Arbitration CAS 2015/A/4158 Qingdao Zhongneng Football Club v. Blaz Sliskovic, award of 28 April 2016

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

Football
Contract of employment between a club and a coach
Just cause
Just cause in case of delayed salaries
Duty of the club to facilitate the visa and work permit renewals

1. **The following principles apply in matters determining whether an aggrieved party has just cause to terminate an employment contract on account of breaches by the other party: a) just cause is any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason; b) a termination of contract with immediate effect, for just cause, is to be declared only in circumstances where a serious breach of the contract has been committed; the termination of the contract with immediate effect is to be applied as *ultima ratio*; c) a party that has not been paid its salary for more than three months generally has just cause to terminate the contract.**

2. **Although just cause in cases regarding delayed salaries is determined on a case by case basis, there is CAS jurisprudence to the effect that a party that has not been paid its salary for more than three months generally has just cause to terminate the contract. However, a 17-day delay in paying 1/5th of an employee's salary does not justify the employee's termination of the contract unless there exists other aggravating situations or conduct on the part of the employer, such as persistent, unexplained or unjustifiable delays.**

3. **A club, as the employer, has an implied duty to facilitate the renewal of the employee's visa and work permit. This is the general presumption in employment relationships and if the club intends to shift this obligation to its employee, then it should ensure a clause to this effect in the employment contract.**

I. THE PARTIES

1. Qingdao Zhongneng Football Club (hereinafter the "Appellant" or "Qingdao" or the "Club") is a Chinese professional football club affiliated to the Football Association of the People's Republic of China (hereinafter the "CFA"), which is in turn a member of the Fedération Internationale de Football Association (hereinafter "FIFA").

2. Blaz Sliskovic (hereinafter the "Respondent" or the "Coach") is a Bosnian citizen and the former head coach of Qingdao.

II. THE FACTUAL BACKGROUND

3. This matter is related to an appeal filed by Qingdao against the decision rendered by the FIFA Players' Status Committee (hereinafter the "FIFA PSC") on 23 September 2014 (hereinafter the "Appealed Decision"). The grounds of the Appealed Decision were communicated to the Appellant on 2 July 2015.

4. The facts leading to the present arbitration as presented by the parties can be summarized as follows.

A. The contractual relationship between the Parties

5. On 19 January 2012, the Parties entered into an employment agreement (hereinafter the "Employment Contract") under which the Appellant employed the Respondent as its head coach for the period 1 February 2012 until *"the end of China Super League Season 2014"*.

6. During validity of the Employment Contract, the Coach was at all material times represented by a sports agency company known as Nan Xing Sports (Macau) Agency (hereinafter "Nan Xing"). Nan Xing had a representative based in China by the name of Mr. Wen Jiaqing.

7. The relevant parts of the Employment Contract provided as follows:

> *"Position and Duration of service*
>
> [Qingdao] *hires* [the Coach] *as the head coach of Professional team of Qingdao Jonoon Football Club. The period of service will be from January 20th, 2012 to the end of China Super League Season 2014.*
>
> *Remuneration for* [the Coach]
>
> *The salary for* [the Coach] *consists of 2 items. (After tax).*
> *The basic salary is 200,000USD and should be paid monthly in accordance. Bonus of each match: If the team of* [Qingdao] *wins the official league match,* [the Coach] *will gain 3,000USD as a win bonus from* [Qingdao]*, when the match result is draw,* [the Coach] *will get 1,000USD as draw bonus. The bonus pay monthly.*
>
> *(…)*

Obligation of [Qingdao]

1. [Qingdao] *shall provide* [the Coach] *an apartment, and the telephone as well as the other communication fee pay and services consumed by* [the Coach] *himself*. [Qingdao] *shall also provide* [the Coach] *a car for daily usage*.

2. [Qingdao] *shall provide* [the Coach] *2 return air tickets between Qingdao and Sarajevo*.

3. *During the period of the contract,* [Qingdao] *will provide personal accident insurance for* [the Coach].

4. [Qingdao] *will supply* [the Coach] *with the necessary training equipment*.

5. *Except the salary, bonus and allowance above,* [Qingdao] *will not provide* [the Coach] *any other payment in the name of anything in any case*.

Obligation of [the Coach]

1. *During the term of this contract,* [the Coach] *should obey the internal management regulations of* [Qingdao].

2. [The Coach] *must maintain good professional virtue, be involved in all the training and games with full exertion*.

3. [The Coach] *must obey the regulation of China Football Association and the rules of the club.* [The Coach] *must obey the relevant management regulations of labor, personnel, administration and finance of* [Qingdao] *as well*.

4. [The Coach] *has the obligation to attend all the matches, trainings, conferences and other collective activities, the commercial activities and non-commercial activities organized by TV, broadcast station and dressing as* [Qingdao] *required*. [The Coach] *can keep 30% of the income from the commercial activities arranged by* [Qingdao].

   (…)

   Termination

   If any of the two parties breach this contract, the other party will get 50% salary of the rest period of execution of the Contract as compensation.

   (…)".

8. Upon the Respondent's request, Qingdao allowed his son, Mr. Vladimir Sliskovic, (hereinafter the "Assistant Coach") to join the Club alongside the Respondent as his assistant coach. The Assistant Coach was later dismissed by Qingdao and is the subject of parallel proceedings against the Club in *CAS 2015/A/4161 Vladimir Sliskovic v. Qingdao Zhongneng Football Club*.

B. The dispute between the Parties

9. On 27 January 2012, the Coach received 20,000 Chinese Yuan (approximately USD 3,200) from Qingdao. Qingdao claims that this money served as an advance of wages given to the Coach at his request. The Coach on his part asserts that the money did not serve as an advance of wages but was rather meant to help him cater for the expenses he would incur in preparing the team for training. It is not disputed that the Coach received this amount.

10. On 12 February 2012, the Coach requested and received an advance in wages of USD 30,000 from Qingdao.

11. On 20 March 2012; the Coach, through his manager Mr. Susnjar Darko (hereinafter the "Agent"), wrote to Qingdao alleging among other things that:

    a) Qingdao was mistreating the Coach and the Assistant Coach;

    b) Qingdao had prohibited the Coach and the Assistant Coach from conducting the training sessions and from "*lead*[ing] *the teams at their matches";*

    c) Qingdao had deprived the Coach and the Assistant Coach of their car and a driver;

    d) Qingdao had failed to provide the Coach and the Assistant Coach with accommodation;

    e) Qingdao had failed to pay insurance premiums as required by the Employment Contract; and

    f) The USD 30,000 paid on 12 February 2012 was not a down payment of the Coach's salary and that Qingdao was therefore still indebted (and therefore in default of its contractual obligations) to the Coach for two months salaries.

    Consequently, the Coach granted Qingdao 3 days within which to comply with its contractual obligations in a manner which would see him and the Assistant Coach effectively perform their duties, failing which recourse would be made to FIFA.

12. On 30 March 2012, the Coach, through his lawyer, wrote to Qingdao alleging that the latter had been breaching the Employment Contract by *"banning* [them from] *training, banning* [him and the Assistant Coach from] *contact with the team, deprival of the right to use the car (…)* [and] *violating their basic human rights and insulting their dignity"*. The Coach claimed to have suffered damages to his dignity to the tune of USD 30,000 and granted Qingdao 3 days within which to rectify these breaches and pay the aforementioned damages, failing which he would seek recourse before FIFA.

13. On 5 April 2012, the Coach wrote to Qingdao calling for his February and March 2012 salaries.

14. On 6 April 2012, the Coach filed a petition before the FIFA PSC on the grounds mentioned in section II.2 below asking it to make the following orders against the Club:

"- To make a ruling that terminates the Contract to the expense of the Club, pursuant to article 17 of the Regulations, which includes payment of complete contracted salaries and all other contracted benefits belonging to the Coach, totalling to USD 600,000.

- *To order the Club to the disciplinary measure in line with Article 17, paragraph 3 and 4 of the Regulations.*

- *To order adequate sanctions against the Club's official, the Director and the President in line with Artide 17 paragraph 5 of the Regulations".*

15. On 12 April 2012, Qingdao fined the Coach USD 5,000 for an offensive gesture he made at one of the club's interpreters during a training session and also asked the Coach to make a public apology to the interpreter. Qingdao asked the Coach to provide the club's training schedules, match previews, analyses and reports, failing which he would be sanctioned in accordance with the Employment Contract and possibly have it terminated.

16. On 15 April 2012, the Assistant Coach sent an e-mail to Nan Xing enclosing *"the trainings that Club* [Qingdao] *want from Baka* [the Coach]*"*.

17. The Coach sent further information to Qingdao in between 14 and 22 April 2012. Part of that information read as follows:

"Because (…) Qingdao (…) since 13/3/2012 did not allow any physical contact on work (…) and given my job as head coach to another coach, I find it impossible to write weekly and daily work plan (…). In order to help the team and QJFC Qingdao (…), I attach those trainings. This trainings can be carried only by me and my assistant (…)".

18. On 17 April 2012, Qingdao fined the Coach USD 1,000 for failing to provide the requested training information.

19. On 17 and 18 April 2012, Qingdao made efforts to contact the Coach with a view to facilitating the extension of his Chinese visa. By that time however, the Coach had already left the country on 17 April 2012 for fear of being deported as his visa was about to expire.

20. On 18 April 2012, Qingdao sent a notice to Nan Xing warning the Coach that he risked having the Employment Contract terminated if he continued missing the training sessions.

21. On 29 April 2012, Qingdao rescinded the Employment Contract citing among others, the following grounds:

"During the period you worked as head coach of the club, you gravely breached the contract, violated the relevant regulations of the club, returned to your country without the authorization of the club amid the term of the contract. Basing on the facts mentioned above and in accordance with (…) the contract (…), the (…) club decided to rescind the contract (…) and reserve the right to pursue your liability of the breach of the contract".

22. The rescission was soon followed by Qingdao's decision to sever ties with the Assistant Coach, who also took the matter to the FIFA PSC and has also filed an appeal therefrom in CAS 2015/A/4161.

C. The FIFA Players' Status Committee Proceedings

23. In his FIFA PSC petition dated 6 April 2012 and subsequent rejoinders, the Coach stated that *"after the first day match that was played"*, he had been told orally that *"he would remain the Head Coach but only on the paper, whereas in fact he was banned coaching and contacting the team, etc"*. but that in spite of the aforementioned *"he had continued attending every training and requested to be enabled to implement the Contract, to which the Club remained silent"*.

24. Furthermore, the Coach alleged that Qingdao had deprived him of all the contracted rights (use of car and driver, apartment and insurance), that Qingdao did not provide him with a working permit before the expiry of his visa and besides that Qingdao did not pay his salaries and other contractual obligations. Therefore, the Coach had no other choice than to leave China.

25. Qingdao in its response rejected the claim of the Coach and lodged a counterclaim requesting from the Coach the payment of the total amount of USD 306,000 as compensation due to the alleged *"unilateral termination of the contract"* by the latter, who abandoned his job without permission, forcing the Appellant to rescind the Employment Contract.

26. On 23 September 2014, the FIFA PSC rendered the Appealed Decision and held as follows:

"1. The claim of the Claimant / Counter-Respondent, Blaz Sliskovic, is partially accepted.

2. The Respondent/Counter-Claimant, Qingdao Zhongneng Football Club, has to pay to the Claimant/Counter-Respondent, Blaz Sliskovic, within 30 days as from the date of notification of the present decision, the following amounts:

- *USD 60,000 as outstanding salaries and*
- *USD 270,000 as compensation for breach of contract*

3. Any further claims lodged by the Claimant/Counter-Respondent, Blaz Sliskovic, are rejected.

4. The counter-claim lodged by the Respondent/Counter-Claimant, Qingdao Zhongneng Football Club, is rejected.

5. If the aforementioned sums are not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of the expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

(…)".

27. In finding that the Coach had terminated the Employment Contract with just cause, the FIFA PSC based its decision on the following grounds:

a) Qingdao had breached its contractual obligations by failing to (i) pay the Coach any of the agreed salaries and to (ii) renew the Coach's visa and/or secure his work permit;

b) Qingdao prevented the Coach from performing his duties by replacing him with another coach, Mr. Yang, on 13 March 2012;

c) Consequently, the Coach was justified in terminating the Employment Contract on 17 April 2012; and

d) Pursuant to the Employment Contract, the Coach was entitled 50% of the remaining value of the Contact as compensation for breach of contract. Given that the termination took place with 27 months still remaining under the Employment Contract and that he was on an annual salary was USD 200,000 payable in ten monthly instalments (which equals to USD 20,000 per month), he was entitled to USD 270,000 as compensation (*i.e.* USD 20,000 x 27 months / 2) plus USD 60,000, corresponding to his outstanding 3 months' salaries.

III. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

28. On 23 July 2015, the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (hereinafter the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2013) (hereinafter the "CAS Code").

29. In its Statement of Appeal, the Appellant requested an extension of the time limit for filing the Appeal Brief until24 August 2015. Besides, the Appellant requested for the present proceedings to be submitted to a sole arbitrator.

30. On 31 July 2015, the Respondent objected to the Appellant's request for an extension of the time limit for the filing of the Appeal Brief. At the same time, he indicated consent to having the matter resolved by a sole arbitrator.

31. On 6 August 2015, the CAS informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to partially grant the Appellant's request for an extension of its time limit to file the Appeal Brief until 17 August 2015.

32. On 7 August 2015, the Appellant requested a reconsideration of the decision of the Deputy President of the CAS Appeals Arbitration Division dated 6 August 2015 to partially grant the extension of the time limit to file the Appeal Brief until 17 August 2015 and not to 24 August 2015. Therefore, the Appellant requested again for a further extension until 24 August 2015 to file its Appeal Brief. Such request was eventually granted.

33. On 21 August 2015, the Appellant filed his Appeal Brief together with exhibits.

34. On 27 August 2015, the appointment of Mr Rui Botica Santos as Sole Arbitrator in this case was confirmed by the CAS Court Office.

35. On 16 September 2015, the Respondent filed his Answer. The CAS Court Office acknowledged receipt of the Respondent's Answer on 22 September 2015. Although the document is headed *"Second Submission by the Respondent Blaz Sliskovic",* on 30 September 2015

the CAS confirmed that such indication was due to a mistake by the Respondent and that this document should be considered as the first (and only) Respondent's Answer.

36. On 9 November 2015, the CAS Court Office issued an Order of Procedure, which was duly signed by both Parties.

37. On 10 December 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the composition of the Panel.

38. At the hearing, the Panel was assisted by Mr. Christopher Singer, Counsel to the CAS. In addition to the translators respectively hired by the Parties, the following persons (including witnesses) attended the hearing:

For the Appellant

Mr. Vladimir Sliskovic – Assistant Coach

Mr. Blaz Sliskovic – Head Coach

Ms. Doris Kosta – Lawyer

Mr. Radovan Keckemet – Interpreter

Mr. Darko Susjnar – Witness, FIFA licensed agent (video conference)

Mr. Krunoslav Lovrek – Witness, Football Player (video conference)

For the Respondent

Mr James Fairbairn – Lawyer

Mr Che Xu – Witness, translator professional team Qingdao (video conference)

Mr Li Xialong – Witness, team translator Qingdao (video conference)

Ms Yu Jian – Witness, accountant (video conference)

Mr Tan Xu – Witness, deputy general manager (video conference)

39. At the conclusion of the hearing, the Parties expressly stated that they were satisfied with how the hearing was conducted and that their right to be heard had been respected. The Sole Arbitrator also invited the Parties to file post hearing submissions.

40. On 13 January and 2 February 2016, the Appellant and the Respondent respectively filed their post hearing submissions.

41. On 10 February 2016, the Appellant enquired as to whether it would be invited to file a short response to the Respondent's post hearing submissions, indicating that it was its understanding that this was the case.

42. On 12 February 2016, the CAS Court Office informed the Parties that as the respondent in these proceedings, only the Coach would have the final word in as far as the submissions were

concerned. The Respondent was therefore granted 5 days to file a short response to the Appellant's post hearing submissions.

43. By letter dated 17 February 2016, the Respondent informed the CAS Court Office that he was satisfied with the submissions he had filed in these proceedings and therefore waived its right to reply to the Appellant's post hearing submissions.

IV. THE PARTIES' POSITION

44. Below is a summary of the facts and allegations raised by the Parties. 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 this award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Appellant's submissions

45. It is the Appellant's position that the Respondent terminated the Employment Contract by his own conduct and that the Coach is required to prove that Qingdao was in breach of the Employment Contract, that the breaches were serious and undermined the whole basis of the Employment Contract. According to the Appellant, the Respondent did not succeed upon this matter and therefore the Respondent terminated the Employment Contract without just cause.

46. The Appellant's submissions can in essence be summarized as follows.

a) The Coach terminated the Employment Contract without just cause

47. The Appellant avers that the Respondent left without notice and that in doing so, wrongfully terminated the Employment Contract. Therefore, the Appellant requests that the Appealed Decision be set aside and that the Respondent be ordered to compensate the Club with an amount "*equivalent to the balance of the sums available to the Respondent*". The Appellant in particular regarded the Coach's absence from training without justification or explanation on 17 and 19 April 2012 as an indication that he had repudiated the Employment Contract, especially after learning from news reports that he had returned to Bosnia on 19 April 2012.

b) The non-payment of the salary

48. According to the Appellant, the advance payments made by Qingdao of USD 30,000 and the additional loan of circa USD 3,200 were sufficient to cover the Coach's salary for February and the main part of the salary due for March.

49. The employees have to collect their salaries from Qingdao. The payments are made in cash and the employees are able to collect them when they wish. However, the Respondent does not assert that he attempted to collect the salary and that the salary was refused.

50. The Coach cannot claim that his salary was unpaid, since he never attempted to collect it and since there was no refusal to provide the salary.

51. Besides, Qingdao paid the Respondent USD 30,000, as confirmed in the Respondent's letter of 20 March 2012 and by the receipt dated 12 February 2012, and a further advance of circa USD 3,200. The FIFA PSC therefore erred by finding that the Coach was never paid any salary. The Coach cannot claim that the USD 30,000 was not a monthly salary and that he was to repay this amount by the end of the Employment Contract. In fact, he has not adduced any evidence to this effect.

52. The USD 3,200 cannot be deemed as expenses because it was paid on the same date the Coach signed the Employment Contract. At that time, the Coach was not in a position to be coaching the team or to incur expenses. He started working on 1 February 2012.

53. Furthermore, as at 7 April 2012 only two monthly salaries could be due, since the April salary would only become due by the end of the month.

54. Lastly, the Respondent made no attempt to collect the salary due to him at the end of March before leaving in April.

c) The Respondent's status as head coach

55. According to the Employment Contract, Qingdao was entitled to give directions to the Respondent as to his duties as head coach. The basis of the Respondent's complaint was part of these duties which required him to act as a coach to the reserve team as well, especially considering that the reserve team is part of Qingdao's professional squad and Qingdao was justified to require the Respondent to undertake coaching activities for the reserve team.

56. The Appellant denies that the Respondent was excluded from training sessions or that he was evicted from the stands. There are no witness statements from the Respondent or anyone else dealing with the alleged mistreatment.

57. Regarding the finger gesture on 12 April 2012, Qingdao states that it does not rely on that incident as justification for terminating the Employment Contract. Besides, the Respondent could have challenged the disciplinary sanction before FIFA, which he did not.

d) The accommodation

58. The Appellant claims to have offered the Respondent two separate flats. However, the Respondent did not like them and refused to take either one of them. The reason for this refusal is, according to the Appellant, not clear. The Employment Contract does not provide any requirements for the apartment, but solely: *"*[Qingdao] *shall provide* [the Coach] *an apartment, and the telephone as well as the other communication fee pay and services consumed by* [the Coach] *himself".*

59. Besides, the Appellant provided the Respondent with a hotel accommodation and covered all the expenses. Therefore, Qingdao is not in breach of the Employment Contract.

e) Failure to obtain a valid visa

60. The Appellant states that there is no obligation in the Employment Contract for Qingdao to obtain a visa for the Respondent. However, the Appellant had attempted to obtain a visa for the Respondent and for that purpose the Appellant had requested the Respondent to provide the Appellant with his passport. However, the Respondent was not likely to hand the passport to the Appellant and therefore it was not possible for the Appellant to arrange his visa.

61. Although the Appellant did not arrange the Respondent's visa, this cannot form a basis of termination of the Employment Contract, since there was no obligation for Qingdao in this respect, contrary to what the Appealed Decision stipulates.

f) Transport and insurance

62. The records of Qingdao show that a motor vehicle was made available to the Respondent and that the Respondent used such motor vehicle. This is shown by Exhibit 8 of the Appeal Brief. Therefore, the Appellant is not in breach with the Employment Contract.

63. The Respondent states that the Appellant did not take out insurance for the Respondent. However, the records show that this is not the case and that the Respondent did have insurance in accordance with the Employment Contract (exhibit 8 of the Appeal Brief).

g) FIFA miscalculated the amount awarded in the Appealed Decision

64. The Appellant's primary position is that it has no liability to the Respondent, since the Appellant has not wrongfully terminated the Employment Contract.

65. However, the Appellant's alternative case is that the Appealed Decision incorrectly calculates the compensation due if (which is denied by the Appellant) there was a wrongful termination by the Respondent. The amount of compensation is wrongly calculated because:

a) no account is taken of the admitted payment of USD 30,000;

b) the calculation is based upon three month's salary whereas the maximum period is less than three months if one were to calculate it from either 21 January to 17 April 2012 or 1 February to 17 April 2012); and

c) it is calculated by reference to total potential earnings of USD 600,000 although the maximum earnings that could have been earned during the Employment Contract is 11 days in January and then 33 months from 1 February 2012 to 31 October 2014 x USD 200,000 per annum or the 33 months from 1 February 2012 to 31 October 2014.

66. The calculation of the 50% of the salary is therefore overstated by FIFA by USD 16,388.89.

67. Furthermore, the calculation of the unpaid salary at USD 60,000 is wrong. Assuming that the Coach started working on 21 January 2012, the salary due for period 21 January to 17 April

2012 would total to USD 48,154.12, while assuming he started working on 1 February 2012, the salary due for period 1 February to 17 April 2012 would total to USD 42,777.78. Given that the Coach had already received an advance of USD 33,200 (USD 30,000 + USD 3,200), he was only owed USD 14,954.12 (if we take 21 January 2012 as the date he started working) or USD 9,577.78 (if we take 1 February 2012 as the date he started working).

68. As the Appealed Decision awards USD 60,000, the Respondent has been over-compensated by USD 45,045.88 or USD 50,422.22.

69. In any case, the Respondent is not entitled to compensation in accordance with Article 17 of the FIFA RSTP, since this regulation only applies to players and professionals. The CAS can only discern the Coach's actual compensation from the provisions of the Employment Contract, and the Coach has failed to demonstrate under Chinese law that he would be entitled to compensation.

b) Prayers and requests

70. The Appellant concludes its submissions by requesting the CAS:

"1. To set aside the Decision and to decide on the basis of the evidence that Qingdao has not by its actions terminated the Contract, and that by his actions of absenting himself without leave in April 2012 the Respondent terminated the Contract.

2. Consequently the Respondent is not entitled to compensation under the provisions of the contract, Qingdao is entitled to compensation but limited (at its request) to setting off an amount equivalent to the balance of the sums available to the Respondent.

3. Qingdao seeks its costs of this appeal from the Respondent".

B. The Respondent's submissions

71. It is the Respondent's submission that the documentary evidence of the Appellant is unreliable, that he was mistreated by the Appellant and that all the allegations made by the Appellant are unfounded.

72. The Respondent's submissions can in essence be summarized as follows:

a) The Appellant breached his contractual obligations

73. The Respondent asks the CAS to refer to and consider the submissions he filed in the FIFA PSC to be part and parcel of his submissions before the CAS.

74. In his Answer, the Respondent states that he never received a loan of 20,000 Yuan of which the receipt is filed by the Appellant as Exhibit 8. The Respondent states that the receipt shows the Respondent's signature under a text in Chinese, without a translation to English. In his

post hearing submissions, he however admits to having received this amount, saying they were meant to *"cover the reasonably expected expenses of the team during their preparations"*.

75. According to the Respondent, the amount of USD 30,000 cannot be regarded as salary because *"the receipt states that the received funds will be deducted from his salary in future"*. The USD 30,000 was a *"one time financial support"*. The Respondent reiterates that the USD 30,000 was not a monthly salary and that he was to repay this amount by the end of the Employment Contract. He says the amount of USD 3,200 was merely meant to help him cater for his expenses but not to act as his salary.

76. The Respondent claims not to have been provided accommodation or a car. He claims to have once been evicted from his hotel and relies on the testimony of Mr. Kruno Lovreck. He was also not given an insurance policy, and the Club only undertook one on 17 April 2012 upon realising that the matter was about to be taken to FIFA. No disciplinary proceedings or sanctions were ever imposed upon him. If they were, then they were never drawn to his attention.

77. The Respondent claims that the video evidences do not contain anything to the effect that he allegedly made an inappropriate gesture to a club interpreter on 12 April 2012 and/or refused to provide the Appellant with his passport. The Respondent denies that such events occurred. Regarding the latter event, the Respondent refers to a document dated 29 January 2014 which reads in part as follows:

"This is to certify that Mr. Blaz Sliskovic personally contacted the Embassy of the Republic of Croatia in Beijing and Mr. Mirko Vlastelica, the Minister Plenipotentiary and the Deputy Chief of Mission, in March and April of 2012, related to the problems he had with the Qingdao Jonoon Football Club. Mr. Sliskovic advised the Ministry and Mr. Vlastelica about his problem and requested assistance from the Embassy because he felt unsafe, even life threatened. Mr. Vlastelica had asked Mr. Sliskovic to arrange a meeting with the Club President to have been advised a few days later that this was not possible since no one in the Qingdao Jonoon Football Club wanted to talk to him".

78. As for the videos adduced in purported proof of conversations regarding the visa, the conversations are not understandable and there are no transcripts either.

79. Regarding the training reports, the Respondent states that the Appellant has not sent the alleged warnings, decision on termination etc. to Nan Xing. In fact, *"the request* [to prepare training reports] *is intended to falsely show that he was still engaged as the coach"*.

80. The Club took no steps to renew his visa. The Respondent risked deportation. The Club's allegations that they contacted the Coach on 17, 18 and 19 April 2012 with a view to renewing his visa are false. The statements of eyewitnesses are unreliable as well, according to the Respondent, since all eyewitnesses are players of the same agent and employees of the Appellant.

81. Furthermore, the Respondent maintains that he had left China on 17 April 2012, as evidenced in his passport. Therefore, all the alleged communication between the Respondent and the Appellant did not take place at all.

b) Just cause for termination

82. The Respondent claims to have terminated the Employment Contract with just cause on 17 April 2012 as held by the FIFA PSC and that the Appellant breached the doctrine of *pacta sunt servanda*, forcing him to terminate the Employment Contract. The Club breached the Employment Contract by demoting the Coach to train the reserves team and appointing another person in his position as Head Coach on 13 March 2012. The Club denied him access and communication to the players, forcing him to *"contact the Croatian embassy requesting them to contact the Club"*. He claims to have made efforts to prevent the termination by contacting the Croatian embassy in March and April 2012, and by writing to FIFA on 6 April 2012 asking them to establish contact with the Club.

83. The Respondent claims to have been contracted as the first team (head coach) manager. There is no provision in the Employment Contract obliging him to train the reserve team. In addition, the Coach adduces statements from Mr. Krunoslav Lovrek (a player) and Mr. Milo Durovic (a goalkeeper's coach) to the effect that Qingdao prevented him from performing his training sessions and duties as head coach. He also claims that the Club replaced him with another coach by the name of Mr. Yang who was allegedly appointed on 13 March 2012.

84. The Respondent thus seeks compensation as ordered in the Appealed Decision, *i.e.* USD 330,000.

c) Prayers and requests

85. In his Answer, the Respondent requests that:

> *"(…) the appeal is rejected by the Court in full, and that the decision made by the FIFA Sole Judge on 23 September 2014 be confirmed, that is, the Court confirms that the Appellant, Qingdao Jonoon FC terminated the employment agreement with the Respondent unilaterally and without reasons, wherefore the Appellant is to pay to the Respondent, Blaz Sliskovic, USD 330,000, plus the accrued interest and costs".*

86. In his post hearing submissions, the Respondent concludes his submissions by stating as follows:

> *"1. The Club (…) failed to honour stability of the Employment Contract that they, as employers, Made with the Head Coach (…)*
>
> *2. The said violations of the Employment Contract by the Club as the employers constitute serious violation of Mr. Sliskovic's human rights and dignity.*

The Respondent, Mr. Blaz Sliskovic is therefore expecting the Court of Arbitration for Sport to reject the Appellant's appeal, and to confirm the Decision made by the Single Judge of the FIFA Players' Status Committee on 23 September 2014".

V. JURISDICTION OF THE CAS

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

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

88. The jurisdiction of the CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2015 edition) which states as follows:

"Appeals 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".

89. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties.

90. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

91. The grounds of the Appealed Decision were communicated to the Appellant on 2 July 2015. The Statement of Appeal was filed on 23 July 2015. This was in accordance with the 21-day deadline fixed under Article 67.1 of the FIFA Statutes.

92. The admissibility of the appeal is further confirmed by the Order of Procedure duly signed by the parties and by the lack of any objection by Respondent.

93. It follows that the appeal is admissible.

VII. APPLICABLE LAW

94. According to the Employment Contract *"the contract shall be governed and construed in accordance with the laws of China".*

95. However, both Parties did not invoke Chinese law within this procedure and no objection was raised before the FIFA Single Judge of the Players' Status Committee to the application of the FIFA Regulations on the Status and Transfer of Players 2010 Edition (the "FIFA RSTP"). Therefore, the Panel considers the FIFA RSTP applicable.

96. 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

97. Article 66.2 of the FIFA Statutes provides that:

"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".

98. Therefore, the Sole Arbitrator holds that the dispute must be decided in accordance with the FIFA Regulations and supplemented by Swiss law, if necessary.

VIII. MERITS OF THE APPEAL

99. Based on the submissions adduced and the discussions held during the hearing, the issues for determination are (i) whether the Coach had a just cause to terminate the Employment Contract and (ii), depending on the answer to the above, what are the legal consequences of the termination.

a) Did the Coach have just cause to terminate the Employment Contract?

100. Although one of the allegations raised by the Coach in his written submissions is that he was justified in terminating the Employment Contract owing to the Club's alleged failure to provide insurance to him, give him an apartment, and depriving him of the use of car and driver, during the hearing, the Parties informed the Sole Arbitrator that they had agreed that these alleged causes were no longer an issue and that the Coach had consequently withdrawn this allegation.

101. This therefore leaves the Sole Arbitrator to establish whether the Club committed any of the following alleged contractual breaches as claimed by the Coach, and whether any of these breaches justified his termination:

a) Did the Club default on the Coach's February and March 2012 salaries?

b) Did the Club fail to facilitate the Coach's visa and work permit renewal?

c) Did the Club replace, mistreat and exclude the Coach from training the first team?

102. Qingdao refutes any of the above, asserting in particular that:

a) the Coach was not owed his February and March 2012 salaries and had actually been paid a substantial part of these salaries in advance in the form of USD 3,200 on 27 January 2012 and USD 30,000 on 12 February 2012;

b) the Coach was not excluded from the training sessions and has not summoned any witnesses to attest to his alleged mistreatment. Qingdao's reserve team is part and parcel of the club's professional squad and the Coach was thus obliged to train the reserves; and

c) the Employment Contract contains no provision obliging Qingdao to obtain a visa for the Coach. Besides, Qingdao unsuccessfully asked the Coach to provide them with his passport for purposes of facilitating his visa application.

103. The Sole Arbitrator will address each of these issues succinctly. In doing this, he shall be minded by the following principles as settled in Swiss law and at the CAS in matters determining whether an aggrieved party has just cause to terminate an employment contract on account of breaches by the other party:

a) that just cause is *"[a]ny circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason"* (Article 337(2) of the Swiss Code of Obligations (hereinafter the "CO");

b) that *"(…) a termination of contract with immediate effect, for just cause, is to be declared only in circumstances where the employee has committed a serious breach of the contract. According to Swiss law, which applies additionally, and as emphasized by the FIFA Dispute DRC in the appealed decision, the termination of the contract with immediate effect is to be applied as ultima ratio"* (CAS 2009/A/1956 at paragraph 25); and

c) that a party that has not been paid its salary for more than three months generally has just cause to terminate the contract (CAS 2014/A/3584 at paragraph 87).

104. Reference shall also be made to the standard of proof required from the Coach, which, in the Sole Arbitrator's view, is to the comfortable satisfaction of the latter.

a.i) The alleged default in paying the February and March 2012 salaries

105. It is an undisputed fact as evidenced from the documents adduced that:

a) the Coach was on an average monthly salary of USD 16,666.66, *i.e.* USD 200,000/12 months;

b) Qingdao advanced a sum of USD 3,200 to the Coach on 27 January 2012; however, the Coach was not asked to counter sign any document as an acknowledgment of receipt; and

c) a further amount to the tune of USD 30,000 was advanced to the Coach on 12 February 2012. This time, he was asked – and did – countersign a document acknowledging receipt thereof.

106. Qingdao avers that the above monies were meant to serve as an advance of salaries paid to the Coach for his February and March 2012 services. The Coach denies this but has not availed any argument specifically addressing the Sole Arbitrator on the purpose of the USD 30,000 advanced on 12 February 2012. He however reiterates that the USD 3,200 paid on 27 January 2012 did not serve as an advance of wages but was rather meant to help him cater for the expenses he would incur in preparing the team for training.

107. The Sole Arbitrator notes a number of significant differences between the timing and manner in which the USD 3,200 and USD 30,000 were respectively advanced:

a) while the USD 3,200 were advanced on 27 January 2012 and before the Coach was due to begin his official duties (on 1 February 2012), the USD 30,000 were advanced on 12 February 2012, after the Coach had officially began his duties; and

b) unlike the USD 30,000 advanced on 12 February 2012, the Coach was not asked to countersign any document acknowledging receipt of the USD 3,200 advanced on 27 January 2012.

108. It therefore seems that Qingdao's payment of the USD 3,200 before the date the Coach was meant to officially start his duties and its failure to ask the Coach to countersign a document acknowledging receipt of the USD 3,200 gives rise to a genuine and legitimate presumption that the USD 3,200 was merely meant to help the Coach to get started and to settle into the job by offsetting some of the minor expenses he would incur early on, such as food, transport and communication. The Sole Arbitrator does not therefore regard the USD 3,200 as having formed part of the Coach's advanced wages.

109. On the other hand, the document signed by the Coach acknowledging receipt of the USD 30,000 states that *"the received funds will be deducted from his salary in future"*. It is therefore apparent that this amount served as an advance of salary.

110. Even if the document lacked the aforementioned words, it is fairly improbable for an ordinary reasonable man to assume that such a large amount was a *"one time financial support"* as the Coach alleges.

111. The Sole Arbitrator therefore finds that the Coach had been paid an advance salary of USD 30,000. Given that he was on a monthly salary of USD 16,666.66, the USD 30,000 catered for his entire February 2012 with the balance (USD 13,333.34) covering the greater part of his

March 2012 salary. In fact the USD 30,000 only fell short of completing his March 2012 salary by USD 3,333.32 (*i.e.* USD 16,666.66 – USD 13,333.34).

112. Therefore by the time the Coach terminated the Employment Contract, he was owed part of his March 2012 salary, *i.e.* USD 3,333.32. His April 2012 salary had not fallen due and would only be due at the end of April 2012.

Did the Coach have just cause to terminate the Employment Contract on account of the outstanding USD 3,333.32?

113. In the Sole Arbitrator's view, the Coach seems to have acted rather prematurely and/or unreasonably by terminating the Employment Contract. This is because the USD 3,333.22 (due on or before 31 March 2012) had been outstanding for only 17 days and represented approximately 20% (or 1/5th) of the Coach's March salary.

114. Although just cause in cases regarding delayed salaries is determined on a case by case basis, there is CAS jurisprudence to the effect that a party that has not been paid its salary for more than three months generally has just cause to terminate the contract (CAS 2014/A/3584 at paragraph 87). That is not the case here. A 17-day delay in paying 1/5th of an employee's salary does not justify the employee's termination of the contract unless there exists other aggravating situations or conduct on the part of the employer, such as persistent, unexplained or unjustifiable delays. There is no evidence in this case that the Club had previously defaulted on his salary and/or engaged in persistent and inexplicable delays.

115. The salary payment delay had therefore not reached levels which could be considered serious which could warrant the Coach's termination.

116. It therefore follows that the Coach had no just cause to terminate the Employment Contract on account of the outstanding March 2012 salary.

a.ii) The failure to facilitate the visa and work permit renewals

117. The Club denies having breached this obligation, arguing that the Employment Contract contains no express provision obliging Qingdao to facilitate the renewals.

118. The Sole Arbitrator however disagrees. Although the Employment Contract contains no provision regarding the visa and work permit renewals, the Club, as the employer, had an implied duty to facilitate the renewal of the Coach's visa and work permit. This is the general presumption in employment relationships and if the Club intended to shift this obligation to the Coach, then it ought to have ensured a clause to this effect in the Employment Contract. It was indeed the Coach's testimony at the hearing that he entered China on a tourist visa and embarked on working on the promise or expectation that the Club would secure him a visa and work permit. The Club therefore seems to have given the Coach legitimate expectations and an assurance that it would handle his papers. This is corroborated by its efforts to contact the Coach on 15, 17 and 19 April 2012 with a view to having him send the Club his passport for purposes of renewing the visa. The Club cannot therefore seek to change its position at

this stage, as doing so would be contrary to the doctrine of *venire contra factum proprium*. The Sole Arbitrator therefore finds the Club to have had a duty to facilitate the Coach's visa and work permit renewals.

Did the Coach have just cause to terminate the Employment Contract on account of the Club's failure to facilitate his visa and work permit renewals?

119. In the Sole Arbitrator's view, the Coach's absence from China was more to the detriment of the Club as opposed to the Coach himself. The longer the Coach remained in Bosnia, the more the Club's performances and financial books stood to be affected. This is because the Employment Contract remained in force and the Club had a duty to continue paying the Coach until the visa and work permit situation had been resolved. On the other hand, the Coach's personal duties and obligations remained temporarily suspended pending the resolution of his papers.

120. Under the circumstances, the Coach cannot be said to have had just cause to terminate the Employment Contract. In fact, he terminated the Employment Contract on the same day he left China. He hardly waited nor made personal efforts to renew the documents from Bosnia, for instance by formally requesting the Club to send him any missing document/requirement of the Club's responsibility in order to apply for the visa. The Sole Arbitrator acknowledges that no specific notice has been sent to the Club asking for any document or action, and the Club declined to cooperate. The situation may have been different had the Coach stayed in Bosnia for a relatively long period without hearing from the Club, or given the Club a specific notice to facilitate the renewal of these documents while he was in Bosnia, as this could perhaps have given rise to a legitimate argument or presumption that the Club was no longer interested in his services and/or had breached its duties to grave and unacceptable levels.

121. In view of the foregoing, the Sole Arbitrator is not comfortably satisfied that the Coach had just cause to terminate the Employment Contract on account of the Club having failed to facilitate his visa and work permit renewals.

a.iii) The alleged replacement, mistreatment and exclusion from training the first team

122. The Coach claims to have been mistreated, in particular by being (i) excluded from training the first team and threatened that the police would be called if he tried to report for training (ii) asked to train the reserves (iii) replaced by another coach (Mr. Yang) who was appointed on 13 March 2012 and adduces a letter dated 20 March 2012 from his lawyer to Qingdao complaining about the alleged mistreatment. He also summoned Mr. Krunoslav Lovrek (a player) and Mr. Milo Durovic (goalkeeper's coach) to testify to this effect.

123. It is striking to note that despite claiming to have been replaced by Mr. Yang on 13 March 2012 and excluded from training the first team, the Coach did lead the Club's first team training as late as 12 April 2012 (barely 5 days before he left China), where he denies having insulted a Club interpreter. He has not explained the circumstances under which he was allowed to train the team on this date if Mr. Yang had indeed replaced him. The Sole Arbitrator

is therefore not satisfactorily convinced that the Coach had actually been replaced by Mr. Yang. The Sole Arbitrator therefore sees some inconsistency between this fact and the testimonies of Mr. Krunoslav Lovrek and Mr. Milo Durovic. In fact, none of these witnesses nor the Coach were able to name individual officials of the Club who allegedly caused the mistreatment.

124. Even if the Coach was asked to train the reserves, the Sole Arbitrator does not find this to be contrary to his duties and job descriptions, given that he was specifically hired as the *"head coach of Professional team of Qingdao"* and the absence of any evidence to the effect that Qingdao's reserve team comprised of amateur players. In addition, he was also obliged to *"attend all the matches, trainings, conferences and other activities"*.

125. Allegations of a serious and weighty nature such as those raised by the Coach require solid, compelling and unequivocal evidence to persuade the Sole Arbitrator as to their thrust and veracity.

126. Unfortunately, the Sole Arbitrator has not been placed in a position where he can regard himself as comfortably satisfied and persuaded by the Coach's allegations. It therefore follows that the Coach had no just cause to terminate the Employment Contract on account of his alleged mistreatment and exclusion from training the first team.

Final findings

127. The Coach had no just cause to terminate the Employment Contract on grounds of the outstanding salary and the Club's failure to facilitate his visa and work permit renewals. He has failed to comfortably satisfy the Sole Arbitrator that the Club was mistreating him and had excluded him from training the first team. He is therefore not entitled to any compensation from the termination.

128. In the Sole Arbitrator's overall outlook of the case, it seems as though the Coach's actions may have been driven by his frustration with his son's (the Assistant Coach) contractual status at the Club and the termination of his contract without just cause, a claim that has been decided in *CAS 2015/A/4161 Vladimir Sliskovic v. Qingdao Zhongneng Football Club*.

b) What legal consequences follow from the Coach's unjustified termination?

129. Having found the Coach to have terminate the Employment Contract without just cause, it follows that he is not entitled to compensation.

130. However, prior to the termination, the Coach was owed a total of USD 12,777.65 in outstanding salary calculated as follows:

- March 2012 salary: USD 3,333.22
- April 2012 salary (17 days' work): 17/30 x USD 16,666.66 = USD 9,444.45

- Total: USD 12,777.65

131. The Sole Arbitrator finds that this amount is due to the Coach regardless of whether or not he terminated the Employment Contract without just cause because he had already worked for it.

132. Qingdao, however, seeks compensation on grounds that the Coach left without notice and that, in doing so, wrongfully terminated the Employment Contract. Qingdao wants the Appealed Decision to be set aside and the Coach ordered to compensate the Club with an amount *"equivalent to the balance of the sums available to the Respondent"*. Qingdao particularly regards the Coach's absence from training without justification or explanation on 17 and 19 April 2012 as an indication that he had repudiated the Employment Contract, especially after learning from news reports that he had returned to Bosnia on 19 April 2012.

133. The Parties had agreed on a compensation clause in the Employment Contract which stated that *"[i]f any of the two parties breach this contract, the other party will get 50% salary of the rest period of execution of the Contract as compensation"*.

134. Therefore, Qingdao would ideally be entitled to 50% of the salaries due to the Coach for the remaining period of the Employment Contract. Since the termination took place on 17 April 2012, with the Employment Contract due to expire at the end of the 2014 Chinese super league season, *i.e.* on 31 October 2014, the 50% remaining salaries total to USD 203,611 (407,222 : 2) calculated from 18 April 2012 to 31 October 2014.

135. During the hearing, the Club expounded on the nature of the compensation sought, explaining that in the unlikely event of the Sole Arbitrator finding that the Coach had no just cause to terminate the Employment Contract but was owed some unpaid salaries for work done prior to the termination, then the said salaries ought to be paid to the Club as compensation. Indeed, the Club displayed its good faith towards settling this matter at the lowest possible damages to the Coach by overlooking the compensation clause in the Employment Contract.

136. Given that the Coach was owed a total of USD 12,777.65 as unpaid salary prior to the termination, it follows that the *"balance of the sums available to the Respondent"* amounts to USD 12,777.65. This amount exceeds 50% of the salaries remaining under the Employment Contract (USD 203,611) and must be offset against the Coach in satisfaction of the compensation requested by the Club.

137. Consequently, the Club is entitled to USD 12,777.65 in compensation. The Appellant has not requested interest on this amount and the same shall therefore not be awarded.

c) Conclusion

138. The Sole Arbitrator thus finds the Coach to have terminated the Employment Contract dated 19 January 2012 without just cause. Based on Qingdao's limited compensation request, the Coach must compensate the Club with any amount that he is entitled to receive. He must therefore compensate the Club in accordance with Article 337 (d) of the CO with an amount

equal to USD 12,777.65. No interest shall be granted on this amount, which has already been offset by the outstanding salaries owed to the Coach prior to the termination.

139. The appeal is therefore upheld and the Appealed Decision set aside.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Qingdao Zhongneng Football Club against the FIFA Players' Status Committee decision dated 23 September 2014 is upheld.

2. The FIFA Players' Status Committee decision dated 23 September 2014 is set aside.

3. Mr Blaz Sliskovic has terminated his contract dated 19 January 2012 without just cause. Mr Sliskovic shall compensate Qingdao Zhongneng FC with an indemnity equivalent to the outstanding salaries owed to him by Qingdao Zhongneng FC and amounting at USD 12,777.65. No interest shall be granted on this amount, which has already been offset by the outstanding salaries owed to Mr Sliskovic prior to the termination.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.