Arbitration CAS 2016/A/4875 Liaoning Football Club v. Erik Cosmin Bicfalvi, award of 15 May 2017

Panel: Mr Lars Hilliger (Denmark), President; Mr Rui Botica Santos (Portugal); Mr Michele Bernasconi (Switzerland)

Football
Termination of the employment contract without just cause by the club
Determination of the law(s) applicable to a labour contract
Nullity of a reciprocal contractual clause setting a disproportionate obligation for one party towards the other
Assessment of the amount of compensation

1. **In the absence of an explicit clause of choice of law applicable to a labour contract and of agreement between the parties in this respect, Article 58 of the Code shall be applied, *i.e. "[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties (…)"*. One of the main purposes of said article is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues. Article R58 of the Code thus states that the rules and regulations of the sports organization that issued the decision subject to the dispute are primarily applicable.**

2. **Parties to a contract of employment are free to stipulate a liquidated damages clause to be referred to in case of termination said contract without any just cause. However, such a clause may be incompatible with the general principles of contractual stability and considered null and void if the reciprocal obligations it sets forth actually disproportionately favour one of the parties and gives it an undue control over the other party.**

3. **In the absence of a valid liquidated damages clause inserted in the relevant contract of employment, the amount of compensation for termination of contract without just cause payable by the relevant party needs to be assessed in application of the other parameters set out in article 17 paragraph 1 of the FIFA Regulations for the Status and Transfer of Players, in the light of the principle of *"positive interest"*, and with due consideration of one's duty to mitigate damages.**

1. THE PARTIES

1.1 Liaoning Football Club (the "Appellant" or the "Club") is a football club from China, currently playing in the Chinese Super League. The Club is affiliated with the Chinese Football Association (the "CFA"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

1.2 Erik Cosmin Bicfalvi (the "Respondent" or the "Player") is a professional football player of Romanian nationality. The Player is currently registered as a professional with the Russian football club FC Tom Tomsk.

2. FACTUAL BACKGROUND

2.1 The following considerations set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 29 July 2016 (the "Decision"), the FIFA file, the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 On 7 July 2015, the Parties signed an employment contract valid as of 1 July 2015 until 31 December 2016 (the "Contract").

2.3 The Contract stated, *inter alia*, as follows:

> *"1.*
>
> *The period of this contract: from 1st July 2015 to 31st December 2016.*
>
> *(…)*
>
> *Article 10*
>
> *1. Salary:*
>
> *During the contractual period, Party B's month salary is 50.000 USD (net), the annual salary of 2015 for Party B reaches a total amount of 300.000 USD (net) which shall be paid to Party B evenly by 6 months in 2015. Signature fee for Party B in 2015 is: 500.000 USD (net) {after sign this contract A need to pay Party B 300.000 USD within 30 days, and pay the left 200.000 USD before 1st October}. Party B's 2016 Season salary is 1.100,000 USD (net), the payment is by month: 91.666 USD/net/month, from 1st Jan. 2016 until 31st December 2016, signature fee for Party B in 2016 is: 500.000 USD (net).*
>
> *2. Each month of the 15th, Party A will pay the last month salary to Party B.*
>
> *3. Bonus: Part A will accord Part B's match nature of competition, results, gaming time, and the game performance to pay Part B's bonus.*

(…)

Article 11: Party B shall be provided with

(…)

7. Club will provide a high class apartment for player and his family in Shenyang, the rent fee about 5.000 RMB/month. If player don't like the apartment, club will pay player 5.000 RMB/month for rent a house. If the house is more than 5.000 RMB, club take charge 5.000 RMB only.

Club will provide a high class Apartment for player and his family in Shengyang, the rent fee about 5.000 RMB/month. If player don't like the apartment, club will pay player 5.000 RMB/month for rent a house. If the house is more than 5.000 RMB, club take charge 5.000 RMB only.

(…)

Article 13: Either party may terminate the contract at any time, if both parties agree to its termination in writing.

(…)

Article 18:

After finishing the 2015 season, according to the investment and target for the next season, if Part A pursue a better rank in the league, then Party A need notice in writing to Party B to continue the contract, and pay Party B's salary and signing fee for the 2016 season according to this contract. If in the season 2016 Party A do not want to increase the investment and not pursue a better rank in the league, the Party A need notice to Party B in writing that no longer execution of the contract before 31st December 2015, then Party B as a free player could transfer to any clubs, this contract automatic invalid, Party A do not need to pay Party B any money or any compensation by any names, and all the clauses about 2016 season no longer valid.

Article 19: During the contractual period, if Party B cancel or terminate the contract by himself for whatever described reason (including Sporting Just Cause) without the permission of Party A, Party B shall pay 2.000.000 USD as the PENALTY. During the contractual period, if any other club wish to sign Party B, the transfer shall strictly comply with all relevant regulations made by FIFA.

(…)

Article 22: If Party A arrears the payment of salary and bonus to Party B for over 90 days or more days, Party B has the right to ask terminate the contract.

(…)

Article 24: This contract comes with the jurisdiction of the Chinese law; any dispute will be resolved by consolation. If it is cannot be resolved both sides, send it to the CFA and FIFA to adjudicate".

2.4 On 30 December 2015, the Club forwarded a Termination Letter (the "Termination Letter") to the Player. The Termination Letter stated as follows:

"Thank a lot for the hard working of Player BICFALVI ERIK COSMIN in the season 2015, your brilliant performance help our club finish the target of 2015. Unfortunately, according to the club financial plan of 2016, club do not want to increase investment and pursue better rank, then according the Artide 18 of the agreement: after finishing the 2015 season, according to the investment and target for the next season, if Party A pursue a better rank in the league, then Party A need notice in writing to Party B to continue the contract, and pay Party B's salary and signing fee for the 2016 season according to this contract. If in the season 2016 Party A do not want to increase the investment and not pursue a better rank in the league, then Party A need notice to Party B in writing that no longer execution of the contract before 31st December 2015, then Party B as a free player could transfer to any clubs, this contract automatic invalid Party A do not need to pay Party B any money or any compensation by any names, and all the clauses about 2016 season no longer valid.

According to this article 18, now club notice to player BICFALVI ERIK COSMIN in writing that in the season 2016 club do not want to increase investment, player BICFALVI ERIK COSMIN can be transfer to (…). Player, all the clauses in the agreement about 2016 season no longer valid".

2.5 On 16 February 2016, a representative of the Player asked the Club for, *inter alia*, documentation of the termination of the Contract and for the confirmation that the Player was a free agent. On 17 February 2016, the Club forwarded two statements to the representative of the Player, stating respectively, *inter alia*, that *"By signing this document, I confirm that my club has not entered into an agreement with a third party (defined as any club other than the two clubs transferring the player or any previous club with which the player has been registered) regarding the above-named player's economic rights"* and *"This is to confirm that the employment contract between LIAO NING FOOTBALL CLUB and the player BICFALVI ERIK COSMIN expired on 2015.12.31".*

2.6 On 26 February 2016, the Player lodged a claim for breach of contract against the Club before the FIFA DRC and requested the total amount of USD 2,670,298.16 plus interest at the rate of 5% *p.a.* as of 30 December 2015, broken down as follows:

a. USD 550,000 *"for 2015, as balance of salary and signature fee"*;

b. USD 1,100,000 as *"salary for 2016"*;

c. USD 500,000 as *"signature fee"* for 2016;

d. USD 550,000 as specificity of sport;

e. less USD 29,701.84, which, according to the Respondent, was the value of his new contract.

2.7 In particular, the Player explained that on 30 December 2015, the Club unilaterally terminated the Contract by means of the Termination Letter. The Player further explained that at the time of termination of the Contract, the Club had only paid him USD 250,000 out of USD 800,000, which was the total amount due. The Player further stressed that Article 18 of the Contract is a unilateral option for the Club to terminate the Contract and, thus, is not valid. As a consequence, it is evident that the Club terminated the Contract without just cause, and therefore the Player is entitled to receive compensation for breach of contract on top of his outstanding salaries. Finally, the Player informed the FIFA DRC that he had concluded a new employment contract with the Romanian club Dinamo Bucharest, valid as of 16 February 2016 until 30 June 2016, according to which he was entitled to a monthly salary of EUR 6,000. Later on, the Player concluded a new employment contract with the Russian club FC Tom Tomsk, valid as of 1 July 2016 and according to which the Player was entitled, for the remaining of the year 2016, to receive the total amount of EUR 160,916, which, when added to his first new contract, makes a total of EUR 190,916, roughly equivalent to USD 210,000.

2.8 In its reply, the Club first argued that, according to the Contract, Chinese law should be applicable to the present dispute. Pursuant to Chinese labour law, unilateral options are not prohibited, and the Club acted in accordance with article 18 of the Contract when sending the Termination Letter of 30 December 2015 to the Player. The Club further submitted documentation to prove that it had paid the Player's salaries for 2015 in full and final settlement of the Player's claim. Consequently, there are no more obligations of any kind between the Parties.

2.9 If it was decided that the Club terminated the Contract without just cause, the Club further argued that any payable compensation should be calculated in accordance with Chinese law and, accordingly, should be limited to USD 2,115, *i.e.* three times the average monthly salary of the workers of the region.

2.10 In the alternative, if the decision of the case was based on the FIFA Regulations, the Club submitted that it did not terminate the Contract, but that it ended by natural expiry since, pursuant to the Contract, the second year needed to be confirmed by the Club in order to be valid and binding on the Parties. Article 18 should be considered a unilateral extension clause, which has been accepted by the CAS in the past. In any case, the Player tacitly accepted the natural expiry of the Contract, as he did not raise any complaints or warnings before filing his claim with FIFA almost two months later. Finally, the Player should reimburse the Club an amount of CNY 28,000 to cover the additional expenses paid by the Club for the rent of an apartment over and above the amount agreed in the Contract.

2.11 In his replica, the Player first rejected the application of Chinese law and argued that the only applicable regulations are FIFA Regulations. Furthermore, article 18 of the Contract is invalid. With regard to the alleged tacit acceptance of the termination of the Contract, the Player never accepted this termination, and his claim was lodged in front of FIFA only two months after the unlawful termination of the Contract. As for the claim for reimbursement, the Club paid the full amount of the rent expenses without informing the Player, which is why such payment must

be understood as an acceptance to meet total rent expenses and, in consequence, the Club's request for reimbursement should be rejected. Finally, the Player amended this claim in the amount of USD 2,664,632.19.

2.12 In its rejoinder, the Club reiterated the arguments contained in its first submission.

2.13 The FIFA DRC, after having confirmed its competence, first of all concluded that the FIFA Regulations on the Status and Transfer of Players (edition 2015) (the "FIFA Regulations") are applicable to the matter at hand as to substance. In doing so, the FIFA DRC recalled that when deciding a dispute before the Chamber, the FIFA Regulations prevail over any national law chosen by the Parties. The main objective of the FIFA Regulations is to create a standard set of rules to which all actors within the football community submit and can rely on. This object would not be achievable if the FIFA DRC would have to apply the national law of a specific party to every dispute brought before it. It is in the interests of football that the termination of a contract is based on uniform criteria rather than on provisions of national law, which may vary considerably from country to country. As such, the matters of this case would have to be assessed by taking into consideration the FIFA Regulations, general principles of law as well as the Chamber's well-established jurisprudence.

2.14 Based on the Parties' submissions, the FIFA DRC deemed that the underlying issue in the dispute at hand, considering the claim of the Player, was to determine whether the Contract had been unilaterally terminated without just cause by the Club, and, in the affirmative, which would be the potential consequences of said termination. Furthermore, the request for reimbursement of the alleged overpayment of the Player's rent expenses should be addressed.

2.15 First of all, the members of the FIFA DRC were of the unanimous opinion that article 18 of the Contract is evidently a provision granting the Club the right to terminate the Contract unilaterally by December 2015. However, it is clearly established in the Contract that the Contract period would run until 31 December 2016. Consequently, the FIFA DRC concluded that the Club, in view of its letter dated 30 December 2015, did not refuse to extend the Contract, but instead terminated it unilaterally. The FIFA DRC furthermore found that the said article is to be considered invalid in view of its potestative nature. The FIFA DRC, *inter alia*, considered article 18 to be in direct opposition with the general principles of proportionality and the principle of balance of rights of the parties since it provides benefits only towards the Club with no equivalent right in favour of the Player. In this respect, the Chamber underlined that in case the Player would have terminated the Contract during the Contract period, he would have to pay to the Club USD 2,000,000 in compliance with article 19 of the Contract. Thus, article 18 of the Contract is to be deemed invalid and, therefore, inapplicable.

2.16 The FIFA DRC further found that the Player cannot be deemed to have accepted the alleged natural expiry of the Contract, one of the reasons being that he lodged his claim in front of FIFA within a rather short period of time from the date of the early termination of the Contract. Based on the above, the FIFA DRC found that the Club had no just cause to terminate the Contract and, consequently, that the Club is to be held liable for the said early termination of the Contract without just cause.

2.17 With regard to the consequences of the early termination, the FIFA DRC initially noted that the Player did not dispute having received the amounts contained in the receipts provided by the Club regarding his salaries for 2015, and the FIFA DRC thus found it sufficiently proved that the Player had in fact received his full salaries for the year 2015. The Player's claim for outstanding remuneration was thus rejected in full.

2.18 Taking into consideration Article 17 para. 1 of the FIFA Regulations, the FIFA DRC found that the Player is entitled to receive a compensation for breach of contract from the Club. Since the Contract was not found to contain any provision under which the Parties had beforehand agreed upon a compensation payable by the parties to the Contract in the event of breach, the compensation should be calculated with due respect to the parameters set out in said article, thus dismissing the argument by the Club that any compensation payable to the Player should be calculated exclusively on the basis of Chinese labour law.

2.19 With the aforementioned in mind, the Chamber pointed out that the remaining value of the Contract as from the date of the early termination by the Club until its regular expiry amounts to USD 1,599,992, made up of salaries for the year 2016 of USD 1,099,992 as well as a sign-on fee of USD 500,000 due in July 2016, which amount should serve as the basis for the final determination of the amount of compensation for breach of contract. The FIFA DRC further recalled that the Player had entered into two new employment contracts, according to which he was entitled, for the remaining of 2016, to a total amount of remuneration corresponding to USD 210,000, which amount should be taken into consideration in the calculation of the amount of compensation for breach of contract. Based on that, the FIFA DRC decided that the Club must pay the amount of USD 1,389,992 to the Player as compensation for breach of contract plus 5% interest *p.a.* on said amount as from the date of the claim until the date of effective payment.

2.20 Furthermore, and after having considered the position of the Parties with respect to the payment of the rent expenses above the agreed amount, the Chamber found that the content of article 11.7 of the Contract is clear and leaves no room for interpretation, *i.e.* the Club undertook to meet the Player's rent expenses up to the amount of CNY 20,000 for the relevant period, while in fact the Club paid CNY 48,000 to meet such expenses, and the Player must therefore reimburse the Club the amount of CNY 28,000.

2.21 Thus, on 29 July 2016, the FIFA DRC rendered the Decision as follows:

1. *"The Claim of the Claimant, Erik Cosmin Bicfalvi, is partially accepted.*

2. *The Respondent, Liaoning Whowin Football Club, is ordered, to pay to the Claimant, within 30 days as from the date of notification of this decision compensation for breach of contract in the amount of USD 1,389,992 plus 5% interest p.a. as of 26 February 2016 until the date of effective payment.*

3. *In the event that the amount due to the Claimant in accordance with the abovementioned number 2. 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 formal decision.*

4. *Any further claim lodged by the Claimant is rejected.*

5. *(…).*

6. *The Claimant is ordered to reimburse to the Respondent, within 30 days as from the date of notification of this decision, the amount of CNY 28,000.*

7. *In the event that the amount due to the Respondent in accordance with the above-mentioned number 6 is not reimbursed, within the stated time limit, interest at the rate of 5 % p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

8. *(…)".*

2.22 On 8 November 2016, the grounds of the Decision of the FIFA DRC were communicated to the Parties.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 28 November 2016, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the "Code") against the Decision rendered by the FIFA DRC on 29 July 2016.

3.2 On 9 December 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

3.3 On 16 January 2017, the Respondent filed his Answer in accordance with Article R55 of the Code.

3.4 By letter dated 27 January 2017, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark (President of the Panel); Mr Rui Botica Santos, attorney-at-law in Lisbon, Portugal (nominated by the Appellant), and Mr Michele Bernasconi, attorney-at-law in Zurich, Switzerland (nominated by the Respondent), arbitrators.

3.5 By letter of 31 January 2017, the Parties were informed that the Panel had decided to hold a hearing in this matter.

3.6 On 23 and 27 February 2017, respectively, the Respondent and the Appellant duly signed and returned the Order of Procedure.

4. HEARING

4.1 On 15 March 2017, a hearing was held in Lausanne, Switzerland.

4.2 In addition to the Panel, Mr Fabien Cagneux, counsel to the CAS, and the following persons attended the hearing:

For the Appellant: Mr Alejandro Pascual and Mr Rouyu Chu, attorneys-at-law in Shanghai, China.

For the Respondent: Mr Jorge Ibarrola and Ms Natalie St Cyr Clarke, attorneys-at-law in Lausanne, Switzerland, and Ms Tijana Zivkovic, intern, as observer.

4.3 At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

4.4 The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award.

4.5 Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Article R47 of the Code states as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 58 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".*

5.3 In addition, no Party objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.

5.4 The Decision with its grounds was notified to the Parties on 8 November 2016, and the Appellant filed its Statement of Appeal on 28 November 2016, *i.e.* within the statutory time limit set forth by the FIFA Statutes, which is not disputed.

5.5 It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

5.6 Under Article R57 of the Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the decision appealed against.

6. APPLICABLE LAW

6.1 Article R58 of the Code states 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".*

6.2 Article 57 para. 2 of the FIFA Statutes states 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".*

6.3 On the one hand, in its Appeal Brief, the Appellant refers to article 24 of the Contract, which states as follows: *"This contract comes with the jurisdiction of the Chinese law; any dispute will be resolved by consolation. If it is cannot be resolved both sides, send it to the CFA and FIFA to adjudicate".* Based on that, the Appellant submits that the Parties, by express mutual agreement, confirmed to apply Chinese law as the governing law to their labour relationship and that the CAS should not disregard the Parties' clear agreement regarding applicable law.

6.4 Furthermore, the CAS should not ignore the facts that the Contract was signed in China, that one of the Parties is Chinese and that the Contract produced its effects in the territory of China.

6.5 Alternatively, and in the event that the CAS decides that the regulations of FIFA should be applicable to this dispute, the CAS should take into consideration that FIFA, through its regulations, more specifically Article 2 of the Rules Governing Procedure of the Player's Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), acknowledges and confirms the importance of the national law chosen by disputing parties.

6.6 The Respondent, on the other hand, submits that the Parties have agreed to conduct their arbitration in accordance with the relevant provisions of the Code and that the Panel should therefore decide the dispute *"according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties"*, in accordance with Article 58 of the Code, meaning that the Panel should apply the FIFA Regulations in this case and, subsidiarily, the rules of law chosen by the Parties, if any.

6.7 However, there is no explicit choice of law in article 24 of the Contract, which article only refers to the *"jurisdiction"* of Chinese law, which is different from explicitly stating that Chinese law is the law applicable to the substance of the Contract, which the Respondent disputes.

6.8 Furthermore, the Appellant never raised any objections with regard to its jurisdiction and to the application of the Regulations before FIFA, even if the Appellant was not compelled to accept FIFA's jurisdiction, thus accepting not only FIFA's jurisdiction, but also the application of the FIFA rules, including Article 57 of the FIFA Statutes.

6.9 To start with, the Panel notes that pursuant to Article 58 of the Code, *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties (…)"*. One of the main purposes of said article is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues. Article R58 of the Code thus states that the rules and regulations of the sports organization that issued the decision subject to the dispute are primarily applicable.

6.10 Furthermore, the Panel finds, based on the facts of the case and the Parties' submissions, that it is up to the Appellant to discharge the burden of proof to establish that the Parties confirmed by express mutual agreement to apply Chinese law as the governing law to their labour relationship.

6.11 In doing so, the Panel adheres to the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, paras. 71ff).

6.12 However, the Panel, upon review of all the evidence submitted and all arguments advanced, finds that the Appellant has not adequately discharged the burden of proof to establish that the Parties confirmed by express mutual agreement to apply Chinese law as the governing law to their labour relationship: the Panel does not find the wording of article 24 of the Contract to constitute a clear and explicit choice of law clause with the above-mentioned content.

6.13 Therefore, the Panel is satisfied to apply primarily the various regulations of FIFA and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the rules and regulations of FIFA.

6.14 Finally, the Panel agrees with the FIFA DRC that the Regulations on the Status and Transfer of Players (2015 edition) are applicable to the present matter, in particular.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 The Appellant

7.2.1 In its Appeal Brief, the Appellant requested the CAS to:

"1. Declare its jurisdiction over the present matter.

2. To accept this appeal against the FIFA Decision rendered by the FIFA Dispute Resolution Chamber dated 29 July 2016.

3. Consequently, to adapt an award declaring that:

a) The decision of the FIFA Dispute Chamber dated 29 July 2016 is annulled;

b) Determine that Chinese law shall be applicable law to the merits;

c) Confirm that, based on the pacta sunt servanda the Respondent shall be bound by the terms and conditions expressly signed by the Parties in the Employment Contract.

d) Determine that the option right established in Article 18 of the Employment Contract is valid and therefore the Employment Contract expires on 31 December 2015;

e) Determine that the Respondent is not entitled to receive any sort of compensation from the Appellant;

f) Confirm point III.6 of the FIFA Decision and declare that the Respondent has to reimburse the amount of 28,000 RMB as per the overpayment of the accommodations costs.

Alternatively

g) Determine that in case any compensation is to be paid in favor of the Respondent, it shall be calculated in accordance with Chinese Law.

Alternatively,

h) Determine that in case Chinese Law is not applied for the calculation of compensation, it shall be considerably reduced ex aequo et bono by the Panel bearing in mind the mitigating factors exposed by the Appellant in point D, among others.

i) Take into account the bad faith of the Respondent after the notification sent on 30 December 2015 and reduce the compensation on the basis of specificity of sport.

4. Order that Respondent shall reimburse the Appellant for legal expenses to be determined ex aequo et bono by the Panel, added to any CAS administrative and procedural costs incurred by the Appellant.

5. To condemn the Respondent to the payment of the whole CAS administration and the Arbitrators fees".

7.2.2 In support of its requests for relief, the Appellant submitted, *inter alia*, as follows:

a) First of all, it must be noted that the Parties entered into the Contract freely, knowingly and voluntarily, thus both agreeing with the content of the Contract, including the content established in article 18.

b) The Respondent never mentioned any disagreement with the content of the Contract during his stay with the Appellant, and only two months after the Appellant lawfully invoked article 18 of the Contract, the Respondent responded by filing a claim before FIFA, thus trying to violate in bad faith the principle of *pacta sunt servanda*.

c) According to Chinese law in general and the Chinese labour contract law, in particular, which is the law applicable to the merits of this dispute, unilateral option clauses are not prohibited at all, unless against moral or public policy. Moreover, neither FIFA regulations, nor Swiss Law prohibit the implementation of such unilateral option clauses.

d) Based on that alone, the CAS should declare that article 18 of the Contract was perfectly valid and, consequently, that the Contract expired at the end of 2015 and that the Appellant never breached the Contract.

e) According to article 18 of the Contract: *"If in the season 2016 [the Appellant] do not want to increase the investment and not pursue a better rank in the league, [the Appellant] need notice to [the Respondent] in writing that no longer execution of the contract before 31st December 2015, then [the Respondent] as a free player could transfer to any clubs, this contract automatic invalid, [the Appellant] do not need to pay [the Respondent] any money or any compensation by any names, and all the clauses about 2016 season no longer valid".*

f) In order to decide the validity of said clause, there are numerous essential details that need to be carefully analysed by the CAS, which, in recent decisions, has confirmed that where such an option clause complies with the so-called Portmann Criteria, the option clause may be considered perfectly valid.

g) The Portmann Criteria are all perfectly fulfilled in this case since, *inter alia*, i) the maximal duration of the labour relationship is not excessive, ii) the option was exercised by the Appellant within an acceptable deadline before the expiry of the original contract, iii) the Contract contained a financial reward for the Respondent for the granting of the option to the Appellant since the Respondent, pursuant to article 10 of the Contract, would

receive a substantial increase of salary plus a significant second sign-on fee in case the Contract was valid in 2016 also.

h) Furthermore, iv) the Respondent was not at the mercy of the Appellant with regard to the content of the Contract, and the Respondent's consent to the Appellant's exercising the option was granted in advance and, in any case, the respective reciprocal obligations were not clearly unbalanced. In addition, v) the option was clearly established and emphasised in the Contract, and vi) the potential extension period was proportional to the duration of the original Contract period, just as the number of potential extensions was limited to one.

i) All in all, clause 18 of the Contract does not represent a standard unilateral extension clause under which the Respondent was placed in a weaker position *vis-à-vis* the Appellant. Also, it must be borne in mind that the Respondent is an experienced player who was assisted by legal representatives during the Contract negotiations.

j) In these circumstances, it can be concluded that the option clause does not create any abusive or illegitimate situation which should induce the CAS to declare the option clause void and that it would be against the principle of good faith and in violation of *pacta sunt servanda* if the Respondent is allowed to escape from a valid clause agreed upon by the Parties when entering into the Contract. Thus, the Respondent must be bound by the terms and conditions of the Contract, including clause 18. Thus, the Contract expired at the end of December 2015 pursuant to article 18 and following the Appellant's Termination Letter of 30 December 2015.

k) In any case, the Respondent, as a result of his conduct after the receipt of the Termination Letter, tacitly accepted the expiry of the Contract at the end of 2015.

l) The Respondent never warned or notified the Appellant about his position before filing his claim with FIFA, thus not giving the Appellant any opportunity to solve the matter.

m) On the contrary, the Respondent acknowledged the situation when, *via* his agent, he requested confirmation that he was a free agent and that there was no third party ownership.

n) Furthermore, the claim was only filed with FIFA almost two months after the receipt of the Termination Letter. The Respondent should have reacted much earlier. By not doing so, the Respondent tacitly accepted the expiry of the Contract on 31 December 2015.

o) Alternatively, and in case the CAS declares that the Contract did not expire on 31 December 2015, any compensation payable to the Respondent should be calculated in accordance with Chinese law.

p) Pursuant to article 47 of the Chinese Labour Contract Law, the amount of compensation should amount to three times the monthly average salary of the workers in the region for the previous year, *i.e.* USD 2,115.

q) However, if the CAS finds that Chinese law is not applicable, any compensation payable to the Respondent should be reduced by any salary payments that the Respondent might have received from third clubs during 2016.

r) Furthermore, a deduction should be made for any possible salaries and bonuses the Respondent could have received if he had negotiated his new contracts with his new clubs in good faith in order to respect his obligation to mitigate his losses.

7.3 **The Respondent**

7.3.1 In his Answer, the Respondent requested the CAS to rule as follows:

"I. The appeal filled on 28 November 2016 by Liaoning Whowin Football Club is dismissed.

II. The decision issued on 29 July 2016 by the FIFA Dispute Resolution Chamber, is affirmed.

III. Liaoning Whowin Football Club is ordered to pay to Erik Cosmin Bicfalvi USD 1,389,992 plus 5% interest as of 26 February until the date of effective payments.

IV. Liaoning Whowin Football Club shall bear the arbitration costs.

V. Liaoning Whowin Football Club shall compensate Erik Cosmin Bicfalvi for the legal and other costs incurred in connection with this procedure in an amount to be determined at a later stage".

7.3.2 In support of his requests for relief, the Respondent submitted, *inter alia*, as follows:

a) First of all, it is undisputed that the Contract validly existed between the Parties, and that pursuant to article 1 of the Contract, the period of the Contract is *"1st July 2015 to 31st December 2016"*, which means that the Contract was valid until 31 December 2016, and not until 31 December 2015, as submitted by the Appellant.

b) As such, the FIFA DRC was correct in deciding that the Appellant did not refuse to extend the Contract, but instead decided to terminate it unilaterally at the end of December 2015, opting for an early termination of the Contract.

c) The Appellant's early termination of the Contract constitutes a breach of contract since the termination was made without mutual consent and without just cause.

d) Article 18 of the Contract does not represent a mutual agreement between the Parties to terminate the Contract, just as the Respondent never in any other way consented to the early termination of the Contract.

e) Furthermore, the Appellant never had just cause to terminate the Contract. Article 18 of the Contract is not a unilateral extension option, but is in fact an invalid unilateral termination clause.

f) First of all, the termination clause is not enforceable by both parties, leaving the Respondent at the will of the Appellant, based on the subjective will of the Appellant *not to pursue a better rank*. For this reason alone, the termination clause is invalid.

g) Furthermore, the so-called Portmann Criteria are not applicable to this termination clause since these criteria, if applicable, only concern unilateral extension clauses and not unilateral termination clauses. And in any case, article 18 of the Contract and the Appellant's termination of the Contract do not fulfil all the criteria, *inter alia*, since the alleged option was not exercised within an acceptable deadline before the supposed termination of the Contract and since the Contract did not provide a salary reward for the Respondent for accepting such a clause. The agreed higher salary in 2016 is not to be regarded as such a salary reward, but simply as an agreed increase of the negotiated salary for the second calendar year of the Contract. In addition, the Respondent was at the mercy of the Appellant, which, according to the wording of the clause, was the only Party capable of enforcing early termination, thus granting different and clearly unbalanced rights to the Parties.

h) Consequently, the unilateral termination clause in article 18 of the Contract must be considered null and void in accordance with the FIFA Regulations and Swiss law applied complementarily as well as in line with the clear and consistent jurisprudence of the CAS and of the FIFA DRC.

i) Finally, the Appellant has even failed to demonstrate that unilateral termination clauses are valid under Chinese law, *quod non in casu*.

j) In a final attempt to salvage its case, the Appellant submits that the Respondent tacitly accepted the early termination of the Contract since he did not make any complaint nor forwarded any warning to the Appellant before bringing his claim before FIFA. Naturally, this is disputed by the Respondent.

k) It was the Appellant which unilaterally terminated the Contact, and the Respondent bears no obligation, nor can he be expected to forward any warning to the Appellant based on that. The Respondent protected his interests by asking for the confirmation that he was a free agent following the early termination of the Contract in order for him to be able to enter into a new employment agreement, thus making it possible to mitigate his loss following the Appellant's breach of contract. Furthermore, the Respondent's claim was timely forwarded to FIFA. Thus, the Respondent acknowledged the Appellant's decision to terminate the Contract, but certainly did not accept that such a decision was valid and legitimate.

l) The compensation payable to the Respondent for the Appellant's breach of contract must be calculated in accordance with the universal application of the FIFA Regulations, specifically Article 17, and, complementarily, by Swiss law, and the Decision ordering the Respondent to pay to the Respondent USD 1,389,992 must therefore be upheld.

8. DISCUSSION ON THE MERITS

8.1 To start with, the Panel notes that it is undisputed that on 7 July 2015, the Parties validly concluded the Contract and that the term of the Contract was *"from 1st July 2015 to 31st December 2016"*.

8.2 Furthermore, it is undisputed that, on 30 December 2015, the Appellant forwarded the Termination Letter to the Respondent, which stated as follows:

> *"Thank a lot for the hard-working of Player BICFALVI ERIK COSMIN in the season 2015, your brilliant performance help our club finish the target of 2015. Unfortunately, according to according to the club financial plan of 2016, club do not want to increase investment and pursue better rank, then according the Article 18 of the agreement: after finishing the 2015 season, according to the investment and target for the next season, if Party A pursue a better rank in the league, then Party A need notice in writing to Party B to continue the contract, and pay Party B´s salary and signing fee for the 2016 season according to this contract. If in the season 2016 Party A do not want to increase the investment and not pursue a better rank in the league, then Party A need notice to Party B in writing that no longer execution of the contract before 31st December 2015, then Party B as a free player could transfer to any clubs, this contract automatic invalid Party A do not need to pay Party B any money or any compensation by any names, and all the clauses about 2016 season no longer valid.*
>
> *According to this article 18, now club notice to player BICFALVI ERIK COSMIN in writing that in the season 2016 club do not want to increase investment, player BICFALVI ERIK COSMIN can be transfer to (…). Player, all the clauses in the agreement about 2016 season no longer valid".*

8.3 While the Appellant, on one side, submits that the Contract expired at the end of 2015 in accordance with the provisions of the Contract and that it never breached the Contract, the Respondent submits, on the other side, that the Contract was terminated unilaterally by the Appellant one year before the end of the agreed Contract period without just cause and that the Respondent is therefore entitled to receive compensation for breach of contract from the Appellant.

8.4 Thus, the main issues to be resolved by the Panel are:

a) Did the Contract expire at the end of 2015 or did the Appellant terminate the Contract and, in the affirmative, was such termination made with or without just cause? and,

b) if the Contract was terminated by the Appellant without just cause, what are the financial consequences, if any, of such termination?

a) Did the Contract expire at the end of 2015 or did the Appellant terminate the Contract and, in the affirmative, was such termination made with or without just cause?

8.5 The Panel notes that, pursuant to Article 13 of the Regulations, a professional contract between a player and a club can only be terminated on the expiry of the term of the contract or by mutual agreement. Furthermore, and pursuant to Article 14 of the Regulations, such a contract may be terminated by either party without consequences of any kind where there is just cause. Finally, article 13 of the Contract states that *"Either party may terminate the contract at any time if both parties agree to its termination in writing"*.

8.6 Based on the facts of the case and the Parties' submissions, the Panel finds that it is up to the Appellant to discharge the burden of proof (see para. 6.11) to establish that the Parties mutually agreed to an early termination of the Contract.

8.7 However, the Panel finds that the Appellant has not adequately discharged the burden of proof to establish such mutual agreement.

8.8 Furthermore, and for the sake of good order, the Panel notes that there is evidently no breach of contract by the Respondent which could possibly induce the Appellant to terminate the Contract with just cause due to the Respondent's conduct. On the contrary, in the Termination Letter the Respondent was explicitly congratulated on his *"brilliant performance"* for the Appellant.

8.9 Based on that, the Panel turns its focus to the submission by the Appellant that the Contract expired at the end of 2015 in accordance with article 18 of the Contract since the Appellant never exercised its option to continue the Contract for 2016 in accordance with said article.

8.10 Article 18 and article 19 of the Contract read as follows:

> *"Article 18:*
>
> *After finishing the 2015 season, according to the investment and target for the next season, if Part A pursue a better rank in the league, then Party A need notice in writing to Party B to continue the contract, and pay Party B's salary and signing fee for the 2016 season according to this contract. If in the season 2016 Party A do not want to increase the investment and not pursue a better rank in the league, the Party A need notice to Party B in writing that no longer execution of the contract before 31st December 2015, then Party B as a free player could transfer to any clubs, this contract automatic invalid, Party A do not need to pay Party B any money or any compensation by any names, and all the clauses about 2016 season no longer valid.*
>
> *Article 19: During the contractual period, if Party B cancel or terminate the contract by himself for whatever described reason (including Sporting Just Cause) without the permission of Party A, Party B shall pay 2.000.000 USD as the PENALTY. During the contractual period, if any other club wish to sign Party B, the transfer shall strictly comply with all relevant regulations made by FIFA.*
>
> *(…)".*

8.11 The Appellant submits that article 18 of the Contract constitutes a legally valid extension clause which was mutually and validly agreed upon by the Parties and which, *inter alia*, fulfills all the so-called Portmann Criteria, thus supporting its validity. By not exercising this option, the Appellant decided to let the Contract expire at the end of 2015.

8.12 The Respondent, on the other side, submits that said article constitutes an unbalanced and invalid unilateral termination clause which does not in any way give the Appellant the legal right to terminate the Contract unilaterally one year before the end of the agreed contract period. Furthermore, the Portmann Criteria are not applicable to termination clauses.

8.13 The Panel notes that pursuant to article 1 of the Contract, the Parties have agreed that the contract period should run *"from 1st July 2015 to 31st December 2016"*. Furthermore, the Panel notes that, when directly asked during the hearing, the Appellant confirmed that the Contract would have remained in force until the end of December 2016 if the Appellant had not forwarded the Termination Letter to the Respondent.

8.14 Given these circumstances, *inter alia*, the Panel finds that article 18 of the Contract constitutes a unilateral termination clause rather than a unilateral extension clause. The Panel attributes no weight to the fact that article 10 of the Contract establishes a so-called *"signature fee for [the Respondent] in 2016"* in an amount of USD 500,000 or that the Respondent's lease contract allegedly expired at the end of 2015.

8.15 For all these reasons, the Panel finds that the Appellant unilaterally terminated the Contract by its Termination Letter to the Respondent on 30 December 2015.

8.16 The question is therefore, whether the Appellant was entitled to terminate the Contract one year before the end of the originally agreed contract period?

8.17 The Panel notes that, pursuant to a possible interpretation of the wording of the termination clause, the Appellant was said to be entitled to terminate the Contract at the end of 2015 on its own will, based on its subjective decision *"not to pursue a better rank"*, without having to pay any compensation to the Respondent and without having to respect any other notice period than *"before 31st December 2015"*. In fact, the Appellant terminated the Contract by giving only one day's notice on 30 December 2015.

8.18 Contrary to this, and pursuant to article 19 of the Contract, in case the Respondent would choose to cancel or terminate the Contract for any reason without the consent of the Appellant, the Respondent would have to pay as compensation an amount of USD 2,000,000 to the Appellant.

8.19 Based on the above and the other facts of the case, the Panel finds that article 18 of the Contract was inserted in the Contract only for the purpose of aiming at making it possible for the Appellant to terminate the Contract already after six months and without just cause, without running the risk of being forced to pay a substantial amount to the Respondent for breach of contract.

8.20 Moreover, the Panel attaches particular importance to the fact that this must effectively be considered a provision that unilaterally accommodates the Appellant's wish to be entitled, potentially, to terminate the Contract without just cause already after six months without taking on a huge financial risk, in view of the fact that the amount of compensation payable by the Respondent to the Appellant, pursuant to article 19 of the Contract, if the Respondent would choose to terminate the Contract early, in reality precludes the Respondent from doing so on account of the severe financial consequences, *i.e.* the payment of the amount of USD 2,000,000.

8.21 The way the provisions have been drafted by the Appellant implies a set-up which disproportionally favours the Appellant and constitutes an easy way for the Appellant to terminate the Contract after six months without any consequences, whereas the Respondent in turn does not have such an equal possibility.

8.22 In addition, the provision also implies a scenario of different periods of notice for each Party – something the Panel finds to be inconsistent with Article 335a of the Swiss Code of Obligations ("SCO") (*"Notice periods must be the same for both parties; where an agreement provides for different notice periods, the longer period is applicable to both parties"*), which provision is, under Swiss law, mandatory (decision of the Swiss Federal Tribunal dated 5 September 2006, 4C.186/2006 considering 2.1; ATF 108 II 115; WYLER R., *Droit du Travail, 2nd edition,* p. 437).

8.23 Although the Appellant argues that the Respondent, *inter alia*, through his high remuneration had already been financially rewarded for accepting the content of the said provisions by signing the Contract, the Panel finds that such a provision, considering its consequences, is clearly contrary to the general principles of contractual stability and labour law as it gives the Appellant undue control over the Respondent.

8.24 Based on that, considering also that the Contract has been undisputedly drafted by Appellant, and in accordance with the considerations made by the CAS Panel in the case CAS 2014/A/3707, the Panel finds that the reciprocal rights and obligations deriving from article 18 (and article 19) of the Contract are, in the present setting, so unbalanced and clearly contrary to the general principles of contractual stability, that article 18 of the Contract is null and void.

8.25 However, the Appellant further submits that in any case the Respondent, as a result of his conduct after the receipt of the Termination Letter, tacitly accepted the expiration/termination of the Contract at the end of 2015. The Respondent never warned or notified the Appellant about his position before making this argument before FIFA, thus not giving the Appellant any opportunity to solve the matter. On the contrary, the Respondent acknowledged the situation when requesting confirmation that he was a free agent, and only filed his claim almost two months after the receipt of the Termination Letter.

8.26 The Panel notes that, pursuant to article 24 of the Contract, *"any dispute will be resolved by [consultation]. If it [is] cannot be resolved both sides, send it to the CFA and FIFA to adjudicate"*. However, such a duty to try to resolve a dispute by consultation is, in the Panel's view, solely binding on the Parties when a situation can reasonably be assumed to exist where this form of dispute

resolution could be of relevance. This does not appear to be the case in this situation where it is merely a unilateral decision made by the Appellant, based on the Appellant's own circumstances and priorities.

8.27 Moreover, the Panel finds that the Appellant has failed to produce adequate evidence to show that a duty always exists for a player to put his club in default, especially when it is the club in question that has unilaterally decided to terminate the contract as in this case. This situation cannot be compared to the one where a party is in delay of a non-substantial amount. In fact, the Appellant, though its notice, clearly terminated the Contract. In such circumstances, the Panel cannot see any reason why Respondent should have been prevented to defend his rights by filing a claim before the competent FIFA body.

8.28 Finally, the Panel finds that the circumstance that the Respondent only filed his claim with FIFA after having received from the Appellant the confirmation regarding his status as a free agent and after having signed a new employment contract, cannot be used against him. In fact, by doing this, the Respondent protected his chances to sign a new contract and, therefore, also mitigated his losses, as it will be seen below.

8.29 In any case, the Panel does not find that the Respondent, by not putting the Appellant in default before filing his claim with FIFA, and by waiting almost two months before doing so, which is incidentally well within the two-year limitation period set by the FIFA Regulations, can be deemed to have tacitly accepted the Appellant's unilateral termination of the Contract.

8.30 The Panel finds, accordingly, that no valid termination clause granting the Appellant a right to terminate the Contract unilaterally after six months can be admitted to have been validly concluded between the Parties. Since the Respondent did not tacitly accept the Appellant's unilateral termination of the Contract, the Appellant's termination of the Contract was made without just cause.

b) What are the financial consequences of the Appellant's termination of the Contract without just cause?

8.31 As already mentioned under para 6.13 above, the Panel is satisfied that, based on the unclear wording of the relevant contractual clause, and taking in consideration the fact that the Parties have agreed to put forward this matter to FIFA and to CAS, respectively, the various regulations of FIFA shall apply primarily and, subsidiarily, Swiss law shall be applied. The Appellant's submission that any compensation payable to the Respondent should be calculated in accordance with Chinese law is therefore disregarded, in lack of any convincing argument and evidence.

8.32 With regard to the Respondent's claim for compensation for breach of contract, and since the Appellant is held liable for the early termination of the Contract due to its breach of contract, the Panel finds that the Respondent is entitled, subject to article 17 para. 1 of the FIFA Regulations, to receive financial compensation for breach of contract.

8.33 The Panel notes that in principle, the amount of the outstanding, unpaid salaries payable under the Contract has remained undisputed. Undisputed is also the total amount earned by the Respondent thanks to the two new contracts concluded during the remaining original period of the Contract, *i.e.* the amount of approx. USD 210,000.

8.34 Article 17 para. 1 of the FIFA Regulations reads as follows:

> *"The following apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortized over the term of the contract) and whether the contractual breach falls within the protected period".*

8.35 The Panel acknowledges that it is undisputed that no agreement has been concluded between the Parties on an amount of compensation payable in the event of breach of contract by the Appellant.

8.36 Based on that, the compensation payable to the Respondent has to be assessed taking in consideration all the circumstances of the present case, including the parameters set out in Article 17 para. 1 of the Regulations.

8.37 As such, the Panel finds that the FIFA DRC correctly applied the other parameters set out under Article 17 of the FIFA Regulations, particularly taking into account the entire remuneration payable to the Respondent under the Contract for the remaining time of its duration, *i.e.* USD 1,599,992, as the basis for the determination of the amount of compensation to be awarded to the Respondent.

8.38 In fact, consistent with the well-established CAS jurisprudence, the injured party is entitled to a whole reparation of the damages suffered pursuant to the principle of the "*positive interest*", under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in, had the contract been fulfilled properly and to its end (CAS 2012/A/2698; CAS 2008/A/1447).

8.39 In view of the above, the Panel is satisfied that the Respondent has the right to compensation of the damage caused by the breach of the Contract by the Appellant. Such compensation shall be determined in line with the provisions of Article 17 of the FIFA Regulations, applying the principle of the *"positive interest"* as specified above and with due consideration of the duty to mitigate damages, which is consistent with CAS jurisprudence (CAS 2005/A/909-912; CAS 2005/A/801; CAS 2004/A/587).

8.40 In this context, the Decision correctly deducted the salaries the Respondent was to receive under the employment contracts with Dinamo Bucharest and FC Tom Tomsk, in the amount of USD 210,000. The Panel notes that the fact that the Respondent allegedly never has received his payments (in full) from the latter club is not relevant for these proceedings with regard to the calculation of the amount of compensation payable by the Appellant since the Respondent never appealed the Decision on his own.

8.41 The Panel further finds that no special circumstances can be assumed to exist which, in the specific case, would provide a basis for reducing the amount of compensation due to the specificity of sport, nor does the Panel find grounds for assuming that the Respondent has not adequately attempted to mitigate his losses.

8.42 Based on the above, the Panel therefore finds that the FIFA DRC was correct in deciding that the Appellant must pay an amount of USD 1,389,992 to the Respondent as compensation for breach of contract.

8.43 With regard to the order by the FIFA DRC for the Respondent to reimburse the Appellant the amount of CNY 28,000, the Panel notes that since neither of the Parties appealed nor contested this part of the Decision, this part shall be confirmed without any further consideration.

8.44 Finally, the Panel sees no reason to deviate from the Decision concerning the interest rate, which is also confirmed.

9. SUMMARY

9.1 Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Appellant terminated the contractual relationship between the Parties without just cause. Consequently, in accordance with article 17 para. 1 of the FIFA Regulations, the Appellant has to pay an amount of USD 1,389,992 plus interest at the rate of 5% *p.a.* as of 26 February 2016 to the Respondent as compensation for breach of contract.

9.2 The Appeal filed against the Decision is therefore dismissed. This conclusion makes it unnecessary to consider any other requests made by the Parties. Accordingly, all further and other requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 28 November 2016 by Liaoning Football Club against the decision rendered on 29 July 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision rendered on 29 July 2016 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All further and other requests for relief are dismissed.