



Arbitration CAS 2015/A/4026-4033 FC Sportul Studentesc SA v. Valentin Marius Lazar, Daniel-Cornel Lung, Sebastian Marinel Ghinga, Leonard Dobre, Octavian Dorin Ormenisan, Sebastian Cioranu Codrut & Andrei Lungu, award of 2 October 2015

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

Football

Claims related to contracts of employment entered into between a club and several players

Application of the principle of res judicata

Identity of the object and cause

1. According to the principle of res judicata defined by Swiss law and jurisprudence, once a cause of action has been litigated, it may not be relitigated. In this respect, a club's new claims are barred by the principle of res judicata, if (a) a former binding and final decision was issued which bears (b) the identity of the parties and (c) the identity of the object and cause with respect to the new claims.
2. Identity of the object and cause is given if a claim is based on the same cause and the identical factual background which has already been subject to a previous claim and has been considered by a court. Hereby, identity is not to be defined grammatically but according to the claim's content. Despite a different cause which a party relies on, the claim still is qualified identical if such cause was included in the former dispute or if the contradictory opposite of the former claim is presented to the judge.

I. INTRODUCTION

1. The consolidated appeals are brought by FC Sportul Studentesc SA (the "Club" or "Appellant") against decisions rendered by the Romanian Football Federation Appeal Committee ("Appeal Committee") dated 4 March 2015 (the "Appealed Decisions").
2. The Respondents 1-7 together are referred to as the "Players" or "Respondents".

II. PARTIES

3. FC Sportul Studentesc SA is a professional Romanian football club. The Appellant is affiliated to the Romanian Football Federation ("RFF"), which is affiliated to the Fédération Internationale de Football Association ("FIFA").

4. Valentin Marius Lazar is a professional football player of Romanian nationality, born 21 August 1989, resident in Ploiesti, Romania, who was contracted to play as professional footballer for the Appellant under a contract of Employment dated 10 August 2011.
5. Daniel-Cornel Lung is a professional football player of Romanian nationality born on 2 March 1987, currently resident in Satu Mare, Romania, who was contracted to play as professional footballer for the Appellant under a contract of Employment dated 30 June 2010.
6. Sebastian Marinel Ghinga is a professional football player of Romanian nationality, born on 12 February 1987, currently resident in Bacau, Romania, who was contracted to play as professional footballer for the Appellant under a contract of Employment dated 30 June 2010.
7. Leonard Dobre is a professional football player of Romanian nationality born on 16 June 1992, currently resident in Cornetu, Romania, who was contracted to play as professional footballer for the Appellant under a contract of Employment dated 30 June 2011.
8. Octavian Dorin Ormenisan is a professional football player of Romanian nationality, born on 31 August 1992, currently resident in Târgu Mures, Romania, who was contracted to play as professional footballer for the Appellant under a Contract of Employment dated 30 June 2011.
9. Sebastian Cioranu Codrut is a professional football player of Romanian nationality, born 10 January 1991, resident in Bucharest, Romania, who was contracted to play as professional footballer for the Appellant under a contract of Employment dated 30 June 2010.
10. Andrei Lungu is a professional football player of Romanian nationality born on 29 January 1989, currently resident in Pitesti, Romania, who was contracted to play as professional footballer for the Appellant under a Contract of Employment dated 30 June 2010.

III. FACTUAL BACKGROUND

A. Background Facts, initial Proceedings 2013-2014

11. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
12. During the years 2010 and 2011, the Club entered into a series of employment agreements with the Players. In 2013, a dispute arose between the Players and the Club regarding the Players' claims for outstanding salaries and the question whether the employment agreements were terminated by the Players with just cause.

13. On 23 April 2013, the National Dispute Resolution Chamber of the RFF (“RFF NDRC”) issued the following decisions:

Ormenisan (resolution no. 168)

- *Ascertained the termination of the contractual relations between the club and Ormenisan as of 23 April 2013*
- *Ordered the club to pay an amount of euro 7.800 net in favor of Ormenisan, representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Ormenisan for the costs of the proceeding.*

Lungu (resolution no. 196)

- *Ascertained the termination of the contractual relations between the club and Lungu as of 23 April 2013*
- *Ordered the club to pay an amount of euro 17.500 net in favor of Lungu, representing his remaining contractual rights for the period between August 2012 and February 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Lungu for the costs of the proceeding.*

Dobre (resolution no. 167)

- *Ascertained the termination of the contractual relations between the club and Dobre as of 23 April 2013*
- *Ordered the club to pay an amount of euro 9.200 net in favor of Dobre, representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Dobre for the costs of the proceeding.*

Ghinga (resolution no. 169)

- *Ascertained the termination of the contractual relations between the club and Ghinga as of 23 April 2013*
- *Ordered the club to pay an amount of euro 18.000 net in favor of Ghinga, representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Ghinga for the costs of the proceeding.*

Lung (resolution no. 170)

- *Ascertained the termination of the contractual relations between the club and Lung as of 23 April 2013*
- *Ordered the club to pay an amount of euro 18.000 net in favor of Lung representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Lung for the costs of the proceeding.*

Lazar (resolution no. 172)

- Ascertained the termination of the contractual relations between the club *and Lazar as of 23 April 2013*
- *Ordered the club to pay an amount of euro 21.000 net in favor of Lazar, representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of the Lazar for the costs of the proceeding.*

Codrut (resolution no. 166)

- *Ascertained the termination of the contractual relations between the club and Codrut as of 23 April 2013*
- *Ordered the club to pay an amount of euro 12.000 net in favor of Codrut, representing his remaining contractual rights for the period between February 2012 and January 2013;*
- *Ordered the club to pay an amount of LEI 400 in favor of Codrut for the costs of the proceeding.*

14. The Romanian Football Federation's Appeal Committee (the "Appeal Committee") modified the decision regarding the Player Codrut and ordered the Club to pay him EUR 7'260.40. The other appeals were rejected, whereby the Appeal Committee stated that they were inadmissible as filed too late.
15. The Club appealed before the Court of Arbitration for Sport (the "CAS"), claiming that the amounts in question had been paid throughout the year 2012 and filing the respective payment slips. This argument was not filed by the Club during the proceedings within the RFF. On 7 March 2014, CAS issued the award *CAS 2013/A/3286-3294*, dismissing the Club's appeal (the "CAS Award 2014"). In his reasoning, the sole arbitrator considered that the payment slips were filed too late and therefore inadmissible according to Article R57 of the Code of Sports-related Arbitration (the "CAS Code").

B. New Proceedings before the RFF NDRC and the Appeal Committee

16. On 18 July 2014, the Appellant filed several new claims with the RFF NDRC against the Players (the "new claims"). Except for the name and amount in question, the claims were not only alike but almost identical. The Club argued that:
 - It had already paid all salaries to the Players throughout the year 2012.
 - As the amounts due defined by CAS Award 2014 for the period February 2012 until January 2013 were actually below the amounts that the Club had allegedly paid to the Players, the Club concluded that it had paid to the Players too much. Therefore, the Club claimed for the amounts that the Club allegedly paid to each Player on the basis of unlawful enrichment.
 - The claim against the Player Lung shall serve as an example: the Club claimed to have paid to the Player Lung the amount of EUR 26'916.86 during the year 2012. The CAS Award 2014 held that the Club had to pay EUR 18'000.00 to the Player for the same

period. Hence, the Club claimed that the Player was unlawfully enriched and had to pay back the amount received by the Club.

17. By decisions dated 16 October 2014, the RFF NDRC dismissed the Club's claims.
18. On 4 March 2015, the Appeal Committee upheld those decisions and rejected the Club's appeal.
19. In their reasoning, the RFF NDRC and Appeal Committee both considered the following main points:
 - The Club's prayers for relief were exactly about the same factual background and legal question which was settled in the CAS Award 2014. Namely, the subject was whether the Club paid the Players' salaries or not for the claimed periods. This question had been answered by the judicial bodies of the RFF and by the CAS Award 2014.
 - The Appeal Committee cited the CAS Award 2014 and held that:
 - The evidences for the payments allegedly being made were filed too late (only before CAS) and were therefore inadmissible.
 - Even if they were admissible, they cannot prove the payments because the amounts did not match the payments due and were not written in a proper form.
 - Taking the argument of the Club, that the new claims were not *res indicata* because it is about wrongful enrichment this time, into consideration, it would again lead to the decisive question of whether the Club had paid the alleged amounts or not. Hence, there is *res indicata* from this point of view as well.
 - According to Articles 430 and 431 of the Romanian Civil Code, the case has to be considered as a matter of *res indicata*. The Club was only trying to reverse the factual circumstances which had already been determined irrevocably by the CAS Award 2014.
 - Therefore, the new claims had to be rejected due to the principle of *res indicata*.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 3 April 2015, the Appellant filed its statements of appeal against the decisions of the Appeal Committee with the CAS in accordance with Articles R47 and R48 of the CAS Code.
21. On 16 April 2015, the Appellant filed its appeal briefs.
22. In accordance with Article R55 of the CAS Code, the Respondents filed their answers on 4 June 2015.
23. On 22 April 2015, the parties were informed that the seven appeals by the Club will be submitted to the same sole arbitrator upon consent by the parties and in accordance with Article R50 of the CAS Code.

24. On 15 May 2015, pursuant to Articles R33, R52, R53 and R54 of the CAS Code, the Secretary General of the CAS informed the parties that the Panel appointed to decide the present matter was constituted by the Sole Arbitrator Dr. Marco Balmelli, attorney-at-law in Basel, Switzerland.
25. On 24 July 2015, a submission was filed on behalf of all Players (save Player Lungu) by their newly appointed legal counsel. Such late submission was deemed inadmissible pursuant to Article R56 of the CAS Code.
26. On 27 July 2015, a hearing was held at the CAS Headquarters in Lausanne, Switzerland. The parties' counsels made their respective opening statements and answered the questions raised by the Sole Arbitrator. Finally, the parties' respective counsels made their closing statements.
27. 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.

V. SUBMISSIONS OF THE PARTIES

28. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference has been made in what immediately follows. The parties' written submissions, their verbal submissions at the hearing and the contents of the Appealed Decisions were all taken into consideration.

A. Appellant

29. The Appellant filed the following prayers for relief:

Regarding Player Lung:

1. *"To admit the Appeal against the Decision no. 101 issued by the Appeal Committee of the Romanian Football Federation;*
 2. *To ascertain the fact that the Appellant paid to the Football Player the sum of 26'916.86 Euros, in accordance with payment documents attached to this application, representing financial rights under the contract for football services, for sports year 2012.*
 3. *To oblige the football player to reimburse to the Appellant the sum of 26'916.86 Euros due to the fact that, for the same period of time, the Appellant was ordered to pay the sum of 18'000.00 Euros by National Commission for Settlement of Disputes ("NCSD") Decision no. 170 issued on April 23, 2013.*
 4. *To oblige the Football Player to pay the costs generated by this procedure".*
30. The prayers for relief regarding the other Players were identical apart from the different amounts claimed by the Appellant. The arguments were also identical (save the numbers).

31. The Appellant's submissions, in essence, may be summarized as follows:

- The parties entered into a contract in 2010 (monthly fee of EUR 1'500.00, conditioned by participation of 70% in official games). The Club paid EUR 26'916.86 for the year 2012. Additionally, 23/04/2013 RFF NDRC forced the Club to pay EUR 18'000.00.
- The Club states it paid all obligations (especially wages) to the Player. Payment slips were filed as evidences.
- Since the CAS Award 2014 ordered the Club to pay EUR 18'000.00 to the Player, it had paid too much salary throughout the year 2012. Therefore, the whole amount paid to the Player shall be reimbursed by him. Otherwise, he would be unlawfully enriched.
- The principle of *res indicata* only applies if a triple identity is met: the dispute has to concern the same object based on the same cause of action between the same parties. This is not met in the case at hand:
 - The first case was about issues arising from the employment contract. This time, it is about unlawful enrichment (e.g. neither identical cause nor object).
 - The identity of the parties is not given since it is now the Club which sues the Player, not vice-versa.
- It is not the "same legal problem". It would be unlawful if the Player gets the same amount twice. This would be a completely different legal action, although based on the same background. It is not about the Player's right this time but about the Player being overpaid. Furthermore, the aspect that the Club did indeed pay its Players their salaries was not considered in the first case because it was born only after.
- As the Club was ordered to pay a different amount for the same period, the amount initially paid is considered as "not due" and needs to be returned.

B. Respondents

32. The Respondents filed the following identical (except for the decision number and the name of the Players) prayers for relief:

"The decision no 101 issued by the Commission of Appeal of the Romanian Football Federation in the matter of SC FC Sportul Studentesc against Lung Daniel Cornel is solid and legal and it will be kept".

33. The Respondents' submissions, in essence, may be summarized as follows:

- The Club didn't receive the first decision by RFF NDRC because the fax machine was broken and they refused to accept the registered mail letter. This may not serve as an excuse for a delayed appeal before the Appeal Committee since this was an old issue, when the Players sued the Club for not paying their salaries.
- If the problem to be solved was already solved in a previous case, the principle of *res indicata* applies. This is supported if a new judgment would be contradictory to another case between the same parties.

- Even if there were quittances that stated that the amounts were paid, they would be void. According to the Romanian Labour Code, employees cannot waive their rights recognized by law.
- The Club failed to pay the salaries from February 2012 to January 2013 and the employment agreement could be terminated with just cause according to the ruling of the RFF NDRC. Subsequently, the Club was banned from all competitions because they did not comply with the decisions of the RFF NDRC. This decision was not challenged by the Club.
- The payment slips filed by the Appellant lack the standard of proof as they are forged.
- The Club tries to come back on all the decisions which have been made in a prior procedure. Due to the principle of *res iudicata*, the appeal shall be dismissed.

34. On 24 July 2015, the Respondents (save Player Lungu) filed the following prayers for relief:

- *“To dismiss the appeals submitted by the APPELLANT, as ungrounded;*
- *To maintain the appealed decisions rendered by the Appeal Committee of the Romanian Football Federation;*
- *To condemn the APPELLANT to the payment of the whole CAS administration costs and the Panel fees;*
- *To fix a sum, to be paid by the APPELLANT to the RESPONDENTS Lazar Valentin Marius, Lung Daniel Cornel, Ghinga Sebastian, Dobre Leonard, Ormenisan Octavian and Cioranu Codrut, in order to pay their defense fees and costs in amount of 3'000 CHF/each respondent”.*

VI. JURISDICTION

35. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

36. The jurisdiction of CAS, which is not disputed by the parties, derives from Article 36 par. 17 of the Regulations on the Status and Transfer of Players of the RFF (the “RSTP RFF”). It is furthermore confirmed by the signature of the Order of Procedure by all the parties.

37. Therefore, the Sole Arbitrator considers that CAS is competent to decide over this case.

VII. ADMISSIBILITY

38. In accordance with Article 36 para. 17 of the RSTP RFF, the appeal has to be filed within 21 days from the receipt of the Appealed decisions.
39. The motivated Appealed Decisions were communicated by the Appeal Committee to the Appellant on 16 March 2015. The Appellant filed its Statement of Appeal on 3 April 2015. The Appeal is therefore admissible.

VIII. APPLICABLE LAW

40. Article R58 of the CAS Code provides as follows:

“The Sole Arbitrator 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 Sole Arbitrator deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for its decision”.

41. The Sole Arbitrator notes that the employment agreements between the Players and the Club were not submitted. The parties refer in their submissions to Romanian law. Therefore, the Sole Arbitrator deems it appropriate to apply Romanian law to the dispute and the RSTP RFF, Statutes of the RFF. The Sole Arbitrator shall also apply Swiss law as a subsidiary should the need arise and if the Parties failed to prove the content of the provisions of Romanian law on which they rely on.

IX. MERITS

42. Regarding the dispute at hand, the Sole Arbitrator deems it important to first evaluate whether the Appellant’s requests for relief can or cannot be considered due to the principle of *res iudicata*.
43. In this respect, the Sole Arbitrator notes the content of the CAS Award 2014. Furthermore, it came to the Sole Arbitrator’s attention that the Swiss Federal Tribunal issued an award with regard to the CAS Award 2014 on 15 July 2015 (decision no. 4A_246/2014). In this award, the Swiss Federal Tribunal upheld the Club’s appeal with respect to the Players Ormenisan, Lungu and Dobre (the “FT Award”).

A. Principle of *res iudicata*

44. First, the Sole Arbitrator notes that none of the parties refer to a provision of Romanian law regarding the definition of *res iudicata* and its consequences. The decisions of the Appeal Committee refer to Articles 430 and 431 of the Romanian Civil Code. Neither of the parties filed those provisions. However, they both define *res iudicata* alike. In addition, the Sole Arbitrator applies the Swiss law and jurisprudence to define the main points of the principle of

res iudicata as they appear to correspond to the parties' definition. In general, it may be described as once a cause of action has been litigated, it may not be relitigated. In detail:

a) Former decision

45. In order for the principle of *res iudicata* to apply, the Sole Arbitrator considers whether a former binding decision had been issued or not at the relevant time, namely when the Club filed its new claims before RFF NDRC on 18 July 2014.
46. CAS Award 2014 was issued to the parties on 7 March 2014. Therefore, when the Club filed his new claims on 18 July 2014, there was a former decision issued which was at this time final and binding (Article 59 para. 4 CAS Code).
47. Since the CAS Award 2014 was set aside with regard to the Players Ormenisan, Lungu and Dobre by the Swiss Federal Tribunal, the proceedings *CAS 2013/A/3286-3287 and 3288* are again pending before CAS. However, the FT Award does solely concern CAS Award 2014. Therefore, the dispute in question remains within the procedure of CAS Award 2014 and has to be decided by the competent judicial body to rule in such procedure.
48. In this respect, the Sole Arbitrator notes that the FT Award, partially upholding the Club's appeal against the CAS Award 2014, does not influence the proceeding at hand which was initiated by the Appellant as a new case. Therefore, the Sole Arbitrator holds that a former final and binding decision (CAS Award 2014) had been issued at the relevant time when the Appellant filed its new claims. Considering this, the Sole Arbitrator turns his attention to the evaluation whether this former decision was about the same object and cause between the same parties, or not.

b) Identity of the parties

49. Identity of the parties means that the parties were all parties to the previous procedure. Hereby, the role of claimant or respondent is not of any essence. The Sole Arbitrator considers that all Respondents as well as the Appellant were parties to the procedures which lead to CAS Award 2014 and therefore, the criteria of the identity of the parties is met.

c) Identity of the object and cause

50. Identity of the object and cause is given if a claim is based on the same cause and the identical factual background which has already been subject to a previous claim and has been considered by a court. Hereby, identity is not to be defined grammatically but according to the claim's content. Despite a different cause which a party relies on, the claim still is qualified identical if such cause was included in the former dispute or if the contradictory opposite of the former claim is presented to the judge (Decision of the Swiss Federal Tribunal 139 III 126, para. 3.2.3).
51. The Sole Arbitrator notes that the Appellant claims for a reimbursement of allegedly paid salaries from February 2012 until January 2013. It then considers the content of the CAS Award

2014. Hereby, the Sole Arbitrator notes that the matter in dispute concerned several claims by the Respondents on 13 March 2013 and on 3 April 2013 before the RFF NDRC for outstanding salaries regarding the year 2012. The Club hereby stated that it had already paid the salaries claimed. The RFF NDRC considered that the payments by the Club were not proven and therefore condemned the Club to pay the outstanding salaries.

52. Considering the dispute of CAS Award 2014, the Sole Arbitrator notes that the new claims by the Club concern the exact same question, i.e. whether the Club paid the Players' salaries from February 2012 until January 2013 or not. The question of how much was actually due to the Players was also considered in the CAS Award 2014. The Club's claims that it paid certain amounts to the Players during this period was included in the question whether the Club had paid the salaries at all. The Club's argument, that the case at hand is different from the CAS Award 2014 since the new claims derive from alleged unlawful enrichments, cannot be heard. To get to the bottom of judging the Club's new claims, the question whether the Club had paid the salaries from February 2012 until January 2013 or not must be answered. This question has already been answered by CAS Award 2014. Furthermore, the Sole Arbitrator holds that the Club should have claimed for an alleged overpayment during the proceedings which led to the CAS Award 2014 as it was included in this dispute.
53. To conclude, the Sole Arbitrator notes that judging over the Club's new claims (a) could lead to a contradictory award to the CAS Award 2014 and (b) would interfere with the again pending proceedings regarding the Players Ormenisan, Lungu and Dobre and could also lead to a contradictory award with respect to those Players.
54. In conclusion, the Sole Arbitrator holds that the Club's new claims are indeed barred by the principle of *res indicata*, since (a) a former decision (CAS Award 2014) was issued which bears (b) the identity of the parties and (c) the identity of the object and cause with respect to the new claims. Therefore, the Appealed Decisions of the Appeal Committee were correct and the appeals must be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by FC Sportul Studentesc SA on 3 April 2015 concerning the decisions of the Appeal Committee of the Romanian Football Federation dated 4 March 2015 are dismissed.
2. The decisions of the Appeal Committee of the Romanian Football Federation dated 4 March 2015 are confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.