Arbitration CAS 2015/A/4368 Mikhail Danilyuk v. Football Union of Russia (RFU) & Football Club Shinnik, award of 11 July 2016

Panel: Mr Nicholas Stewart QC (United Kingdom), Sole Arbitrator

Football
Agency contract between a club and an agent
CAS precedents
Principle "tempus regit actum"
Interest

1. **While reasoning of previous CAS panels is to be accorded all due respect, previous CAS decisions are not binding precedents.**

2. **The maxim or principle *tempus regit actum* may apply with greatest rigour in the field of criminal law, so that no one may be held criminally liable for an action which is not prohibited by law when committed. It may also apply in relation to substantive rights such as contractual rights. It is not a maxim or principle which (whether in public courts or before private tribunals such as the DRC) necessarily prevents changes in procedural rules during the course of existing proceedings being then validly applied to those proceedings from that point onwards. However, there is at the very least a strong presumption that where under the applicable laws and regulations in force at the time a claim is validly filed before a judicial body by a person who is then entitled to bring that claim and that judicial body has jurisdiction over the claim at the time it is filed, the proceedings cannot be invalidated and the jurisdiction cannot be removed unless by the clearest exercise of powers by whichever public or private authority decides the laws and regulations governing that body and its jurisdiction. Moreover, any purported exercise of powers to that effect would always be liable to testing and scrutiny to ensure that such a drastic effect on existing proceedings under an existing jurisdiction was lawful and valid.**

3. **As a matter of general principle, interest on late payment of contractual debts should normally take into account that the delayed payment is in substance a forced borrowing of that amount from an involuntary lender. Broadly speaking, an interest rate for retention of an amount in US dollars should be a rate appropriate for a US dollar borrowing during the relevant period. However, it does not need refined calculation and a rate of 5% per annum is well in line with that approach and fair in all the circumstances.**

I. PARTIES

1. Mr Mikhail Danilyuk (the "Agent" or "Appellant") is a professional football agent licensed by the Football Union of Russia (the "RFU" or "First Respondent"). He is a Russian citizen.

2. The Football Union of Russia (the "RFU" or "First Respondent") is the national football association of Russia and is so recognized by the Fédération Internationale de Football Association.

3. Football Club Shinnik (the "Club" or "Second Respondent") is a professional football club in Russia currently competing in the National Football League (Second Division). The Club is affiliated to the RFU.

II. FACTUAL BACKGROUND

A. Background Facts

4. The following section contains a summary of the relevant facts and arguments based on the parties' written submissions and evidence and on oral submissions at the hearing in Lausanne on Wednesday 20 April 2016. The Sole Arbitrator has considered all the arguments and evidence submitted by the parties and refers to specific matters in this Award only as necessary to explain his decision. Although the Sole Arbitrator does not speak or read Russian, his first language is English and he has made slight adjustments to English translations provided by the parties where that makes the translation read more naturally (but without any change at all to the meaning).

5. On 10 August 2011 the Agent and the Club concluded an Agency Agreement (the "Contract"). The Contract, which was in Russian but of which an English translation is in evidence on this appeal, was registered by the RFU's *Commission on Operations of Football Players' Agents*. By Clause 1.1 of the Contract, Mr Danilyuk was to act as the Club's agent, in particular to *"hold negotiations with the professional sportsman A. … with a view to enter into an employment agreement between the Professional Sportsman and the Club on the conditions, specified by the Club"*. Clause 1.2 of the Contract stated that the services under the Contract *"shall be deemed rendered, provided the Club and the Professional Sportsman enter into an employment Agreement"*.

6. Using the English translation put in evidence by the Appellant and not challenged by the Respondents, clause 3 of the Contract set out "Agents Remuneration and the Payment Procedure" as follows (omitting words not relevant for present purposes):

> *3.1 The remuneration under this agreement shall be determined as agreed by the parties and shall include the sum of the agent's remuneration in the amount of 50,000 (fifty thousand) US dollars … and additional remuneration, determined according to the paragraphs 3.5 and 3.6 hereof.*
>
> *3.2 The payment of the Agent's remuneration shall be carried out after conclusion of the Act of execution of the services which is to be signed by the authorized representatives of the parties.*

3.3 The payment of the Agent's remuneration stipulated in par. 3.1 hereof shall be effected, provided the goal of this agreement is achieved – the employment agreement between the Club and the Professional Sportsman is entered into.

3.4 Settlement of accounts with respect to par. 3.1 hereof shall be effected via a bank transfer of the sum in rubles at the exchange rate of the Bank of Russia as of the payment date, to the current account of the Agent, by 15 October 2011.

3.5 In case the Professional Sportsman participates in the official games of the Club in the Russia football championship of the sport season 2012-2013, sport season 2013-2014, the Club shall pay the Agent an additional remuneration in the amount of 50,000 (fifty thousand) US dollars per each such season. The Club shall pay this additional remuneration in the form of a prepayment by the 15th day of the month following the month of the expiration of the registration period (transfer window) in Russia.

The said remuneration is not to be paid to the Agent for a sports season in which the Professional Sportsman does not play for the club.

Clause 3.6 provided for further agent's remuneration on a transfer of A. (the "Player") to another football club, but this has not happened.

7. The Agent did negotiate the transfer of the Player to the Club and on 16 August 2011 the Club and the Player entered into an employment contract. This was expressly acknowledged by the Club in a written Act of Execution dated 16 August 2011 and signed on the Club's behalf and by the Agent (the "Act of Execution"). This was the Act of execution of services mentioned in clause 3.2 of the Contract. It expressly acknowledged that the remuneration under clause 3.1 was payable and it appears that there has been no dispute in connection with that payment.

8. However, there was a dispute in relation to a claim by Mr Danilyuk against the Club for additional remuneration of US $50,000 under clause 3.5 because the Player participated in official games of the Club in the Russian football championship for the season 2012-13. The Club refused to pay that sum and on 29 May 2014 Mr Danilyuk filed a complaint with the Dispute Resolution Chamber of the RFU (the "DRC"). The DRC decided in favour of Mr Danilyuk and the Club then appealed to the Players Status Committee of the RFU (the "PSC"). The PSC allowed the Club's appeal on 3 October 2014 and gave its full written reasons to Mr Danilyuk on 14 January 2015. Mr Danilyuk then appealed to the Court of Arbitration for Sport (the "CAS") and by his 9 June 2015 decision as the Sole Arbitrator in CAS 2015/A/3889, Professor Michael Geistlinger allowed the appeal and ordered FC Shinnik to pay $50,000 with interest to Mr Danilyuk.

9. While some of the issues in CAS 2015/A/3889 relating to clause 3.5 of the Contract are closely similar to issues in the present appeal, and reasoning of previous CAS panels is to be accorded all due respect, previous CAS decisions are not binding precedents. It follows that the Sole Arbitrator on the present appeal must and does exercise his own judgment on all issues

(although it will be seen that there is no inconsistency between the decision on this appeal and Professor Geistlinger's decision in CAS 2015/A/3889).

10. The present appeal relates to a further claim by the Agent for additional remuneration under clause 3.5. This further claim is for $50,000 because the Agent states that the Player participated in official games of the Club in the Russian football championship for the season 2013-14. The Club has rejected that further claim and has made no payment of the claimed $50,000 or any part of it. The Agent, as he had done over his claim for US $50,000 in relation to the 2012-13 season, has sought to recover the further $50,000 in relation to the 2013-14 season through the mechanisms of the RFU. His claim was upheld by the DRC but then rejected by the PSC on 31 August 2015.

B. Proceedings before the Dispute Resolution Chamber and the Players Status Committee of the Football Union of Russia

11. Mr Danilyuk filed his claim (case No. 034-15) with the Dispute Resolution Chamber of the RFU on 2 December 2014. However, on a date apparently soon after Mr Danilyuk had filed his appeal CAS 2015/A/3889 on 19 January 2015, his case No. 034-15 was suspended pending the resolution of CAS 2015/A/3889 because of the similarities of issues in the two cases. That was clearly a sensible course at the time and the Appellant rightly makes no criticism of that suspension in itself.

12. After Professor Geistlinger issued his decision in CAS 2015/A/3889 on 9 June 2015, the suspension of Mr Danilyuk's claim in his new case No. 034-15 was lifted and the DRC proceeded to a decision on 14 July 2015 by which it resolved to:

> *1. Grant partially the application of the licensed agent of the football players Danilyuk, N.V against NP FC Shinnik (Yaroslavl).*
>
> *2. Oblige NP FC Shinnik (Yaroslavl) to pay the licensed agent of the football players Danilyuk, M.V. the debt under the agency contract in the amount of fifty thousand (50,000) US dollars at the exchange rate of the Central Bank of the Russian Federation as of the date of payment within thirty (30) days from the decision effective date.*

13. The reference to granting the Agent's application only "partially" relates to the fact that the Agent, in addition to claiming the $50,000, had asked the DRC to impose a financial penalty on the Club for non-payment of that $50,000 and also a sporting sanction on the Club by a ban on registration of new players for a period of up to 12 months. The DRC refused to impose either a penalty or a sporting sanction and there is no appeal before the CAS on those points.

14. On 19 August 2015, both FC Shinnik and Mr Danilyuk appealed to the Players Status Committee of the RFU against that DRC decision. Mr Danilyuk appealed against the refusal of the DRC to impose a financial penalty and the Club appealed against the order for payment of $50,000.

15. The PSC made its decision on 31 August 2015. The PSC decision and the reasons were notified to Mr Danilyuk on 14 December 2015. The PSC resolved to:

> 1. *Dismiss the complaints of NP Shinnik (Yaroslavl) and the licensed agent of the football players Danilyuk, M.V. about the decision of the Dispute Resolution Chamber No. 034-15 dated July 14, 2015.*
>
> 2. *Cancel the Dispute Resolution Chamber decision No. 034-15 dated July 14, 2015 and terminate the proceedings in the case No. 034-15 Danilyuk vs. FC Shinnik.*

directed that:

> 3. *This decision shall not enter into force in the manner prescribed in Article 63 of RFU Dispute Resolution Regulations.*

and added:

On the basis of Article 47 of the Charter of the Russian Football Union, All-Russian Public Organization this decision may be appealed to the Court of Arbitration for Sport in Lausanne in accordance with the Code of the Court of Arbitration for Sport.

16. It is that 31 August 2015 decision of the PSC which is the "Appealed Decision" on this appeal to the CAS, although Mr Danilyuk no longer seeks a financial penalty against the Club but confines his appeal to recovery of $50,000 with interest and costs.

17. In summary, the basis of the PSC's annulment of the DRC's 14 July 2015 decision was:

> (i) because of a change of relevant RFU regulations taking effect from 1 April 2015, the dispute between Mr Danilyuk and the Club in case No 034-15 ceased to be within the jurisdiction of the DRC as from that date; and
>
> (ii) the DRC had therefore been in error when it lifted the suspension of the case after the CAS decision in CAS 2015/A/3889 and proceeded to its decision on 14 July 2015 including the order for payment of $50,000 to Mr Danilyuk.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 29 December 2015, the Appellant filed his statement of appeal with the CAS against the Respondents with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In his statement of appeal, the Appellant requested that a sole arbitrator be appointed in accordance with Article R54 of the Code.

19. On 21 January 2016, the First Respondent informed the CAS Court Office in its letter dated 20 January 2016 that it objected to the Appellant's request for a Sole Arbitrator and preferred that this case be referred to a three-member Panel. The Second Respondent did not comment on that issue.

20. On that same day 21 January 2016 the Appellant filed his appeal brief in accordance with Article R51 of the Code, having been granted an extension until 25 January 2016.

21. On 4 February 2016, the Second Respondent filed its answer in accordance with Article R55 of the Code.

22. On 12 February 2016, the First Respondent filed its answer in accordance with Article R55 of the Code.

23. On 8 March 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that Mr Nicholas Stewart QC, Barrister in London, United Kingdom, was appointed Sole Arbitrator in accordance with Article R54 of the Code.

24. On 14 and 15 April 2016, the Appellant and Second Respondent signed and returned to the CAS Court Office the Order of Procedure dated 14 April 2016. The First Respondent did not sign the Order of Procedure but notified no objection to its contents.

25. A hearing was held on 20 April 2016 at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr Brent J. Nowicki, counsel to the CAS. Ms Darina Nikitina attended and made oral submissions as the Appellant's representative. The Respondents did not participate in the hearing though their written submissions with all supporting documents have been fully considered by the Sole Arbitrator.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant's submissions

26. The Appellant's submissions may be summarised as follows:

(1) The Club had confirmed by the Act of Execution that the Player had entered into the Club's employment on 16 August 2011.

(2) The Appellant had produced evidence in the form of printout from the official Russian Football National League website confirming the Player's participation in official games of the Club during the season 2013-14.

(3) The 2014 summer transfer window in Russia expired on 6 September 2014, as evidenced by a printout dated 18 January 2016 of an item posted on 5 April 2013 on the website of the Russian newspaper *Rossiyskaya Gazeta*.

(4) Accordingly, the condition for payment of further additional remuneration of $50,000 under clause 3.5 of the Contract had been satisfied. It was a recognised type of condition, called a suspensive condition, under Article 157.1 of the Civil Code of the Russian Federation (the "Russian Civil Code").

(5) By the express provisions of clause 3.5 of the Contract, the Club's obligation was to pay that $50,000 to the Appellant on 15 October 2014 but no payment had been made.

(6) The Appellant was therefore entitled to payment of $50,000 plus interest from 15 October 2015 until actual payment.

(7) As submitted by Ms Nikitina at the hearing on 20 April 2016, the power to award interest was contained in Article 395 of the Russian Civil Code.

(8) The appropriate rate of interest in this case was 5% per annum from 15 October 2015.

(9) On 2 December 2014, when the Appellant filed this claim with the RFU, there was clear jurisdiction under the statutes and regulations of the RFU for the DRC to decide the case and for any appeal from a decision of the DRC to be made to the PSC.

(10) The PSC had erred in ruling that:

- changes of the RFU regulations which came into force on 1 April 2015 had the effect that the dispute referred by the Appellant to the DRC on 2 December 2014 had lost arbitrability before the DRC as from that date;
- the DRC had therefore been wrong in resuming consideration of the merits of the case following the CAS decision in CAS 2015/A/3889; and
- the PSC should dismiss the Appellant's appeal to the PSC against the decision of the DRC

(11) In making those erroneous rulings the PSC had infringed the principle *tempus regit actum*, by which the RFU jurisdictional rules applicable when the Appellant's complaint was filed with the RFU on 2 December 2014 remained applicable to his complaint; and the changes made as from 1 April 2015 had no retrospective application to the Appellant's case.

27. In his Statement of Appeal and his Appeal Brief, the Appellant makes the following request for relief:

1) The appeal filed by Mr Danilyuk Mikhail is upheld;

2) The decision issued by RFU Players Status Committee on 31 August 2015 is annulled and set aside;

3) The Football Club Shinnik shall pay to Mr Danilyuk the amount of 50 000 USD as agency remuneration and 5% interest per year starting from 15 October 2014;

4) The Football Club Shinnik shall bear all the costs incurred with the present procedure;

5) The Football Club Shinnik shall pay to Mr Danilyuk Mikhail a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel.

B. First Respondent's submissions

28. The First Respondent's submissions may be summarised as follows:

(1) This appeal to the CAS should be dismissed because from 1 April 2015 onwards (and therefore at the date of its decision on 14 July 2015) the DRC no longer had any jurisdiction in relation to the Appellant's complaint filed on 2 December 2014.

(2) Part 3 of the RFU's Answer to the Statement of Appeal contains submissions under the heading "The misconduct of Appellant during the addressing to CAS and the CAS deceit". However, there is nothing else in the RFU's submission which alleges or even suggests the dishonesty which is always implicit in the word "deceit" so there is no need to address that particular point.

(3) So far as the submissions in that Part 3 of the RFU's Answer do not relate to the jurisdictional ground already mentioned in (1) above, they do not add any point of substance. There is a reference to a deadline for appeal running out but it rests on confusion of dates as between the claim for the first additional $50,000 which eventually went to appeal in CAS 2015/A/3889 and this claim for the second additional payment of $50,000 under clause 3.5 of the Contract.

(4) The jurisdictional ground in the RFU's Answer to this appeal is essentially the point in the PSC's 31 August 2015 decision. The RFU submits the following analysis, in summary:

(i) Article 1 (14) of the RFU Statutes defines "Football subjects" as:

RFU and others who recognise regulations set by the RFU, in particular: oganisations founded by the RFU, members of the RFU, members of the RFU bodies, RFU employees (administrative apparatus of RFU), the league and their employees, clubs and their employees, officials, players, sports teams, groups of physical training, agents of matches and agents of the players, the trade unions in the football field, sports training centres, sports schools of different types, users and owners of sports facilities used in the football field, the fans and their associations, as well as others whose activities are related to events held under the auspices of the RFU and who recognize the RFU requirements.

(ii) Correctly interpreted, the effect of Article 1(14) is that unless a person or entity falls within one of the categories specifically listed from "organisations" founded by the RFU down to "the fans and their associations" then in order to come within Article 1(14) that person or entity must:

- be engaged in activities related to competitions[1]
- recognise the norms[2] set by the RFU

and the Appellant satisfies neither of those requirements.

(iii) Up to 31 March 2015 the Appellant had been a football subject under Article 14(1), because he was a players' agent and therefore within a specific category listed in Article 14(1). However, implementation of FIFA policy by replacement of the RFU *Players Agent Regulations* (with effect from 1 April 2015) by new RFU *Regulations on Working with Intermediaries* had the effect that as from 1 April 2015 the Appellant no longer fell within the definition of a players' agent (or indeed any sort of football agent). That change of regulations was the effect of RFU Executive Committee Decision 164/4 on 30 March 2015.

(5) The vital last step in the RFU's submissions on jurisdiction is the threefold contention that:

(i) Only a "football subject" under the RFU Statutes has the right to submit a dispute or claim to the DRC for its resolution;

(ii) As from 1 April 2015 Mr Danilyuk was no longer a "football subject", according to the RFU analysis summarised in 30(4) above; and

(iii) Because Mr Danilyuk had lost the right to submit a dispute or claim to the DRC as from 1 April 2015, the DRC no longer had any jurisdiction over the claim filed by him on 2 December 2014 and therefore also no power to lift the suspension of that claim after the 9 June 2015 decision of Professor Geistlinger in CAS 2015/A/3889.

(6) The RFU did not submit that there had been any change in the RFU statutes or regulations directly governing the jurisdiction of the DRC or the PSC. It relied on the effect of the rule changes as summarised in subparagraphs (4) and (5) above.

(7) The First Respondent made no specific submission in relation to the Appellant's claim for interest on the $50,000.

29. In its Answer, the First Respondent makes the following requests for relief:

1. To reject the statement of appeal

[1] The translation provided by the Appellant says "events", which may well be wider. However, any difference does not affect the Sole Arbitrator's conclusions.
[2] The translation provided by the Appellant says "requirements" but the difference is not material.

2. *To oblige the Appellant (i) to pay fully for all the costs which are connected with the arbitration proceedings and (ii) to bear fully or partially the court costs and other charges incurred by the Football Union of Russia in connection with this investigation.*

3. *In case of approval of the Appellant's complaint and settlement of the RFU Dispute Resolution Chamber's arbitrability in this case, to send the new investigation to the RFU Dispute Resolution Chamber.*

C. Second Respondent's submissions

30. The Second Respondent's submissions may be summarised as follows:

(1) First, on the question of jurisdiction of the DRC, the Second Respondent's position is essentially the same as the position of the First Respondent. The Second Respondent makes additional references to Article 2 of the RFU *Regulations on Dispute Resolution* (dealing with Legal Status of the DRC) and Article 1 of the RFU *Regulations on the Status and Transfer of Players* (defining Subjects of Football in slightly narrower terms than Article 1(14) of the RFU Statutes); and also to a Resolution 134/2 of the Bureau of the Executive Committee of the RFU dated 25 March 2015, according to which the Second Respondent says that licensed agents of football players lost the right to apply to the Dispute Resolution Chamber as at 1 April 2015.

(2) The Second Respondent's essential conclusion is the same as the First Respondent's conclusion: The DRC's jurisdiction over Mr Danilyuk's claim No 034-15 lapsed on 1 April 2015 and its 14 July 2015 decision was therefore completely invalid.

(3) Secondly, and quite separately from the jurisdiction point, the Second Respondent challenges the Appellant's entitlement to payment of the claimed $50,000 under the Contract. It submits: *"there is no Act of confirmation of the work between Shinnik and Danilyuk. Such Act definitely should be according to the law of country in which the federation, the Appellant and the Respondent are domiciled. The Appellant cannot perform such an Act, for the reason that there was not any work he did"*.

(4) Thirdly, as a self-standing point on the jurisdiction of the CAS on this appeal, the Second Respondent submits that as Mr Danilyuk is no longer a player's agent he is not a "sports-related body" according to Article 47 of the RFU Statutes, which states:

> *In accordance with the relevant provisions of the FIFA, UEFA and RFU Statutes, any appeal against final and legal binding decisions of the FIFA, UEFA and RFU shall be heard by the CAS. The Court of Arbitration for Sport, however, does not hear appeals concerning the matters stipulated by the FIFA, UEFA and RFU or appeals against the decisions of an independent and properly constituted Russian arbitration tribunal referred to in Article 45 hereof.*

There was no development of this submission by the Second Respondent and specifically no reliance on Article 45 or anything else in the second sentence of Article 47. Although presented as a self-standing point on the jurisdiction of the CAS, this submission clearly

rests on the same foundation as the jurisdiction argument summarised in paragraph 28 above - that although when the Appellant first filed his complaint to the DRC on 2 December 2014 he was a licensed players' agent entitled under the RFU statutes and regulations to bring that complaint and to appeal if necessary to the PSC, and from the PSC to the CAS, he lost those rights (including the right of appeal to the CAS) at midnight 31 March/1 April 2015.

(5) The Second Respondent, like the First Respondent, made no specific submission in relation to the Appellant's claim for interest on the $50,000.

31. In its answer, the Second Respondent makes the following request for relief:

> *Football Club Shinnik denies the Appeal submitted by Mr Danilyuk and asks CAS to refuse satisfaction of the complaint.*

V. CAS JURISDICTION AND ADMISSIBILITY

32. The Order of Procedure dated 14 April 2016 was signed on behalf of the Appellant and the Second Respondent. Those parties thereby expressly acknowledged that they did not contest the jurisdiction of the CAS in this case. The First Respondent did not sign the Order of Procedure and is therefore not bound by any such acknowledgment. However, the jurisdiction of the CAS on this appeal is clear, by a combination of Article R47 of the Code and Article 53 of the RFU *Regulations on Dispute Resolution*.

33. Article R47 of the Code states:

> *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.*

34. Article 53, para 2, of the RFU *Regulations on Dispute Resolutions* provides for an appeal to be available to the CAS as follows:

> *The decision of the Committee [PSC] can be appealed only to the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days from the moment of receipt of the decision.*

35. There was a decision of the PSC which was notified to Mr Danilyuk on 14 December 2015. His Statement of Appeal against that decision was filed with the CAS on 29 December 2015, which was well within the 21 day time limit under Article 53.

36. The Respondents' submissions that the DRC had no jurisdiction when it made its 14 July 2015 decision have no bearing on the question of the CAS's own jurisdiction on this appeal. The CAS jurisdiction on this appeal is clear.

37. The submission by the Second Respondent that Mr Danilyuk has lost his own right to appeal to the CAS is summarised in paragraph 30(4) and rejected by the Sole Arbitrator in paragraph 55 of this Award.

VI. APPLICABLE LAW

38. Article R58 of the Code provides as follows:

> *The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

39. Clause 7.1 of the Contract states:

> *The parties shall be liable for non-performance or undue performance of conditions hereof, according to the applicable legislation of the Russian Federation, as well as the regulations of the FIFA, UEFA, RFU.*

40. The clear result is that the statutes and regulations of the RFU (and so far as relevant, of FIFA and UEFA) apply as *lex specialis* and, subsidiarily, the law of the Russian Federation applies.

VII. MERITS

41. The Sole Arbitrator's approach here is to examine: first, the merits of the Agent's contractual claim to the $50,000 remuneration on the footing that there was no issue on jurisdiction of the DRC; secondly, the question of jurisdiction of the DRC. The Sole Arbitrator will then address the Appellant's claim for interest, i.e. whether interest should be awarded and, if so, at what rate.

A. The contractual claim for $50,000 under clause 3.5 of the Contract

42. The Contract is clear. Under clause 3.1, the Agent was expressly entitled to an initial $50,000 and *"additional remuneration, determined according to paragraphs 3.5 and 3.6 hereof"*. This claim is made under clause 3.5 for a second payment of additional remuneration of $50,000. The only condition to be satisfied in order to trigger the Club's obligation to make that payment was the Player's participation in official games of the Club in the Russian football season 2013-14.

43. The Appellant has adduced evidence which does show that the condition was satisfied and neither Respondent has produced any contrary evidence. The condition was a suspensive condition under Article 157.1 of the Civil Code of the Russian Federation (the "Russian Civil Code").

44. Nothing more was required to trigger the Club's obligation to pay $50,000 to the Agent on the 15th day of the month following the month of expiration of the Russian summer transfer window. Uncontroverted evidence adduced by the Appellant shows the due day for payment was 15 October 2014.

45. The Respondents' only suggested answer to this analysis is the Second Respondent's contention that the Appellant is not entitled to this payment because there is no evidence that he did any work for which he is entitled to this $50,000 as remuneration. That answer is fundamentally flawed. Further payments under clause 3.5 of the Contract were additional remuneration for the work which the Agent had already done in 2011 in negotiating the employment of the Player by the Club, which was implemented by a playing contract dated 16 August 2011. By clause 3.2 of the Contract, the 16 August 2011 Act of Execution signed by the Club's authorised representative was a sufficient basis for the obligation to pay not only the initial $50,000 specified in clause 3.1 but also the additional remuneration under clause 3.5 provided only that in the case of the additional remuneration the condition specified in clause 3.5 was satisfied. No further work was required from the Agent, who was entitled simply to wait and see if the condition was satisfied. If it was (as did happen), he would be entitled to a further payment of $50,000 under clause 3.5.

46. The Sole Arbitrator therefore holds that, subject only to the question of jurisdiction considered next, the Appellant is now and has been since 15 October 2014 entitled to a payment of additional remuneration of $50,000 from the Second Respondent under clause 3.5 of the Contract in relation to the 2013-14 season.

B. Did the Dispute Resolution Committee of the RFU have jurisdiction?

47. This issue turns entirely on the change of RFU regulations which took effect on 1 April 2015, given that the parties' positions in this appeal are:

(1) The Appellant expressly accepts that under the RFU regulations which came into force from 1 April 2015 he would not have had the right to bring a complaint before the DRC.

and on the other hand:

(2) The Respondents appear clearly to accept that under the RFU regulations in force up to 31 March 2015, the Appellant did have the right to bring his complaint before the DRC and the DRC would have had jurisdiction. Neither Respondent has made any submission to the contrary.

48. Those positions are plainly correct as far as they go. It is therefore clear that up to 31 March 2015 Mr Danilyuk's complaint of non-payment of the $50,000 by FC Shinnik was validly before the DRC and that the DRC had jurisdiction to rule on the complaint. This was unaffected by the suspension of the proceedings pending the outcome of CAS 2015/A/3889, which was a sensible practical course with no effect on jurisdiction.

49. The crucial question is whether the change of RFU regulations on 1 April 2015 caused the jurisdiction of the DRC to lapse. If the Respondents are right in their submissions, a process validly started on 2 December 2014 became invalid at midnight 31 March/1 April 2015.

50. The firm opinion of the Sole Arbitrator is that such a result would be contrary to principle and simply wrong.

51. The Appellant asserted that the Respondents' submissions on jurisdiction were contrary to the principle *tempus regit actum,* as to which it cited the case CAS 2011/A/2653, paragraph 66, itself referring to:

> *the general principle of "tempus regit actum" according to which – as a general rule – the substantive aspects of a contract keep being governed by the law in force at the time when the contract was signed, while any claim should be brought and any dispute should be settled in accordance with the procedural rules in force at the time of the claim*.

That statement of the principle was drawn from an earlier decision CAS 2004/A/635, para. 11, also cited by the Appellant.

52. The maxim or principle *tempus regit actum* may apply with greatest rigour in the field of criminal law, so that no one may be held criminally liable for an action which is not prohibited by law when committed. It may also apply in relation to substantive rights such as contractual rights. It is not a maxim or principle which (whether in public courts or before private tribunals such as the DRC) necessarily prevents changes in procedural rules during the course of existing proceedings being then validly applied to those proceedings from that point onwards.

53. However, the issue in this appeal concerns jurisdiction and not just changes of procedure. There is at the very least a strong presumption that where under the applicable laws and regulations in force at the time

- a claim is validly filed before a judicial body by a person who is then entitled to bring that claim; and

- that judicial body has jurisdiction over the claim at the time it is filed

the proceedings cannot be invalidated and the jurisdiction cannot be removed unless by the clearest exercise of powers by whichever public or private authority decides the laws and regulations governing that body and its jurisdiction. Moreover, any purported exercise of powers to that effect would always be liable to testing and scrutiny to ensure that such a drastic effect on existing proceedings under an existing jurisdiction was lawful and valid.

54. The Sole Arbitrator does not need to express any view on the question whether and in what circumstances such a drastic effect could be achieved by changes of regulations of a sporting organisation. Those are questions to be considered by other tribunals if they arise and on their own facts if they ever do. In the present case there is nothing in the changes of RFU rules since the Agent filed his claim on 2 December 2014, or in the content of the post-31 March

2015 rules themselves, which comes anywhere near showing an intention to extinguish the jurisdiction of the DRC over cases already begun validly under the pre-1 April 2015 rules; or, which is another way of expressing the same point, shows an intention to put a stop to proceedings of which the DRC was already seized. The general rule cited in paragraph 51 above applies and the DRC's jurisdiction over Mr Danilyuk's case No. 034-15 remained entirely unaffected by the changes of RFU regulations which took effect on 1 April 2015.

55. Even if it were not plainly barred anyway by its authorised signature on the Order of Procedure, the Second Respondent's argument summarised in paragraph 30(4) of this Award would fail for the same essential reason. When the Agent filed his complaint with the DRC on 2 December 2014 he was fully entitled to use the appeal structure then in force, which included his entitlement to appeal from the PSC to the CAS as expressly provided by Article 47 of the RFU statutes. Article 47 still expressly so provides and none of the changes which took effect on 1 April 2015 can have removed that jurisdiction or the Appellant's right to appeal to the CAS against the PSC Decision.

C. Players Status Committee decision was wrong and is set aside

56. The conclusion which follows is that the PSC was wrong in ruling that the dispute lost arbitrability before the DRC. The decision of the PSC to dismiss the parties' appeals and cancel the DRC decision No 034-15 dated 14 July 2015 was therefore also wrong. The Appellant being the only party who has appealed to the CAS against that decision, it is hereby set aside so far as it affected the claims by the Appellant.

D. Decision on Claims for USD 50,000 plus Interest

57. The Sole Arbitrator has full power under Article R57 of the Code to issue a new decision which replaces the decision challenged or to annul the decision and refer the case back to the previous instance. The RFU asks in its Answer to the Statement of Appeal that if the Sole Arbitrator decides in the Appellant's favour he should send the case back to the Dispute Resolution Chamber. Neither the Appellant nor the Second Respondent make that request and they are the contracting parties directly affected. Leaving aside the fact that the "previous instance" under Article R57 is the Players Status Committee and not the DRC, it would be utterly wasteful of time and money for all parties if the Sole Arbitrator were to refer the case back to a previous instance. All the relevant facts appear in the papers. Nothing would be gained by prolonging this dispute by such a referral back.

(1) Appellant's claim for $50,000

58. It follows from the discussion and conclusions on the merits that the Appellant was entitled to payment on 15 October 2014 of the full $50,000 which he claims, and he remains so entitled.

59. The payment is to be made in roubles at the US$/rouble exchange rate of the Bank of Russia at the date of actual payment, as requested by the Appellant.

(2) Appellant's claim for 5% interest on the $50,000

60. The Sole Arbitrator has no doubt that the Appellant's claim for 5% interest on the $50,000 since the due date for payment 15 October 2014 is within his powers and is the fair order to make.

61. The Appellant referred the Sole Arbitrator to Article 395 of the Russian Civil Code, which states:

> *For the use of the other person's money as a result of its illegal retention, of the avoidance of its return or of another kind of delay in its payment or as a result of its ungroundless receipt or saving at the expense of the other person, the interest on the total amount of these means shall be due. The interest rate shall be defined by the discount rate of the bank interest, existing by the date of the discharge of the pecuniary obligation or of the corresponding part thereof at the place of the creditor's residence.*

62. The Appellant informed the Sole Arbitrator at the hearing that the Russian courts had ruled that the definition of the applicable interest rate by reference to the Russian Central Bank base rate was only applicable to payments due in roubles. She did not contend that the payment due in this case fell within that category, because the sum due remained as $50,000 dollars from 14 October 2014 down to the date of actual payment. That was a realistic approach by the Appellant, because the conversion to roubles is made only at the point of actual payment, as the mechanism for payment of a sum fixed up to that point in United States dollars. As a practical matter it would be potentially unfair to the Second Respondent to apply to a sum expressed in US dollars the high rouble-based interest rates in force for the period between 14 October 2014 and actual payment.

63. The Sole Arbitrator does note that Article 395 and its effect had not been mentioned anywhere in the Appellant's written submissions before the hearing, so the Respondents had not been specifically alerted to the need to comment on Article 395. However, the Appellant's claim for an interest rate of 5% per annum is in the nature of a concession in the Second Respondent's favour, as the 5% interest rate claimed by the Appellant is considerably lower than any level of the Russian Central Bank base rate since 15 October 2014. Moreover, both Respondents have known since first receiving the Statement of Appeal that the Appellant claimed interest at 5% per annum but neither Respondent chose to make any submission on that particular issue. In the circumstances, the Sole Arbitrator considers that both Respondents, including the Second Respondent who would actually be paying the interest to the Appellant, have had a fair opportunity of making submissions in opposition to the claim for interest at 5% per annum. That is also exactly the same rate of interest as claimed and awarded in CAS 2015/A/3889 and the Respondents will clearly have known the relevance of Article 395 from that earlier CAS award.

64. As a matter of general principle, interest on late payment of contractual debts should normally take into account that the delayed payment is in substance a forced borrowing of that amount from an involuntary lender (in this case from the Appellant). That principle is recognised by

the introductory words of Article 395: *"For the use of the other person's money as a result of its illegal*[3] *retention …"*. Broadly speaking, an interest rate for retention of an amount in US dollars should be a rate appropriate for a US dollar borrowing during the relevant period. However, it does not need refined calculation and a rate of 5% per annum since 14 October 2015 is well in line with that approach and fair in all the circumstances.

ON THESE GROUNDS

The Court of Arbitration for Sport orders that:

1. The appeal filed by Mr Mikhail Danilyuk against the Football Union of Russia and Football Club Shinnik concerning the decision of the decision of the Players Status Committee of the RFU dated 31 August 2015 is upheld.

2. The decision of the Players Status Committee of the RFU dated 31 August 2015 is set aside.

3. Football Club Shinnik is ordered to pay Mr Mikhail Danilyuk:

   (1) $50,000, by transfer to Mr Danilyuk of that sum exchanged into roubles at the United States dollar/Russian rouble exchange rate of the Central Bank of the Russian Federation on the day of transfer; and

   (2) interest on such amount at the rate of 5% a year from 14 October 2014 to the date of transfer.

(…)

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

[3] The better English word would be "unlawful" though the sense is clear anyway.