



Arbitration CAS 2016/A/4547 Nikola Mikic v. Manisaspor KD, award of 22 December 2016

Panel: Mr Manfred Nan (the Netherlands), Sole Arbitrator

Football

Contract of employment

Pacta sunt servanda

In accordance with the general legal principle of *pacta sunt servanda*, a club which did not fully comply with its financial obligations towards a player is liable for the payment of the outstanding remuneration to the player.

I. PARTIES

1. Mr Nikola Mikic (the “Appellant” or the “Player”) is a professional football player of Serbian nationality.
2. Manisaspor Kulübü Derneği (the “Respondent” or the “Club”) is a professional football club with its registered office in Manisa, Turkey. The Club is registered with the Turkish Football Federation (the “TFF”), which in turn is affiliated to the Fédération Internationale de Football Association (“FIFA”).

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 23 July 2013, the Club and the Player entered into an employment contract (the “Employment Contract”) valid for a period of two football seasons, *i.e.* until 31 May 2015.
5. The Employment Contract contains, *inter alia*, the following relevant terms:

“3- PAYMENTS AND SPECIAL PROVISIONS

Net Monthly Wage (cannot be less than the minimum wage)

MINIMUM WAGE

- 1) *The Club shall pay the Player a total amount of 180.000 EUR for 2013-2014 season as follows:*
 - a) *While signing the contract (23.07.2013), the Player shall be paid 20.000 EUR as Transfer Advance Payment*
 - b) *The Player shall be paid 20.000 EUR as Transfer Advance Payment on 31 August 2013*
 - c) *The Player shall be paid 20.000 EUR as Transfer Advance Payment on 30 September 2013*
 - d) *A total of 120.000 EUR shall be paid in 10 monthly instalments of equal amounts, namely 12.000 EUR each month between 05.09.2013 – 05.06.2014*
 - e) *[...]*
- 2) *If the Club plays at TFF 1st league during 2014-2015 season, the Club shall pay the Player a total of 200.000 EUR for the said season as follows:*
 - a) *The Player shall be paid 20.000 EUR as Transfer Advance Payment on 31 July 2014*
 - b) *The Player shall be paid 20.000 EUR as Transfer Advance Payment on 31 August 2014*
 - c) *The Player shall be paid 20.000 EUR as Transfer Advance Payment on 30 September 2014*
 - d) *A total of 140,000 EUR shall be paid in 10 monthly instalments of equal amounts, namely 14.000 EUR each month between 05.09.2014 – 05.06.2015*
 - e) *[...]*

Special Provisions

1. *All the amounts stated herein are the NET amounts*

[...]

4. *The amount to be paid per match shall be 100% if the player plays in the first eleven, 75% if he joins the game when it is in progress and 50% if he is in the first 18 but does not participate in the game. Such match payments shall be paid at the end of each month for the matches participated during the said month. Match payments are made only for league matches”.*

6. Since 3 February 2014, the Club allegedly did not fully comply with its contractual obligations vis-à-vis the Player.
7. On 3 May 2014, the Player and the Club verbally reached a settlement agreement (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the Club was to pay Turkish Lira (“TRY”) 265,280 (allegedly EUR 90,850 at the time) to the Player by 31 December 2014. By means of a “*Letter of Release*” the Player confirmed that this was his only claim against the Club regarding the 2013/2014 sporting season.
8. The amount of TRY 265,280 due by 31 December 2014 in accordance with the Settlement Agreement however allegedly remained unpaid by the Club and the Player was not able to cash the check issued by the Club for this amount.
9. Regarding the remuneration due for the 2014/2015 sporting season, the Club allegedly also did not fully comply with its payment obligations vis-à-vis the Player. The Player maintains that the amounts of EUR 64,087 and TRY 8,000 remained unpaid.

B. Proceedings before the Dispute Resolution Chamber of FIFA

10. On 15 June 2015, with a subsequent amendment on 6 July 2015, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) against the Club requesting payment of EUR 177,000 as well as TRY 17,600, plus interest at a rate of 5% *p.a.* corresponding to his alleged outstanding salaries and Turkish minimum wage¹. The Player also requested sporting sanctions to be imposed on the Club and that the Club should cover his legal fees. In particular, the Player claimed:
 - EUR 11,500, corresponding to outstanding remuneration due on 5 February 2014;
 - EUR 48,000, corresponding to four monthly salaries in the amount of EUR 12,000 each, due on 5 March, 5 April, 5 May and 5 June 2014 respectively;
 - EUR 5,500, corresponding to the salary due on 5 October 2014;
 - EUR 112,000, corresponding to eight monthly salaries in the amount of EUR 14,000 each, due as from 5 November 2014 until 5 June 2015;
 - TRY 17,600, corresponding to outstanding Turkish minimum wages due by 1 June 2015.
11. On 6 August 2015, the Club submitted its defence, whereby it requested the Player’s claim to be dismissed, alleging that it had fulfilled all of its financial obligations towards the Player and that its “*debts towards the player is not as huge as he claimed in the statement of the claim*”.
12. On 28 January 2016, the FIFA DRC rendered its decision (the “Appealed Decision”) with, *inter alia*, the following operative part:

¹ The discrepancy between the amounts mentioned in para. 7-9 of the present arbitral award and the amounts claimed by the Player before FIFA are, according to counsel for the Player, the result of the failure of the previous counsel of the Player to properly calculate all outstanding amounts.

- “1. *The claim of the [Player] is partially accepted.*
2. *The [Club] has to pay to the [Player] within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 40,476 plus 5% interest p.a. as from 31 May 2015 until the date of effective payment.*

[...]

4. *Any further claim lodged by the [Player] is rejected.*

[...]”.

13. On 21 March 2016, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:

- The FIFA DRC started its analysis by determining that the Club “*acknowledged that the [Player] was entitled to receive EUR 380,000 for the entire contractual duration [...]*” and “*that the [Club] has not contested the [Player’s] allegation that, in addition to the amounts in Euros, he was also owed a monthly TRY 800 as minimum wage*”.
- In respect of the payment documents presented by the Club, the FIFA DRC noted that “*no translation of the relevant documents was presented and that therefore no purpose of payment could be distinguished from the documents presented, that all documents indicate the names of both the [Player] and the [Club], and that some documents consist of vouchers bearing the [Player’s] signature. In total, the documents presented by the [Club] correspond to the amounts of EUR 316,809 and TRY 97,500, which amount [...] corresponds to EUR 34,325*”.
- The FIFA DRC rejected the Player’s argument, according to which payments of TRY 82,500 are related to match bonuses, observing that “*the contract does not include an entitlement of the [Player] to match bonuses [...]*”. As such, the FIFA DRC concluded that the Player “*received the amount of TRY 82,500 in connection with his employment with the [Club]*”.
- In continuation, the FIFA DRC rejected the Player’s argument that the receipt dated 23 July 2013 in the amount of EUR 20,000 should not be linked to his outstanding receivables, considering that “*according to the contract the [Club] was obliged to pay the amount of EUR 20,000 to the [Player] on 23 July 2013*”.
- In respect of the Player contesting the signature on the receipt amounting to EUR 96,809, dated 13 March 2015, the FIFA DRC “*focussed its attention on the aforementioned receipt as well as on other documents containing the [Player’s] signature, provided by the parties in the context of the present dispute. In this regard, the Chamber pointed out that the original version of the contested receipt dated 13 March 2015 was provided by the [Club]. After a thorough analysis of the aforementioned documents, in particular comparing the relevant signatures of the [Player] in the various documents provided in the present affair, the DRC had no other option but to conclude that, for a layman, the signatures on such documents appear to be the same*”.

- *On account of all the above, the members of the Chamber established that the [Club] has paid to the [Player] the amount of EUR 316,809, the entire minimum wage of TRY 17,600 (22 months × TRY 800), and the remaining amount of TRY 64,900, bearing in mind that the [Player] acknowledged having received the amount of TRY 82,500 from the [Club] in connection with his employment. The Chamber further established that said amount of TRY 64,900 equals EUR 22,715 following the [Club’s] uncontested rate of conversion. Consequently, the Chamber established that the [Club] failed to pay the amount of EUR 40,476 to the [Player], i.e. EUR 380,000 due to the [Player] minus EUR 339,525 received by the [Player]”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 9 April 2016, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R47 and R48 of the 2016 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Club requested the CAS Court Office to assign the arbitration to a Sole Arbitrator.
15. On 14 April 2016, the CAS Court Office invited the Club to inform whether it agreed to the appointment of a Sole Arbitrator and that in the absence of an answer it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide.
16. On 26 April 2016, the Player filed its Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of facts and legal arguments. The Player challenged the Appealed Decision, submitting the following requests for relief:
- “1. *to annul the Decision of the FIFA Dispute Resolution Chamber dated 28 January 2016 in thus far as it dismissed the claim of Mr. Nikola Mikic;*
 2. *to order Manisaspor Kulübü Derneği to pay to Mr. Nikola Mikic an amount of [TRY] 265,280.00, plus interest of 5% per annum as from 1 January 2015 until the payment is effectively made,*

or, alternatively to order Manisaspor Kulübü Derneği to pay to Mr. Nikola Mikic an amount of EUR 92,500.00 and [TRY] 9,600, plus interest of 5% per annum as from 1 January 2015 until the payment is effectively made;
 3. *to order Manisaspor Kulübü Derneği to pay to Mr. Nikola Mikic an amount of EUR 64,087.00, plus interest of 5% per annum as from 1 June 2015 until the payment is effectively made;*
 4. *to order Manisaspor Kulübü Derneği to pay to Mr. Nikola Mikic an amount of [TRY] 8,000.00, plus interest of 5% per annum as from 1 June 2015 until the payment is effectively made;*
 5. *to order Manisaspor Kulübü Derneği to bear the costs of these arbitration proceedings as well as the costs of the proceedings before the FIFA Dispute Resolution Chamber; and*

6. *to grant Mr. Nikola Mikic a contribution towards its legal fees and other expenses incurred in connection with these arbitration proceedings as well as the proceedings before the FIFA Dispute Resolution Chamber, the amount of which will be specified at a later stage”.*
17. On 28 April 2016, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
18. On the same date, the CAS Court Office informed the parties that since the Club did not provide the CAS Court Office with its views regarding the appointment of a Sole Arbitrator, pursuant to Article R50 of the CAS Code, it would be for the Division President, or his Deputy, to decide on the number of arbitrators.
19. On the same date and pursuant to Article R55 of the CAS Code, the CAS Court Office invited the Club to submit its answer within twenty days receipt of the invitation letter, which letter was delivered by courier to the Club on 2 May 2016.
20. On 3 May 2016, the CAS Court Office informed the parties that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.
21. On 25 May 2016, the Club requested for an extension of the deadline to file its answer.
22. On 31 May 2016, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands was appointed Sole Arbitrator.
23. On 1 June 2016, the Player objected to the Club’s request for an extension of the deadline to file its Answer.
24. On 14 June 2016, the Club filed its Answer, pursuant to Article R55 of the CAS Code, requesting CAS to decide the following:

“The decision passed in front of the FIFA deciding body be approved by the court”.
25. On 11 July 2016, the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties that the Club’s Answer was untimely filed in accordance with Article R55 of the Code and therefore inadmissible.
26. On 14 July 2016, the Player informed the CAS Court Office that he did not deem it necessary for a hearing to be held.
27. On 15 July 2016, upon request of the Sole Arbitrator and pursuant to Article R57 of the CAS Code, FIFA produced a copy of its file related to the matter.

28. On 8 August 2016, the CAS Court Office, on behalf of the Sole Arbitrator, advised the parties that the Sole Arbitrator deemed a hearing necessary in accordance with Article R57 of the CAS Code.
29. On 10 August 2016, the Club informed the CAS Court Office that it *“would like to request that the Sole Arbitrator decide on the basis of the written statements of the parties involved”*.
30. On 12 August 2016, the Player reiterated his request to decide the matter on the basis of the written submissions only.
31. On 17 August 2016, the CAS Court Office informed the parties that the Sole Arbitrator had considered the parties’ mutual position on their preference to not have a hearing and agreed to decide the appeal on the basis of the parties’ submissions, without a hearing.
32. On 15 September 2016, the Player filed a statement of costs.
33. On 1 and 5 October 2016 respectively, the Player and the Club returned duly signed copies of the Order of Procedure with the CAS Court Office. By signing the Order of Procedure, both parties confirmed that their right to be heard had been respected and confirmed their agreement that the Sole Arbitrator would decide the present matter based on the parties respective written submissions.
34. The Sole Arbitrator confirms that he carefully studied and took into account all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

35. The submissions of the Player, in essence, may be summarised as follows:
 - The Player maintains that the Club failed to comply with its contractual obligations towards him.
 - With regard to the 2013/2014 season, the Player argues that because the Club owed him EUR 92,500 for outstanding salaries and TRY 9,600 for Turkish minimum wages at the end of the 2013/2014 season, in May 2014 a verbal settlement was reached with the Club’s President for the total amount of TRY 265,280, which amount at that time equalled to EUR 90,850.
 - With regard to the 2014/2015 season, the Player asserts that the Club owed him EUR 64,087 for salaries and TRY 8,000 for Turkish minimum wages.
 - The Player maintains that the Club never paid him a cash amount of EUR 96,809 and, as such, argues that the payment confirmation no. 00993 dated 13 March 2015 in the amount of EUR 96,809 filed by the Club during the FIFA proceedings is falsified. The Player refers to an expert opinion of Mr Jozef Berec, graphologist,

who opines that the signature on the mentioned payment confirmation is not the Player's authentic signature.

36. The Club failed to timely file its Answer. The Club's Answer was therefore declared inadmissible.

V. JURISDICTION

37. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2015 Edition), as it determines that “[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code. The jurisdiction of CAS is not contested by the Club and further confirmed by the Order of Procedure duly signed by the parties.
38. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

39. The appeal was filed within the deadline of 21 days set by Article 67(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
40. It follows that the appeal is admissible.

VII. APPLICABLE LAW

41. Article R58 of the CAS Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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”.

42. The Sole Arbitrator notes that article 66(2) of the FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

43. The Player argues that *“the Panel shall primarily apply the FIFA RSTP and, subsidiarily, Swiss law”.*
44. The Club did not file any position regarding the applicable law.

45. The Sole Arbitrator finds that the various regulations of FIFA are to be applied primarily and subsidiary Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

46. The main issues to be resolved by the Sole Arbitrator are:

- i. What amounts was the Player entitled to receive from the Club?
- ii. Did the Club comply with its financial obligations towards the Player?

i. What amounts was the Player entitled to receive from the Club?

47. The Sole Arbitrator notes that it is undisputed between the parties that the remuneration for the 2013/2014 sporting season, pursuant to clause 3.1 of the Employment Contract, amounts to EUR 180,000, divided in three transfer advance payments of EUR 20,000 each and ten monthly instalments of EUR 12,000 each, due between 5 September 2013 and 5 June 2014.
48. It is undisputed by the Player that the Club paid him a total amount of EUR 87,500 between 23 July 2013 and 3 February 2014. According to the Player, the remaining debt of the Club in respect of the 2013/2014 sporting season was therefore EUR 92,500 plus TRY 9,600. Pursuant to the Settlement Agreement concluded on 3 May 2014, the Club was obliged to pay TRY 265,280 to the Player by 31 December 2014.
49. Since this amount allegedly remained unpaid, the Player claims to be entitled to TRY 265,280 in respect of the 2013/2014 sporting season.
50. In continuation, the Sole Arbitrator observes that the remuneration for the 2014/2015 sporting season, pursuant to clause 3.2 of the Employment Contract, amounts to EUR 200,000, divided in three transfer advance payments of EUR 20,000 each and ten monthly instalments of EUR 14,000 each, due between 5 September 2014 and 5 June 2015.
51. However, the parties have different views on whether the Player was also entitled to a monthly minimum wage in the amount of TRY 800, and whether the Player was entitled to receive match bonuses. Whereas the Club submits that the Player is only entitled to transfer advance payments and salaries, the Player maintains to be also entitled to TRY 8,000 for the Turkish minimum wage in respect of the 2014/2015 sporting season.
52. The Sole Arbitrator notes that the Player does not claim any outstanding match bonuses in these proceedings.
53. With regard to the alleged entitlement to the monthly minimum wage in the amount of TRY 800, the Sole Arbitrator observes that the Club in its defence in the proceedings before

the FIFA DRC submitted that the Employment Contract entitled the Player to EUR 380,000 only, implicitly denying the obligation to pay the Player also a monthly amount of TRY 800 as minimum wage. The Player on the other hand, submits that the Club “*did not contest that the minimum wage in Turkey was [TRY] 800 monthly*” and maintains that the Club “*used the difference between “Net Monthly Wage” and “Other payments” in order to optimize its tax duties in Turkey*”.

54. The Sole Arbitrator observes that the sentence in clause 3 of the Employment Contract, reading “*Net Monthly Wage (cannot be less than the minimum wage) MINIMUM WAGE*”, does not mention any amount or currency which should be added to the specific amounts related to the transfer advance payments and salaries mentioned in the same clause.
55. In the absence of any evidence being presented by the Player as to why the Club would be held to pay a minimum wage in addition to the remuneration specified in the Employment Contract, the Sole Arbitrator finds that the Player is not entitled to an additional amount of TRY 8,000 as Turkish minimum wage with respect to the 2014/2015 sporting season.
56. Consequently, the Sole Arbitrator finds that the Player was entitled to receive from the Club TRY 265,280 with respect to the 2013/2014 sporting season and EUR 200,000 with respect to the 2014/2015 sporting season. It is not disputed by the Player that the Club paid him a total amount of EUR 135,913 with respect to the 2014/2015 sporting season.

ii. Did the Club comply with its financial obligations towards the Player?

57. Turning his attention to the parties’ conflicting positions regarding the amounts paid by the Club to the Player, the Sole Arbitrator carefully studied the documentary evidence submitted by the Club in the proceedings before the FIFA DRC and by the Player in the present arbitration.
58. The Sole Arbitrator observes that the amounts received by the Player align with the swift messages and vouchers submitted by the Player and with the “overview of payments” with bank statements and vouchers provided by the Club in the proceedings before FIFA. It is undisputed by the Player that he received a first payment in cash in the amount of EUR 20,000 on 23 July 2013. The Player however disputes having received an alleged cash payment from the Club in the amount of EUR 96,809 on 13 March 2015.
59. It is further not disputed by the Player that he received payments totalling TRY 83,000 and EUR 2,500 from the Club, the Player however maintains that these amounts were not paid as salary but rather as match premiums, as a consequence of which these amounts should not be taken into account in calculating whether the Club fully complied with its financial obligations vis-à-vis the Player.

a) ***Were the amounts of TRY 83,000 and EUR 2,500 paid as salary or match bonus premiums?***

60. The Player maintains that the FIFA DRC wrongfully deducted the payments of TRY 83,000 and EUR 2,500 from the total outstanding amount to be paid by the Club as these payments were made as match premiums and were not part of his salary.

61. The Club pointed out in the proceedings before the FIFA DRC that the Player was not entitled to receive match bonuses. The FIFA DRC considered that the Employment Contract *“does not include an entitlement of the [Player] to match bonuses in the event of the Club playing in the first league, which in fact is the league at the basis of the present matter”*.

62. However, the Sole Arbitrator observes that clause 3 of the Employment Contract contains a special provision, which reads as follows:

“4. The amount to be paid per match shall be 100% if the player plays in the first eleven, 75% if he joins the game when it is in progress and 50% if he is in the first 18 but does not participate in the game. Such match payments shall be paid at the end of each month for the matches participated during the said month. Match payments are made only for league matches”.

63. Furthermore, the Player submitted the following witness statements in which the entitlement to match bonuses is confirmed:

➤ Mr Nebojsa Lukic, the Player’s Agent: *“In July 2013, I was present at the meeting on which Nikola Mikic signed the contract with the [Club]. [...] He was explained that he would certainly receive the match premiums in the Turkish liras during the seasons 2013/2014 and 2014/2015 in the following amounts: 1) TL 4.000 for victories away 2) TL 3.000 for victories at home, and 3) TL 1.000 for draws”*.

➤ Mr Slavko Perovic, professional football player: *“I played for the [Club] during the season 2013/2014. I was receiving the salaries in euros, while the match premiums were paid in Turkish Liras. As to the match premiums, we were receiving TL 3.000 for victories at home, TL 4.000 for victories away and TL 1.000 for draws”*.

➤ Mr Ferit Büyükbayrak, translator: *“During the seasons 2013/2014 and 2014/2015, I was engaged by the [Club] as a translator. [...] During the season 2013/2014, all the players were receiving TL 3.000 for victories at home, TL 4.000 for victories away and TL 1.000 for draws. I was familiar with their premiums, because I was receiving 30% of those amounts. [...] At the beginning of the season 2014/2015, the new management of the Club was appointed. Nikola Mikic became the captain as well, so he negotiated on behalf of the players about the premiums with the newly appointed president. Thus, Mr. Mikic and the president agreed that the match premiums would be between TL 5.000 and TL 10.000, depending on the importance of the game, only this season the players were not receiving the premiums for draws”*.

➤ Mr Branimir Subasic, professional football player: *“In the season 2014/2015 I played for the [Club]. During that season, the Club was paying me salaries (in US Dollars) and match*

premiums (in Turkish Liras). Mentioned premiums were paid after the victorious matches. In February 2015, after very important victory over the club “Adanaspor”, I received an amount of EUR 2.500 in cash. That was the only premium that I received in euros. I also remember receiving (in two instalments) the premium for victory over “Adana Demirspor” in May 2015”.

- Mr Nikolay Dimitrov, professional football player: *“I played for the [Club] in the season 2014/2015. [...] The premiums were being paid after the victorious matches, sometimes in cash and sometimes via bank account. [...] The salaries were being paid in euros, while premiums were remunerated in Turkish Liras, except the one related to victory over “Adanaspor”, which was paid in euros in February 2015. The Club paid this premium in the amount of EUR 2.500 right after the match”.*
- Gökhan Sazdagi, professional football player: *“I played for the [Club] during the season 2014/2015. In that season, when the team won the matches, the players who were either playing or sitting on the bench were receiving the premiums, regardless the salaries. These premiums were paid in cash or via bank account in the amounts between TL 5.000 and TL 10.000”.*

64. The Player submitted a detailed lists of matches with the match results and corroborating payment confirmations related to the 2013/2014 and 2014/2015 sporting seasons, arguing that he received a total amount of TRY 35,000 for match premiums during the 2013/2014 sporting season, and TRY 48,000 and EUR 2,500 for match premiums during the 2014/2015 sporting season.
65. In light of the Settlement Agreement concluded between the Player and the Club on 3 May 2014, the Sole Arbitrator finds that it is not relevant whether the amount of TRY 35,000 was paid to the Player as match premiums or as salary as the Settlement Agreement clearly sets out the remaining amount to be paid to the Player by the Club. The Sole Arbitrator has no reason to doubt the existence of the Settlement Agreement, and in any event, the existence of the Settlement Agreement is favourable to the Club as opposed to the claim based on clause 3.1 of the Employment Contract.
66. More specifically, in respect of the 2014/2015 sporting season, the Player submitted evidence of match results and alleged match premiums received:
- The Club v. Kayserispor (2-1): TRY 5,000;
 - Gaziantepspor v. The Club (0-2): TRY 10,000 (allegedly paid in two instalments);
 - The Club v. Bucaspor (5-0): TRY 5,000;
 - The Club v. Denizlispor (2-1): TRY 5,000;
 - Tuzlaspor v. The Club (1-3): TRY 3,000;
 - The Club v. Adanaspor (2-1): EUR 2,500;
 - The Club v. Elazigspor (1-0): TRY 5,000;
 - Orduspor v. The Club (1-6): TRY 5,000;
 - The Club v. Adana Demirspor (2-0): TRY 10,000 (allegedly paid in two instalments).
67. The Sole Arbitrator observes that the Player submits with regard to the 2014/2015 sporting season that there was one away win in a league match for which he received TRY 10,000

from the Club and one away win in a league match for which he received TRY 5,000, four home wins in league matches for which he received TRY 5,000 each, one home win in a league match for which he received TRY 10,000 (paid in 2 instalments of TRY 5,000 on 5 and 8 May 2015) and one home win in a league match for which he received EUR 2,500. According to the Player, there was also one away win in a cup match for which he received TRY 3,000 from the Club.

68. The Sole Arbitrator observes that the Club did not refute the facts and circumstances as described and evidenced by the Player in these proceedings, nor did it file any other documents or witness statements to refute the assertions made by the Player, nor did it take the opportunity to cross-examine Mr Lukic, Mr Perovic, Mr Büyükbayrak, Mr Bubasic, Mr Dimitrov and Mr Sazdagi, and to call its President, Mr Mergen, as a (party) witness to the hearing. On the contrary, the Club waived its right to request a hearing and as such only simply denied that the Player was entitled to receive match bonuses.
69. The Sole Arbitrator notes that the Employment Contract contains a special provision regarding match bonuses, which reads that “[m]atch payments are made only for league matches”.
70. On the basis of this provision and because the match played against Tuzlaspor was a cup match, the Sole Arbitrator is not convinced that the payment of TRY 3,000 made on 17 February 2015 was a bonus payment.
71. Furthermore, the Sole Arbitrator is also not convinced that the payment of TRY 5,000 dated 8 May 2015 in cash is related to a match bonus as already TRY 5,000 was paid on 5 May 2015 and the usual amount for a home win was TRY 5,000.
72. The Sole Arbitrator, however, finds that the Player convincingly established that the other payments amounting to TRY 40,000 and EUR 2,500 in total were transferred to the Player as match bonuses and not as salary. These payments can therefore not be taken into account in calculating the total amount of outstanding payables of the Club towards the Player. The Sole Arbitrator finds it important that the Player’s position in this respect is corroborated by six different witness statements that were not materially contested by the Club.
73. Consequently, the Sole Arbitrator is convinced that the payments totalling to TRY 40,000 and EUR 2,500 were made as match bonus payments and are not related to any outstanding transfer advance payments and/or salaries pursuant to clause 3.2 of the Employment Contract. An amount of TRY 8,000 (allegedly regarding the matches against Adana Demirspor and Tuzlaspor) was, however, paid to the Player as transfer advance payment and/or salary.

b) *Did the Club pay an amount of EUR 96,809 to the Player on 13 March 2015?*

74. Turning his attention to the disputed cash payment in the amount of EUR 96,809 of 13 March 2015, the Sole Arbitrator finds that the burden of proof lies with the Club in order to convince the Sole Arbitrator that this payment was indeed made to the Player.

75. The Sole Arbitrator observes that the Club, with reference to the payment voucher no. 00993 dated 13 March 2015, argues that its President, Mr Abdullah Mergen, made a cash payment in the amount of EUR 96,809 to the Player, which voucher was allegedly signed by the Player. The Player denies that he received this amount and argues that his signature is forged.
76. The Sole Arbitrator observes that this signed voucher is the only evidence relied upon by the Club in order to prove that the amount of EUR 96,809 was paid to the Player on 13 March 2015. Most notably, the Sole Arbitrator notes that no evidence of Mr Mergen has been submitted by the Club in order to corroborate its position that he made this payment to the Player in cash.
77. In respect of the signed voucher, the Player submitted an expert opinion of Mr Jozef Berec, *“permanent court expert witness in the field of graphoscopy Belgrade”*, which reads, *inter alia*, as follows – in the undisputed English translation of his report in the Serbian language:
- “The signatures in the name of Nikola Mikić, found on the enclosed copies of the RECEIPT no. 00993 dated March 13th 2015, for the amount of EUR 96,809 and the RECEIPT no. 01024 dated May 17th 2015, for the amount of 10,000.00 (currency not specified), are not authentic signatures of Nikola Mikić [...]”*
78. The Sole Arbitrator has no reason to doubt about the analysis conducted by Mr Berec. The expert report, although based only on copies of the Player’s alleged signature, is detailed and several different aspects of the signatures investigated have been analysed in detail.
79. The conclusions of Mr Berec have also not been disputed by the Club and no counter-evidence has been submitted as to the authenticity of the signature on the voucher.
80. Furthermore, the Player corroborates his position that he did not received this payment by a witness statement of Mr Ferit Büyükbayrak, who stated that he was engaged by the Club as a translator from 2013 until 2015. His witness statement, which is not disputed by the Club, reads as follows – as relevant:
- “I was in charge of footballers from Serbia, because I speak Turkish and Serbian. Since the club’s presidents and coaches who were leading the club those two seasons do not speak English and the players from Serbia do not speak Turkish, I was present almost every time they had a conversation; [...]”*
- In May 2015, the president gave TL 10.000 in cash to Mr. Mikic in my presence, only this time he did not ask Mr. Mikic to sign a confirmation. [...]*
- Once again, I hereby confirm that Mr. Mikic was never given an amount exceeding EUR 20.000 in my presence. [...] According to my best knowledge, all the agreements between the club’s president and Nikola Mikic were made in my presence”*.
81. As with the issue of the match bonuses, the Sole Arbitrator observes that the Club did not refute the facts and circumstances as described and evidenced by the Player in these proceedings, nor did it file any other documents or witness statements to refute the assertions

made by the Player, nor did it take the opportunity to cross-examine Mr Büyükbayrak, and to call its President, Mr Mergen, as a (party-) witness to the hearing. On the contrary, the Club waived its right to request a hearing.

82. The Sole Arbitrator has no reason to doubt about the veracity of Mr Büyükbayrak's witness statement.
83. The Sole Arbitrator finds that the Player did everything that could reasonably have been expected from him to refute the evidence presented by the Club and finds the evidence presented by the Player convincing. In the absence of any other evidence being advanced by the Club to prove that it made this unusual high cash payment of EUR 96,809 to the Player on 13 March 2015, the Sole Arbitrator finds that the Club failed to establish that such payment was made.
84. Consequently, the Sole Arbitrator finds that it has not been established that the Club paid the Player the amount of EUR 96,809 on 13 March 2015.

c) Conclusion

85. Summarising all the above, the Sole Arbitrator concludes that the Club was obliged to pay the Player TRY 265,280 with respect to the 2013/2014 sporting season following the Settlement Agreement concluded on 3 May 2014.
86. In respect of the 2014/2015 sporting season, the Club was obliged to pay the Player a total amount of remuneration in the amount of EUR 200,000. The Player's additional claim for TRY 8,000 as minimum salary is dismissed.
87. The Player does not contest having received EUR 135,913 from the Club as salary regarding the 2014/2015 season.
88. In respect of the remaining amount of EUR 64,087 (EUR 200,000 – EUR 135,913), the Sole Arbitrator finds that the Player failed to establish that the payment of TRY 3,000 in respect of the match against Tuzlaspor and TRY 5,000 in respect of the match against Adana Demirspor were paid to the Player as match premiums and shall therefore be considered as salary.
89. The exchange rate applied in the FIFA proceedings by the Club in respect of payments made in TRY has not been contested by the Player, the Sole Arbitrator therefore finds that TRY 8,000 equals an amount of EUR 2,740.
90. The outstanding remuneration in respect of the 2014/2015 sporting season is therefore EUR 61,347 (EUR 64,087 – EUR 2,740).
91. In conclusion, the Sole Arbitrator finds that the Club did not fully comply with its financial obligations towards the Player and, in accordance with the general legal principle of *pacta*

sunt servanda, the Club is liable for the payment of the outstanding remuneration to the Player in the amount of TRY 265,280 and EUR 61,347.

92. The Sole Arbitrator observes that Article 104(1) of the Swiss Code of Obligations (the “SCO”) determines as follows:

“A debtor in default of payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract”.

93. In view of this provision, the Sole Arbitrator finds that the Club shall pay default interest at a rate of 5% *per annum* to the Player over the amount of TRY 265,280 as from 1 January 2015 and over the amount of EUR 61,347 as from 1 June 2015 until the date of effective payment.
94. Any other and further prayers or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 April 2016 by Mr Nikola Mikic against the decision issued on 28 January 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
 2. Manisaspor Kulübü Derneği is ordered to pay to Mr Nikola Mikic the amount of TRY 265,280 (two hundred sixty five thousand and two hundred eighty Turkish Lira), with interest at a rate of 5% (five per cent) *p.a.* as from 1 January 2015 until the effective date of payment.
 3. Manisaspor Kulübü Derneği is ordered to pay to Mr Nikola Mikic the amount of EUR 61,347 (sixty one thousand and three hundred forty seven Euro), with interest at a rate of 5% (five per cent) *p.a.* as from 1 June 2015 until the effective date of payment.
- (...)
6. Any other and further motions or prayers for relief are dismissed.