



Arbitration CAS 2015/A/4361 Akhisar Belediye Gençlik ve Spor Kulübü Deneri v. Severin Brice Bikoko, award of 21 September 2016

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole Arbitrator

Football

Compensation following termination by player with just cause of his employment contract

Termination of employment contract with just cause in case of non-payment of remuneration

Interpretation of clause foreseeing “per match” payments

- 1. The payment obligation is the core obligation of a club when it comes to employment contracts with football players. If the club is found to be in breach of this core obligation, and continues its illegal behaviour even after a proper notice thereof, then such breach may be accepted as “just cause” for the player to terminate the employment contract. CAS jurisprudence is also supporting the interpretation that failure to pay a significant part of the agreed salary is considered as just cause for termination. According to the FIFA Regulations and Swiss substantive law the breaching party has the obligation to pay compensation to the non-breaching party when the contract is terminated with just cause.**
- 2. In case an employment contract does stipulate that “per match” payments are due to the player, but does not specify whether the respective payments depend on the player’s actual participation in the respective matches, the player’s participation as substitute in matches or his presence in the group of players, all circumstances and evidence need to be taken into account in order to determine what has been contractually agreed upon. If for example the player in question, in the preceding season, did not claim from the club the “per match” payments for matches in which he has not participated, this may lead to the conclusion that the respective payments were due only in case the player had indeed participated in the match in question.**

I. PARTIES

- 1. Akhisar Belediye Gençlik ve Spor Kulübü Deneri (the “Appellant” or the “Club”) is a professional football club based in Akhisar, Turkey and is a member of the Turkish Football Federation, which in turn is a member of the Fédération Internationale de Football Association (FIFA).**
- 2. Mr. Severin Brice Bikoko (the “Respondent” or the “Player”) is a professional football player from Cameroon.**

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and supporting evidence submitted in these proceedings. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. The Player and the Club signed on 13 August 2012 a 2-year employment contract so-called "Professional Soccer Player Contract" (the "Contract") for the seasons 2012/2013 and 2013/2014. Pursuant to Section 3 second paragraph of the Contract, *inter alia*:

"Other fees Undertaken by the Club and Payment Method: ... For the football season of 2013 2014 Total: 330.000 Euros (three hundred and thirty thousand euros) Advance payment: 165.000 euros (one hundred and sixty five thousand euros) 120.000 euros shall be paid on 13.08.2013. Balance 45.000 euros shall be paid in the form of check dated 30th September 2013. Per match: 4.852 euros calculated by dividing 165.000 euros (one hundred and sixty five euros) into 34 league matches per match shall be paid once after four matches ..."
5. The Appellant duly paid the contractual remuneration for the 2012/2013 football season (not disputed by the Player apart from a claim for due bonus of 55'000 Turkish Lira).
6. However, the Appellant failed to pay the sums due to the Player pursuant to Section 3 second paragraph of the Contract (season 2013/2014).
7. On 26 August 2013, the Player has notified the Club by a Notary certified invitation that the Club is in default of the payment of the first due amount (EUR 120'000 due on 13 August 2013) and that the Club owes to the Player also the amount of TL 50'000 as a bonus for competition versus Football club Orduspor. The Player further notified the Club that a cheque dated 30 September 2013 for the amount of EUR 45,000.00 should have been provided to the Player. Also the Player has notified the Club that if the amounts claimed as due are not paid within 30 days of the said notification, he shall take recourse to relevant national (Turkish) and international institutions (FIFA).
8. After receiving the said notification dated 26 August 2013, the Club did not perform any of the obligations of which it has been notified by the Player.
9. On 1 October 2013, the Player notified the Club again by a Notary certified notification that he was unilaterally terminating the employment agreement due to the Club's default to meet its contractual payment obligations.
10. After 1 October 2013, the Player ceased to perform any employment obligations with the Club.
11. On 5 November 2013, the Player lodged a claim in front of the FIFA Dispute Resolutions Chamber (FIFA DRC) against the Club requesting the FIFA DRC to award the Player EUR

165'000 due as down payments on the employment contract, TL 50'000 due as bonus for one match and further EUR 165'000 due as compensation for breach of the employment contract – Club's failure to pay due salaries as stipulated in the contract. The Player claimed further 5% per annum interest on the aforementioned amounts, legal fees and additional compensation in the amount of 6 (six) monthly salaries.

12. According to the Player's submission before the FIFA DRC, the 2012/2013 salaries were paid with exception of a bonus of TL 50'000 for taking part in a football match on 18 May 2013. The Player held before FIFA DRC that the Club failed to pay due remuneration (EUR 120,000.00 due on 13 August 2013 and EUR 45,000.00 on 30 September 2013) and therefore the Player has terminated unilaterally the employment contract for just cause – Club's breach of the contract. The termination was also due to the Club's attempts to restrict the Player's participation in matches and allegedly trying to force him to leave the Club.
13. In its submission before the FIFA DRC, the Club held, *inter alia*, that: the claimed TL 50'000 bonus was not contractually agreed and such was due only to players that took part in the match. Since the Player was not among the players that took part he is not entitled to such bonus. Furthermore, the Club argued that there are no legal grounds for awarding the requested compensation of EUR 165'000 as the termination of the employment by the Player was made intentionally after closing of the transfer period and the reason for the Player staying unemployed is his own intentional behaviour.
14. The Club further maintained before the FIFA DRC that the second portion of the Player's remuneration for 2013/2014 season of EUR 165'000 was not due as this amount was agreed to be payable on "*per match*" basis i.e. the Player would have been entitled to such payments only if he has taken part in the respective 34 season matches in the football league or in different proportions if the Player was playing as substitute or was included in the team group for the respective match/es.
15. Also the Club maintained that the sum of EUR 165,000.00 due in two instalments (13 August 2013 and by 30 September 2013) was unconditional remuneration for the whole 2013/2014 season and since the Player has unilaterally terminated his employment contract such sum was not due in its entirety but only proportionally to the time spent by the Player in the Club. The Club also claimed it never had sought way to force the Player to leave by not including him in the group for the matches.
16. On 2 July 2015, the FIFA DRC issued a Decision (the "FIFA Decision" or the "appealed decision") by which the claim of the Player was "partially accepted". The FIFA DRC ordered the Appellant to pay the following amounts to the Player within 30 days as of the date of notification of the decision:
 - a. *Outstanding remuneration in the amount of EUR 198,000.00 plus 5% interest per annum until the date of effective payment as follows:*
 - 5% per annum as of 14 August 2013 on the amount of EUR 120,000.00
 - 5% per annum as of 1 September 2013 on the amount of EUR 16,500.00

- 5% per annum as of 1 October 2013 on the amount of EUR 45,000.00

- 5% per annum as of 1 October 2013 on the amount of EUR 16,500.00

b. *Compensation for breach of contract at the amount of EUR 132,000.00 plus 5% interest per annum as from 5 November 2013 until the date of effective payment.*

c. *Any further claim lodged by the Player was rejected.*

17. The grounds of the FIFA Decision appealed were notified to the Appellant on 3 December 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 23 December 2015, the Appellant filed an appeal before the Court of Arbitration for Sport (the “CAS”) against the Respondent concerning the FIFA Decision. Furthermore, the Appellant requested the appointment of a sole arbitrator as provided in Article R48 of the Code and has chosen English as language of the proceedings pursuant to Article R29 of the Code.
19. On 30 December 2015, the Appellant filed its Appeal Brief in English, enclosing exhibits, including the employment contract between the Parties which was drafted in Turkish and accompanied by English translation.
20. By letter dated 6 January 2016, the Respondent requested the CAS to have this procedure handled in French without giving any reason or justification of such request. The Respondent confirmed in this communication that it agrees the case to be referred to a sole arbitrator.
21. By letter dated 7 January 2016, the CAS Court Office invited the Appellant to state whether it agreed to have the procedure handled in French.
22. By letter dated 11 January 2016, the Appellant notified the CAS that it did not agree to have this case handled in French and requested the CAS to confirm English as language of this procedure.
23. By letter dated 13 January 2016, FIFA renounced its right to request possible intervention in the arbitration proceedings.
24. By letter dated 19 January 2016, following the Respondent’s request, the CAS Court Office decided that the deadline for answer shall be fixed after the payment by the Appellant of its share of the advance on costs.
25. On 22 January 2016, the President of the Appeals Arbitration Division issued an Order on Language on the case ruling that: The language of the procedure is English.
26. By letter dated 16 February 2016, the CAS Court Office confirmed payment of the Appellant’s share of the advance on costs and invited the Respondent to submit within 20 days his answer.

27. On 17 February 2016, the CAS Court informed the Parties that the President of the CAS Appeals Arbitration Division had appointed Mr. Ivaylo Dermendjiev, attorney-at-law in Sofia, Bulgaria, as Sole Arbitrator.
28. On 1 March 2016, the Respondent filed his answer.
29. By letter dated 2 March 2016, the CAS Court Office invited the Parties to inform if they preferred that a hearing to be held or for the Sole Arbitrator to issue an award based solely on Parties' written submissions.
30. By letter dated 8 March 2016, the Appellant informed the CAS Court Office that it wished a hearing to be held.
31. By letter dated 4 April 2016, the CAS Court Office notified the Parties of the scheduling of a hearing on 12 May 2016.
32. On 4 April 2016, the CAS Court Office issued an Order of Procedure, which was signed by both Parties.
33. On 12 May 2016, the hearing was held on the case. The Appellant was represented at the hearing by Mr. Levent Polat, attorney at law. The Respondent was represented in the hearing by Mr. Nihat Gumon – counsel and Ms. Emel Efe Goksel – attorney-at law.
34. At the hearing, the Parties were heard by the Sole Arbitrator, who was assisted by Mr. Antonio de Quesada, counsel with the CAS. No witnesses or experts were requested by the Parties. Both Parties had presented their cases and they repeated the facts and arguments stated in their written submissions so-far.
35. After having exhausted the presentations and pleadings of the Parties on the case, the hearing was declared closed and the Parties declared expressly that their right to be heard was respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

36. The Appellant submits that the Decision of the FIFA DRC is not justified and that the FIFA DRC had decided in deviation or “against” the employment contract and in excess of the Respondent's own application before FIFA. In the Appellant's view, the FIFA Decision has awarded to the Player sums which were not requested.
37. FIFA DRC has misinterpreted the employment contract and awarded sums which were not stipulated for or not in the same manner in the Contract.
38. The unilateral termination of the employment contract by the Respondent was without just cause. Not every late payment justifies termination of contract (as argued by Appellant) and therefore even after notifying the Club of its delay in payment of the 2013/2014 season salary

the Respondent still had not the right to terminate the employment contract. A delay which did not exceed 2 months did not justify such termination according to FIFA Regulations despite the regulations of the Turkish Football Federation (TFF) which, according to the Appellant, provide shorter period of notice – 30 days.

39. The Respondent did not act in good faith by taking the decision to terminate the employment contract after the expiration of the transfer period. If there was a reason to terminate the Contract the Player should have done it during the transfer and registration period and thus to have the ability to play for another football club.
40. In the Appellant's view it is not the Club's fault that the Respondent failed to find a new club to play for as it was the Respondent's deliberate decision to terminate the Contract (without just cause) during a period when it could not be registered with another club. Accordingly, not finding a new club was choice of the Respondent.
41. The Appellant submits that according to Article 337c of the Swiss Code of Obligations the income that was intentionally avoided by the Player should be deducted from the compensation for termination.
42. The Appellant disputes the interpretation made by the FIFA DRC of the employment contract and the respective payment obligations of the Club towards the Player.
43. The Appellant maintains that the contractually agreed remuneration of the Player for 2013/2014 is not EUR 330'000 as adopted by FIFA DRC but only EUR 165'000 while the remaining EUR 165'000 represent conditional – "per match" payment obligation. Such remuneration would vary on the Player's participation in the respective matches, the Player's participation as substitute in matches or presence in the group of players.
44. FIFA DRC has misinterpreted the Contract by deciding that the second EUR 165'000 (per match) remuneration is due on a monthly basis as this clause of the Contract was arbitrary and the Club could have prevented payment of such obligation by simply not letting the Player to take part in the football matches.
45. By dividing the EUR 165'000 in 10 monthly salaries the FIFA DRC had acted against the rule of the Contract (rule of law according to the Appellant) and therefore the decision is unjustified and such sums should not be awarded to the Respondent.
46. Also by way of example the Club presents that for the 2012/2013 season the Player had received the so-called "per match" payments only for two matches in which he took part and nevertheless the Player did not object this and did not demand payment of further remuneration. Hence according to the Appellant the sum of EUR 330'000 is not the amount of agreed remuneration but "the maximum amount" to be received by the Respondent if he had played in all 34 matches of the Turkish Super League.
47. The Appellant maintains that such agreements (of per match payments) are regular practice and should not be misinterpreted by the respective jurisdictions as this is contrary to the agreement

itself and could create chaos. Further – the decision whether the Player will take part in a match is not of the Club, but of the Head Coach which fact does not allow to conclude that the clause in the Contract of the per match payments is arbitrary and can be used unilaterally by the Club.

48. The Appellant argued that the FIFA DRC had wrongly calculated and awarded the amounts due according to the Contract by 30 September 2015 – EUR 120'000 due on 13 August 2015 and EUR 45'000 due on 30 September 2015 as these were the salary for the Player for the whole 2013/2014 season though payable in advance. So applying this logic the Appellant maintains that the Player should receive only a portion of these amounts equal to the actual period spent by the Player with the Club during the 2013/2014 season. However, the Appellant does not state what exactly deduction should be made from this amount.
49. The Appellant contests the Player's entitlement to compensation for breach of contract (as awarded by the FIFA DRC). The Player terminated the Contract without just cause and therefore, had no right to claim compensation. Furthermore, the Appellant maintains that by putting himself intentionally into a position not to be able to play for another club the Player has lost the right of compensation.
50. The Appellant argues that the amount awarded by the FIFA DRC as compensation again with the reasoning that the remaining EUR 165'000 (the per match payments) were due only conditionally – if the Player had participated in all 34 games of the championship and therefore this amount cannot be treated as something that the Player has not received due to the Club's breach of contract. In the Appellant's view awarding such sum as compensation is against the applicable legal provisions (without specifying such).
51. The Appellant requested the following prayers for relief to the CAS:
 - *to accept [the] appeal against the decision of FIFA DRC dated 02 July 2015;*
 - *to overturn and set aside the abovementioned decision with all its consequences, if this is not accepted, to make a reasonable deduction from the compensation and from the so-called outstanding remuneration. (no specific amount of deduction is stated);*
 - *to condemn the Respondent to pay the legal fees and other expenses of the Appellant in connection with the proceedings.*

B. The Respondent

52. The Respondent denies in full the factual and legal argumentation of the Appellant and contests the reasoning and justification of the Appeal. In the Respondent's view, the Appellant has not denied any of the basic facts on which the FIFA DRC has grounded its decision but the appeal is simply a way to postpone the payment of the awarded salaries and compensation for termination of the employment.
53. The Appellant has not disputed and had admitted that it had outstanding debts towards the Respondent at the amount of EUR 165'000 at the time of termination. Further that the Club did not make the payments due to the Player for the 2013/2014 season. And finally – that the

termination of the employment was made with just cause – after delay of over 30 days of the Club’s payment obligations.

54. The Respondent considers that it is undisputed by the Appellant that the same Contract provided for two types of certain payments: a) the advance payments - one due on 13 August 2013 (EUR 120’000) and second before 30 September 2013 (EUR 45’000) and b) the per match payments (EUR 4’852) payable after each match and totalling to EUR 165’000.
55. That the Appellant failed to make the first two due payments is undisputable on the one side and on the other – it is just cause for unilateral termination of the employment contract by the Player.
56. The Respondent contests the Appellant’s allegation that the FIFA DRC has issued an award which goes beyond the prayers for relief of the Respondent as the sum requested initially was EUR 330’000 being the sum of EUR 165’000 due until 30 September 2013 and the sum of EUR 165’000 due as compensation for the termination. The fact that the FIFA DRC had made another interpretation of the grounds on which these sums are due to the Respondent does not make the award going out of the scope of the requested relief.
57. The termination of the employment was made with just cause and in good faith. Opposite to what the Respondent presents, the Player has not acted in bad faith by terminating the employment contract after the expiration of the transfer period, but was forced by the Club to take such action in pursuit of his lawful rights and interest.
58. The reason for the lawful termination of the employment contract was the breach of the Appellant’s basic obligation under the Contract – to pay the agreed remuneration in due term. The consequence of such termination with just cause is the Appellant’s liability towards the Player to compensate him for the damages derived from such termination. This compensation should be the sum of the remuneration up to the initially intended term of the employment.
59. Nevertheless, the FIFA DRC has stated different grounds of the awarded sums by finding that the compensation of EUR 132’000 is due for the remaining period of the sporting season while EUR 33’000 are due as remuneration for September and October 2014. The sums so awarded are found justifiable by the Respondent. According to him the Player has lost the possibility to compete till the end of the respective season and thus has suffered damages by the breach of the Appellant’s contractual obligations.
60. The Respondent also supports the interpretation of the “per match” remuneration agreed in the Contract that is made in the appealed decision. As the FIFA DRC decided, the “per match” payments clause is deemed as arbitrary and unequal by giving the Club the possibility to unilaterally decide whether to pay such remuneration by including or not the Player in the respective games. Therefore the interpretation of this clause according to the Respondent is that the total agreed amount should be divided in monthly payments throughout the length of the sporting season and namely 10 monthly payments for EUR 16’500 each. Such payments are due unconditionally.

61. The Appellant did not provide any new evidence or argument that can substantiate reversal or revision of the FIFA Decision. Therefore, the Respondent requests that the FIFA Decision is confirmed by the CAS and that the Appellant should pay EUR 198'000 as due remuneration of the Player – EUR 165'000 payable in two instalments until the end of October 2014 according to the Contract and EUR 33'000 as due remuneration for September and October 2014. The Respondent requests payment of compensation for the termination of the Contract due to the Club's fault at the amount of EUR 132'000.

V. JURISDICTION

62. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

63. The translation of Article 9 of the employment contract presented by the Appellant provides that:

"Parties are free to agree the jurisdiction of Dispute Resolution Chamber in accordance with the Regulations of Dispute Resolution Chamber in dispute arising from this contract".

64. This clause does not refer clearly and unambiguously to the FIFA Dispute Resolution Chamber. Therefore in interpreting the Parties' agreement on jurisdiction the Sole Arbitrator should take note of the procedural behaviour of the Parties up to filing the appeal with the CAS and during the procedure before the CAS.
65. Neither of the Parties to the dispute has objected to the jurisdiction of both FIFA DRC and the CAS to resolve such dispute. The Respondent had filed on 5 November 2014 a claim against the Club in front of the FIFA DRC and the Appellant did not object to the jurisdiction of the FIFA DRC. Therefore it is obvious that by the reference to the "Dispute Resolution Chamber" in the employment contract the Parties had in mind the FIFA DRC.
66. According to Article 67 par. 1 of the FIFA Statutes the decision of the FIFA DRC may be appealed before the CAS.
67. Based on the Parties' written submissions it can be concluded that both Parties expressly agree that CAS has jurisdiction to hear the appeal against the FIFA Decision. This has also been confirmed by the signature of the Order of Procedure by both Parties.
68. Accordingly, the Sole Arbitrator is satisfied that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

69. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

70. According to Article 64 par. 1 of FIFA Statutes in case an appeal against a FIFA DRC decision is lodged the statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of such decision and shall contain all the elements in accordance with point 2 of the directives issued by CAS. Within 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

71. Therefore and also by reference to Article R49 of the Code, the time limit for appeals filed under the existing FIFA Statutes would be again 21 days from the receipt of the decision appealed.

72. The Appellant maintains that it has received official notification of the appealed decision by FIFA on 4 December 2015 by DHL. According to the documents presented by FIFA DRC the appealed decision was sent to the Appellant also by fax on 3 December 2015. The Respondent has not risen objection as to the timeliness of the submission of the appeal to the CAS.

73. The appeal was filed with the CAS Court Office on 23 December 2015 i.e. in both cases – whether the appealed decision was received on 3 December 2015 or on 4 December 2015 - the appeal is submitted within the prescribed period.

74. It is well established under Swiss procedural law that the time limit for an appeal starts to run on the day following the communication of the decision appealed against. The same principle is incorporated in Article R32 of the Code. In this respect, the Sole Arbitrator is satisfied by the evidence presented that the appealed decision was properly notified to the Appellant on 3 December 2015.

75. In view of the above, the Sole Arbitrator finds that by filing its Statement of Appeal on 23 December 2015, the appeal is admissible.

VII. APPLICABLE LAW

76. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according

to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

77. The employment agreement does not contain any express provision on the applicable law chosen by the Parties.
78. The arbitration clause contained in Article 9 of the Contract provide (by way of reference and interpretation as reasoned above) that disputes between the Parties will be resolved by the FIFA Dispute Resolution Chamber. The seat of FIFA is in Switzerland.
79. Article 67 par. 2 of the FIFA Statutes provides that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
80. Furthermore, both Parties did not make any express statement on the applicable substantive law. In its Appeal Brief the Appellant had made a reference to provisions of Swiss Law as legal argumentation of its position.
81. Accordingly, pursuant to Article R58 of the Code, the Sole Arbitrator shall decide the case by applying FIFA Regulations and, additionally, Swiss law.

VIII. LEGAL ANALYSIS AND REASONING

A. Is the decision of the FIFA DRC exceeding the relief requested by the Respondent and what are the limits of the CAS decision?

82. The Sole Arbitrator needs first to examine the Appellant's argument whether the appealed decision has been issued in excess of the Respondent's prayers for relief.
83. The appealed decision has awarded sums which are less in amount than the initial request for relief of the Respondent. The Respondent sought award at the amount of EUR 330'000 being divided in EUR 165'000 as due but unpaid remuneration and EUR 165'000 as compensation for damages occurring from breach of contract which lead to the Contract's termination. In addition, the Respondent claimed TRY 50'000 being due as bonus for participation in one football match. The Respondent requested payment of statutory interest of 5% per annum on the claimed principal amounts until full repayment.
84. Despite that FIFA DRC has made qualification of the requested amounts as due payments different from what was made by the Respondent in its claim the amount awarded by the appealed decision does not exceed the initially claimed amounts.
85. Further and according to the well-established practice, the procedure before the CAS on such appeals is a "*de novo*" procedure and the Sole Arbitrator may and should take into consideration all arguments, evidence and prayers for relief made by the Parties.
86. In the present case the Respondent argues that the FIFA DRC is correct in interpreting the grounds for awarding the sums requested and namely that the requested relief is that the

Respondent is to be awarded EUR 198'000 as due remuneration for the 2013/2014 season until 30 October 2013 plus the interest as calculated by the FIFA DRC and another EUR 132'000 due as compensation for breach of contract plus interest as calculated in the appealed decision.

87. In those circumstances, the Sole Arbitrator finds that the argument of the Appellant that the FIFA Decision is exceeding the Respondent's prayers for relief requested at FIFA stage is unsubstantiated.

B. Was the Appellant in breach of its contractual obligations?

88. In order to assess whether the Appellant was in breach of its contractual obligations, the Sole Arbitrator needs to assess whether the Contract bound the Parties and whether the Appellant has performed according to the clauses of the same Contract.
89. Both Parties had confirmed in their respective submissions before the FIFA DRC and CAS the existence and validity of the employment contract. The differences in the Parties' positions as to the Contract are in the interpretation of the remuneration clauses and respectively – the Appellant's amount of payment obligations towards the Player and the nature of the "*per match*" remuneration.
90. The basic argument of the Appellant in its interpretation of the Contract is that the further sums due "*per match*" were not contractually guaranteed remuneration payments but depended on the actual participation in games and payments were to be calculated and due also based on the type of participation – whether the Player has started the game, whether he played as substitute or whether he was in the group of players without taking part in the game.
91. It is an indisputable fact in this case that the Appellant did not make the payments due to the Respondent as per the Contract on 13 August 2013 and on or by 30 September 2013. The Appellant did not claim that it made such payment or did not provide any evidence, factual or legal grounds of reason to postpone such due payments. The burden of proof to establish that it has performed its payment obligations is for the Appellant and the Appellant neither stated that it has performed them nor provided evidence of such payment.
92. Therefore it should be considered as established that the Appellant failed to perform its contractual payment obligation and therefore has breached the Contract by not effecting such due payments.

C. Did the Respondent terminate the employment contract with just cause?

93. The breach of the Appellant's contractual obligation was identified by the Respondent as "just cause" to terminate the Contract. Based on the evidence presented it is established in the case (and not contested) that the Respondent has notified the Appellant of its failure to pay the due remuneration. Further it is established that the Respondent has granted the Appellant 30 days term to fulfil such obligation (which refers actually to the first due amount of EUR 120,000.00 due on 13 August 2013). It is also established that by a further notification from 1 October 2013

the Respondent has unilaterally terminated the Contract for reason attributable to the Appellant – failure to pay due remuneration.

94. The arguments of the Appellant that the Respondent did not have the right to terminate the Contract and that he has not acted in good faith by unilaterally terminating the employment contract may not be supported by the Sole Arbitrator.

95. The payment obligation is the core employer's obligation of the Club in employment contract. As such its breach may not be neglected. The Appellant maintains that FIFA's own practice is to require longer period on delay or non-payment of employment remunerations in order to terminate the contract but has not provided any evidence or at least quotation of such established court practice. According to Article 14 of the FIFA Regulations on the Status and Transfer of Players:

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

96. On the other side – the two initial payments under the Contract are obviously envisaged by the Parties as essential to the Player and its commitment with the Club. If the Sole Arbitrator accepts the logic of the per match payments proposed by the Appellant as such being due only if the Player has participated, then the nature of the initial payments is to cover the Player's basic remuneration.

97. Even the Appellant has relied on the legal principle *pacta sunt servanda* – the contract is law to the parties. Therefore, the Appellant may not derive positive arguments from its own bad behaviour.

98. As the Appellant was in breach of the core obligation under the Contract and after being properly notified it continued its illegal behaviour, then such breach may be accepted as “just cause” for the Respondent to terminate the Contract.

99. This interpretation of the facts is maintained also in the disputed FIFA Decision which clearly refers to the constantly applied practice of the same resolution chamber. Furthermore, CAS jurisprudence is also supporting the interpretation that failure to pay significant part of the agreed salary is considered as just cause for termination.

100. The Appellant argues that the Player acted in bad faith deciding to terminate the Contract on 1 October 2013 instead of on an earlier or later date is both self-confronting and unsustainable.

101. On the one side, the Appellant itself declares that the Player should have waited and provided the Club options to pay its obligation – which was done. On the other side the Appellant complains that this was done intentionally after 30 September 2013 when the transfer period was closed.

102. This argument lacks logic. The Player was not able to terminate the Contract before expiration of the term given in its notice to the Club. Acting in good faith the Player has provided extension to the Club for its payment obligations with 30 days from the date of delivery of the notice and

just after such period expires. Furthermore – the second payment which the Appellant failed to comply with should have been made on 30 September 2013. So after that date the Appellant was in continuous breach of its obligations and therefore 1 October 2013 was the earliest date on which the Respondent could act legally and terminate the Contract with just cause.

103. The Sole Arbitrator does not agree that the Respondent should have waited indefinitely for the Appellant to fulfil its payment obligations. It is evident that without being paid for its services, the Player could not continue its normal course of life and therefore the argument of the Appellant that the Respondent should have waited until the end of the Contract (without being paid for its engagement) again is completely illogical and groundless.
104. The Appellant claims that the termination was made following the principles and provisions of the documents of the Turkish Football Federation. No evidence of such rules is presented but the Parties do not dispute that such rules were complied with. It is important to note here that according to the FIFA Regulations on the Status and Transfer of Players the national federations, including the Turkish Football Federation, should include in their regulations clauses which conform with the principles of FIFA's Regulations including the principle for promoting stability of the contracts. Therefore it should be accepted that the rules applied by the Turkish Football Federation are in line with FIFA's Regulations and complying with them confirms also compliance to FIFA Regulations and procedures.

D. Is the Respondent entitled to any compensation following the termination of the Contract with just cause?

105. According to the applicable FIFA Regulations and the Swiss substantive law the breaching party has the obligation to pay compensation to the non-breaching party when the contract is terminated with just cause. In the particular case though the termination was initiated by the Respondent, the reason for such termination was the Appellant's breach of its contractual obligations.
106. Article 17 of the FIFA Regulations on the Status and Transfer of Players provides:

"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".

107. Furthermore, according to Article 337b of the Swiss Code of Obligations:

(1) Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.

(2) *In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances.*

108. In accordance with any of the above-mentioned provisions, the breaching party should bear the liability for compensating the party that terminated the contract with just cause for the damages caused.
109. As it was clearly established that the Respondent has terminated the employment contract with just cause. This just cause was the Appellant's breach of contract. It is therefore the Sole Arbitrator's finding that the Appellant should pay compensation to the Respondent. This compensation should cover the damages (financial losses) occurring from the termination of the Contract.

E. What is the amount of the compensation due to the Respondent by Appellant?

110. According to the Appellant's submissions the compensation sought by the Player and awarded by the FIFA Decision was too high and did not find contractual and legal grounds. On the other side, the Appellant maintains that Article 337c par. 2 of the Swiss Code of Obligations should apply and the Respondent should not receive compensation due to the fact that it has deliberately omitted to enter into another employment agreement.
111. This argument may not be entirely supported. The Appellant failed to provide any evidence or other argument why the Player is to be regarded as intentionally omitting to enter in other employment. Further – such employment should have been something sure – i.e. he should have had an offer to play for a club, which fact is not established. Therefore the Appellant's request to reduce the amount of the compensation due to the purported Respondent's own bad faith behaviour is not justified.
112. In order to decide on the amount of the compensation due by applying the principles of FIFA Regulations and Swiss law, the Sole Arbitrator should determine what are the financial losses that occurred to the Respondent from the termination caused by the Appellant's breach of contract. In this respect the Sole Arbitrator may act "*at its discretion, taking due account of all the circumstances*" as stipulated in Article 337b par. 2 of the Swiss Code of Obligations. The same principle of determining the compensation is applied in the FIFA Regulations where it is developed that the respective decision making body should take into consideration the term of the contract.
113. The Appellant maintains that the "*per match*" remuneration payments agreed in the Contract were not "*guaranteed*" and depended on the Player's actual participation in matches and not on his engagement with the Club. On the opposite interpretation position is the FIFA DRC stating that this contractual clause was arbitrary and therefore should not apply to the Player as providing unlawful advantage to the Club.
114. Here the Sole Arbitrator would like to make a note to the whole text of Section 3 of the Contract - "*Payments and special provision*".

115. According to the first paragraph of this section:

“Net Monthly Wage (provided not to be lower than the minimum wage) – Minimum wage”.

116. Further the text of Section 3 refers to *“Other fees undertaken by the Club and Payment Method”* and *“Special provisions”*. Both the initial EUR 165,000.00 for the 2013/2014 season and the “per match” payments are regulated in these two paragraphs which refer to other fees.

117. Contrary to the FIFA DRC’s interpretation after considering the entirety and the logic of the Contract, the Sole Arbitrator accepts that the Contract stipulates for a *“Net Monthly Wage”* which should be no lower than the minimum wage (evidently applied in Turkey) and agreed at such rate between the Parties plus further payments to the Player. These further payments are a part of the agreed employment remuneration but a certain portion from them is guaranteed and due irrespective of the Player’s performance and another (the so called *“per match”* payments) is based especially on such performance. Neither of the Parties however has presented evidence what was the *“Net Monthly Wage”* actually paid to the Player or if such was paid at all.

118. This interpretation of the contractual clauses was confirmed by way of action by the Respondent himself as the Respondent did not claim from the Club the “per match” payments for the preceding season – 2012/2013 for matches in which he has not participated. It is confirmed in the Respondent’s submission that for the 2012/2013 season the Player has participated only in two matches and respectively received payment only for these two matches of the “per match” remuneration. Therefore, the Sole Arbitrator cannot support the FIFA DRC *ex officio* qualification in par. 10 in the FIFA Decision, saying that *“per match payments were to be treated as being 10 monthly salary payments of EUR 16 500 each”*. Supporting that position would mean that the arbitrator may amend or interpret freely contractual clauses, which are not existing in the Parties’ written agreements. By this reason the FIFA DRC qualification on “per match payments” as monthly salary for August and September 2013 is denied.

119. Therefore the Sole Arbitrator should determine the amount of the compensation due to the Respondent for the termination of the Contract due to the Appellant’s breach taking into consideration all relevant circumstances. Such compensation should be for losses which were foreseeable and reasonably anticipated.

120. As the Contract was terminated prematurely, it is evident that no one can be sure in how many matches the Player would have played should the Contract have not been terminated. On the one hand, the Sole Arbitrator notes that the Player only played two matches during the previous season. On the other hand, the Sole Arbitrator also notes that the Player terminated the Contract with just cause due to the Club’s fault. Taking into account these circumstances and in view of the fact that the Sole Arbitrator has discretion to determine the financial consequences derived from a termination of a contract with just cause pursuant to Article 337 (b)(2) of the Swiss Code of Obligations, the Sole Arbitrator considers reasonable to reduce the Player’s compensation to EUR 82’500 for his losses as “per match” payments of the season 2013/2014.

121. It may not be accepted from the interpretation of the text and structure of the Contract that the so called “per match” payments were something sure and these are more like individually agreed bonuses for participation in games. Therefore the Sole Arbitrator would not agree with the interpretation of that contractual clause made by the FIFA DRC in the appealed decision given the circumstances and evidence in the case and, therefore, the amount given under this concept as compensation shall be reduced.

F. Is the Respondent entitled to the whole amount of the initially payable remuneration of EUR 165,000.00?

122. In order to exhaust the arguments and review all submissions of the Parties the Sole Arbitrator should also comment on the Appellant’s reasoning that the sums due to the Respondent as advance payments for 2013/2014 (EUR 165,000.00 payable in two instalments) are not to be awarded to the Respondent as his remuneration for this season should be reduced due to the fact that the employment contract was terminated.

123. This reasoning is not justified and may not be accepted. The “advance” payments for the respective season were agreed by the Parties as remuneration irrespective of the Player’s participation in matches. As it was the Appellant’s failure to make such payments the just cause for the termination of the Contract the Appellant may not claim now that this remuneration should be reduced. The Appellant acted negligently or intentionally omitting to make agreed payments under the Contract and such payments should be awarded now as due under the Contract irrespective of the fact that it was terminated earlier.

G. Other relevant issues in the case

124. Neither of the Parties have provided argumentation concerning the applicable statutory interest on the claimed amounts. Such interest was awarded in the appealed decision and the Sole Arbitrator adopts for the reasons stated above that he should apply the statutory interest rate applied in Swiss substantive law for delayed payments – 5% per annum (Article 104 of the Swiss Code of Obligations).

H. Conclusion

125. In view of all the above findings, the Sole Arbitrator decides to partially uphold the Appellant’s appeal only with respect of reduction of the sum awarded as compensation for termination of the Contract for just cause and with respect of the sums awarded as “remuneration” for August and September 2013. The FIFA Decision in that respect shall be amended as to the amounts of:

- a) The amount of EUR 16,500 due as remuneration for August 2013 according to the appealed decision (section III par. 2 item “b”) is not due and accordingly no interest is to be accrued;

- b) The amount of EUR 16,500 due as remuneration for September 2013 according to the appealed decision (section III par. 2 item “d”) is not due and accordingly no interest is to be accrued;
 - c) The compensation for breach of Contract by the Appellant awarded to the Respondent by the appealed decision should be reduced from EUR 132,000.00 to EUR 82,500.00.
126. The FIFA Decision is only modified with respect of the above amounts, and the remaining part of the Decision should be upheld. The Appellant is therefore ordered to pay to the Respondent the remaining amounts awarded in the appealed decision, and namely:
- a) EUR 120,000.00 due as advance payment under the Contract together with 5% interest per annum starting from 14 August 2013 until the full payment of the sum;
 - b) EUR 45,000.00 due as advance payment under the Contract together with 5 % interest per annum starting from 1 October 2013 until the full payment of the sum;
 - c) EUR 82,500.00 due as compensation for breach of Contract together with 5% interest per annum starting from 5 November 2013 until the full payment of the sum.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Akhisar Belediye Gençlik ve Spor Kulübü Deneri on 23 December 2015 against the Decision of the FIFA DRC rendered on 2 July 2015 is partially upheld.
2. The Decision of the FIFA DRC rendered on 2 July 2015 is set aside.
3. Akhisar Belediye Gençlik ve Spor Kulübü Deneri is ordered to pay to Mr. Severin Brice Bikoko
 - a) EUR 120,000.00 due as advance payment under the Contract together with 5% interest per annum starting from 14 August 2013 until the full repayment of the sum;
 - b) EUR 45,000.00 due as advance payment under the Contract together with 5 % interest per annum starting from 1 October 2013 until the full repayment of the sum;
 - c) EUR 82,500.00 due as compensation for breach of Contract together with 5% interest per annum starting from 5 November 2013 until the full repayment of the sum.
- (...)
6. All other motions or prayers for relief of the Parties are dismissed.