



**Arbitration CAS 2016/A/4656 Nikola Kalinić v. FC Dnipro, award of 25 November 2016**

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole Arbitrator

*Football*

*Player's entitlement to receive payment related to bonuses*

*Scope of review of the CAS*

*Applicable law*

*Admissibility of new evidence*

*Evidence establishing the player's right to bonuses*

*Determination of the default interest on the principal amount*

- 1. In reviewing *de novo*, a CAS panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the appealed decision.**
- 2. Although it is not to be considered as a choice-of-law clause, article 25 paragraph 6 of the FIFA Regulations on the Status and Transfer of Players (RSTP) is a reminder to the relevant decision-making body applying the RSTP that in making its decision, it must not apply these provisions in a vacuum, but must account for applicable contractual arrangements, collective agreements and national law.**
- 3. A panel has a wide inherent discretion to exclude or admit certain evidence under article R57 of the Code based on the panel's own assessment of the case at hand and the idea that this power can be executed in a wide range of circumstances. In this respect, the evidence added by a party which is completely in line with the arguments and evidence already presented by that party in the proceedings before FIFA, after having received the grounds of the appealed decision, is admissible especially where the other party ignored the notifications made and ignored the proceedings before FIFA.**
- 4. Match reports can demonstrate a player's appearances during the matches and the goals scored by that player. Therefore, based on the match reports and pursuant to the contract of employment, the club can be found liable to pay to the player the contractual bonuses for scored goals and appearances.**
- 5. With respect to the default interest accrued on the principal amount, where a contract does not contain a specific date of performance, an obligation must be executed, or its execution can be required, immediately (Article 75 of the Swiss Code of Obligations, CO). In such a case, the debtor will be considered in default when there is a subsequent notice by a creditor demanding performance (Article 102(1) CO). If the default concerns a payment of money, the debtor must pay interest on arrears at the rate of 5% per annum if not a higher rate is stipulated in the contract (Article 104 CO).**

## **I. THE PARTIES**

1. Nikola Kalinić (hereinafter referred to as the Player” or the “Appellant”) is a professional football player of Croatian nationality.
2. FC Dnipro (hereinafter referred to as the “Club” or the “Respondent”) is a football club, having its seat in Dnepropetrovsk, Ukraine. The Club is affiliated to the Football Federation of Ukraine (hereinafter referred to as “FFU”), which is a member of the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”).
3. The Appellant and the Respondent will be jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

- 1<sup>1</sup>. This appeal was filed by the Player against the decision of the FIFA Dispute Resolution Chamber (hereinafter referred to as the “FIFA DRC”) passed on 28 April 2016 (hereinafter referred to as the “Decision”). The grounds of the Decision were notified to the Appellant and to the Respondent via the FFU on 19 May 2016.
2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The facts as summarized below are not in dispute between the Parties. While the Sole Arbitrator took duly note of all the evidence and legal arguments raised, in this award the Sole Arbitrator only refers to the submissions and evidence considered necessary to explain his reasoning.
3. The present contractual dispute relates to the right of the Appellant to receive payment of an amount of EUR 170,000 corresponding to bonuses for scored goals, appearances in starting line-ups and appearances of minimum 15 minutes in matches of the Club.
4. On 1 January 2015, FC Dnipro and the Player concluded an employment contract (hereinafter referred to as the “Contract”) under which the Player would render his services to the Club as a professional player for the period starting on 1 January 2015 and ending on 31 December 2019. In consideration of the Player's services, the Respondent agreed to pay to the Appellant a monthly remuneration and various bonuses pursuant to Appendix No. 1 to the Contract (hereinafter also referred to as the “Appendix”), including for scored goals and assists, appearances in line-ups and appearances for a minimum of 15 minutes in matches.
5. In particular, clause 3.1 of the Contract provides for the payment by the Club of a monthly salary to the Player in the amount specified in Cl.1 of the Appendix. Further, pursuant to the Contract, the Respondent assumed liabilities to pay bonuses with reference to clauses Cl.2 and Cl.4 of the Appendix (clauses 3.2 and 3.3. of the Contract).

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<sup>1</sup> [NB: Numbering as in original award].

6. Since 14 August 2015, the Player was transferred on a definitive basis to the Italian club Fiorentina.
7. On 1 February 2016, the Player sent a letter to the Respondent inviting him to pay overdue payments including bonuses for April and May 2015 in the amount of EUR 170,000.

### III. THE FIFA PROCEEDINGS

1. Having explained that despite the above invitation sent on 1 February 2016, which granted a ten days grace period, the Respondent failed to make the relevant payment, on 25 February 2016, the Player lodged a claim before FIFA against the Respondent requesting the payment of overdue parts of monthly salaries for April to August 2015 in the amount of EUR 340,000 and bonuses for April and May 2015 amounting to EUR 170,000 plus 5 % interest as of the due dates.
2. Despite of having been asked to do so, the Respondent did not reply to the Appellant's claim within the context of the FIFA proceedings.
3. In its pleadings before the FIFA DRC, the Player maintained that the Respondent had overdue payments towards him in the total amount of EUR 510,000 corresponding to part of his salaries as of April until August 2015, as well as bonuses for scored goals and assists.
4. On 28 April 2016, the FIFA DRC issued its Decision, upholding it partially. The operative part of the Decision reads as follows:

*"1. The claim of the Claimant, Nikola Kalinić, is partially accepted.*

*2. The Respondent, FC Dnipro Dnipropetrovsk, has to pay to the Claimant within 30 days as from the date of notification of the present decision, overdue payables in the amount of EUR 340,000, plus interest at the rate of 5% p.a. until the date of effective payment as follows:*

- a. 5% p.a. on the amount of EUR 70,000 as from 1 May 2015;*
- b. 5% p.a. on the amount of EUR 70,000 as from 1 June 2015;*
- c. 5% p.a. on the amount of EUR 70,000 as from 1 July 2015;*
- d. 5% p.a. on the amount of EUR 80,000 as from 1 August 2015;*
- e. 5% p.a. on the amount of EUR 50,000 as from 1 September 2015;*

*3. In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

*4. Any further request filed by the Claimant is rejected.*

*5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC of every payment received.*

*6. The Respondent is ordered to pay a fine in the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision to the following bank account ...”.*

5. In order to accept the claim for overdue payables pertaining to salaries in the amount of EUR 340,000 and having noted that the Respondent failed to present its response to the claim, thus renouncing its right to defense, with reference to Article 9 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2015), the FIFA DRC took its decision on the basis of the documents on the file, in other words, upon the statements and documents presented by the Player. The Decision, concerning the overdue salaries, is not the subject of the present appeal and need not be further discussed.
6. The claim for overdue payables for bonuses for scored goals and assists in the amount of EUR 170,000 was rejected by the FIFA DRC on the account of lack of supporting evidence. In particular, the FIFA DRC made the following considerations:

*“12. Furthermore, taking into account the documentation presented by the Claimant in support of his petition, the DRC concluded that the Claimant had not fully substantiated his claim pertaining to overdue payables with pertinent documentary evidence in accordance with art. 12 par.3 of the Procedural Rules. That is, there is no supporting documentation relating to the Claimant's claim pertaining to the alleged bonuses for goals scored and assists. Consequently, the Chamber decided to reject the Claimant's claim relating to said bonuses”.*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

1. In accordance with Articles R47, R48 and R51 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), on 9 June 2016, the Appellant filed his statement of appeal, serving as appeal brief, with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) challenging in part the Decision.
2. Pursuant to Article R50 of the Code, the Appellant applied that the appeal should be submitted to a sole arbitrator.
3. On 17 June 2016, the CAS Court Office notified the statement of appeal to the Respondent by courier. The Respondent was invited to submit an answer pursuant to Article R55 of the Code within 20 days following receipt of the letter, as well as to provide within 5 days its position whether it agreed to the appointment of a sole arbitrator. Such letter was received by the Respondent by DHL on 21 June 2016.
4. The Respondent failed to provide its position on the Appellant's request that the present matter be submitted to a sole arbitrator within the prescribed time limit and, pursuant to Article R50 of the Code, on 4 July 2016, the President of the CAS Appeals Arbitration Division decided to submit the present matter to a sole arbitrator to be appointed in accordance with Article R54 of the Code.

5. Furthermore, the Respondent failed to submit an answer or any other communication in this regard in accordance with Article R55 of the Code.
6. By a letter of 13 July 2016, the CAS Court Office, with reference to Article R56 of the Code, advised the Parties that unless they agree or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. With reference to Article R57 of the Code, the Parties were invited to state by 20 July 2016 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
7. By a letter dated 20 July 2016, the Appellant expressed his preference that the Sole Arbitrator decides the matter without holding a hearing. Within the prescribed deadline, the Respondent did not indicate whether it preferred a hearing to be held or for the Sole Arbitrator to render an award on the basis of the written submissions.
8. By a letter of 5 August 2016 of the CAS Court Office, the Parties were informed that, pursuant to Article R54 of the Code, the President of the CAS Appeals Arbitration Division had appointed Mr. Ivaylo Dermendjiev, attorney-at-law in Sofia, Bulgaria, as Sole Arbitrator in this procedure.
9. By a letter of 18 October 2016, the CAS Court Office informed the Parties of the Sole Arbitrator's decision not to hold a hearing and to render an award on the basis of the written submissions, pursuant to Article R57 of the Code.
10. On 25 October 2016, the Parties, including the Respondent, signed the Order of Procedure. By signing of the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator may decide this matter based on the Parties' written submissions and that their right to be heard had been respected.

## **V. POSITION OF THE PARTIES**

1. Regarding the facts, in his submissions, the Appellant asserts as follows:
  - The Appellant, as a football player, and the Respondent, as a football club, concluded the Contract dated 1 January 2015;
  - Pursuant to Appendix No.1 to the Contract, the Respondent undertook the obligation to pay to the Appellant EUR 10,000 for every scored goal or assist. Further, the Respondent undertook the obligation to pay to the Appellant EUR 10,000 for every appearance in starting line-ups and EUR 5,000 for every appearance of a minimum of 15 minutes;
  - In April and May 2015, the Player took part in 7 (seven) matches of the Club in the Ukrainian Premier League. In 3 (three) of these matches, the Player started the game in

- the line-up. In the other 4 (four) matches, the Player entered onto the field as a substitute, at the 78th, 65th, 71th and 68th minute of the respective matches. For the 7 (seven) played games in the Ukrainian Premier League in April and May 2015, the Player scored 3 (three) goals. Thus, the Player became entitled to be paid the amount of EUR 80,000;
- During the same period (April-May 2015), the Player took part in 3 (three) matches of the Club's team for the Ukrainian Football Cup. In 2 (two) of these matches, the Player started the game in the line-up. In 1 (one) of the matches, the Player appeared at the 64th minute as a substitute. For the 3 (three) played games in the tournament for the Ukrainian Football Cup in April and May 2015, the Player scored 1 (one) goal. Thus, the Player became entitled to be paid the amount of EUR 35,000;
  - Finally, within April-May 2015, the Player took part in 5 (five) matches for the Club in the UEFA Europa League. In 3 (three) of these matches, the Player started the game in the line-up. In 2 (two) of the matches, the Player entered the game at the 73rd and 75th minute. In the UEFA Europa League campaign of the Club in April-May 2015, the Player scored 1 (one) goal. Thus, the Player became entitled to be paid the amount of EUR 50,000;
  - Apart from the claim for payment of overdue salaries in the amount of EUR 340,000, the Appellant filed a claim before the FIFA asking for payment of EUR 170,000 related to overdue bonuses for scored goals and assists;
  - The FIFA DRC passed the Decision in regard to the Appellant's claim on 28 April 2016 accepting the claim for overdue salaries and denying the claim for bonuses;
  - The Appellant emphasizes also the fact that the Respondent has not yet paid the Appellant the amount for bonuses for March 2015, as well as the fact that the Appellant lost several hundred thousand Euros through conversion of wages from Ukrainian hryvnia (Ukrainian official currency) to Euros.
2. As to the merits of the dispute, the Appellant asserts that the Decision lacks legal basis, in particular with respect to the finding that the Appellant had not fully substantiated his claim with supporting documentation as regard the claim for bonuses.
  3. Together with his statement of appeal serving as appeal brief, the Appellant adduced as evidence Ukrainian Premier League, Ukrainian Cup and UEFA Europa League match reports of the Respondent for the period April-May 2015.
  4. The Respondent has not expressed any position on the statement of appeal regarding the facts, evidence and reasoning provided by the Appellant.
  5. In the statement of appeal, the Appellant requested the following relief, asking the CAS:  
*"I. to issue a new decision and along with the amount of EUR 340,000 (three hundred forty thousand euro as part of Appellant's salaries, to condemn the Respondent to pay in favour of the Appellant the amount of EUR 170,000 (one hundred seventy thousand euro) for bonuses for scored goals, assists and appearances, which matured as follows:*

a. EUR 70,000 (seventy thousand euro) as from 01 May 2015;

b. EUR 100,000 (one hundred thousand euro) as from 01 June 2015;

II. to condemn the Respondent to the payment in favour of the Appellant of default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of payment.

III. to condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred and procedural costs before the CAS.

alternatively, if the honourable chamber due to any reason considers it is impossible to issue a new decision in the subject case:

IV. to refer the case back to the previous instance”.

## VI. JURISDICTION OF THE CAS

1. 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 if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*

2. The jurisdiction of the CAS, which is not disputed by either Party and which has been confirmed by the Parties by signing the Order of Procedure, derives from Article 58 of the FIFA Statutes (edition 2016, in force as of 27 April 2016).

3. The Parties also have conferred jurisdiction to the CAS by the clear reference to it contained in Clause 5.2 of the Contract.

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

## VII. ADMISSIBILITY

1. 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”.*

2. The grounds of the Decision were notified on 19 May 2016. The statement of appeal was filed on 9 June 2016 and, thus, within the deadline of twenty-one days set in Article R49 of the Code and in Article 58.1 of the FIFA Statutes referred to in the Decision itself.

3. Accordingly, the appeal filed by the Appellant is admissible.

4. For the sake of completeness, the Sole Arbitrator notes the following. In his statement of appeal serving as appeal brief, the Appellant emphasizes the fact that the Respondent has not yet paid the amount for bonuses for March 2015, as well as the fact that the Appellant lost several hundred thousand Euros through conversion of wages from Ukrainian hryvnia to Euros. However, these allegations are not associated with any of the Appellant's prayers for relief. The Appellant seeks an award with regard to bonuses for April and May 2015 only. Therefore, the Sole Arbitrator shall not decide on the admissibility of the above considerations from the Appellant. Furthermore, such claim has not been previously reviewed within FIFA and for such claim, the internal remedies have not been exhausted. Pursuant to CAS jurisprudence, in reviewing *de novo*, the Sole Arbitrator cannot go beyond the scope of the previous litigation and is limited to the issues arising from the Decision (CAS 2007/A/1396 & 1402, CAS 2012/A/2875).

### VIII. APPLICABLE LAW

1. The law applicable in the present arbitration is identified by the Sole Arbitrator in accordance with Article R58 of the Code.
2. 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
3. In the present case, the "*applicable regulations*" for the purposes of Article R58 of the Code are, indisputably, the FIFA regulations, because the appeal is directed against a decision issued by FIFA DRC which was passed applying FIFA's rules and regulations, and in particular to the Regulations on the Status and Transfers of Players (hereinafter referred to as the "FIFA RSTP").
4. Furthermore, the Sole Arbitrator notes that clause 4.2 of the Contract provides that the latter shall be "*regulated by the norms of the labour laws valid on the territory of Ukraine with additions and supplements*".
5. The Sole Arbitrator notes that Article 57.2 of the FIFA Statutes reads as follows:  
*"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"*.
6. The Sole Arbitrator further notes that according to article 25 paragraph 6 of the RSTP, "*The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decision, apply these regulations whilst taking into account all relevant arrangements, laws and/ or collective bargaining agreements that exist at national level, as well as the specificity of sport*".

7. The Sole Arbitrator recognises that, although article 25 paragraph 6 of the RSTP is not to be considered as a choice-of-law clause, the provision is a reminder to the relevant decision-making body applying the RSTP that in making its decision under the RSTP, it must not apply these in a vacuum, but must account for applicable contractual arrangements, collective agreements and national law (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, p. 552).
8. Having reviewed clause 4.2 of the Contract, the Sole Arbitrator finds there are no sufficiently clear indications that an agreement has been concluded between the Parties concerning the application of Ukrainian national law which can provide a basis for deviating from the above-mentioned practice of applying the FIFA Statutes and the Code.
9. Based on the foregoing, the Sole Arbitrator finds that the Parties have agreed to the application of the various regulations of FIFA, in particular the RSTP, and, subsidiarily, to the application of Swiss law. The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the regulations of FIFA. However, to the extent necessary, in respect of specific arguments put forward by the Appellant on the basis of Ukrainian law, and if the Sole Arbitrator deems himself sufficiently informed, the Sole Arbitrator will consider the direct applicability (or non-applicability) of such provisions to the present dispute in greater detail below.
10. With respect to the RSTP, the Sole Arbitrator agrees with the FIFA DRC that the 2015 edition.
11. The specific provisions of the RSTP which are relevant in this arbitration are set in the RSTP 2015 and include the following:

Article 12bis (“Overdue payables”):

*“1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.*

*[...]*

*3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s)”.*

## **IX. THE MERITS OF THE APPEAL**

1. The core principle applicable by CAS is the *de novo* principle resulting from Article R57 of the Code. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

2. On the basis of the reliefs requested, the object of these proceedings is the claim submitted by the Player to be paid by the Club an amount corresponding to EUR 170,000. The Appellant bases his claim on Appendix No.1 to the Contract.
3. The main question before the Sole Arbitrator is therefore the identification and assessment of the Parties' agreement. As a starting point, the Sole Arbitrator must identify the relevant contractual provisions devoted to the Player's entitlement to receive payments related to bonuses for scored goals and appearances.
4. Pursuant to the Contract, the Respondent assumed liabilities to pay bonuses with reference to clauses Cl.2 and Cl.4 of the Appendix (clauses 3.2 and 3.3. of the Contract).
5. The Appendix, in the English version of the text, provided *inter alia* for the following:  
“(…)  
*CL.2. The Club undertakes the obligation to pay the appearance fee in line-up (minimum 45 minutes) in the sum equivalent to 10 000 (ten thousand) euro (NETTO after deductions all taxes).*  
*CL.3 The Club undertakes the obligation to pay the appearance fee (minimum 15 minutes) in the sum equivalent to 5 000 (five thousand) euro (NETTO after deductions all taxes).*  
*Cl.4 The Club undertakes to pay bonuses for goal or assist in the sum equivalent to 10 000 (ten thousand) euro (NETTO after deductions all taxes).*  
“(…)”.
6. Although the Contract does not make specific reference to the bonus stated in Cl.3 of the Appendix (clauses 3.2 and 3.3. of the Contract refer only to Cl.2 and Cl.4 of the Appendix), the Sole Arbitrator is not in doubt that by signing the Appendix, the Respondent also expressly undertook to pay the bonuses specified in Cl.3 of the Appendix, i.e. for appearances of a minimum of 15 minutes.
7. Clause 4.4 of the Contract provides the following:  
*“The documentary basis for payment of the salary and bonuses to the Player in accordance with Cl.1 and 2 of the Appendix N° 1 is the Inquiry within the Club”.*
8. It remains to be seen if the conditions for payment of the respective bonuses from the Club to the Player were fulfilled.
9. The Appellant bears the burden of providing evidence of the facts on which his claim to obtain payment of the amounts pertaining to bonuses for scored goals and appearances is based. The Appellant submitted such evidence (match reports) for the first time along with his statement of appeal serving as appeal brief filed with the CAS. The FIFA DRC had not been provided with such evidence.
10. As a starting point, the Sole Arbitrator must therefore decide whether the newly presented evidence is admissible.

11. In this respect, the Sole Arbitrator fully agrees with the opinion of other CAS panels (CAS 2014/A/3486, CAS 2015/A/3923 and others) which are focused on (a) the wide inherent discretion of the panel to exclude or admit certain evidence under this provision of the Code based on the panel's own assessment of the case at hand and (b) the idea that this power can be executed by the panel in a wide range of circumstances to include, *inter alia*, abusive procedural behaviour, or in any other circumstances where the panel might, in its discretion, consider the request to admit new evidence either as unacceptable procedural conduct by a party or to be unfair or inappropriate having in mind the overall circumstances of the case and the rights and interests of all the parties to the proceedings.
12. Based on the above-mentioned view, the Sole Arbitrator finds that the Player did not engage in any abusive or otherwise unacceptable procedural conduct and does not consider it either unfair or inappropriate to admit the new evidence presented by the Player for the first time in the proceedings before CAS.
13. In reaching this conclusion, the Sole Arbitrator took into consideration the fact that the Club did not answer the Player when it was asked to pay the outstanding amounts before the Player submitted his claim before the FIFA DRC, as well as the fact that the Club failed to submit any defence before the FIFA DRC. The Sole Arbitrator understands that the Player would have submitted such evidence in case the Club would have answered to the Player or would have submitted a defence denying the claim based on counter arguments. However, as the Club totally ignored the notifications in respect of the debt and ignored the proceedings before FIFA, the Player decided to add the evidence after having received the grounds of the Decision, as part of his appeal in order to support his position. Such evidence is completely in line with the arguments and evidence already presented by the Player in the proceedings before the FIFA DRC. Finally, the Sole Arbitrator also considers that the Appellant may have considered that match reports, being publicly available, did not have to be provided to the FIFA DRC.
14. The Sole Arbitrator will now make his own assessment as to whether the evidence in the file supports the Appellant's appeal.
15. The match reports of the Ukrainian Premier League football matches demonstrate that:
  - in the match against Vorskla (4 April 2015), the Player entered the game at the 78<sup>th</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix. It is evident from the match report that there had been an additional time of at least 6 minutes and, therefore, the Player stayed on the pitch for more than 15 minutes;
  - in the match against Metalist (11 April 2015), the Player entered the game at the 65<sup>th</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix;
  - in the match against Olimpik (19 April 2015), the Player entered the game at the 71<sup>st</sup> minute, scored a goal, and thus became entitled to EUR 15,000 pursuant to clauses Cl.3 and Cl.4 of the Appendix.
  - in the match against Illychivets (26 April 2015), the Player started the game in the line-up and thus became entitled to EUR 10,000 pursuant to clause Cl.2 of the Appendix.

- in the match against Chornomorets (3 May 2015), the Player started the game in the line-up, scored two goals, and thus became entitled to EUR 30,000 pursuant to clauses Cl.2 and Cl.3 of the Appendix;
  - in the match against Zoria (10 May 2015), the Player entered the game at the 68<sup>th</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix.
  - in the match against Dynamo (17 May 2015), the Player started the game in the line-up and thus became entitled to EUR 10,000 pursuant to clause Cl.2 of the Appendix.
16. The match reports of the Ukrainian Cup football matches demonstrate that:
- in the match against Chornomorets (8 April 2015), the Player started the game in the line-up and thus became entitled to EUR 10,000 pursuant to clause Cl.2 of the Appendix;
  - in the match against Shakhtar (20 May 2015), the Player started the game in the line-up, scored a goal, and thus became entitled to EUR 20,000 pursuant to clauses Cl.2 and Cl.4 of the Appendix;
  - in the match against Shakhtar (29 May 2015), the Player entered the game at the 64<sup>th</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix.
17. The match reports of the UEFA Europa League football matches demonstrate that:
- in the match against Club Brugge (16 April 2015), the Player started the game in the line-up and thus became entitled to EUR 10,000 pursuant to clause Cl.2 of the Appendix;
  - in the match against Club Brugge (23 April 2015), the Player entered the game at the 73<sup>rd</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix;
  - in the match against Napoli (7 May 2015), the Player started the game in the line-up and thus became entitled to EUR 10,000 pursuant to clause Cl.2 of the Appendix;
  - in the match against Napoli (14 May 2015), the Player entered the game at the 75<sup>th</sup> minute and thus became entitled to EUR 5,000 pursuant to clause Cl.3 of the Appendix;
  - in the match against Sevilla (27 May 2015), the Player started the game in the line-up, scored a goal, and thus became entitled to EUR 20,000 pursuant to clauses Cl.2 and Cl.4 of the Appendix.
18. With no evidence to the contrary, the Sole Arbitrator is satisfied that the Player is entitled to: bonuses for matches played in Ukrainian Premier League in the amount of EUR 80,000; bonuses for matches for the Ukrainian Cup tournament in the amount of EUR 35,000; and bonuses for UEFA Europa League football matches in the amount of EUR 50,000. The amount of bonuses due to the Player for scored goals and appearances for the period April-May 2015 totals EUR 165,000 and not EUR 170,000 as claimed by the Appellant.
19. The Respondent has not discharged its burden to prove payment of the said amount and is therefore found to be liable to pay it to the Appellant.

20. Having found that the Respondent is liable to pay to the Appellant the amount of EUR 165,000, the Sole Arbitrator must decide on the Appellant's request for default interest.
21. With respect to the default interest accrued on the principal amount, the Sole Arbitrator observes that when a contract does not contain a specific date of performance, an obligation must be executed, or its execution can be required, immediately (Article 75 of the Swiss Code of Obligations, "CO"). In such a case, the debtor will be considered in default when there is a subsequent notice by a creditor demanding performance (Article 102(1) CO). If the default concerns a payment of money, the debtor must pay interest on arrears at the rate of 5% per annum if not a higher rate is stipulated in the contract (Article 104 CO).
22. Unlike salaries, which are obviously due on a monthly basis, the Contract and the Appendix are silent as to when the bonuses for scored goals and appearances were due. One can only speculate that bonuses for scored goals and appearances were due together with the respective monthly salary. Therefore, a formal notice as defined under Article 102(1) CO and required by Article 12bis (3) of the RSTP must have been sent to the Club. Such a notice with the effect of putting the debtor club in default was sent by the Player to the Club by a letter dated 1 February 2016 granting a deadline of ten days for payment of overdue salaries and bonuses. Under those circumstances, default interest of 5 % per annum must be calculated as from 11 February 2016.
23. Any other requests or prayers for relief submitted by the Appellant to the Sole Arbitrator must be dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Nikola Kalinić on 9 June 2016 against the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 28 April 2016 is partially granted.
2. Point 4 of the operative part of the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 28 April 2016 is set aside and replaced by the following:

FC Dnipro is ordered to pay Nikola Kalinić overdue payables for bonuses in the amount of EUR 165,000 (one hundred and sixty five thousand euros), plus interest at 5% (five percent) *per annum* from 11 February 2016 until the date of final payment.

3. (...).
4. (...).
5. All other prayers for relief are dismissed.