



Arbitration CAS 2015/A/4220 Club Samsunspor v. Aminu Umar & Fédération Internationale de Football Association (FIFA), award of 12 July 2016

Panel: Mr. Bernhard Welten (Switzerland), Sole Arbitrator

Football

Termination of the employment contract with just cause by a player

Discretion of the CAS panel to exclude evidence not submitted before the previous instance

Compensation for damages and principle of the “positive interest”

Prerogative to impose sporting sanctions ex officio

Discretion to impose sporting sanctions and need for a strict approach for a repeated offender

1. Since the 2013 modification of the CAS Code, a new provision has been inserted in the third paragraph of Article R57 CAS Code, with a view of avoiding evidence submitted in an abusive way and / or retained by the parties in bad faith in order to bring it for the first time before CAS. The legality of Article R57 para. 3 CAS Code was endorsed by the Swiss Federal Tribunal (SFT) which stated that parties are allowed to freely determine the procedural rules governing a certain arbitration procedure, in particular through reference to specific rules of procedure, if, in a contradictory procedure, the parties are treated equally and the parties' right to be heard is fully assured. In this context, it is legally feasible that the parties limit the cognition of the arbitral tribunal, either regarding the object of the arbitral tribunal's assessment or relating to the profundity of such assessment, as per Article R57 para. 3 CAS Code. The SFT also stated that this clause is a key element of the rules governing the appeal proceedings before the CAS and that it cannot be ignored by the parties. However, Article R57 para. 3 CAS Code is to be used with restraint in order to preserve the fundamental *de novo* character of the review by the CAS and CAS panels are to reserve the application of this provision to exceptional circumstances of abusive and or inappropriate conduct and as a safeguard in order to avoid such abusive or otherwise unacceptable conduct by one of the parties.
2. Article 17 para. 1 of the FIFA Regulations on the Status and Transfer of Players (RSTP) closely follows Article 337b of the Swiss Code of Obligations (CO), which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work. In principle, the injured party should be restored in the position in which he would have been if the contract had been properly fulfilled.
3. The sporting sanctions as mentioned in Article 17 para. 4 RSTP *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. The prerogative to impose the

sporting sanctions provided for in Article 17 para. 4 RSTP entirely lies with FIFA, respectively the DRC, which implicates that it is of no relevance whether a player or a club has requested the imposition of sporting sanctions. As such, and in principle, the DRC has full authority to impose *ex officio* a ban on a club to register any new players for two entire and consecutive registration periods, based on the fact that a club breached an employment contract during the protected period.

4. It follows from a literal interpretation of the provision of Article 17 para. 4 RSTP that it is a duty of the competent body to impose sporting sanctions on a club who has breached its contract during the protected period: “shall” is obviously different from “may”; consequently, if the intention of the RSTP was to give the competent body the power to impose a sporting sanction, it would have employed the word “may” and not “shall”. Accordingly, based on the wording of the provision, a sporting sanction should be imposed. Although the jurisprudence of FIFA and CAS on this particular Article 17 para. 4 RSTP is rendered on a case by case basis, the consistent line is that if the wording of a provision is clear, one needs clear and strong arguments to deviate from it. A strict approach is necessary, especially in case the club is a repeated offender that has been held liable on several occasions in the recent past by the DRC (and the CAS) for the early termination of the employment contracts with other players without just cause.

I. PARTIES

1. Club Samsunspor (the “Appellant” or the “Club”) is a football club having its seat in Samsun, Turkey and playing since 2012 in the Second highest league in Turkey, the PTT 1. League. The Club is affiliated to the Turkish Football Federation (the “TFF”) which itself is affiliated to the Fédération Internationale de Football Association.
2. Mr. Aminu Umar (the “First Respondent” or the “Player”) is a professional football player, born on 6 March 1995 in Abusha, Nigeria. He is actually playing for Osmanlispor FK (former Ankaraspor Kulübü) in the PTT 1. League in Turkey.
3. The Fédération Internationale de Football Association (the “Second Respondent” or “FIFA”) is an association incorporated under Swiss law with 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. Facts

4. Below is a summary of the relevant facts and allegations, as established on the basis of the Parties' written submissions and evidence examined in the course of the present proceedings. 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.
5. On 15 August 2013, the Appellant and the Player signed an Employment Contract for the time period from 15 August 2013 until 31 May 2016. This contract was mutually terminated on 27 August 2014.
6. On 29 August 2014, the Appellant and the Player signed a new Employment Contract for the time period from 29 August 2014 until 31 May 2016.
7. According to the Decision of the FIFA Dispute Resolution Chamber, the Player was entitled to receive from the Club:
 - during the 2014/15 season a lump-sum of EUR 30,000, payable on 30 August 2014, 10 monthly instalments of EUR 15,000 (net), starting as from 31 August 2014 and a bonus of TRY (Turkish Lira) 100,000 if the Club promotes to the Turkish Super League and a bonus of TRY 50,000 if the Club takes part in the play-offs at the end of the 2014/15 season.
 - during the 2015/16 season, a lump-sum of EUR 37,000, payable on 30 August 2015 if the Club plays in the Turkish PTT 1. League, respectively EUR 60,000 if the Club plays in the Turkish Super League, 10 monthly instalments of EUR 17,000 (net) starting as from 31 August 2015 if the Club plays in the Turkish PTT 1. League, respectively EUR 30,000 (net) if the Club plays in the Turkish Super League.
8. On 17 November 2014, the Player put the Appellant in default for not having paid the total outstanding amount of EUR 75,000 (lump-sum of EUR 30,000 and three (3) monthly instalments of EUR 15,000 each) and he set the Club a deadline of seven (7) days to pay such amount.
9. On 25 November 2014, the Player terminated the contract with the Appellant with immediate effect, invoking just cause as the Appellant did not pay the outstanding amounts within the deadline set by the Player.

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 12 January 2015, the Player lodged a claim before the FIFA's Dispute Resolution Chamber ("DRC"), claiming payment of outstanding remuneration and compensation for breach of contract in the total amount of EUR 525,000. The Appellant, despite having been invited to do so, failed to present its position to the Player's claim.

11. Upon request of the DRC, on 16 April 2015, the Player sent a copy of the signed new contract with the Turkish club Omanlispor FK, valid as from 22 January 2015 until 31 May 2019.
12. On 2 July 2015, the DRC decided (the “Decision”) that the Employment Contract was unilaterally terminated by the Player with just cause and stated:
 - “1. *The claim of the Claimant, Aminu Umar, is partially accepted.*
 2. *The Respondent, Samsunspor Kulübü Derneği, has to pay to the Claimant, within 30 days as from the date of the notification of this decision, outstanding remuneration in the amount of EUR 75,000, plus 5% interest p.a. until the date of effective payment as follows:*
 - a. *5% p.a. as of 31 August 2014 on the amount of EUR 30,000;*
 - b. *5% p.a. as of 1 September 2014 on the amount of EUR 15,000;*
 - c. *5% p.a. as of 1 October 2014 on the amount of EUR 15,000;*
 - d. *5% p.a. as of 1 November 2014 on the amount of EUR 15,000.*
 3. *In the event that the amounts due to the Claimant in accordance with the above-mentioned number 2. are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
 4. *The Respondent has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 30,000.*
 5. *In the event that the amount due to the Claimant in accordance with the above-mentioned number 4. is not paid by the Respondent within the stated time limit, interest at the rate of 5% will fall due as 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. *Any further request filed by the Claimant is rejected.*
 7. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.*
 8. *The Respondent 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”.*
13. On 3 September 2015, the motivated Decision was notified to the Parties; it stated, *inter alia*, the following:
 - The DRC is the competent authority to decide on employment-related disputes between the Appellant (Turkish club) and the Player (Nigeria) as it is of an international dimension and the FIFA Regulations on the Status and Transfer of Players (“RSTP”), edition 2014, shall be applicable as to the substance of the matter;
 - The Player and the Club had signed an employment contract valid as from August 2014 until 31 May 2016. This contract was terminated by the Player on 25 November 2015, whereas the Player invoked just cause to do so, after having previously put the Club in

default, since the latter allegedly failed to pay the Player's remuneration;

- The Club, for its part, failed to present its response to the Player's claim, in spite of having been invited to do so. Consequently, the DRC deemed that the Club had renounced to its right of defence and, thus, had accepted the allegations of the Player;
- The Club was obliged to pay to the Player at the time the contract was terminated by the Player, *i.e.* on 25 November 2014, the sign-on fee in the amount of EUR 30,000 as well as the first three salaries in the amount of EUR 15,000 each. The Club did not contest that these payments had not been made. The Club failed to pay this amount until 25 November 2014 and therefore, the Club had repeatedly and for a significant period of time been in breach of his contractual obligations towards the Player. As a consequence, the Player had just cause to unilaterally terminate the employment contract;
- The Club must fulfil its contractual obligations and consequently, it has to pay to the Player the remuneration that was outstanding at the time of the termination of the employment contract, *i.e.* the amount of EUR 75,000 consisting of the monthly salaries of August to October 2014 in the total amount of EUR 45,000 and the sign-on fee in the amount of EUR 30,000, plus 5% interest as from the respective due dates;
- In addition, the Player is entitled to receive from the Club compensation for breach of contract. Taking into account the Player's remuneration, the amount of EUR 312,000, *i.e.* remuneration as from November 2014 until 31 May 2016, serves as the basis for the determination of the amount of compensation for breach of contract;
- The Player's remuneration under a new contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages. The Player remained unemployed during the months November and December 2014, and was not able to mitigate his damages during these months. Therefore, the Player suffered damages in the total amount of EUR 30,000;
- In January 2015, the Player found a new employment with the Turkish club Omanlispor FK. The value of the new employment contract concluded between the Player and Omanlispor FK for the period as from January 2015 until 31 May 2016 is of a higher value than the contract with the Appellant. As such, the Player had been able to mitigate his damages in full in relation to the period from January 2015 to May 2016;
- In addition to the obligation to pay compensation, sporting sanctions shall be imposed on a club found to be in breach of contract during the protected period. The breach of contract by the Club in the matter at stake had occurred within the protected period. Therefore, 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;

- The DRC stated that apart from having been in breach of contract within the protected period in the present matter, the Club had also on several occasions in the recent past been held liable by the DRC for the early termination of employment contracts with other players.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

14. On 22 September 2015, the Appellant filed its Statement of Appeal against the Player and FIFA regarding the Decision, pursuant to Articles R48 of the Code of Sports-related Arbitration (the “Code”), including a request for stay of the Decision. The Appellant requested a Sole Arbitrator to be appointed by the Appeals Arbitration Division pursuant to Article 50 of the Code and submitted the following requests for relief:
 - “1. *Principally, to make an order for provisional measures since the challenged DRC award may cause irreparable harm to 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 Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
 7. *To establish that the costs of the arbitration procedure shall be borne by the Respondents”.*
15. On 30 September 2015, the CAS Court Office requested the Player and FIFA whether they would agree with the appointment of a Sole Arbitrator.
16. On 30 September 2015 as well, the CAS Court Office invited the Appellant to withdraw its application for provisional measures as financial decisions rendered by an association having its seat in Switzerland (*i.e. FIFA*) are not immediately enforceable when appealed against.
17. On 5 October 2015, the Appellant informed the CAS Court Office that it does not wish to withdraw its application for provisional measures since, in addition to the monetary claim, it has been banned from registering any new players for two entire and consecutive registration periods.
18. On 5 October 2015 as well, the Appellant filed its Appeal Brief, pursuant to Article R51 of the Code.
19. On 5 October 2015 as well, the Second Respondent informed the CAS Court Office that it does not agree with the appointment of a sole arbitrator in the matter at hand, as it concerns,

inter alia, the issue of the application of sporting sanctions on a club deemed to be in breach of contract during the protected period and a repeated offender.

20. By letter dated 7 October 2015, the Player informed the CAS Court Office that he does not agree with the appointment of a sole arbitrator. Furthermore, he objected to the Appellant's request for provisional measures as the criteria set out by the constant jurisprudence of the CAS (*i.e.* irreparable harm, likelihood of success of the appeal on the merits and balance of interest) were not met.
21. On 12 October 2015, FIFA requested the CAS Court Office to set aside the deadline to file a response in accordance with Article R55 of the Code until the payment of the advance of costs is made by the Appellant.
22. On 13 October 2015, the CAS Court Office informed the Parties that the Appellant is not willing to submit a present matter to CAS mediation.
23. On 15 October 2015, the Player requested as well that, based on Article 55 of the Code, his deadline for filing his response shall be set aside until the Appellant has paid its share of the advance of costs.
24. On 16 October 2015, the Second Respondent provided the CAS with its answer to the Appellant's request for stay of execution and demanded the rejection of such request.
25. On 27 October 2015, the President of the CAS Appeals Arbitration Division issued her Order on provisional measures and stated:
 - “1. *The application for provisional measures filed by Club Samsunspor on 23 September 2015, in the matter CAS 2015/A/4220 Club Samsunspor v. Aminu Umar & FIFA, is dismissed.*
 2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
26. On 4 December 2015, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland, was appointed as Sole Arbitrator to decide upon the matter at stake.
27. By letter dated 15 December 2015, the Appellant filed a document dated 13 January 2015, according to which the Player confirmed having received EUR 45,000 from the Appellant for the overdue amounts based on the employment contract signed between the Player and the Appellant. Based on this document, the Appellant requested that the Sole Arbitrator shall grant a permanent relief by reversing the Decision, and more importantly, to establish that the Appellant shall not be banned from registering any new players for the next two entire and consecutive registration periods.
28. On 18 December 2015, the Second Respondent objected to the admission of the document submitted by the Appellant with letter of 15 December 2015 and pointed out to Article R56 of the Code.

29. On 21 December 2015, the Second Respondent filed its Answer pursuant to Article R55 of the Code.
30. By letter dated 24 December 2015, the Appellant asserted that, according to Article R56 of the Code, new documents and exhibits can be filed, if the parties agree and the Player would not deny the said payment.
31. On 28 December 2015, the CAS Court Office noted that the Player did not file his answer within the time limit granted, *i.e.* 21 December 2015 and noted that the Player did not submit any comments regarding the alleged payment of EUR 45,000.
32. On 4 January 2016, the Appellant confirmed its preference to hold a hearing. The Player and the Second Respondent informed the CAS Court Office that they do not deem a hearing to be necessary.
33. On 22 January 2016, the CAS Court Office invited the Appellant to file a reply to FIFA's answer of 21 December 2015 and the Player to comment within the same deadline of seven (7) days the Appellant's allegation of payment of his claimed amounts.
34. On 29 January 2016, the Appellant filed its reply to FIFA's statement dated 21 December 2015. Based on this, the CAS Court Office invited the Second Respondent to file its rejoinder within seven (7) days.
35. On 8 February 2016, the Second Respondent submitted its rejoinder on the Appellant's reply of 29 January 2016.
36. On 7 March 2016, the CAS Court Office informed the Parties that the Sole Arbitrator deems himself sufficiently informed to render an arbitral award on the basis of the Parties' written submissions, without holding a hearing.
37. On 8 March 2016, the Appellant and the Player signed the Order of Procedure as did the Second Respondent on 14 March 2015.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant's submissions and requests for relief

38. The Appellant's submissions, in essence, may be summarized as follows:
 - On 25 November 2014, the Player unilaterally terminated the Employment Contract and, on 27 November 2014, the Appellant paid an amount of EUR 30,000 to the Player. As can be seen in Exhibit 1 with this payment, the Appellant showed its intention to respect its contractual obligations; financial difficulties of the Appellant had not allowed performing in full and on time;

- The Appellant believes that the ban from registering new players for two transfer periods is arbitrary and contrary to the principles of legality, equal treatment and also proportionality. The DRC never decided on such ban unless the counterparty of the relevant employment contract explicitly requested for such disciplinary measures. The DRC decided at its discretion to ban a club and not according to the particularities of a specific case.
- FIFA, contrarily to the wording of the relevant provisions, did not decide to ban clubs automatically if a breach of contract occurred; *e.g.* in earlier cases, the Appellant was held liable for the early termination of employment contracts, but no transfer ban was issued against the Appellant. Therefore, FIFA did not respect the principle of legality and predictability;
- Based on the CAS jurisprudence, the doctrine of “Estoppel by Representation” should be applied, especially for strong sanctions. Clubs, even if found in repeated breach of contracts, have to be warned by FIFA in one decision, before it can be sanctioned;
- A ban for two transfer periods is a strong sanction affecting two seasons and most probably causes the Appellant to be relegated. Further this disables the Appellant to create revenues and fulfil its financial obligations. Most probably, a club like the Appellant, who is already struggling due to enormous financial difficulties, would come to a complete closure;
- Due to the sporting relegation to the second division at the end of the 2011/12 season, the Appellant faced financial difficulties. With the election of the former President (2010/11 season in the Super League) on 27 December 2014, these financial problems have been dissolved as equitable as possible. Nevertheless, all departments of the Appellant and its employees had neglected their duties and due to the lack of communication of former employees, the Appellant was of the opinion that it did not have any pending proceedings before the DRC. Therefore, the payment document of 13 January 2015 was not filed to the DRC;
- The payment of EUR 30,000, was made by bank transfer, because the Player had already terminated his contract and left the Appellant’s city;
- The Appellant requests that the Sole Arbitrator takes the said payments into consideration to encourage the Appellant with its ongoing efforts to handle and dispose of financial difficulties. The document showing that EUR 45,000 have been paid to the Player was only filed after the appeal brief as the Appellant’s administration overlooked such document; the former finance department did work in a rather uncoordinated way.

39. In its prayers for relief, the Appellant requests:

- “- *to set aside the challenged FIFA Dispute Resolution Chamber decision,*
- *grant a permanent injunctive relief revering the appealed decision and reject the respondents claim,*

- *to lift the ban decided by the DRC,*
- *to condemn the Respondents to pay the legal fees and other expenses of the Appellant in connection with the proceedings”.*

B. The Player’s submissions and requests for relief

40. The Player’s attorney filed some letters during the proceedings and signed the Order of Procedure, however, he did not file any response or statement to the Appellant’s allegation of payment.

C. Second Respondents’ submissions and requests for relief

41. The Second Respondents’ submissions, in essence, may be summarized as follows:
- In this appeal, it is the first time that the Appellant questions the injustice of the breach of the Employment Contract. During the proceedings before the DRC, the Appellant remained silent and thereby tacitly renounced its right of defence. The “new” document of 27 November 2014, “receipt” for the amount of EUR 30,000, has not been revealed in the proceedings before the DRC. Based on Article R57 par. 3 of the Code, this document shall be excluded by the Sole Arbitrator. It was issued only two days after the termination of the Employment Contract and was available to the Appellant during the DRC proceedings. FIFA further questions the credibility and the probative value of this “receipt” and the document does not bear the Player’s signature.
 - The same considerations as made for the “receipt” have to be made regarding the “payment document” dated 13 January 2015 which was filed by the Appellant on 15 December 2015 only, and therefore far after the expiry of its deadline for the submission of its appeal brief. This document shall not be admitted to the file either. It is strange that such document produced long before the Decision was never filed in the proceedings before the DRC. As even this document was only issued and signed after the termination of the Employment Contract, it does not change anything to the fact that the Player had just cause to terminate the Employment Contract.
 - The Appellant did not support its allegations regarding its financial difficulties; such financial difficulties of a club are certainly not prevailing over the financial situation of a Player, rendering his services to the club without receiving any remuneration. It is the exclusive responsibility of the Appellant to assess its financial possibilities prior to contracting a player like the First Respondent.
 - This payment made after the termination of the contract has absolutely no influence whatsoever on the conclusion that on 25 November 2014, *i.e.* the date of termination, three (3) monthly salaries and one sign-on fee were outstanding and, consequently, in accordance with the well-established and longstanding jurisprudence of the DRC repeatedly confirmed

by CAS, the Player had just cause to terminate the Employment Contract.

- The wording of Article 17 para. 4 RSTP is clear: sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period. This provision assigns the DRC as first instance the power, but not the obligation to impose a sporting sanction.
- The DRC has therefore formed its jurisprudence to this Article which is accepted by the CAS jurisprudence.
- Based on Article 17 para. 4 RSTP, the DRC is competent to impose sporting sanctions ex officio, therefore no explicit request from a third party is needed.
- No prior warning to a club regarding the application of sporting sanctions in case of unjustified breach of contract within the protected period is required.
- The specific circumstances of the dispute at stake and the overall situation of the club regarding its level of compliance with the contractual obligations are taken into considerations by the DRC. This approach of the DRC was recently confirmed and supported by recent CAS awards.
- The Employment Contract was signed in August 2014 and already on 25 November 2014, the Player terminated this contract with just cause. No remuneration at all was paid to the Player from the start of the contractual relationship up to the termination. Further the club did not even actively participate in the proceedings before the DRC. The unlawful breach of contract was committed by the club within the protected period. Further the club was involved in four other cases where the club was liable for the earlier termination of Employment Contracts. In view of all these points, the sporting sanction is certainly justified.

42. In its prayers for relief, the Second Respondent requests:

- “1. That the CAS rejects the present appeal at stake and confirms the presently challenged decision passed by the Dispute Resolution Chamber (hereinafter: the DRC or the Chamber) on 2 July 2015 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”.*

V. JURISDICTION

43. Article R47 of the Code provides as follows:

“An appeal against the 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”.

44. Articles 66 and 67 FIFA Statutes state that the CAS has jurisdiction to decide on appeals against final decisions passed by FIFA’s legal bodies like the DRC. Furthermore, Article 24 para. 2 FIFA Regulations on the Status and Transfer of Players (the “RSTP”) states that the decisions reached by the DRC may be appealed before the CAS.
45. In the light of the foregoing, the Sole Arbitrator, therefore, confirms that CAS has jurisdiction to hear this appeal. This was further confirmed by the signature of the Order of Procedure by the Parties.

VI. ADMISSIBILITY

46. The Decision was notified to the Appellant on 3 September 2015 and the Statement of Appeal was filed on 22 September 2015. Thus, the Appeal was filed within the 21-day deadline set by Article 67 para. 1 FIFA Statutes (2013 edition). The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office Fees.
47. Therefore, it follows that the Appeal is admissible.

VII. APPLICABLE LAW

48. Article R58 of the 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”.

49. The Appellant stated that the Sole Arbitrator shall decide the present dispute according to the various FIFA Regulations and, subsidiarily, Swiss Law; the Employment Contract did not contain a choice of applicable law. The Second Respondent did not state explicitly which law shall be applied in the matter at hand, but made extensive references to FIFA’s Regulations. According to a longstanding CAS jurisprudence, such reference is deemed a choice of law (CAS 2009/A/1880 & 1881; CAS 2009/A/1909). As the Player did not file any response, no statement is available from him regarding the applicable law.
50. The Sole Arbitrator, thus, notes that the Appellant and the Second Respondent agree that the FIFA Regulations are applicable in this case. According to Article 66 para. 2 of the FIFA Statutes, CAS shall, in arbitration proceedings, primarily apply the various regulations of FIFA and, additionally, Swiss law. Therefore and based on Article R58 of the Code, the Sole Arbitrator considers that in this matter FIFA Regulations and, subsidiarily, Swiss law are applicable.

51. In order to specify which of FIFA Regulations are applicable to this matter, the Sole Arbitrator notes that the case at hand was submitted to the DRC on 12 January 2014, thus before 1 April 2015, which is the date when the revised FIFA Regulations for Status and Transfer of Players edition 2015 (the “RSTP 2015”) entered into force. Pursuant to Article 26 para. 1 RSTP 2015, any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations, *i.e.* the 2014 edition. Accordingly, the 2014 edition of the FIFA Regulations for Status and Transfer of Players, as already established by the DRC in the Decision, shall be applicable.

VIII. MERITS

A. Player’s failure to file its Answer

52. As a preliminary remark, the Sole Arbitrator notices that the Player did not submit an Answer to the Appellant’s appeal to CAS, although being invited to do so. The Sole Arbitrator refers to Article R55 of the Code, pursuant to which he may proceed with the arbitration procedure and deliver an award even if a respondent failed to submit an answer by the stated time limit. The fact that the Player did not file his answer to the Appellant’s appeal is therefore insignificant; the Sole Arbitrator will render his award based on the submissions of the Appellant and the Second Respondent.

B. Appellant’s submission of new documents

53. On 5 October 2015, together with its Appeal Brief, the Appellant filed for the first time during the present arbitration proceedings a bank receipt from “Finansbank”, according to which the Appellant had paid by bank transfer on 27 November 2014 an amount of EUR 30,000 to the Player. This document had not been submitted to FIFA during the procedure before the DRC which led to the Decision dated 2 July 2015.
54. Further, by letter dated 15 December 2015, the Appellant submitted to CAS another “new” document which was titled as “payment document”. According to this document, which was allegedly signed by the Player on 13 January 2015, the Appellant had paid to the Player an amount of EUR 45,000. This document was not filed during the proceedings before the DRC and it was not included in the Appeal Brief.
55. The Second Respondent objected to the admission to the file of said two documents by invoking the provisions of Article R56 para. 1 in conjunction with Article R51 para. 1 of the Code as well as Article R57 para. 3 of the Code. The Sole Arbitrator has therefore to decide if the two documents shall be admitted in the proceedings at hand.
56. Regarding the bank receipt from “Finansbank” of 27 November 2014 submitted with the Appeal Brief, the Sole Arbitrator refers to Article R57 para. 1 of the Code: *“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul*

the decision and refer the case back to the previous instance". In other words, the Sole Arbitrator has the power to hold a trial *de novo*. By so doing, the Sole Arbitrator is not limited in reviewing the legality of the Decision, but he can issue a new decision without being limited by the legal and factual reasoning provided by the DRC. Such a full review has the following implications: first, the Sole Arbitrator reconsiders and evaluates the legal arguments and evidence provided by the Parties a new. Second, procedural flaws occurred through the previous instance are cured by the *de novo* appeal to the CAS (MAVROMATI D., *The Panel's right to exclude evidence based on Article R57 para. 3 CAS Code: a limit to CAS' full power of review?*, CAS Bulletin 1/2014, p. 50).

57. Up until 2013, Article R57 of the Code did not contain any provision limiting the admission of evidence in case such evidence was not submitted by the parties before the previous instance but rather, for the first time, with the appeal to CAS. Since the 2013 modification of the CAS Code, a new provision has been inserted in the third paragraph of Article R57 of the Code, which states: "*The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered*". The rationale of Article R57 para. 3 of the Code is to avoid evidence submitted in an abusive way and / or retained by the parties in bad faith in order to bring it for the first time before CAS (MAVROMATI, *op. cit.*, p. 51).
58. The new provision of Article R57 para. 3 of the Code has raised some questions when it has come into force. It is alleged that, in appeals proceedings against decisions rendered by sports-governing bodies, CAS panels should use the discretion granted to them by Article R57 para. 3 of the Code only in those instances where the adducing of pre-existing evidence constitutes a clearly abusive or otherwise unacceptable procedural conduct by a party (RIGOZZI/HASLER, in: ARROYO M. (ed.), *Arbitration in Switzerland*, p. 1036). Furthermore, it has been supported that Article R57 para. 3 of the Code should be used with restraint in order to preserve the fundamental *de novo* character of the review by the CAS (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, R57, no. 43); CAS panels should reserve the application of this provision to exceptional circumstances of abusive and or inappropriate conduct and as a safeguard in order to avoid such abusive or otherwise unacceptable conduct by one of the parties (Mavromati, *op. cit.*, p. 54).
59. In the case CAS 2013/A/3286, the Sole Arbitrator excluded documents which were available during the proceedings before the first instance and only filed in the appeal before the CAS. He referred to Article 317 of the Swiss Civil Procedure Code as well as Article R57 of the Code. The party filing these documents did not provide any satisfactory explanation why not even copies of the documents were available during the proceedings before the first instance. This CAS award and the legality of the newly applicable provision of Article R57 para. 3 of the Code were endorsed by the Swiss Federal Tribunal (the "SFT") in its decision of 15 July 2015. The Swiss Federal Tribunal stated that parties are allowed to freely determine the procedural rules governing a certain arbitration procedure, in particular through reference to specific rules of procedure, if, in a contradictory procedure, the parties are treated equally and the parties' right to be heard is fully assured. In this context, it is legally feasible that the parties limit the cognition of the arbitral tribunal, either regarding the object of the arbitral tribunal's assessment or relating to the profundity of such assessment, as per Article R57 para. 3 of the Code (SFT 4A_246/2014,

15 July 2015, no. 7.2.2; see hereto HAAS/STRUB, *Entwicklungen im Sportrecht*, SJZ 2016, p. 69). In relation to Article 57 para. 3 of the Code, the SFT stated that this clause is a key element of the rules governing the appeal proceedings before the CAS and they could not have been ignored by the Appellant which was assisted by an attorney specialized in sports law (SFT 4A_246/2014, 15 July 2015, no. 6.4.3.2: “*Or, il va de soit que l’existence de cette disposition, qui constitue un élément-clé de la réglementation régissant la procédure d’appel devant le TAS, ne pouvait être ignoré par le recourant, lequel était assisté d’un avocat spécialisé dans les litiges en matière de sport*”).

60. In the present case, the Appellant submitted to CAS together with its appeal brief of 5 October 2015 for the first time during the present arbitration proceedings a bank receipt from “Finansbank”, dated 27 November 2014, *i.e.* two days after the termination of the employment contract by the First Respondent. The Second Respondent asserts that the newly submitted document was already available to the Appellant during the proceedings in front of FIFA and could have easily provided to the DRC before the challenged decision of 2 July 2015 was rendered. Such argumentation was not contested by the Appellant who, in this context, only stated that it refrained from submitting the payment documents due to an internal administrative re-organisation of the club, which led to several unconformities of communication and organisation. The Sole Arbitrator deems that such behaviour of the Appellant is unacceptable and its own risk, it shows a severe neglect towards its procedural duties during the proceedings before the DRC and the CAS. The Sole Arbitrator is, therefore, of the opinion that the Appellant should have and could have submitted the bank receipt from “Finansbank” of 27 November 2014 already to the DRC. However, despite being invited to do so, the Appellant did not submit any answer to the First Respondent’s claim in the proceedings before FIFA.

61. Although Article R57 para. 3 of the Code should be used with restraint, as cited above, the Sole Arbitrator points out that with letter of the CAS Court Office of 22 January 2016, the Appellant was granted the possibility to take position on FIFA’s Answer of 21 December 2015 and the application of Article R57 para. 3 of the Code. The Sole Arbitrator has taken note of the Appellant’s statement of 29 January 2016 in which the Appellant mainly alleges that it was not aware about any proceedings before the DRC due to bad internal communications and organization. The Sole Arbitrator finds that, all arguments brought forward by the Appellant do not constitute exceptional circumstances but confirm the Appellant’s severe neglect regarding the ongoing proceedings before the DRC; therefore, the bank receipt from “Finansbank” of 27 November 2014 is to be excluded from the file due to the fact that the Appellant should and could have submitted this document already during the proceedings before the DRC. The Appellant’s conduct is, in the opinion of the Sole Arbitrator, unacceptable in the sense of Article R57 para. 3 of the Code. The Sole Arbitrator noted that even if this document was admissible, it only shows a payment after the termination of the Employment Contract and therefore it does not change anything regarding the situation in which the Player was when terminating the Employment Contract invoking just cause.

C. Submission of the payment document dated 13 January 2015

62. Regarding the payment document of 13 January 2015 submitted with the Appellant’s letter of

15 December 2015, *i.e.* after the appeal brief of 5 October 2015, the Sole Arbitrator refers to Article R51 para. 1 of the Code which states the following: *Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. (...)*”.

63. Furthermore, Article R56 para. 1 of the Code states: *“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”*.
64. The wording of Article R51 para. 1 of the Code is clear, the Appellant shall file with the CAS Court Office together with the appeal brief all exhibits upon which it intends to rely and Article R56 para. 1 of the Code amends this rule in the way that the parties shall not be authorized to produce new exhibits on which they intend to rely after the submission of the appeal brief. Therefore, new exhibits can only be admitted if the Parties agree or the Sole Arbitrator orders so on the basis of exceptional circumstances. As the Parties did not agree - to the contrary, the Second Respondent explicitly opposed to admit this document - the Sole Arbitrator has to decide whether the Appellant can rely on exceptional circumstances to justify the late submission of this document.
65. The pertinent literature to the cited provisions states that new evidence, as a matter of principle, should be admitted if it has become available after the time limit for filing the appeal brief or the answer. If the evidence in question existed already before that time but was discovered thereafter, this would constitute an exceptional circumstance only if the evidence in question could not reasonably be discovered and produced in time (RIGOZZI/HASLER, in: ARROYO M. (ed.), *Arbitration in Switzerland*, p. 1034). In this context the Appellant did not assert that the filed documents in question had become available only after the time limit for filing the Appeal Brief, but it only stated that the documents were not submitted to CAS before, due to its administrative and economic difficulties, as well as uncoordinated workings of the Appellant’s former finance department workers. The Sole Arbitrator is of the opinion that such reasons brought forward by the Appellant do not constitute exceptional circumstances in the meaning of Article R56 para. 1 of the Code. The Appellant, once more, showed severe neglect towards its procedural duties and it could have submitted the payment document of 13 January 2015 already to DRC.
66. The Sole Arbitrator points out that even if this document was admissible, the payment allegedly made by the Appellant dates only after the termination of the Employment Contract terminated by the Player for just cause. Therefore, the Appellant’s situation in the moment of the termination of the Employment Contract does not change at all, especially regarding the assessment of the Player having just cause as well as any sporting sanctions issued against the Appellant.

D. Termination of the Employment Contract by the First Respondent with just cause?

67. The present dispute concerns in essence employment matters regarding the termination of the Employment Contract and consequences such as compensation. On this dispute the following rules of the RSTP are applicable:

“Article 13 Respect of contract

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by my mutual agreement.

Article 14 Terminating a contract with just cause

A contract may be terminated by either party without consequences of any kind (either payment of compensation or in position of sporting sanctions) where there is just cause.

Article 17 Consequences of terminating a contract without just cause

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

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

2. [...].

3. [...].

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage”.

68. It is uncontested by the Parties that, in August 2014, the Appellant and the First Respondent signed the Employment Contract valid as from 29 August 2014 until 31 May 2016. According to this Employment Contract the Player was entitled to receive, *inter alia*, during the 2014/2015 season:

- a lump sum of EUR 30,000 (net), payable on 30 August 2014;

- 10 monthly instalments of EUR 15,000 (net), starting from 31 August 2014;
- a bonus of TYR 100,000 if the club promotes to the Turkish Super League and a bonus of TYR 50,000 if the club takes part in the play-offs at the end of the 2014/2015 season.

and during the 2015/2015 season:

if the Club plays in the Turkish PTT 1. League:

- a lump sum of EUR 37,000 net, payable on 30 August 2015;
- a bonus of TYR 100,000 if the club promotes to the Turkish Super League and a bonus of TYR 50,000 if the club takes part in the play-offs at the end of the 2014/2015 season.

if the Club plays in the Turkish Super League:

- a lump sum of EUR 60,000 net, payable on 30 August 2015;
- 10 monthly instalments of EUR 17,000 (net), starting from 31 August 2015;
- 10 monthly instalments of EUR 30,000 (net), starting as from 31 August 2015.

69. During the proceedings before the DRC, the Player stated that the Appellant had failed to pay him the lump sum of EUR 30,000, due on 30 August 2014, as well as three monthly salaries of August, September and October 2014, due as from the last day of the respective months. On 17 November 2014, the Player had put the Appellant in default for not having paid the total outstanding amount of EUR 75,000, giving the Appellant a deadline of seven (7) days to settle the outstanding amount. According to the Player, the Appellant did not pay the outstanding amounts in time and therefore, the Player terminated the Employment Contract with immediate effect on 25 November 2015. The Appellant did not contest the Player's allegations during the proceedings before the DRC as well as in the Appeal Brief. Thus, the Sole Arbitrator establishes that the Appellant had not paid to the Player the amount of EUR 75,000, consisting of the lump sum of EUR 30,000 and three monthly salaries of EUR 15,000 each, on the date the Player terminated the Employment Contract, *i.e.* on 25 November 2014.
70. On 25 November 2014, the Player sent a termination notice to the Appellant in which he informed the Appellant about the termination of the Employment Contract with immediate effect due to the Appellant's unpaid amounts towards the Player. The Sole Arbitrator takes into consideration that, according to Article 13 RSTP, a contract between a professional football player and a club may only be early terminated by mutual agreement, or where there is just cause. The Sole Arbitrator has to clarify whether the Player rightly invoked just cause when he terminated the Employment Contract with the Appellant on 25 November 2014.
71. FIFA Regulations do not provide a definition of "just cause". However, the FIFA commentary to Article 14 RSTP states that a Player has just cause to terminate a contract if his salary for more than three months was not paid and despite having informed the club of its default, the club does not settle the amount due. This example is confirmed by CAS jurisprudence: "*the non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated [...] - constitute 'just cause' for termination of the contract [...]; for the employer's payment obligation is his main*

obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract" (see CAS 2006/A/1180, para. 26).

72. In the case at hand, the overdue payment of EUR 75,000 is certainly not insubstantial or completely secondary for the Player. Therefore, the Sole Arbitrator holds that the first prerequisite according to CAS jurisprudence is established. Furthermore, the Player sent a reminder to the Appellant requesting the payment of the overdue salaries, on 17 November 2014 and warned the Appellant that the contract will be terminated if the outstanding amounts are not paid within seven (7) days. Thus, also the second requirement for terminating a contract with just cause is given in the case at hand. The Sole Arbitrator is therefore of the opinion that the Player terminated the Contract with just cause.

Due to the fact that the Appellant did not file any response to the Player's claim in the proceedings before the DRC and the Player did not file any Answer in the present arbitration proceedings, the Sole Arbitrator does not know, if the outstanding amounts have been paid. Due to the fact of the Player's silence in these proceedings, the Sole Arbitrator has to assume that, based on the letter of the CAS Court Office of 22 January 2016, the payments were made. This assumption, however, does not change the fact that the Player had terminated the Employment Contract with just cause and the DRC decision in this relation is correct.

73. Summing up, the Sole Arbitrator comes to the conclusion that the Player was entitled to terminate the Employment Contract with the Appellant with just cause due to the Appellants unjustified failure to pay the monthly salaries as from August until October 2014 as well as the contractually agreed lump sum of EUR 30,000, due on 30 August 2014. Therefore, the Appellant is to be held liable for the early termination of the contract by the Player with just cause. The Appellant as the party in breach of the contract without just cause is itself liable for compensation of the damages sustained by the Player. More exactly, the Appellant is liable to pay to the Player the amounts already accrued at the time of the termination of the Employment Contract, as well as a financial compensation for breach of contract (see in this context CAS 2005/A/866, no. 55).

E. Is the Appellant liable to pay financial compensation to the First Respondent?

74. To determine the consequences of the breach of contract by the Appellant, the Sole Arbitrator refers to Article 17 para. 1 RSTP which states that the party in breach of a contract shall pay compensation to the other party. Therefore the Player is entitled to receive an amount of compensation for breach of contract in addition to any outstanding payments on the basis of

the Employment Contract. The DRC granted the Player the amount of EUR 75,000 as outstanding salaries plus EUR 30,000 as compensation for breach of contract.

75. Article 17 para. 1 RSTP states that the compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortized over the term of the contract) and whether the contractual breach falls within a protected period.
76. According to the CAS jurisprudence, Article 17 para. 1 RSTP closely follows Article 337b Swiss Code of Obligations (“CO”), which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything “*which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work*”. The Sole Arbitrator has therefore to compare two financial situations in order to determine the compensation: the Player’s hypothetical financial situation without the Appellant’s breach of contract and the financial situation as it is following the breach of contract by the Appellant.
77. The Sole Arbitrator agrees that, in principle, the injured party, in the case at hand the Player, should be restored in the position in which he would have been if the contract had been properly fulfilled by the Appellant. Therefore, the Player shall be entitled to claim payment of the entire amounts foreseen in the Employment Contract, reduced by any payment the Player received from a third party in accordance with a new employment contract (see CAS 2005/A/866, no. 58).
78. Obviously, the Player is also entitled to receive any outstanding salaries from the Appellant according to the general legal principle of *pacta sunt servanda*. Therefore, the Appellant is further obliged to pay to the Player the remuneration that was outstanding at the time of the early termination of the Employment Contract on 25 November 2014, *i.e.* the monthly salaries of EUR 45,000 (for the months of August to October 2014) as well as the lump sum of EUR 30,000, payable on 30 August 2014. The Player is therefore entitled to a payment of EUR 75,000 which corresponds to the amount granted by the DRC.
79. Based on Article 17 para. 1 RSTP and the CAS jurisprudence, the Sole Arbitrator further grants a compensation equal to the remaining value of the Employment Contract for the time period of November 2014 until 31 May 2016. This amount, based on the Employment Agreement, corresponds to EUR 312,000 as the Appellant continued to play in the PTT 1. League. However, this amount is subject to deductions for payments the Player received in this period from new employers.
80. The Sole Arbitrator takes into consideration that the Player remained unemployed during the months of November and December 2014 and that he was therefore not able to mitigate his damages in these months. He suffered during these two months damages in the amount of EUR 30,000 as the DRC correctly stated.

81. Furthermore, the Sole Arbitrator notes that, in January 2015, the First Respondent signed an employment agreement with the Turkish Club Omanlispor FK, according to which he was entitled to receive a monthly salary of USD 10,000 (net) as well as a signing-on fee of USD 55,000 net during the 2014/2015 season and a monthly salary of USD 13,750 (net) as well as a signing-on fee of USD 150,000 net during the 2015/2016 season. The DRC stated in the Appealed Decision that the value of the employment contract between the First Respondent and Omanlispor FK was higher than the value of the terminated Employment Contract. This determination was not contested by the Parties. The Sole Arbitrator, therefore, concludes that the Player had been able to mitigate his damages in full in relation to the period from January 2015 until May 2016 and that no compensation has to be paid by the Appellant to the Player in relation to this period.
82. Consequently, on account of the above mentioned considerations, the Sole Arbitrator decides that the First Respondent is liable to pay the amount of EUR 75,000 as outstanding salaries as well as EUR 30,000 as compensation for breach of contract, as the DRC correctly stated. The Sole Arbitrator, therefore, confirms the Decision regarding the determination of the total amount of compensation payable by the Appellant to the First Respondent. However, the Sole Arbitrator is eager to stress that, in particular due to the Player's lack of participation in the present arbitration proceedings, it is not known to the Sole Arbitrator whether such amounts were fully settled by the Appellant in the meantime. This has, however, only an influence on the enforcement of the award but not on the award confirming the Decision.

F. Are sporting sanctions to be applied on the Appellant?

83. The DRC imposed on the Appellant a sporting sanction in accordance with Article 17 para. 4 RSTP and banned the Appellant from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods. The DRC stated that the Appellant, apart from clearly acting in breach of contract within the protected period in the present matter, had already on previous occasions been found in breach of employment contracts without just cause.
84. The Second Respondent maintained that the sporting sanctions were imposed correctly on the Appellant, as the Appellant is a repeated offender, and referred to several other cases, in which the Appellant was found to be in breach of contract. The Appellant did not contest that it was in breach of contract during the protected period according to Art. 17 para. 4 RSTP, but asserted that a sporting sanction could only be imposed if requested so by a player during the proceedings before FIFA. Due to the fact that the Player had never asked FIFA to impose any sporting sanction on the Appellant, such sanction was unlawfully pronounced by the DRC.
85. In accordance with CAS jurisprudence (CAS 2014/A/3765), the Sole Arbitrator finds it clear that the sporting sanctions as mentioned in Article 17 para. 4 RSTP *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. The prerogative to impose the sporting sanctions provided for in Article 17 para. 4 RSTP entirely lies with FIFA, respectively the DRC, which implicates that it is of no relevance whether a player or a club has requested the imposition of

sporting sanctions. As such, and in principle, the DRC has full authority to impose *ex officio* a ban on a club to register any new players for two entire and consecutive registration periods, based on the fact that a club breached an employment contract during the protected period. The Sole Arbitrator, therefore, concludes that the DRC had the authority to impose a sporting sanction, as per Article 17 para. 4 RSTP, on the Appellant, even though the Player had at no stage during the proceedings before the DRC requested to pronounce such sanction. In fact, the possible imposition of sporting sanctions on a club concerns the vertical relationship between FIFA and its indirect members, rather than the horizontal relation between the two parties to the contractual dispute. It is FIFA's own interest to apply measures aiming at securing the respect of its regulations, *in casu* the maintenance of contractual stability between professional football players and clubs. Actually, CAS has even gone that far as to state that it is not up to the claimant to request sporting sanctions to be imposed during proceedings before the DRC. The only party entitled to consider such measure is, therefore, FIFA respectively the DRC (CAS 2014/A/3707).

86. The Appellant further assumes that the DRC should not have pronounced a sporting sanction due to the fact that the DRC did not respect the principle of legality and predictability, as it did not apply any sporting sanctions in the previous labor disputes, in which the Appellant was already held liable for the breach of contract without just cause, and it did not warn the Appellant in advance of this possibility. According to the Appellant, the imposition of sporting sanctions was not due, as it is arbitrary and contrary to the principles of legality, equal treatment and also proportionality.

87. According to the CAS jurisprudence it follows that, from a literal interpretation of the provision of Article 17 para. 4 RSTP, it is a duty of the competent body to impose sporting sanctions on a club who has breached his contract during the protected period: "shall" is obviously different from "may"; consequently, if the intention of the FIFA Regulation was to give the competent body the power to impose a sporting sanction, it would have employed the word "may" and not "shall". Accordingly, based on the wording of the provision, a sporting sanction should be imposed. The Sole Arbitrator takes into consideration that the jurisprudence of FIFA and CAS on this particular Article 17 para. 4 RSTP is not consistent as their decisions are rendered on a case by case basis. However, the consistent line is that if the wording of a provision is clear, one needs clear and strong arguments to deviate from it (CAS 2009/A/1880 & 1881; CAS 2014/A/3740; CAS 2014/A/3797; see also ZIMMERMANN M., *Vertragsstabilität im internationalen Fussball*, Zürich 2015, p. 341). In the matter at stake the Appellant was not able to bring forward any convincing arguments to deviate from the Decision. To the contrary, the Appellant is a repeated offender, particularly due to the fact that it had been held liable on several occasions in the recent past by the DRC (and the CAS) for the early termination of the employment contracts with other players without just cause. In order to guarantee a better enforcement of the contractual obligation assumed by the Appellant towards its players, a strict approach is necessary. Therefore, the Sole Arbitrator confirms the Decision in application of the clear wording of Article 17 para. 4 RSTP.

88. Regarding the alleged lack of a previous warning by the competent authority before imposing a sporting sanction, the Sole Arbitrator notes that such warning is neither supported by the applicable regulations nor by the constant jurisprudence of the DRC and the CAS.

Consequently, the Sole Arbitrator comes to the conclusion that the sporting sanctions imposed on the Appellant by the DRC have to be confirmed.

89. According to the abovementioned considerations, the Sole Arbitrator decides that the appeal filed on 23 September 2015 by the Appellant against the DRC decision rendered on 2 July 2015 is rejected and the Decision confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed on 23 September 2015 by Club Samsunspor against the decision rendered on 2 July 2015 by the Dispute Resolution Chamber of FIFA is dismissed.
2. The decision rendered on 2 July 2015 by the Dispute Resolution Chamber of FIFA is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.