinafter: the “TFF”), which in turn is affiliated to the Fédération Internationale de Football Association.
2. D. (hereinafter: the “First Respondent” or the “Player”), is a professional football player of Czech nationality.
3. The Fédération Internationale de Football Association (hereinafter: the “Second Respondent” or “FIFA”), is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
5. On an unspecified date, the Player and the Club entered into an employment contract (hereinafter: the “Employment Contract”) valid as from January 2013 until 31 May 2014 pursuant to which the Player was entitled to a salary of EUR 100,000 in the 2012/2013 season, payable in 5 equal monthly instalments of EUR 20,000 and EUR 200,000 in the 2013/2014 season, payable in 10 equal monthly instalments of EUR 20,000. According to the Employment Contract, the monthly salaries fell due on the 20<sup>th</sup> of each month.
6. On 23 May 2013, the Player – after having received only one month’s salary until that date – sent a default letter to the Club requesting payment of EUR 80,000, being the outstanding salaries of February, March, April and May 2013, which remained unanswered.
7. On 6 June 2013, the Player unilaterally terminated his Employment Contract with the Club by means of a termination letter.
8. On 19 July 2013, the Player signed an employment contract with Karşıyaka SK (hereinafter: “Karsiyaka”), a football club with its registered office in İzmir, Turkey, valid from 19 July 2013 until 15 May 2014, for a total remuneration of EUR 165,000.

**B. Proceedings before the Dispute Resolution Chamber of FIFA**

9. On 1 April 2014, the Player lodged a claim before the FIFA Dispute Resolution Chamber (hereinafter: the “FIFA DRC”) against the Club, claiming the total amount of EUR 125,000 (EUR 80,000 as outstanding salary plus 5% interest “*from the actual payment dates*”, EUR 35,000 as compensation for breach of contract and EUR 10,000 as additional compensation for “*bad faith and for the bonuses from which the Claimant has become devoid of*”).
10. In its reply to the claim of the Player, the Club argued that the Player acted in breach of the Employment Contract and, as a result, lodged a counter-claim against the player requesting the amount of EUR 50,000.
11. On 30 July 2014, the FIFA DRC rendered its decision (hereinafter: the “Appealed Decision”) with, *inter alia*, the following operative part:
  - “1. *The claim of the [Player] is partially accepted.*
  2. *The [Club] has to pay to the [Player] within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 80,000 plus 5% interest until the date of effective payment as follows:*
    - *5% p.a. as of 21 February 2014 on the amount of EUR 20,000;*
    - *5% p.a. as of 21 March on the amount of EUR 20,000;*
    - *5% p.a. as of 21 April 2014 on the amount of EUR 20,000;*
    - *5% p.a. as of 21 May 2014 on the amount of EUR 20,000.*
  3. *(...)*
  4. *The [Club] has to pay to the [Player] compensation for breach of contract in the amount of EUR 35,000, within 30 days as from the date of notification of this decision.*
  5. *In the event that the amount due to the [Player] in accordance with the above- mentioned number 4, is not paid by the [Club] within the stated time limit, interest at the rate of 5% p.a. will fall due as of the expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
  6. *(...)*
  7. *The counter-claim lodged by the [Club] is rejected.*
  8. *The [Club] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.*
12. On 17 September 2014, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:
  - “[...] *The Chamber observed that the [Club], for its part, did not contest that the salaries for the months of February to May 2013 had not been paid at the time that the player terminated the*

*contract. The [Club] merely indicated that it had announced to the player that it would pay him his salaries and stressed that, therefore, the termination of the contract by the player was unacceptable. As a result, the [Club] deemed that it was in fact the player who had breached the contract and lodged a counter-claim against him for the amount of EUR 50,000.*

- *[...] the Chamber reiterated that it had remained uncontested by the [Club] that it had failed to pay the player his monthly salaries for February, March, April and May 2013. Furthermore, the [Club] did not invoke any valid reason as to why it had failed to pay these salaries. Indeed, the [Club] did not provide any documentary evidence corroborating the allegation that it had announced that it would pay its players; thus the Chamber could not sustain such allegation (cf. art. 12 par. 3 of the Procedural Rules). Equally the Chamber observed that the [Club] had not contested the fact that it had not responded to the player's default notice letter dated 23 May 2013.*
- *In view of the foregoing, the Chamber was satisfied that the [Club] had seriously neglected its contractual obligations towards the player in a continuous and repeated manner, i.e. the [Club] had failed to remunerate the player for a substantial period of time and had in fact, since the beginning of the contract, only paid the player one month salary. Therefore, the Chamber concluded that the [Club] was found to be in breach of the employment contract and that the breach was of such seriousness that, in line with the Chamber's long-standing and well-established jurisprudence, the player had a just cause to unilaterally terminate the contractual relationship with the [Club] on 6 June 2013, having previously put the [Club] in default. Consequently, the [Club] is to be held liable for the early termination of the employment contract with just cause by the player".*
- *As to the consequences of the early termination, "[...] the members of the Chamber concurred that the [Club] must fulfil its obligations as per employment contract in accordance with the general principle of "pacta sunt servanda". Consequently, the Chamber decided that the [Club] is liable to pay to the player the remuneration that was outstanding at the time of the termination, i.e. the amount of EUR 80,000, consisting of the four monthly salaries of February, March, April and May 2013. Furthermore, and considering the player's claim for interest, the Chamber ruled that the [Club] must pay 5% on the amount of EUR 80,000 interest as from the respective due dates".*
- *Furthermore, as to the compensation for breach of contract in addition to any outstanding salaries, "the Chamber established that no [...] compensation clause was included in the employment contract [...]. As a consequence, the members of the Chamber determined that the amount of compensation payable by the [Club] to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations.*
- *[...] Consequently, the Chamber concluded that the amount of EUR 200,000 (i.e. the remuneration for the 2013/2014 season) serves as the basis for the determination of the amount of compensation for breach of contract.*
- *In continuation, the Chamber remarked that the player had found new employment with the Turkish Club, Karsiyaka. In accordance with the pertinent employment contract, which has been made available by the player, he was entitled to receive a total salary of EUR 165,000 during the 2013/2014 season. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the player to mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.*

- *Consequently, on account of all of the above-mentioned considerations, the Chamber decided that the [Club] must pay the amount of EUR 35,000 to the player as compensation for breach of contract.*
- *In conclusion, [...], the Chamber decided to partially accept the player's claim and determined that the [Club] must pay to the player the amount of EUR 80,000 as outstanding remuneration as well as the amount of EUR 35,000 as compensation for breach of contract”.*
- *As to the further consequences of the breach of contract, the Chamber “addressed the question of sporting sanctions in accordance with art. 17 par. 4 of the Regulations [...]. In this respect, the Chamber took note that the breach of the employment contract by the [Club] had occurred within the first 5 months following the conclusion of the contract and that, as a result, on 6 June 2013, the player had terminated the contract. Therefore, the Chamber concluded that, irrespective of the player's age, the breach of contract by the [Club] had occurred within the protected period.*
- *As a result, by virtue of art. 17 par. 4 of the Regulations and considering that the [Club] had been found in breach of an employment contract without just cause, the Chamber decided that the [Club] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision. In this regard, the Chamber emphasized that apart from the [Club] having clearly acted in breach of the contract within the protected period in the present matter, the [Club] had also on a previous occasion been held liable by the Chamber for the early termination of the employment contract with the [...] player Y. (case ref. nr. [...]; decision rendered on 27 May 2014), which should be considered as an aggravating circumstance”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 8 October 2014, the Club filed a Statement of Appeal, including a request for stay of the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”), with the Court of Arbitration for Sport. The Club requested the matter to be resolved by a Sole Arbitrator. In this document, the Club submitted the following requests for relief:

- “1. *Principally, to make an order for provisional measures since the challenged DRC award may cause irreparable harm on the Appellant.*
2. *To accept the present appeal against the challenged decision;*
3. *To set aside the challenged decision;*
4. *To establish that the Appellant does not have to pay to the Respondent any amount.*
5. *To establish that there shall be no sporting sanctions to be imposed to the Appellant.*
6. *To condemn the Respondents to the payment in the favor of the Appellant of the legal expenses incurred;*
7. *To establish that the costs of the arbitration procedure shall be borne by the Respondents”.*

14. On 9 October 2014, the CAS Court Office requested the Player and FIFA whether they would agree with the appointment of a Sole Arbitrator and that in the absence of an answer or in case of disagreement, it would be for the President of the CAS Appeals Arbitration Division, or his deputy, to decide.
15. On 15 October 2014, FIFA informed the CAS Court Office that it did not agree with the appointment of a Sole Arbitrator because the present affair, depending on the outcome, has the potential of bearing substantial and far-reaching consequences in respect of future FIFA procedures. The Player did not submit an answer in this respect.
16. On 20 October 2014, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained “*explanations*” giving rise to the challenge of the Appealed Decision and the following “*conclusion*”:  
*“We kindly request that Annulment of the FIFA DRC decision [sic]”.*
17. On 21 October 2014, FIFA filed an answer to the request for stay of execution of the Appealed Decision, requesting its dismissal. The Player did not submit an answer in this respect.
18. On 22 October 2014, the Club filed an unsolicited additional statement.
19. On 24 October 2014, FIFA objected to the admissibility of the Club’s additional statement.
20. On 7 November 2014, the Player filed his Answer, pursuant to Article R55 of the CAS Code, in which he, *inter alia*, “*accepts the additional submission of the [Club]*, and whereby he requested CAS to decide the following:  
*“1- To accept the appeal lodged against the TRANSFER BAN part of the decision of FIFA DRC but to dismiss the part related to the unpaid salaries with its interest as well as the compensation.*  
*2- To condemn the Appellant to the payment of the whole CAS administration costs and arbitration fees.*  
*3- To fix a sum of CHF 10.000.- (Ten Thousand Swiss Francs Only) to be paid by the Appellant to the Respondent, to help the payment of its legal fees and costs”.*
21. On 17 November 2014, an Order on Request for Stay was pronounced by the Deputy President of the CAS Appeals Arbitration Division, in which the application for a stay filed by the Club was dismissed.
22. On 2 December 2014, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by Mr Manfred Nan, Attorney-at-law, Arnhem, the Netherlands, as Sole Arbitrator

23. On 5 December 2014, FIFA filed its Answer, pursuant to Article R55 of the CAS Code, submitting the following requests for relief:
  - “1. That the CAS rejects the present appeal and confirms the presently challenged decision passed by the Dispute Resolution Chamber (hereinafter: the DRC or the Chamber) on 30 July 2014 in its entirety.
  2. That the CAS orders the Appellant to bear all the costs of the present procedure.
  3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand”.
24. On 11 December 2014, the Club informed the CAS Court Office of its preference for a hearing to be held.
25. On 15 December 2014, FIFA informed the CAS Court Office of its preference that the arbitral award be rendered on the basis of the parties’ respective written submissions. The Player did not file his position.
26. On 19 January 2015, and pursuant to Article R56 of the CAS Code, the Sole Arbitrator informed the parties that due to FIFA’s objection against the admissibility of the additional statement filed by the Club on 22 October 2014, and the absence of exceptional circumstances being adduced by the Club that could justify the late filing, the additional statement is not admitted to the file.
27. On 19, 20 and 21 January 2015 respectively, the Club, the Player and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office.
28. On 22 January 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing all parties confirmed that they had no objection to the constitution and composition of the Panel.
29. In addition to the Sole Arbitrator and Mr Christopher Singer, Counsel to the CAS, the following persons attended the hearing:
30. For the Club:
  - Ms Didem Sunna, Counsel;
  - A., Board Member of the Club
31. For the Player:
  - Mr Talat Emre Koçak, Counsel;
  - Mr Sami Dinç, Counsel
32. For FIFA:
  - Mr Roy Vermeer, Counsel

33. No witnesses or experts were heard. The parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
34. Before the hearing was concluded, all parties expressly stated that they did not raise any objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
35. The Sole Arbitrator confirms that he carefully heard and took into account all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

36. The Club's submissions, in essence, may be summarised as follows:
  - The Club argues that the Appealed Decision "*is based on wrong assessment of the fact [sic]*".
  - The Club purports that the Appealed Decision "*contain extremely hard and heavy provisions and puts our club under huge obligations [sic]*".
  - The Club argues that the Player did not request for sporting sanctions against the Club and that – as FIFA did not warn the Club – it was not aware of the threat of sporting sanctions, otherwise it would have taken "*every precaution to make payment, and applications were made [sic]*". The Club refers to a CAS award regarding the imposition of sporting sanctions.
37. The Player's submissions, in essence, may be summarised as follows:
  - The Player points out that the Club "*has made the payment stated in the [Appealed Decision] and there is no overdue debt of the [Club] which shows the good faith of the [Club]*".
  - The Player stresses that he "*has never claimed from FIFA to impose any sanction upon the [Club] due to his failure in the payment of contractual debts on the agreed dates*".
  - Finally, the Player maintains that no sporting sanctions should be applied on the Club, because the Club "*tried to settle this case in an amicable way and still tries to find an amicable solution for the case*" of Player Y., which case is still pending before CAS and shall not be an aggravating circumstance.
38. FIFA's submissions, in essence, may be summarised as follows:
  - FIFA emphasizes that it endorses the Appealed Decision and points out that the Club – during the proceedings before FIFA – explicitly acknowledged that it had not paid the Player's outstanding salaries from February to May 2013. Furthermore, the Club did not contest that the Player sent a default notice and that the breach of the Employment Contract occurred within the first 6 months of its entry into force, which is, clearly within the protected period.

- FIFA maintains that *“the only argument put forward by the Club in relation to the substance of the matter is that the Appealed Decision is “based on wrong assessment”, without, however, providing any further argumentation or documentary evidence in this respect”*.
- FIFA further argues that *“whether or not a party has requested the imposition of sporting sanctions on the counterparty is completely irrelevant (...) the imposition of sporting sanctions is a disciplinary measure which concerns the relation between the regulatory body and its (indirect) members”*.
- In continuation, FIFA purports that pursuant to article 17(3) and (4) of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the “FIFA Regulations”), and in addition to the obligation to pay compensation, the competent deciding body has the power, but not the obligation, to impose sporting sanctions on a club found to be in breach of contract during the protected period. *“As a consequence, it is left to the free discretion of the competent deciding body, i.e. the DRC, to, depending on the specific circumstances of each particular case, impose the sporting sanctions provided for by art. 17 par. 4 of the Regulations, or, respectively, to refrain from doing so”*.

## V. ADMISSIBILITY

39. The appeal was filed within the 21 days set by article 67 (1) of the FIFA Statutes (2013 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
40. It follows that the appeal is admissible.

## VI. JURISDICTION

41. The jurisdiction of CAS, which is not disputed, derives from article 67 (1) of the FIFA Statutes as it determines that *“[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”* and Article R47 of the CAS Code.
42. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
43. It follows that CAS has jurisdiction to decide on the present dispute.

## VII. APPLICABLE LAW

44. Article R58 of the CAS Code provides the following:  
*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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”.*

45. The Sole Arbitrator notes that Article 66 (2) of the FIFA Statutes stipulates the following:  
*“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
46. The parties did not make any statements regarding the law or regulations to be applied by CAS. In view of the fact that the Appealed Decision was issued by FIFA and because FIFA is domiciled in Switzerland, the Sole Arbitrator is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. MERITS

### A. The Main Issues

47. At the hearing, the Club confirmed its responsibility for breaching the Employment Contract during the protected period and withdrew its request for relief regarding the obligation to pay the Player the outstanding salaries and compensation because of the termination of the Employment Contract by the Player with just cause. Furthermore, both the Club and the Player confirmed that the outstanding salaries and compensation as established in the Appealed Decision were paid by the Club to the Player.
48. In view of the above, the Sole Arbitrator observes that the main issues to be resolved are the following:
- i. Is there a clear legal basis for the *ex officio* imposition of sporting sanctions on the Club by the FIFA DRC?
  - ii. Is the imposition of sporting sanctions on the Club warranted in this specific case?
  - iii. If so, are the sporting sanctions imposed on the Club disproportionate?
- i. Is there a clear legal basis for the ex officio imposition of sporting sanctions on the Club by the FIFA DRC?*
49. As it is no longer in dispute that the Club breached the Employment Contract and that this was done during the protected period, the only issues to be resolved by the Sole Arbitrator are whether there was a legal basis for the FIFA DRC to impose sporting sanctions on the Club without this being requested by the Player and, if so, whether the sporting sanctions imposed were proportionate.
50. The Player submits that he did not ask for the imposition of sporting sanctions and that he is fully satisfied because the Club paid all the outstanding amounts as established in the Appealed Decision.

51. The Club argues that the Player did not request for sporting sanctions to be imposed, FIFA never warned the Club of the possible imposition of sporting sanctions and the sanctions imposed in the Appealed Decision are extremely harsh and disproportionate.
52. At the hearing, the Club supplemented its position, *inter alia*, arguing that the Club is no repeated offender in relation to article 17(4) of the FIFA Regulations. It pointed out that the “Player Y.-case”, a dispute between the Club and another player where the FIFA DRC decided that the Club breached the employment contract, cannot be taken into account because the appeal is still pending at CAS. Finally, the Club argued that FIFA breached several legal principles, such as the principle of legality and the principle of equal treatment.
53. With reference to Article R56 of the CAS Code, FIFA objected to the “new” oral arguments presented by the Club at the hearing and maintained that the specific circumstances in this case justify the imposition of the sporting sanctions.
54. FIFA argues that *“the DRC has formed its jurisprudence in the sense of adopting a more flexible application of art. 17 par. 4 of the Regulations, according to which the deciding authority, in view of the particular and specific circumstances involved in each case brought to its consideration, would have the possibility of renouncing the application of sporting sanctions on a club found in breach of contract without just cause, even if such breach occurred during the protected period. [...] As a consequence, it is left to the free discretion of the competent deciding body [...] to [...] impose the sporting sanctions provided for by art. 17 par. 4 of the Regulations or, [...] to refrain from doing so”*.
55. Furthermore, the Sole Arbitrator observes that FIFA aims at a stricter application of article 17(4) of the FIFA Regulations, pointing out that *“the current situation of constant and repeated disrespect of the contractual obligations – mutually and voluntarily – stipulated in the contracts concluded between clubs and players is not exclusive of the [Club], but concerns several clubs, which constantly figure as respondents in the numerous labour disputes lodged daily in front of FIFA [...] In order to guarantee for a better enforcement of the contractual obligations assumed by the football clubs towards their players and for a consequent reduction of contractual offenses leading to the submission of labour disputes to the DRC, in recent times the latter reached the conclusion that a more strict approach in such situations is not only desirable, but extremely and urgently necessary. In order to achieve such objective, a more strict application of art. 17 par. 4 of the Regulations is deemed appropriate, particularly in cases involving clubs that are repeatedly found to be in a situation of breach of contract without just cause, reaching the condition of “repeated offenders”*.
56. The Sole Arbitrator concurs with FIFA that the “new” oral arguments presented by the Club at the hearing should in principle be dismissed as they should have been submitted within the Club’s Appeal Brief. The Sole Arbitrator however finds that some of the arguments submitted by the Club are to be considered as a substantiation of the previously submitted conclusions and shall be assessed as such. The Sole Arbitrator also finds that it is not necessary to dismiss the Club’s arguments as it does not influence the outcome of the present proceedings.

57. Turning his attention to the legal framework for assessing the authority of the FIFA DRC to impose sporting sanctions, the Sole Arbitrator observes that Article 17(4) of the FIFA Regulations provides as follows – as relevant:
- “In addition to the obligation to pay compensation, sporting sanctions **shall** be imposed on any club found to be in breach of contract during the protected period [...]. The Club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. [...].”* [Emphasis added by the Sole Arbitrator].
58. The Sole Arbitrator finds that from this provision it is clear that the sporting sanctions as mentioned in article 17(4) of the FIFA Regulations “shall be” imposed on any club found to be in breach of contract during the protected period, irrespective of a request by a party to impose the sporting sanctions and without giving the competent body the discretion to impose another – more lenient – sanction as the one foreseen in the applicable provision.
59. The Sole Arbitrator finds that the prerogative to impose the sporting sanctions provided for in article 17(4) of the FIFA Regulations entirely lies with FIFA, which implicates that it is of no relevance whether a player or a club requests the imposition of sporting sanctions. As such, and in principle, the FIFA DRC has full authority to impose a ban on the Club to register any new players for two entire and consecutive registration periods, only because the a club breached an employment contract during the protected period.
60. However, although it follows from a literal interpretation of article 17(4) of the FIFA Regulations that it is a duty of the competent body to impose sporting sanctions whenever a club is found to have breached an employment contract during the protected period, the Sole Arbitrator is satisfied that there is a well-accepted and consistent practice of the FIFA DRC, as explained by FIFA in its submissions and at the hearing, not to apply automatically a sanction as per article 17(4) of the FIFA Regulations, but to leave it to the free discretion of the FIFA DRC to evaluate the particular and specific circumstances on a case by case basis.
61. This discretion is also contemplated in the Commentary on the Regulations for the Status and Transfer of Players (hereinafter: the “FIFA Commentary”), which determines the following in respect of article 17(4) of the FIFA Regulations – as relevant:
- “A club that breaches a contract with a player during the protected period **risks** being prohibited from registering new players, either domestically or internationally, for two registration periods following the contractual breach”* [emphasis added by the Sole Arbitrator].
62. Hence, according to the FIFA Commentary the imposition of sporting sanctions on a club breaching an employment contract within the protected period is not mandatory.
63. In view of the above, the Sole Arbitrator finds that the legal basis for the imposition of sporting sanctions by the FIFA DRC is clear, but that the *ex officio* imposition of sporting sanctions is not necessarily warranted in each and every case.

- ii. *Is the imposition of sporting sanctions on the Club warranted in this specific case?*
64. In continuation, the Sole Arbitrator turns his attention to the question whether the FIFA DRC violated certain general legal principles, such as the principle of being bound by previous standard practice, the principle of legality, equal treatment and/or good governance by imposing the sporting sanctions on the Club.
65. On the one hand, the Club argues that *“it is a lottery”* and that FIFA should have warned clubs regarding a stricter application of article 17(4) of the FIFA Regulations. On the other hand, FIFA maintains that there is *“no real change of policy”*, but only a more strict application adjusting to the reality in the world of football, submitting that even during the period when a more lenient approach was applied clubs that were not repeated offenders were sanctioned with the mentioned ban.
66. More specifically, FIFA maintains that the following specific circumstances justify the sporting sanctions as imposed in the Appealed Decision:
- *“As from the very start of the employment relationship, the Club failed to properly fulfil its main and principal contractual obligation towards the [Player]. Such stance is to be classified as particularly reproachable”;*
  - *“Also in another dispute involving the player Y. the DRC had held the [Club] liable for the breach of the relevant employment contract without just cause, without however applying any sporting sanctions on the [Club]”;*
  - *“The [Club] has been a notorious neglecter of its contractual and regulatory obligations and has been condemned repeatedly by the various decision-making bodies of FIFA to pay certain (overdue) amounts to the other stakeholders in the football community. In support of this, FIFA argues that in the period between 26 March 2012 – 14 October 2014 the Club has been condemned in 14 cases relating to 5 contractual disputes, 3 Solidarity contribution disputes, 1 outstanding remuneration dispute, 1 outstanding commission dispute and 4 Training compensation disputes.*
67. The Sole Arbitrator finds that it is clear from the Appealed Decision that the FIFA DRC imposed the sporting sanctions not only because the Club breached the Employment Contract with the Player by the consistent non-payment of the Player’s salaries during four months out of the first five months of the Employment Contract, but also because the Club had *“on a previous occasion been held liable by the Chamber for the early termination of the employment contract with the [...] player Y. (case ref. nr. [...]; decision rendered on 27 May 2014), which should be considered as an aggravating circumstance”*.
68. At the hearing, the Club confirmed that it also had been held liable by the FIFA DRC for the early termination of the employment contract with the player Y., and that – although the player Y. had filed an appeal at CAS in respect of the amount of compensation awarded by the FIFA DRC – the Club did not file an independent appeal with CAS against this decision.

69. Since the decision of the FIFA DRC regarding the Club and Player Y. was rendered on 27 May 2014 and the grounds were communicated on 14 September 2014, the Sole Arbitrator finds that the Club acted in breach of two employment contracts with two players during the protected period. By not filing an appeal with CAS, the Club accepted the liability for the breach of contract with the Player Y., implicitly confirming the aggravating circumstance as established in the Appealed Decision. As such, the Sole Arbitrator finds that the outcome of the CAS proceedings between Player Y. and the Club about the compensation to be paid is irrelevant for the matter at hand, as the decision of the FIFA DRC that the Club breached the employment contract of Player Y. became final and binding.
70. As held by CAS case law in CAS 2008/A/1545 and CAS 2011/A/2670, the “principle of legality” (*“principe de légalité”*) requires that the offences and sanctions must be clearly and previously defined by law and must preclude the “adjustment” of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable (“predictability test”). This principle is further confirmed by CAS 2007/A/1363, which holds that the principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision. Furthermore, an association may be estopped from invoking a certain rule or exercising such rule in a certain fashion if precedent representations induce a subordinate or member to believe something resulting in that person’s reasonable and detrimental reliance on such belief (“estoppel by representation”) (CAS OG 08/02). Finally, CAS case law (for example CAS 2007/A/1437 para. 8.1.8) has held that inconsistencies in the rules of a federation will be construed against the federation (*contra proferentem* principle).
71. The Sole Arbitrator finds that the offence and the sanction are clearly defined in Article 17(4) of the FIFA Regulations. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behavior and the sanction.
72. Although the FIFA DRC decisions in respect of article 17(4) of the FIFA Regulations are rendered on a case by case basis, the Sole Arbitrator is of the opinion that there are no strong arguments brought forward by the Club to conclude that the FIFA DRC violated one of the above-mentioned principles to such an extent that the imposition of sporting sanctions is illegal.
73. More specifically, the Sole Arbitrator finds that the very short written submissions of the Club (*i.e.* the “*explanations*” of the Club in its Appeal Brief on the merits of the case consist of one page), do neither enable the Sole Arbitrator to consider the Club’s objections in detail nor do they suffice to establish that FIFA is estopped by its precedent representation in similar cases.
74. Consequently, the Sole Arbitrator finds that the imposition of sporting sanctions on the Club in this specific case is warranted.

iii. *If so, are the sporting sanctions imposed on the Club disproportionate?*

75. Turning his attention to the question whether imposing a ban from registering any new players, either nationally or internationally, for the following two entire and consecutive registration periods is disproportionate, the Sole Arbitrator observes that the Club submits that these measures are disproportionate, whereas FIFA maintains that the measures are justified.
76. The Sole Arbitrator observes that article 17(4) of the FIFA Regulations does not provide the decision-making body with discretion as to the severity of the sporting sanctions to be imposed (and neither does the FIFA Commentary); this provision merely determines that if sporting sanctions are to be imposed on a club, these sporting sanctions shall consist of a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.
77. The Sole Arbitrator feels himself comforted in this conclusion by CAS case law determining that:

*“Quant à la nature et la quotité de la sanction infligée, la Formation ne voit pas en quoi elle peut appliquer le principe de la proportionnalité, du moment qu’elle fait partie de règles codifiées concernant le jeu au sein même de l’association. Il appartiendrait à un ou des membre (s) de cette association, voire à l’association elle-même (ou à ses sections), de modifier une telle règle s’il devait être considéré qu’elle est par trop sévère ou qu’il lui manque la possibilité d’être nuancée. En d’autres termes, la Formation ne saurait se substituer au législateur dans l’application de la règle en cause”* (CAS 2006/A/1154, §19).

Which can be freely translated as follows:

*“Concerning the nature and the extent of the inflicted sanction, the Panel does not see how it can apply the principle of proportionality, as long as it is part of the codified rules of the game of the association concerned. It would be up to one or more members of this association, or to the association itself (or to its departments), to change such a rule should it be considered as too severe or lack the possibility of a nuanced application. In other words, the Panel cannot replace the legislator in the application of the rule in question”.*

78. In light of the above, the Sole Arbitrator finds that the sporting sanctions imposed on the Club are not disproportionate.

## **B. Conclusion**

79. Based on the foregoing, and after taking into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Sole Arbitrator finds that:
- i. The legal basis for the imposition of sporting sanctions by the FIFA DRC is clear, but the *ex officio* imposition of sporting sanctions is not necessarily warranted in each and every case.
  - ii. The imposition of sporting sanctions on the Club in this specific case is warranted.

- iii. The sporting sanctions imposed on the Club are not disproportionate.
80. Any further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 8 October 2014 by Club X. against the Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
  2. The Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed.
- (...)
6. All other motions or prayers for relief are dismissed.