



**Arbitration CAS 2017/A/5051 Jarmo Ahjupera v. Ujpest 1885 Futball Kft., award of 29 September 2017**

Panel: Mr Sofoklis Pilavios (Greece), Sole Arbitrator

*Football*

*Existence of a contractual relationship*

*De novo ruling*

*Minimum requirements for the existence of a contractual relationship in football*

*Burden of proof*

*Direct effect of European Union's Directives*

1. According to Article R57 par. 1 of the CAS Code, a CAS panel has *“full power to review the facts and the law”*. By reference to this provision, the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the appealed ruling was correct or not. Accordingly, it is the function of a CAS panel to make an independent determination as to merits.
2. One of the fundamental pillars of the system of maintenance of contractual stability safeguarded by FIFA is the minimum requirement condition that a professional football player contract must be in writing. In addition, Article 13 of the Swiss Code of Obligations provides that a contract required by law to be in writing must be signed by all persons on whom it imposes obligations.
3. In accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof.
4. European Union's Directives are incapable of having a direct effect on the relations between individuals within the European Union territory, as they need first to be transposed into the respective national legal orders before an individual can have recourse to them in a dispute against another individual.

**I. PARTIES**

1. Jarmo Ahjupera (the “Player” or the “Appellant”) is an Estonian professional football player, who plays the position of striker.

2. Ujpest 1885 Futball Kft. (“Ujpest 1885” or the “Club” or the “Respondent”) is a football club playing in the top division of the Hungarian football league system, with seat in the Ujpest district of Budapest, Hungary. It is affiliated to the Hungarian Football Federation, which is, in turn, a member of the Fédération Internationale de Football Association (FIFA).

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations found in the parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 1 July 2013, the Player signed an employment contract with Ujpest FC Kft (“Ujpest FC”), which was valid until 30 June 2015 (the “Ujpest FC Contract”) and provided *inter alia* the following:

#### *I. THE SUBJECT OF THE CONTRACT*

*1. Based on this present contract, the Employer employs Employee to work in the position of a professional athlete (football player) - FEOR 3716. During the term of this contract, the Employer exclusively possesses the right of disposition of Employee’s registration.*

*(...)*

#### *II. THE TERM OF THE CONTRACT*

*The Employer and Employee agree that Employer employs Employee for a specified term from the day of signing present contract to 30 June 2015 in the framework of an employment relationship under this present specified-term work contract with the consideration that the condition for this present contract to enter into force is that according to the findings of the medical examination specified by the Employer, the Employee is suitable for professional competing as a professional football player.*

*(...)*

#### *IV. REMUNERATION*

*a) The Employer and the Employee agree that the Employee’s monthly gross salary until 30 June 2014 the sum which equals net 7,000 EUR, in words a monthly gross salary equivalent to seven thousand Euros net, from 01 July 2014 to 30 June 2015 is net 7,500 EUR, in words a monthly gross salary equivalent to seven thousand five hundred Euros net, the sums specified above are paid by the Employer to the Employee until*

*day 10 of the month following the month concerned and include the wage supplements specified in Articles 140-142 of the Labour Code.*

(...)

#### VI. TERMINATION AND CANCELLATION OF THE CONTRACT

*1. This present contract is terminated at the end of the term specified in Point II.*

(...)

*6. The Parties are entitled to terminate this present contract by mutual consent prior to the term of the contract specified in Point II.*

(...)

#### *Annex I: Premium Regulation*

*a) If the Employee is on the referee's sheet in the adult, eleven-a-side first division championship (NB/1) matches or Hungarian Cup matches played by the football team of UJPEST FC and if on these matches the football team is successful, which means that they win the match or play a draw, based on the point or points awarded, the Employee is entitled to net 50,000 HUF/points as premium, which shall be paid by the Employer to the Employee in a single sum in aggregate form during the coming month".*

5. There is disagreement between the parties as to the facts relevant to the contractual dispute at issue here. The Sole Arbitrator will refer to such disputed matters explaining what the position of each party is, whenever possible.
6. On 16 October 2013, the Player suffered an injury during a Hungarian League Cup match and had to undergo treatment. Ujpest FC referred the Player to a hospital in Antwerp, Belgium, where he was diagnosed with inflamed thigh muscle injury and hormone injection therapy was prescribed. The Player was instructed to resume practice after a few weeks and returned to Budapest. However, the Player was still unable to participate in practice until 12 January 2014, when the team resumed practice sessions after the winter break. As a result, he was prescribed a new course of treatment by Ujpest FC.
7. On 25 January 2014, the Player participated in a preparation match and after that continued his light practicing sessions under the supervision of the medical staff of Ujpest FC.
8. In February 2014, as the Player was still not fit to play, the President of Ujpest FC decided that the Player should undergo a second medical examination in Belgium. The doctors' assessment was that the Player's thigh muscle injury required operation and rehabilitation time.
9. On 8 March 2014, the Player returned to Budapest and together with the medical staff of Ujpest FC it was decided that the Player was to undergo surgery in Estonia. Ujpest FC approved the

Player's decision and allowed him time for surgery and rehabilitation until the beginning of the 2014-2015 season.

10. On 25 March 2014, the President of Ujpest FC, Mr Roderick Duchâtelet, requested an emergency meeting with all the players of the team. According to the Player, during that meeting he and his teammates were informed that Ujpest FC was facing severe financial problems and was in the verge of bankruptcy. The Player further argues that, in order for Ujpest FC to avoid relegation and liquidation, a decision was made to transfer the license and assets of Ujpest FC, including all the players, to a different legal entity under the name Ujpest 1885 Futball Kft ("Ujpest 1885" or the "Club"). To secure this transfer, the Player and his teammates would have to sign termination contracts of their employment relationships, thus freeing Ujpest FC from any liability and, at the same time, sign new employment contracts with Ujpest 1885, which would allegedly include identical terms as their previous contracts with Ujpest FC. On the other hand, Ujpest 1885 argues that in the said meeting "*most of the players of Ujpest FC decided to sign a contract with Respondent and some players, as they were going to be 'free status players' decided to go on another path*".
11. On the same day on 25 March 2014, the Player signed a resignation letter (the "Resignation") with the following content:

*"Dear UJPEST FC Kft.,  
With regard to the liquidation of UJPEST FC Kft., I hand in my immediate resignation based on Article 8(6) of Act 1 of 2004 on Sports. My present statement shall enter into force on the starting date of the liquidation of UJPEST FC Kft.*

*I state that I do not have any claims, requirements towards UJPEST FC Kft. in addition to my salary due by the date when the liquidation enters into force.*

*Budapest 25 March 2014"*.
12. The Player submits that on the same day he also signed an employment contract with Ujpest 1885 (the "Ujpest 1885 Contract"), allegedly containing the same terms and provisions as the Ujpest FC Contract and with the same expiration date. Ujpest 1885 disputes that the Player requested, was offered, and eventually signed any such contract.
13. The Player further asserts that Ujpest 1885 refused several times to provide him with a copy of the "Ujpest 1885 Contract", on the basis of various excuses and over a period of several weeks, following its conclusion on 25 March 2014.
14. On 16 April 2014, Ujpest 1885 transferred the amount of HUF 2,162,439 (which is equivalent to a little over EUR 7,000 in the HUF/EUR exchange rate of April 2014) to the Player's bank account.
15. On 9 May 2014, Mr Duchâtelet wrote a letter to the Club Licensing Committee of the Union of European Football Associations ("UEFA") as the owner of Ujpest FC, in order to "ensure

its continuity”. In such letter, Mr Duchâtelet claims that he was forced to create “a brand new company” to avoid the consequences of the actions of the previous owner of the Ujpest FC, who was allegedly facing numerous lawsuits and police investigation. He also states that:

*“The players and staff were all offered a new contract by the new company, and thus we could continue to play in the Hungarian league. From the side of the HFF, the players’ licenses were adapted, the competition points were kept and so on”.*

16. On 25 June 2014, the Player signed an employment contract with Nomme JK Kalju, an Estonian football club. According to the FIFA Transfer Matching System (“TMS”), the termination of the Player’s contract with Ujpest FC was uploaded in the section “Proof of last contract end date”.

## **B. Proceedings before the FIFA Dispute Resolution Chamber**

17. On 24 March 2016, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) against Ujpest 1885, requesting payment of (i) EUR 111,000 corresponding to the monthly remuneration he was supposed to receive from Ujpest 1885 for the period between April 2014 until June 2015 under the “Ujpest 1885 Contract”, and EUR 15,322 corresponding to bonuses under the annex of the “Ujpest 1885 Contract”, *i.e.* a total of EUR 126,322, (ii) EUR 8,211 corresponding to interest for late payment, (iii) EUR 30,000 corresponding to non-material damage, and (iv) reimbursement of his costs and legal fees. The Player submitted that he still does not have a copy of the “Ujpest 1885 Contract”.
18. Ujpest 1885, by way of its response, rejected the Player’s claim and submitted that (i) the Player had freely agreed to the termination of the Ujpest FC Contract and (ii) the Player was not deceived and no employment contract was ever signed between Ujpest 1885 and him.
19. On 24 November 2016, the FIFA DRC rendered its decision (the “Appealed Decision”), by means of which it rejected the Player’s claim.
20. On 8 March 2017, FIFA communicated to the parties the grounds of the Appealed Decision, following a request of the Player, which, *inter alia*, determined the following:

*“9. In view of this dissent between the parties in respect of the basic question as to whether or not an employment contract between them had been concluded, the members of the Chamber firstly referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the Chamber to conclude that it was up to the Claimant to prove that the employment contract, on the basis of which he claims compensation for breach of contract from the Respondent, indeed existed.*

- 10. Having stated the above, the DRC recalled that the Claimant maintained that he was unable to provide a copy of the contract allegedly signed with the Respondent, since the contract was allegedly collected by it and not returned to him. However, the Claimant held that indeed a contract was concluded with the*

*Respondent, as on 16 April 2014, the Respondent paid an amount to him via bank transfer. Moreover, to support his allegations regarding the events of 25 March 2014, and in order to prove that the alleged employment contract was concluded with the Respondent, the Claimant submitted several written testimonies of other players, text message conversations he had with his agent and enclosed a photograph of a contract allegedly signed on that same date between another player and the Respondent.*

- 11. In this regard, the Chamber turned its attention to the payment made on 16 April 2014, which the Claimant maintained to be a proof that a contract was concluded with the Respondent, whereas the Respondent held that such payment was made to the Claimant due to an agreement between Ujpest FC and the Respondent, as Ujpest FC could not perform the payments any more. In this respect, the Chamber acknowledged that the relevant document presented by the Claimant in support of his position, stated that on 16 April 2014 “Ujpest 1885 Futball FFT” deposited Hungarian Forints HUF 2.162.439.00, as “2014.03 salary”. Consequently, the Chamber concluded that this document refers to a payment for the month of March 2014, and therefore does not substantiate the Claimant’s allegation that such payment was made on the basis of the alleged employment contract between the parties, nor does it prove the existence of such alleged contract.*
- 12. Furthermore, the Chamber took note of the other evidence submitted by the Claimant, namely, written testimonies of other players, text message conversations he had with his agent, as well as the photograph of a contract allegedly signed on that same date between another player and the Respondent. In this respect, the DRC underscored that the probative value of the testimonies of other players and the text conversation held with his agent is reduced in view of the fact that they consist in personal statements that may be subject to impartiality. Moreover, in respect to the photograph of a contract allegedly signed on that same date between another player and the Respondent, the DRC pointed out that this cannot indisputably lead to the conclusion that the parties indeed entered into an employment contract, since said alleged contract refers to another player.*
- 13. Having duly taken note of the aforementioned documentation presented by the Respondent, the members of the Chamber held that in order for the Chamber to be able to assume that the Claimant and the Respondent had indeed been bound through a contractual relationship with the terms as described by the Claimant, it had to be established, beyond doubt, by documentary evidence, that the said parties had indeed entered into a respective labour agreement, and, if so, under which terms. In general, the members of the Chamber held that they could not assume that an employment contract had been concluded by and between parties simply based on circumstances, which, in general, may be likely but are not certain to indicate the signing of a contract. In addition, the members of the Chamber agreed that the Dispute Resolution Chamber must be very careful with accepting documents, other than the employment contract, as evidence for the conclusion of a contract.*
- 14. In respect of the foregoing, the members of the Chamber had to conclude that the documents presented by the Claimant did not prove beyond doubt that the Respondent and the Claimant had validly entered into an employment contract.*
- 15. What is more, even if it would have been possible to establish on the basis of the documents on file, other than an employment contract, that the parties had entered into a labour agreement, the Chamber wished*

*to highlight that it would need to be in possession of such labour agreement in order to be able to properly assess the claim of the Claimant.*

16. *As a consequence, the Chamber decided that, since the Claimant had not been able to prove beyond doubt that an employment contract had validly been concluded between himself and the Respondent, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached.*
17. *Furthermore, and for the sake of completeness, the members of the Chamber highlighted that the Claimant had waited for almost two years before lodging a claim in front of FIFA and that in accordance with the information contained in the TMS, the termination of his contract with Ujpest FC was uploaded as “Proof of last contract end date” in the corresponding transfer instruction with the Estonian club, Nomme JK Kalju, therefore, apparently manifesting, by doing so, his satisfaction with the situation.*
18. *All the above led the members of the Chamber to conclude that the claim of the Claimant has to be rejected, due to its lack of contractual basis*  
  
*(...)*”.

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

21. On 29 March 2017, the Player submitted a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”) to the Court of Arbitration for Sport (the “CAS”), challenging the Appealed Decision.
22. With its statement of appeal, the Appellant also requested that his appeal be submitted to a Sole Arbitrator in accordance with Article R50 of the Code.
23. On 5 April 2017, the Appellant filed a request for legal aid, seeking assistance for CAS arbitration costs and for his own costs and those of witnesses in connection with a potential hearing.
24. On 10 April 2017, the Appellant filed his appeal brief making the following prayers for relief:

*“The Claimant requests the CAS to accept his claims against Ujpest 1885. The Claimant requests the CAS to order the Respondent to pay the following monetary compensation:*

1. *Remuneration and bonuses under the Contract in the amount of 126,322 euros;*
2. *Interest for late payment in the amount of 8,211 euros;*
3. *Compensation for non-material damage in the amount of 30,000 euros.*

*The Claimant requests the Chamber to order Ujpest 1885 to pay the costs of the proceedings. The Claimant requests the Chamber to order Ujpest 1885 to reimburse him for his attorney fees. The Claimant will submit the exact amount of the costs of the proceedings during the proceedings”.*

25. On 12 April 2017, the International Council of Arbitration for Sport granted the Appellant’s request for legal aid.
26. On 18 April 2017, the CAS Court Office informed the parties that, since the Respondent did not comment on the Appellant’s request that the case be heard by a Sole Arbitrator, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on that issue.
27. On 27 April 2017, the Respondent filed its answer in accordance with Article R55 para. 1 of the Code requesting the CAS to:
  - “1. Dismiss the Appeal of the Appellant.*
  - 2. Condemn the Appellant to the payment of the whole CAS administration costs and Panel fees.*
  - 3. Fix a sum to be paid by the Appellant to the Respondent in order to cover its legal cost in the provisional amount of CHF 15,000”.*
28. On 9 May 2017, the Respondent informed the CAS Court Office that it did not wish a hearing to be held in this matter.
29. On 10 May 2017, the Appellant wrote to the CAS Court Office stating that he *“leaves the decision whether to hold a hearing on the court’s discretion”*. He further stated that, as he had not yet received the Respondent’s answer by courier, he was not able to assess whether there is a need for a hearing. However, he elaborated that *“[t]here is most likely no need for a hearing if the court grants in that case the Claimant a chance to rebut the Respondent’s false statements and appoints the Claimant a reasonable deadline to submit additional arguments and exhibits”*.
30. On 11 May 2017, the CAS Court Office informed the parties that the case was to be heard by a Sole Arbitrator and that Mr Sofoklis Pilavios, Attorney-at-Law in Athens, Greece, was appointed as such by the Deputy President of the CAS Appeals Arbitration Division.
31. On 19 May 2017, the CAS Court Office informed the parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide this matter based solely on the parties’ submissions, without a hearing, according to Article R57 of the Code. However, on behalf of the Sole Arbitrator, the CAS Court Office invited the Appellant, to the extent that he deemed it necessary, to file a reply (i) to the Respondent’s request for security for costs (item 3 of the prayers for relief included in the Respondent’s answer of 27 April 2017) and (ii) to the answer in general.



32. On 7 June 2017, the Appellant filed his reply, which included a reply to the Respondent's answer, a request for the production of the minutes of a Hungarian court hearing in the case Z. v. Ujpest 1885 and a request for the dismissal of the Respondent's request for security for costs.
33. On 23 June 2017, the Respondent filed its rejoinder requesting the dismissal of the appeal and the dismissal of the Appellant's request for the production of the minutes of the court hearing in the case Z. v. Ujpest 1885. The Respondent further challenged the decision of the Board of the International Council of Arbitration for Sport ("ICAS") of 12 April 2017, to grant the Appellant's request for legal aid, by submitting additional evidence to disprove the Appellant's financial inability to cover the expenses and costs of this arbitration. In this respect, the Respondent also requested that CAS order the Appellant to disclose several documents related to the Appellant's financial situation.
34. On 7 July 2017, the CAS Court Office also issued an order of procedure, which was signed and returned to the CAS by both parties.
35. On 17 July 2017, the Sole Arbitrator issued an order on the Respondent's request for security for costs, its operative part providing that:
  1. *The Request for Security for Costs filed by Ujpest 1885 Futball Kft. on 27 April 2017 in the matter CAS 2017/A/5051 Jarmo Ahjupera v. Ujpest 1885 Futball Kft. is dismissed.*
  2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".*
36. On 8 August 2017, the CAS Court Office informed the parties that their respective requests for disclosure of documents (*i.e.* the Appellant's request of 7 June 2017 and the Respondent's request of 23 June 2017) were dismissed, the reasons of the dismissal to be set out in the final arbitral award.

#### **IV. SUBMISSIONS OF THE PARTIES**

37. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.
38. The Appellant's submissions, in essence, may be summarized as follows:
  - On 1 July 2013, Ujpest FC hired the Appellant as a professional football player and the parties concluded an employment contract which was valid until 30 June 2015. The contract provided for a net monthly salary of the Appellant in the amount of EUR 7,000 until 30 June 2014 and EUR 7,500 until 30 June 2015.

- In early 2014 there were rumours on the bad financial situation of the team, which were confirmed by a press conference of the president of Ujpest FC, Mr Duchâtelet on 17 March 2014.
- On 25 March 2014, all the players were called to an emergency meeting, where they were informed by Mr Duchâtelet that the club was facing financial problems and, in order to avoid the disqualification and relegation of the team into a lower category, the solution was to create another legal entity under the name Ujpest 1885 Futball Kft., which was to take over all the activities and assets of Ujpest FC. Mr Duchâtelet also assured all the players that their contracts were to be “transferred” to the new club, meaning that the new club would assume all the responsibilities of Ujpest FC towards them and comply with all the obligations and terms of the employment contracts of the players with Ujpest FC in force at that time.
- As a condition for the implementation of the proposed solution, Mr Duchâtelet asked from the players to sign “some papers”, which were already prepared, including one document to terminate their contracts with Ujpest FC and one document for their contracts to be “re-signed” with Ujpest 1885. According to Mr Duchâtelet, this would be “just a formality” for the players. The Appellant submits that Mr Duchâtelet assured all the players that they will continue playing for the team and he pointed out in particular that all the terms and conditions of the new contract they were asked to sign are identical to the existing one and that the only change is the name of the club. The Appellant further asserts that all the players, including himself, signed the documents terminating their contracts with Ujpest FC and then they signed a new employment contract with Ujpest 1885 (which was identical to the previous one), all at the same time during the meeting of 25 March 2014.
- After that, Mr Duchâtelet informed the players that he would immediately sign all the contracts in his office and that they would all get promptly their contracts back. However, the Appellant claims that he was unable to get a copy of his new contract with Ujpest 1885, neither that day nor in any of the following days, under various pretexts, while at the same time being repeatedly assured that everything was in order and that the contracts were sent to the Hungarian Football Association “for approval”. The Appellant’s impression was confirmed by the fact that his March salary was paid by Ujpest 1885.
- In late April 2014, Mr Duchâtelet informed the Appellant during a telephone conversation that the plans of the team had changed and that there was no longer place for him in the team because of his injury. The Appellant found out that Mr Duchâtelet had refused to return the signed contract to two other teammates of his as well, one of which had taken a photo of the contract he was asked to sign with Ujpest 1885 and has filed a suit before the Hungarian courts.
- The Appellant never wished to leave the club and seek employment elsewhere or to end his career as a professional football player. His wish was to remain in Ujpest 1885 and that is why he accepted the solution offered by Mr Duchâtelet to all the former players

of Ujpest FC. The account of events offered by the Respondent in this regard is false and misleading.

- The scouting position was not offered to the Appellant, as alleged by the Respondent. A contract of scouting services was indeed signed, but the parties thereto were L and E. Moreover, the said contract was signed on 1 July 2014, *i.e.* more than 3 months after the Appellant signed his new contract with the Respondent.
- Other former players of Ujpest FC were also deceived by the Respondent. Z. has initiated a civil suit against the Respondent in Hungary, which is still pending and the testimonies offered in the course of the said proceedings allegedly confirm the Appellant's position.
- The Appellant further invokes the provisions of EU Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, regarding safeguarding of employees' rights in the event of transfer of an undertaking.
- Lastly, the Appellant argues that his claims are confirmed by the Respondent's own submission before UEFA during the proceedings initiated to grant the Respondent an exception from the three-year-membership rule of the UEFA Club Licensing and Financial Fair Play Regulations.

39. The Respondent's submissions, in essence, may be summarized as follows:

- The Respondent asserts that the Appellant, being 30 years old and having played only for a limited amount of time during the previous season, was looking for a change of career and that is why he accepted a scouting position with L. The job was proposed to the Appellant only because of Mr Duchâtelet's efforts who was kind enough and willing to help him.
- The Appellant has signed a termination notice, thereby explicitly and without any reservations expressing his free will to terminate his contract with Ujpest FC and declaring that he had no claims against Ujpest FC.
- Additionally, the Appellant also signed a professional contract as a football player with Nomme JK Kalju, an Estonian football club.
- The witnesses' statements submitted by the Appellant cannot be relied on, since they are contradicted by testimonies of other club employees submitted by the Respondent. No contract was signed between the Appellant and the Respondent.
- Albeit claiming that he signed a contract with the Respondent, the Appellant provides no proof for such a contract. In accordance with the Appealed Decision, the Appellant's arguments to that regard are not enough to sustain his claim due to lack of evidence.

- The fact that the Respondent paid the Appellant's salary for March does not substantiate the Appellant's allegation that a contract was signed between the parties on 25 March 2014.
- The Appellant is not entitled to any compensation for material or non-material damage as he was the one who terminated his employment relationship with Ujpest FC according to his own free will and he has not signed any subsequent contract with Ujpest 1885. Moreover, the Appellant has waited for almost two years before filing his claim with the FIFA DRC on 24 March 2016. Lastly, according to the Appealed Decision, the information contained in FIFA TMS suggest that the Appellant was satisfied with the situation as he uploaded his termination contract with Ujpest FC in the section "proof of last contract end date".
- The Respondent never denied that the meeting of 25 March 2014 did take place. It is the Respondent's position that after the termination of their contracts with Ujpest FC, some of the players decided to be "free status players".
- The testimony of Mr Duchâtelet given in the course of the civil suit initiated by Z. against the Respondent before the Hungarian courts is irrelevant and cannot influence the outcome of this arbitration.
- The Appellant's Request for Legal Aid contains false representations concerning the true income of the Appellant, which denotes his lack of credibility as to his statements concerning the merits of this dispute.

## V. JURISDICTION

40. 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 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.*

41. The jurisdiction of CAS, which is not disputed, derives from article 58 par. 1 of the FIFA Statutes 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".
42. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

43. Article 58 par. 1 of the FIFA Statutes states:

*Appeals 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.*

44. Article 58 par. 2 of the FIFA Statutes states:

*Recourse may only be made to CAS after all other internal channels have been exhausted.*

45. The appeal was filed within the applicable 21-day time limit set by article 58 par. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

46. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

47. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

48. The Sole Arbitrator notes that Article 57 par. 2 of the FIFA Statutes stipulates the following:

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

49. Consequently, the Sole Arbitrator will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, apply Swiss law in case of a possible gap in the FIFA Regulations.

50. The case at hand was submitted to the DRC on 24 March 2016, hence after 1 April 2015, which is the date when the Regulations for Status and Transfer of Players (2015 edition, hereinafter referred to as the "FIFA Regulations") came into force. These are the editions of the rules and regulations under which the case shall be assessed.

## VIII. PRELIMINARY ISSUES

51. On 8 August 2017, after hearing the parties' views, the CAS Court Office informed the parties that their respective requests for disclosure of documents (*i.e.* the Appellant's request of 7 June 2017 and the Respondent's request of 23 June 2017) were dismissed and that the reasons of the dismissal were to be set out in the final arbitral award.

52. In this respect, the Sole Arbitrator notes that Article R44.3 paragraph 1 of the Code provides that:

*"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".*

### A. The Appellant's request of 7 June 2017 for disclosure of the minutes of a Hungarian court hearing

53. On 7 June 2017, the Appellant requested the production of the minutes of a Hungarian court hearing held in the case Z. v. Ujpest 1885, namely a civil suit initiated by Z. against the Respondent. The requested minutes contain the testimonies of Z. and Roderick Duchâtelet that allegedly prove the facts of the case, as presented by the Appellant.

54. On 23 June 2017, the Respondent requested that the Appellant's request for production of documents be dismissed.

55. After having heard the Respondent's objections and in view of the Appellant's arguments and also of the email conversation between the Appellant and Z. submitted by the Appellant, the Sole Arbitrator decided to dismiss the Appellant's request for disclosure as he was not convinced of its relevance for the pertinent points in the present appeal arbitration proceedings. In particular, the Sole Arbitrator points out that the requested minutes concern the hearing of a civil suit in which the Appellant was not a party and, thus, are irrelevant to the subject matter of the dispute at hand and of only limited evidentiary value, especially considering that there is no way for the Appellant to know that the content of the minutes at issue supports his claims in this arbitration. Moreover, the civil suit is still pending before the Hungarian courts and no decision was rendered until the time of submission of the relevant request. Lastly, the Appellant has already submitted a witness statement of the one party of the Hungarian case dispute, *i.e.* Z. In any case, as far as the alleged testimony of the Respondent's president is concerned, which is supposed to be included in the requested minutes, the Sole Arbitrator notes that, as it will be explained in greater detail in the following section of the award, the testimony of the Respondent's president and his (alleged) admission that all the players signed simultaneously a termination and a new employment contract cannot possibly be used to discharge the Appellant's burden of proof as to (a) the existence and (b) the terms and conditions of an employment relationship between two parties, *in lieu* of the actual written contract between the said parties.

**B. The Respondent's request of 23 June 2017 for disclosure of several documents related to the Appellant's financial situation**

56. On 23 June 2017, the Respondent requested the CAS to order the Appellant to disclose several documents related to the latter's financial situation, in the context of a challenge by the former of the ICAS decision to grant the Appellant's request for legal aid.
57. On 14 July 2017, the Appellant requested that the Respondent's request for production be dismissed.
58. After having heard the parties' views on the Respondent's request for disclosure, particularly the Appellant's objections thereto, the Sole Arbitrator decided to dismiss the Respondent's request, also as irrelevant to the facts of this arbitration, as the requested documents relate only to the conditions of the ICAS decision to grant the Appellant's request for legal aid.

**IX. MERITS**

59. According to Article R57 par. 1 of the Code, the Sole Arbitrator has "*full power to review the facts and the law*". As repeatedly stated in the CAS jurisprudence, by reference to this provision the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits (see CAS 2007/A/1394).
60. In accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof and, in the matter at hand, it is up to the party invoking arguments to justify the existence of a contractual agreement the terms of which were not respected to establish the existence of the facts founding such arguments (see IBARROLA J., *La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond*, in BERNASCONI/RIGOZZI (eds.), *The Proceedings before the Court of Arbitration for Sports*, Berne 2007, p. 252; see also, *ex multis*, CAS 2009/A/1810 & 1811).
61. In light of the facts and the circumstances of the case, and considering that the existence of the Ujpest 1885 Contract is in principle disputed between the parties, the Sole Arbitrator shall firstly examine whether any contractual relationship exists between the parties and if its terms and conditions can possibly be determined and, secondly, shall deal with the financial consequences resulting from the employment relationship and its breach, if any.
- A. The issue of the existence of a contractual relationship between the parties and the determination of its terms and conditions**
62. The Appellant claims that on 25 March 2014, after signing a termination letter of his employment relationship with Ujpest FC, he signed a contract with Ujpest 1885 with identical

terms as the terminated contract, and that this was also the case with all the Appellant's teammates who were offered contracts with the same terms as their contracts with Ujpest FC. This was supposedly part of an agreement with the president of Ujpest FC, Mr Duchâtelet, involving the creation of a new legal entity (Ujpest 1885, namely the Respondent), which would take over all Ujpest FC assets, in order to save the team's position in the Hungarian League. The agreement also included the signature of termination letters effectively terminating all the players' contracts with Ujpest FC. The Appellant further argues that his efforts to retain a copy of the signed Ujpest 1885 Contract remained to no avail as the Respondent systematically refused to do so by using various excuses.

63. Furthermore, the Appellant submitted, *inter alia*, the following witness statements claiming that they confirm his allegations:

- Mr B., former player of Ujpest FC and teammate of the Appellant: *"(...) All players, including me, were in media room and signed two documents: the one, a declaration for finishing contracts with Ujpest FC Kft in case of its liquidation and second as a new employment contract with 1885 Ujpest Futball Kft. The conditions of the new contract remained the same as were in old contract. (...) As we sat next to each other with Jarmo Ahjupera I can assure that Jarmo Ahjupera signed both the documents, the one terminating the contract with Ujpest FC Kft, and the other, which was a new contract of employment with 1885 Ujpest Futball Kft.*

*I hereby admit that Roderick Duchatelet assured that there was nothing to be worried about and that signing the two documents was just a formality. He promised that all players could continue playing in 1885 Ujpest Futball Kft."*

- Mr Z., former player of Ujpest FC and teammate of the Appellant: *"We were all in media room, signed simultaneously declaration to finish contracts in Ujpest FC Kft and new labour contracts in Ujpest 1885 Futball Kft.*

*I can assure that Jarmo Ahjupera also signed simultaneously 2 documents as we sat nearby: termination of contract with Ujpest FC Kft and new labour contract with Ujpest 1885 Futball Kft. We all did the same because we were promised that it's the best solution for all of us".*

64. The Sole Arbitrator notes for the sake of completeness that the Appellant also submitted a witness statement by his former teammate J., which is however drafted in Spanish language and, as such, considering that the language of the arbitration is English and the Sole Arbitrator is not competent in Spanish, cannot be taken into consideration.

65. The Respondent, on the other hand, rejects the Appellant's allegations in total. Instead, it claims that no contract was signed between the parties and that the Appellant was looking for a "change of career" and so he accepted a scouting position in Belgium which was offered to him by Mr Duchâtelet and that, in addition to the scouting job, he also signed a professional footballer's contract with an Estonian club on 25 June 2014.



66. According to the legal principle of the burden of proof, the Appellant needs to establish the truth of the facts on which his claim is legally based, namely the existence of a contractual relationship between himself and the Respondent and its terms and conditions. The Appellant thus bears the burden of proving the following in particular:
- (i) that the Ujpest 1885 Contract was concluded between him and the Respondent;
  - (ii) that its terms were the same as those of the Ujpest FC Contract; and
  - (iii) that the Respondent breached the Ujpest 1885 Contract.
67. In view of the foregoing, it is certainly true that it seems unlikely that the Appellant would sign a termination agreement and resign from all his rights from the Ujpest FC Contract, allegedly because he decided to follow a career in scouting and to accept a scouting position in Belgium, as the Respondent claims. After all, the Appellant was not even a party to the scouting contract referred to by the Respondent, which was signed more than 3 months later, and, additionally, the Appellant continued to play football professionally in Estonia after the events of the dispute at hand. In this respect, the Sole Arbitrator also bears in mind that the Respondent did not specifically refute the facts and circumstances as described in the aforementioned witness statements submitted by the Appellant, nor did it file any other documents or witness statements to refute the assertions made by the Appellant (the Respondent merely submitted a declaration signed by several employees which vaguely states that those employees confirm that Mr Duchâtelet was always correct and never forced them to do anything). The Respondent also did not take the opportunity to request a hearing in this arbitration where a cross-examination of Mr B. and Mr Z. would be possible, and to call its President, as a (party) witness to the hearing.
68. That said, however, the Sole Arbitrator needs to point out that one of the fundamental pillars of the system of maintenance of contractual stability safeguarded by FIFA is the minimum requirement condition that a professional football player contract must be in writing. This is evidenced by the FIFA Regulations (see particularly Article 2), the constant case-law of the FIFA judicial bodies and CAS, as well as various FIFA documents and circulars (see for instance FIFA circular 1171 of 24 November 2008).
69. In addition, Article 13 of the Swiss Code of Obligations, which is also applicable in the matter at hand, provides that “[a] contract required by law to be in writing must be signed by all persons on whom it imposes obligations” (unofficial translation provided in the website of the Swiss Federal Council<sup>1</sup>).
70. In consideration of the above, the Sole Arbitrator cannot but observe that there is no definite and/or persuasive evidence in the case file, that would allow him to conclude with certainty that the Ujpest 1885 Contract actually included the same terms as the Ujpest FC Contract and that it was indeed signed by the legal representative of the Respondent in order for it to take proper legal effect.

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<sup>1</sup> The original text of the provision (in its German version) states: “Ein Vertrag, für den die schriftliche Form gesetzlich vorgeschrieben ist, muss die Unterschriften aller Personen tragen, die durch ihn verpflichtet werden sollen”.

71. The Sole Arbitrator takes due note of the Appellant's explanations as to the reason why he was unable to produce a copy of the alleged Ujpest 1885 Contract, in spite of his requests to the Respondent.
72. However, as mentioned above, it is the Appellant who bears the burden of proving that the Ujpest 1885 Contract was properly executed between the parties and that its terms were identical to the Ujpest FC Contract. As a matter of fact, the Respondent denies ever entering into any contractual relationship with the Appellant, whereas neither the Appellant, nor any of his witnesses are possibly able to confirm that the terms offered to the Appellant were indeed the same as in the Appellant's Ujpest FC Contract and that the Ujpest 1885 Contract was indeed (duly) signed by the Respondent.
73. In this regard, the Sole Arbitrator notes that further evidence submitted by the Appellant in support of his position, such as a photo of the new contract between Z. and the Respondent and the decision taken by UEFA in the matter of the Respondent requesting an exception in relation to the application of the three-year-membership rule of UEFA Club Licensing and Financial Fair Play Regulations, cannot lead to the conclusion that the parties concluded the Ujpest 1885 Contract. The same holds true for the bank transfer made by the Respondent to the Appellant, which is not disputed. Considering that the said transfer corresponds to the Appellant's salary of March 2014 under the Ujpest FC Contract, the Sole Arbitrator finds that he cannot deem such payment as proof of the existence of the Ujpest 1885 Contract.
74. Lastly, and for the sake of completeness, the Sole Arbitrator shall examine the Appellant's argument for the application in the dispute at hand of the provisions of the EU Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the "Transfer of Undertakings Directive"). The invoked provisions of the Transfer of Undertakings Directive (Articles 3-6) govern the issue of safeguarding of employees' rights in the event of transfer of an undertaking.
75. In this respect, the Sole Arbitrator notes that, in principle, EU Directives are incapable of having a direct effect on the relations between individuals within the EU territory, as they need first to be transposed into the respective national legal orders, before individuals can have recourse to them (Article 288 paragraph 3 of the Treaty on the Functioning of the European Union).
76. Consequently, the Appellant provides no evidence as to whether (and in which form) the relevant provisions of the Transfer of Undertakings Directive were transposed into Swiss law (by decision of the Swiss Federal Council or in the context of the bilateral Switzerland-EU relations), which is the applicable national law in this arbitration proceedings, or, if this is not the case, he submits no arguments supporting the direct effect of such provisions in the dispute at stake for any other reason whatsoever<sup>2</sup>.

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<sup>2</sup> The criteria for the direct effect of provisions of an EU Directive are laid down in the case-law of the Court of Justice of the European Union (see principally Judgement of 4 December 1974, Case 41-74, *Van Duyn*, ECR 1974, p. 1337).

77. Moreover, and for the sake of clearance, the Sole Arbitrator points out that the purpose of the Directive is to protect employees' rights in case of a *“transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger”* (Article 1 paragraph 1 subparagraph a). Moreover, Article 1 paragraph 1 subparagraph b of the Directive defines its scope of application by stating that *“Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary”*.
78. As a result, considering that the events giving rise to the dispute at hand do not involve a transfer of an undertaking within the meaning of the aforementioned provisions, but rather the dissolution of a company (Ujpest FC) and the creation of another (Ujpest 1885), the Sole Arbitrator finds that the dispute at hand does not fall within the scope of application of the Transfer of Undertakings Directive.
79. Last but not least, the provisions invoked by the Appellant are set to safeguard and defend employee's rights that correspond to employer's obligations which arose before the date of transfer of the undertaking from a contract of employment or an employment relationship existing on the date of the transfer (Article 3 paragraph 1 of the Transfer of Undertakings Directive). In the matter at hand, however, the Appellant acknowledges that he himself has agreed to the termination of his employment relationship with Ujpest FC by signing the Resignation on 25 March 2014.
80. In light of the above, the Sole Arbitrator concludes that the Appellant did not discharge his burden of proving that the Ujpest 1885 Contract was concluded between him and the Respondent and that its terms were the same as those of the Ujpest FC Contract. As a result, there is no need to examine whether the Respondent breached the Ujpest 1885 Contract.

**B. The financial consequences resulting from the employment relationship and its breach, if any**

81. Considering the conclusion reached in the above section, the Sole Arbitrator decides to confirm the Appealed Decision also in this regard and to reject the relevant prayers of relief of the Appellant.
82. Any further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed by Jarmo Ahjupera on 29 March 2017 against the decision issued on 24 November 2016 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued on 24 November 2016 by the FIFA Dispute Resolution Chamber is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.