Arbitration CAS 2017/A/5180 Club Antalyaspor v. Sammy Ndjock & Club Minnesota United, award of 18 December 2017

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

Football
Termination of the employment contract with just cause by the player
Non-payment of remuneration as just cause
Excessive commitment
Obligation to notify the intention to exercise a set-off
Entitlement to compensation in case of termination with just cause
Purpose of Art. 17 RSTP

1. **A party that has not been paid his salary for more than three months generally has just cause to terminate the contract.**

2. **By signing an agreement according to which he is liable to pay to his club a sum of EUR 260,000 representing a claim for training compensation, when he is only entitled to a guaranteed remuneration in the amount of EUR 96,000 for three full sporting seasons, a player enters into an excessive commitment. The agreed bonuses are not to be taken into consideration in the calculation of the guaranteed remuneration as these bonuses are dependent on the player's appearances at the matches. Consequently, such an agreement is null and void.**

3. **According to article 124(1) of the Swiss Code of Obligations, *"a set-off takes place only if the debtor notifies the creditor of his intention to exercise his right of set-off".* In the absence of any evidence suggesting such a notification, a club is not entitled to set-off the player's salary against a claim for training compensation.**

4. **Article 14 of the FIFA Regulations on the Status and Transfer of Players (RSTP) does not specifically determine that the party terminating the contract for just cause is entitled to any compensation for breach of contract by the other party. However, according to article 14(5) and (6) of the FIFA Commentary on the RSTP, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".* Hence, the party at the origin of the termination by breaching its contractual obligations is thus liable to pay compensation for the damages incurred by the party terminating the contract for just cause.**

5. **The purpose of article 17 RSTP is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches**

and terminations, be it breaches committed by a club or by a player.

I. PARTIES

1. Club Antalyaspor (the "Appellant" or "Antalyaspor") is a football club with its registered office in Antalya, Turkey. The Club is registered with the Turkish Football Federation (Türkiye Futbol Federasyonu) (the "TFF"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Mr Sammy Ndjock (the "First Respondent" or the "Player"), born on 20 February 1990, is a professional goalkeeper of Cameroonian nationality.

3. Minnesota United FC (the "Second Respondent" or "Minnesota") is a football club with its registered office in Golden Valley, Minnesota, USA. The Club is registered with the U.S. Soccer Federation (the "USSF"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings and at the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the legal discussion.

A. Background Facts

5. On 1 July 2010, the Player and Antalyaspor concluded an employment contract (the "First Contract"), valid from the date of signing until 31 May 2013. Pursuant to article 4 of the First Contract, the Player was entitled to the following salary and bonuses respectively:

> *"4.1 Player shall receive monthly legal minimum wage. Down payments include the minimum wages sum and when the down payment is done minimum wages considered paid as well.*
>
> *4.2 Other Payments*
> *a) 2010-2011 season total 112.000.-EURO*
> *i) 10.000,-EURO on signing this agreement*
> *ii) 102.000,-EURO / divided to 34 league matches*
> *%100 if plays in the starting 11*
> *%75 enters the game as a substitute*
> *%50 if in the 18 men match squad but do not play*

b) 2011-2012 season total 111.000.-EURO
- *i) 6.000,-EURO Agust (sic) 2011*
- *ii) 3.000,-EURO x 10 mounths* [sic] *(starting from Agust* [sic] *2011)*
- *iii) 102.000,-EURO / divided to 34 league matches*
  %100 if plays in the starting 11
  %75 enters the game as a substitute
  %50 if in the 18 men match squad but do not play

c) 2012-2013 season total 116.000.-EURO
- *i) 10.000,-EURO Agust* [sic] *2012*
- *ii) 4.000,-EURO x 10 mounths* [sic] *(starting from Agust* [sic] *2012)*
- *iii) 102.000,-EURO / divided to 34 league matches*
  %100 if plays in the starting 11
  %75 enters the game as a substitute
  %50 if in the 18 men match squad but do not play.

[…]

5. Special Provisions
- *a) Player is a free agent. In case, any other 3rd party shall ask any license, compensation and/or loyalty fee; player agrees to pay this amount on Antalyaspor A.S. shall deduct this amount from player's remuneration".*

6. On 10 August 2010, the Player signed a *"Recognizance"* (the "Recognition"), which provides the following:

> *"I hereby accept and declare that, I transferred to Club Antalyaspor A.S. without a transfer compensation and my previous Clubs, on no condition shall not request from Club Antalyaspor A.S., "training compensation" or "solidarity contribution" or any other compensation.*
>
> *In the event of a person or a Club request from Club Antalyaspor A.S. "training compensation" or "solidarity contribution" or any other compensation and in the event that this compensation is paid by Club Antalyaspor A.S., I accept and declare that, the amount paid by Club Antalyaspor A.S. will be deducted from my due and executory contractual assets. I also accept and declare that, if the deduction remain insufficient I will pay the amount paid by Club Antalyaspor A.S. to Club Antalyaspor A.S".*

7. On 30 April 2012, the Player and Antalyaspor amended the payment terms of the First Contract related to the 2012/2013 sporting season and concluded a second employment contract (the "Second Contract"), modifying the duration of their contractual relationship as from 1 June 2013 until 31 May 2016. Pursuant to article 4 of the Second Contract, the Player was entitled to the following salary and bonuses respectively:

> *"4.1 Player shall receive monthly legal minimum wage. Down payments include the minimum wages sum and when the down payment is done minimum wages considered paid as well.*

4.2 Other Payments

a) 2013-2014 season total 321.000.-EURO

i) 85.500,-EURO Agust [sic] *2013*
ii) 10.500,-EURO October 2013
iii) 10.000,-EURO x 10 mounths [sic] *(starting from Agust* [sic] *2013)*
iv) 125.000,-EURO / divided to 34 league matches
%100 if plays in the starting 11
%75 enters the game as a substitute
%50 if in the 18 men match squad but do not play

b) 2014-2015 season total 374.500.-EURO

i) 112.250,-EURO Agust [sic] *2014*
ii) 12.250,-EURO October 2014
iii) 10.000,-EURO x 10 mounths [sic] *(starting from Agust* [sic] *2014)*
iv) 150.000,-EURO / divided to 34 league matches
%100 if plays in the starting 11
%75 enters the game as a substitute
%50 if in the 18 men match squad but do not play

c) 2015-2016 season total 428.000.-EURO

i) 139.000,-EURO Agust [sic] *2015*
ii) 14.000,-EURO October 2015
iii) 10.000,-EURO x 10 mounths [sic] *(starting from Agust* [sic] *2015)*
iv) 175.000,-EURO / divided to 34 league matches
%100 if plays in the starting 11
%75 enters the game as a substitute
%50 if in the 18 men match squad but do not play

Above mentioned amounts are payable net to player and all respective taxes are to be paid by the club.

[…]

5. Special Provisions

a) Player is a free agent. In case, any other 3rd party shall ask any license, compensation and/or loyalty fee; player agrees to pay this amount on Antalyaspor A.S. shall deduct this amount from player's remuneration".

8. On 5 September 2013, the Player was temporarily transferred on loan to the Turkish club Fethiyespor Kulübü until 31 May 2014, which loan was prematurely terminated in April 2014.

9. On 5 December 2013, the FIFA DRC notified a decision dated 29 November 2013 to Antalyaspor, obliging Antalyaspor to pay training compensation in connection with the Player in the amount of EUR 260,000 to LOSC Lille Metropole ("LOSC"), the former club of the Player based in Lille, France, within 30 days as from the date of notification of the decision,

10. On or about 6 August 2014, the Player resumed rendering his services to Antalyaspor.

11. On 13 September 2014, Antalyaspor informed the Player that it had decided to deduct EUR 260,000 from the Player's remuneration.

12. On 5 November 2014, the Player unilaterally terminated the Second Contract.

13. On 21 February 2015, the Player concluded an employment contract with Minnesota, whereby he earned a total amount of USD 133,000 (equivalent to EUR 125,000, which was not disputed by the parties) until the end of the initial duration of the Employment Contract with Antalyaspor, *i.e.* until 31 May 2016.

B. Proceedings before the Dispute Resolution Chamber of FIFA

14. On 7 April 2015, the Player lodged a claim against Antalyaspor with the FIFA Dispute Resolution Chamber (the "FIFA DRC"), claiming the amount of EUR 1,138,766 with 5% interest from Antalyaspor, which can be broken down as follows:

    i. EUR 276,460.67 as outstanding remuneration:
        a) EUR 10,000 corresponding to the May 2014 salary;
        b) EUR 30,000 corresponding to the salaries for the months from August to October 2014;
        c) EUR 1,666.67 corresponding, pro rata, to the November 2014 salary;
        d) EUR 112,250 corresponding to the contractual payment due in August 2014;
        e) EUR 12,250 corresponding to the contractual payment due in October 2014;
        f) EUR 110,294 corresponding to match bonuses;

    ii. EUR 862,305.33 as compensation for breach of contract:
        a) EUR 68,333.33 corresponding to the salaries calculated as from 6 November 2014 until 31 May 2015;
        b) EUR 149,974 corresponding to match bonuses for the sporting season 2014/2015;
        c) EUR 428,000 corresponding to the entire remuneration for the sporting season 2015/2016;
        d) EUR 44,000 corresponding to accommodation;
        e) EUR 22,000 corresponding to car-rental expenses;
        f) EUR 150,000 corresponding to moral damages;

    iii. 5% interest on both compensation and outstanding amounts.

15. On 1 June 2015, Antalyaspor submitted its position, requesting the claim of the Player to be dismissed and lodging a counterclaim against the Player and Minnesota in the amount of EUR 600,166.66 with 5% interest, which can be broken down as follows:

    a) EUR 496,333.33 corresponding to compensation for breach of contract, i.e. the residual value of the second contract;
    b) EUR 103,833.33 corresponding to the balance between the Player's virtual receivables and the amount of compensation paid by Antalyaspor to LOSC;

c) 5% interest on the amount of EUR 600,166.66;
d) The costs of the procedure;
e) Sporting sanctions on the Player.

16. On 24 November 2016, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

"1. The claim of the [Player] *is partially accepted.*

2. The claim of [Antalyaspor] *is rejected.*

3. [Antalyaspor] *has to pay to the* [Player]*, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 152,305 plus 5% interest p.a. until the date of effective payment as follows:*

a. 5% p.a. as of 1 September 2014 on the amount of EUR 10,000;
b. 5% p.a. as of 1 October 2014 on the amount of EUR 9,000;
c. 5% p.a. as of 1 November 2014 on the amount of EUR 8,805;
d. 5% p.a. as of 1 September 2014 on the amount of EUR 112,250;
e. 5% p.a. of 1 November 2014 on the amount of EUR 12,250.

4. [Antalyaspor] *has to pay to the* [Player]*, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 198,000 plus 5% interest p.a. as from 7 April 2015 until the date of effective payment.*

[…]".

17. On 18 May 2017, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- As to the termination of the Employment Contract, *"the Chamber deemed that the underlying issue in dispute […] was to determine as to whether the relevant employment contract had been terminated with or without just cause by the* [Player].

- *In continuation, given* [Antalyaspor's] *argumentation that it was contractually entitled to withhold the* [Player's] *remuneration and that it, thus, did not act in breach of its financial obligations, the Chamber deemed relevant to first turn its attention to the contents of art. 5 a) of the second contract.*

- *[…] [T]he Chamber stressed that the wording of said clause was not specific enough so as to reflect an agreement by and between the parties to include payment(s) related to training compensation in the scope of the above-described mechanism".*

- As to the statement dated 10 August 2010, *"the members of the Chamber concluded that contrary to art. 5 a) of the second contract, its terms were explicit and left no room for interpretation. […]"* as a consequence of which *"the* [Player] *had inter alia accepted that the amount of training compensation be deducted from his remuneration by* [Antalyaspor], *should the latter be ordered to pay training compensation to another club, which eventually occurred on 5 December 2013.*

- *[…] [T]he Chamber deemed it fit to emphasise that a party signing a document of legal importance without knowledge of its precise contents, as a general rule, does so on its own responsibility. […] However, the members of the Chamber took into consideration that the amount of training compensation of EUR 260,000 that* [Antalyaspor] *had to pay to LOSC represents more than 115% of the value of the* [Player's] *fixed remuneration for the entire sporting season 2014/2015, namely EUR 224,500. […] What is more, with respect to the 2013/2014 season, during which the* [Player] *was registered with another club on loan basis, said training compensation amount even represents more than 132% of the value of the player's fixed remuneration for that season on the basis of employment contract between the parties, i.e. EUR 196,000.*

- *The Chamber agreed that said sum of training compensation must be considered excessive in relation to the yearly income of the* [Player] *and that as a result of the relevant amount of training compensation being disproportionate, the members of the Chamber concurred that the* [Player's] *statement dated 10 August 2010 could not be considered as legally binding on the* [Player] *and could not be validly invoked by* [Antalyaspor] *as a reason not to pay the* [Player's] *remuneration.*

- *On account of all of the above considerations, the Chamber decided that* [Antalyaspor] *had no valid grounds to withhold the* [Player's] *remuneration […]. Consequently, the Chamber decided that the* [Player] *had just cause to terminate the employment contract with effect as of 5 November 2014, at which point in time at least all payments due to the* [Player] *as of August 2014 in accordance with the second contract had remained outstanding, and that* [Antalyaspor] *is to be held liable for the early termination of the contract with just cause by the* [Player]*".*

- As to the consequences of Antalyaspor's breach of the Employment Contract, *"and in accordance with the general legal principle of pacta sunt servanda, the Chamber decided that* [Antalyaspor] *is liable to pay to the* [Player] *the amount of EUR 152,305 in connection with outstanding remuneration.*

- *[…] In application of* [article 17(1) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA Regulations") and having established that the Second Contract does not contain any clause by means of which the parties had beforehand agreed upon a compensation payable in the event of breach of contract]*, the Chamber […] concluded that the* [Player] *would have earned in total EUR 323,000 as fixed remuneration had the contract been executed until its expiry date. Consequently, the Chamber established that the amount of EUR 323,000 serves as the basis for the final determination of the amount of compensation for breach of contract.*

- *In continuation, the Chamber verified as to whether the* [Player] *had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the* [Player's] *general obligation to mitigate his damages.*

- *The Chamber recalled that, on 21 February 2015, the* [Player] *signed an employment contract with Minnesota, and established that in accordance with said contract, and up until the ordinary date of*

expiry of the relevant employment contract with [Antalyaspor]*, the* [Player] *was entitled to receive remuneration of USD 133,000, which equals the approximate sum of EUR 125,000.*

- *Consequently, […] the Chamber decided to partially accept the* [Player's] *claim and that* [Antalyaspor] *must pay the amount of EUR 198,000 as compensation for breach of contract to the* [Player]*".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 8 June 2017, Antalyaspor lodged a Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (2017 edition) (the "CAS Code"), challenging the Appealed Decision and requesting the appointment of a sole arbitrator.

19. On 15 June 2017, the Player agreed with the appointment of a sole arbitrator, but suggested that the procedure be handled in French.

20. On 19 June 2017, Minnesota objected to the appointment of a sole arbitrator, requesting that this procedure shall be submitted to a three-member Panel. Furthermore, Minnesota indicated that it preferred the procedure to be handled in English.

21. On the same day, Antalyaspor filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. Antalyaspor submitted the following requests for relief:

"1. To set aside the challenged FIFA Dispute Resolution Chamber decision,

2. To condemned [sic] *the First Respondent and the Second Respondent:*

a. To pay the amount of EUR 103.833,33- as outstanding and non-paid part of the training compensation,

b. To pay the amount of EUR 321.333,33- as the compensation for breach of the contract,

3. If sub request (2) is not accepted- ; To cancel or at least deduct the compensation amount condemned by the FIFA DRC,

4. To condemn the Respondents as the only responsible of this trial and to establish that the costs of the arbitration procedure shall be borne by the Respondents".

22. On 20 June 2017, Antalyaspor informed the CAS Court Office that it preferred to maintain English as the language of the procedure.

23. On 3 July 2017, the President of the Appeals Arbitration Division rendered an Order on Language, in accordance with Article R29 of the CAS Code, pronouncing that the language of the arbitral procedure would be English.

24. On 25 July 2017, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator

25. On 14 August 2017, the Player filed his Answer, in accordance with Article R55 of the CAS Code. The Player submitted the following requests for relief:

"that the CRL decision will be confirmed".

26. On 15 August 2017, Minnesota filed its Answer, in accordance with Article R55 of the CAS Code. Minnesota submitted the following requests for relief:

"I. Dismiss the appeal filed by Antalyaspor;

II. That the Appealed Decision shall be upheld in totum;

III. Alternatively, limit the amount of compensation established in favour of Antalyaspor to an amount set as close as possible to zero;

IV. Alternatively, to dismiss the claims of Antalyaspor against Minnesota and hold that the Player is the sole debtor of any compensation to Antalyaspor;

V. Order Antalyaspor to reimburse Minnesota for legal costs in an amount of at least CHF 10,000.00 (ten thousand Swiss Francs);

VI. Order Antalyaspor to bear any and all FIFA and CAS administrative and procedural costs, which have already been incurred or may eventually be incurred by Minnesota".

27. On 6 October 2017, upon request of the Sole Arbitrator pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to the proceedings leading to the Appealed Decision, and renounced its right to request its possible intervention in the present arbitration proceedings.

28. On 12 and 13 October 2017 Antalyaspor, the Player and Minnesota, respectively, returned duly signed copies of the Order of Procedure to the CAS Court Office.

29. On 24 October 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Panel.

30. In addition to the Sole Arbitrator and Mr Brent J. Nowicki, Managing Counsel to the CAS, the following persons attended the hearing:

For Antalyaspor:

- Mr Kemal Kapulluoglu, Counsel;
- Mr Ali Topuz, Counsel

For the Player:

- Mr Pascal Cussigh, Counsel

For Minnesota:

- Mr Nicholas Rogers, President of Minnesota;
- Mr Stefano Malvestio, Counsel

31. No witnesses or expert witnesses were heard. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. Although the Player and Minnesota objected to the filing of two documents by Antalyaspor, the Sole Arbitrator decided to accept these documents, pursuant to Article R44.3 of the CAS Code.

32. Before the hearing was concluded, all parties expressly stated that they were treated equally and that their right to be heard had been respected.

33. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

34. Antalyaspor's submissions, in essence, may be summarised as follows:

- Antalyaspor purports that the Player had no reason to lawfully terminate the Second Contract because the Player *"acted against goodwill and breached the contract by negotiating with other clubs whilst the second contract was still in force"*.

- Antalyaspor submits that the employment contracts were concluded, subject to the Player's guarantee that his former club LOSC would not ask for training compensation, and therefore, the Player, by signing the First and Second Contract as well as signing the Recognition, voluntarily *"had accepted the deduction of any amount of compensation, solidarity contribution and training compensation from his allowances paid by the Appellant to other 3rd parties, which occurred on 5 December 2013"*, and accepted that if the deduction would remain insufficient, he would be obliged to reimburse Antalyaspor in full.

- As a consequence, Antalyaspor maintains that it was not only entitled to set-off the amount of training compensation paid to LOSC in the amount of EUR 260,000

against the Player's outstanding remuneration in the amount of EUR 156,166.67, but that it was also entitled to receive from the Player the remaining part of the training compensation in the amount of EUR 103,833.33.

- In continuation, Antalyaspor asserts that in accordance with Article 17 of the FIFA Regulations, it is also entitled to *"receive the residual guaranteed amounts of the second contract which is equal to EUR 321,333.33"*.

- Finally, Antalyaspor submits that pursuant to Article 17(2) of the FIFA Regulations, Minnesota is jointly and severally liable with the Player for the payment of EUR 424,166.66 (EUR 103,833.33 + EUR 321,333.33) and that pursuant to Article 17(3) of the FIFA Regulations *"a four-month restriction shall be imposed to the Player, since he breached the contract without just cause during the protected period"*.

- Subsidiarily, Antalyaspor argues that *"a deduction shall be made to the compensation amount pursuant to the Article 337(b) paragraph 2 of the Swiss Code of Obligation"* because Antalyaspor's *"trust has to be somehow protected"*. Antalyaspor submits that it would never have signed an employment contract with the Player without the assurance that no training compensation was due.

35. The Player's submissions, in essence, may be summarised as follows:

- The Player maintains that Antalyaspor breached the Second Contract unilaterally and without just cause due to unpaid salaries from August 2014 onwards, which justified the termination by the Player on 5 November 2014.

- The Player contends that *"payment of training compensation is not the responsibility of the player and therefore cannot be subject to the application of Article 5 (a)"*. The Player maintains that Antalyaspor cannot ignore the principle laid down in Article 20 of the FIFA Regulations, and as such is not responsible for the payment of training compensation.

- In continuation, the Player submits that the Recognition is clearly *"flawed and must therefore be recognized as null and void"*, adding that *"any agreement or commitment (even signed by the player) to impose a training or solidarity compensation on the player must be considered null and void"*.

- Finally, the Player argues that the conditions for a valid set-off are not satisfied as *"the training compensation was owed by* [Antalyaspor] *to* [LOSC]*, while the remuneration relate to an employee and his employer"*.

36. Minnesota's submissions, in essence, may be summarised as follows:

- Minnesota argues that Antalyaspor was not entitled to set-off training compensation allegedly paid to LOSC, against the Player's (full) salaries. As such, the Player was entitled to terminate his employment relationship with Antalyaspor, as the latter not only owed the Player outstanding remuneration for more than three months, but also

had no interest in the Player whatsoever and *"completely excluded him from its sporting activities"*.

- Minnesota maintains that, pursuant to the FIFA Regulations, Antalyaspor is solely responsible for the payment of training compensation for the Player, which responsibility cannot be shifted to the Player. As such, and taking into account Article 20 of the Swiss Code of Obligations (the "SCO") and Article 27 of the Swiss Civil Code (the "SCC") respectively, the alleged commitment of the Player to pay training compensation is not only unlawful and immoral, but also constitutes an excessive commitment.

- Subsidiarily, Minnesota purports that it should be exempted from any liability, as the negotiations between Minnesota and the Player only started months after the termination of the employment relationship between the Player and Antalyaspor. Therefore, Minnesota stresses that it has not induced the Player to breach his employment relationship with Antalyaspor.

- Finally, Minnesota submits several arguments to explain that Antalyaspor has not suffered any damage and as such is not entitled to any compensation.

V. JURISDICTION

37. The jurisdiction of CAS, which is not disputed, derives from article 58(1) of the FIFA Statutes (2016 edition) as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 of the CAS Code.

38. The jurisdiction of CAS is further confirmed by the parties by means of their signatures on the Order of Procedure.

39. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

VI. ADMISSIBILITY

40. The appeal was filed within the deadline of 21 days set by article 58(1) of the FIFA Statutes. The appeal complies with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

41. It follows that the appeal is admissible.

VII. APPLICABLE LAW

42. Antalyaspor argues that the FIFA Regulations are primarily applicable, and, subsidiary, Swiss law. The Player refers in his submissions to the FIFA Regulations, and Minnesota refers in its submissions to both the FIFA Regulations and Swiss law.

43. Article R58 of the CAS Code provides the following:

> *"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".*

44. Article 6 of the Second Contract determines as follows:

> *"[…] In case of any dispute arising from this contract Turkish Football Federation and FIFA regulations are applicable".*

45. Article 57(2) of the FIFA Statutes determines 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".*

46. The Sole Arbitrator finds that, in accordance with Article R58 of the CAS Code, the dispute shall primarily be decided in accordance with the applicable regulations. The applicable regulations in the matter at hand are the various regulations of FIFA. Pursuant to article 57(2) of the FIFA Statutes, Swiss law shall apply additionally. This however only to the extent that the various regulations of FIFA contain any *lacunae*.

VIII. MERITS

A. The Main Issues

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

i) Did the Player have just cause to terminate the employment relationship?

ii) If the Player had just cause to terminate the employment relationship, to what amount of outstanding remuneration is the Player entitled?

iii) If the Player had just cause to terminate the employment relationship, to what amount of compensation for breach of contract is the Player entitled?

i) Did the Player have just cause to terminate the employment relationship?

48. The Sole Arbitrator notes that it remained undisputed between the parties that the Player unilaterally and prematurely terminated the employment relationship with Antalyaspor on 5 November 2014.

49. The Sole Arbitrator is not impressed by Antalyaspor's argument that the Player breached the Employment Contract because he allegedly negotiated with other clubs while the Employment Contract was still in force, as Antalyaspor confirmed at the hearing that it had granted permission to the Player to participate in trials with other clubs during the period from 28 July to 4 August 2014.

50. The Player maintains that he had just cause to terminate the employment relationship because Antalyaspor failed to pay him the remuneration for August, September and October 2014, totalling to an amount of EUR 156,166, despite the fact that the Player notified Antalyaspor of these overdue payables on numerous occasions.

51. Antalyaspor admitted that *"various letters were sent alleging* [Antalyaspor] *was in breach by not respecting monetary obligations"*, but purports that the Player terminated the employment relationship without just cause because in accordance with the First and Second Contract and the Recognition, Antalyaspor was not only entitled to set-off the training compensation paid to LOSC in the amount of EUR 260,000 against the outstanding remuneration, but it was also entitled to request the remaining amount of EUR 103,833.33 from the Player.

52. The divergent views of Antalyaspor and the Player derive from Antalyaspor's argument that it was not required to pay the Player's remuneration in application of article 5(a) of the First and Second Contract and the Recognition, given the breach of the Player's duties under these agreements.

53. Therefore, the Sole Arbitrator shall determine whether or not the non-payment by Antalyaspor of the Player's remuneration constituted a just cause and entitled the Player to unilaterally and prematurely terminate the Employment Contract.

54. The first issue to be addressed in the present matter is whether the Player had just cause to terminate the employment relationship. The burden of proof in this respect lies with the Player.

55. In this respect, the Panel observes that article 14 of the FIFA Regulations determines as follows:

> *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".*

56. The Panel observes that the FIFA Commentary on the Regulations for the Transfer and Status of Players (the "FIFA Commentary") provides guidance as to when an employment contract is terminated with just cause:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".

57. In this regard, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495).

The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This

> *is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)"* (CAS 2006/A/1180, para. 25-26 of the abstract published on the CAS website).

58. The FIFA Commentary specifically refers to the following example of a breach with just cause:

> *"Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".*

59. The Sole Arbitrator notes that it is established CAS jurisprudence that a party that has not been paid his salary for more than three months generally has just cause to terminate the contract (CAS 2015/A/4158, para. 103(c) of the abstract published on the website of CAS; with further reference to CAS 2014/A/3584, para. 87).

60. At the hearing, Antalyaspor argued that it continued to pay the minimum wages to the Player. However, the Sole Arbitrator notes that although the FIFA DRC acknowledged that Antalyaspor paid in cash to the Player *"approximately EUR 2,195 over said period"* (Turkish Lira ("TRY") 2,862 on 16 September 2014, TRY 350 on 22 October 2014, EUR 1,000 on 24 October 2014 and TRY 350 on 28 October 2014), no evidence has been filed confirming that these payments relate to minimum wages.

61. Besides this, the Sole Arbitrator observes that this argument contradicts Antalyaspor's position as set out in its written submissions where it claims that the total amount payable to the Player for the 2014/2015 sporting season until the unilateral termination amounts to EUR 156,166.67, consisting of the Player's full salary up until that moment, without any reference to alleged continued payments of the minimum wages. In any event, even if these amounts were related to the payment of minimum wages, the Sole Arbitrator notes that the amount of EUR 2,195 is only 1,4% of the total amount of outstanding remuneration and as such insignificant. Therefore, the Sole Arbitrator disregards this argument.

62. Taking into account that Antalyaspor did not settle the amount due, despite the undisputed fact that the Player informed Antalyaspor of its default, and considering the substantial amounts of remuneration that remained unpaid over a period of three months totalling up to EUR 153,971 (EUR 112,250 for August 2014, EUR 12,250 for October 2014, and EUR 31,666, being the total monthly salaries from August till date of termination minus EUR 2,195), the Sole Arbitrator finds that it could not be reasonably expected from the Player to continue to be bound by the contractual relationship due to Antalyaspor's repeated violations,

unless Antalyaspor indeed was entitled to set-off its alleged training compensation claim based on article 5(a) of the employment contracts and/or the Recognition.

63. First of all, the Sole Arbitrator observes that Antalyaspor alleges that it was entitled to proceed in the way it did because the Player, *"with his free will, committed to reimburse* [Antalyaspor] *a priori losses if any compensation, solidarity mechanism and training compensation will be paid",* adding that there is *"not any legal ground to be deemed the Player's commitment as invalid".*

64. The Sole Arbitrator shall start the assessment of the *quaestio litis* by analysing article 5(a) of the Second Contract, which was also included in the First Contract, and the Recognition.

65. Article 5(a) of the First and Second Contract provides the following:

> *"5. Special Provisions*
> a) *Player is a free agent. In case, any other 3rd party shall ask any license, compensation and/or loyalty fee; player agrees to pay this amount on Antalyaspor A.S. shall deduct this amount from player's remuneration".*

66. The Recognition provides as follows:

> *"I hereby accept and declare that, I transferred to Club Antalyaspor A.S. without a transfer compensation and my previous Clubs, on no condition shall not request from Club Antalyaspor A.S., "training compensation" or "solidarity contribution" or any other compensation.*
>
> *In the event of a person or a Club request from Club Antalyaspor A.S. "training compensation" or "solidarity contribution" or any other compensation* ***and in the event that this compensation is paid by Club Antalyaspor A.S.****, I accept and declare that, the amount paid by Club Antalyaspor A.S. will be deducted from my due and executory contractual assets. I also accept and declare that, if the deduction remain insufficient I will pay the amount paid by Club Antalyaspor A.S. to Club Antalyaspor A.S"* (emphasis added by the Sole Arbitrator).

67. The Player and Minnesota have challenged the validity of these clauses by basically stating that article 5 of the First and Second Contract do not refer to training compensation and that the Recognition constitutes an excessive legal commitment, which is to be declared null and void in light of Article 20(1) SCO and Article 27(2) SCC. Antalyaspor argued that the Turkish text of these clauses refers to training compensation, but the English text mistakenly refers to "loyalty fee" instead of "training compensation", and that therefore the Recognition was signed by the Player, *"with his free will"*, in which explicit reference is made to training compensation.

68. The Sole Arbitrator, after a careful analysis of the content of article 5(a) of the First and Second Contract, shares the FIFA DRC's view that the relevant terms could not be reasonably and clearly construed as an acceptance by the Player that Antalyaspor could deduct the amount of training compensation from his remuneration, should Antalyaspor be ordered to pay training compensation to a third party. Furthermore, the Sole Arbitrator concurs with the FIFA DRC that the wording of the clause is not specific enough so as to reflect an agreement

by and between the Player and Antalyaspor to include payment(s) related to training compensation in the scope of the above-described mechanism, which was in fact admitted by Antalyaspor because it considered necessary to have the Recognition signed by the Player. Consequently, the Sole Arbitrator considers that Antalyaspor was not entitled to set-off its alleged training compensation claim based on article 5(a) of both the First and Second Contract.

69. In continuation, the Sole Arbitrator turns his attention to the content of the Recognition, in which the Player, *inter alia*, declares that his former clubs will not request training compensation, solidarity contribution, or any other compensation, but if they do, and if Antalyaspor has paid the relevant compensation, Antalyaspor will be entitled to deduct the amount paid from his remuneration, and if this deduction remains insufficient, he is obliged to pay Antalyaspor the total amount.

70. According to the wording of the Recognition, Antalyaspor's entitlement to deduct any amount from the Player's salary is subject to the effective payment made by Antalyaspor to LOSC for training compensation (*"in the event that this compensation is paid by Club Antalyaspor A.S"*).

71. Although Antalyaspor provided the Sole Arbitrator with the FIFA DRC decision dated 29 November 2013 pursuant to which Antalyaspor was obliged to pay training compensation in connection with the Player in the amount of EUR 260,000 to LOSC, and counsel of Antalyaspor informed the Sole Arbitrator at the hearing that this amount was paid, no proof of payment of such amount to LOSC was provided. In the absence of such evidence, the Sole Arbitrator is not put in a position to examine when this amount was paid. The exact moment of payment is relevant in order to examine whether this amount, if paid, was paid before Antalyaspor invoked the Recognition and proceeded to set-off this claim against the Player's remuneration. As such, the Sole Arbitrator finds that Antalyaspor has not met its burden of proof to establish that the precondition for triggering the application of the Recognition entered into effect.

72. Should Antalyaspor have proven that it paid the amount of EUR 260,000 to LOSC before invoking the Recognition, *quod non*, the Sole Arbitrator concurs with the FIFA DRC that the obligation to pay said sum of training compensation must be considered an excessive commitment in comparison with the yearly income of the Player.

73. At the hearing, Antalyaspor challenged the excessiveness of the Player's payment obligation based on the Recognition, explaining that as LOSC for the first time requested training compensation in February 2012, Antalyaspor and the Player agreed to sign the Second Contract, enabling the Player to pay the training compensation by increasing the Player's guaranteed salaries for three more seasons to EUR 477,500, which means that after the deduction of the training compensation amount of EUR 260,000, the Player still would have earned guaranteed salaries of EUR 217,500, which is in comparison to the Player's salaries at Minnesota (EUR 121,000) nearly twice the amount.

74. The Second Contract, however, makes no reference at all to this alleged agreement between the Player and Antalyaspor, but just maintained article 5(a) unaltered without even a reference

to the Recognition. The Player also disputes this alleged course of events, pointing out that he was never informed about the training compensation claim and arguing that Antalyaspor's position is not credible as reference is made to the deduction of training compensation only for the first time in Antalyaspor's letter dated 13 September 2014, while the relevant decision of the FIFA DRC was already communicated to Antalyaspor on 5 December 2013. There is therefore no evidence on file suggesting that the Player was made aware of the fact that the Club would start setting-off his salary against his debt based on the Recognition. In the absence of any evidence on file suggesting that the Club notified the Player of its intention to set-off the Player's salary against its claim for training compensation before proceeding with the set-off, as required by article 124(1) SCO *("a set-off takes place only if the debtor notifies the creditor of his intention to exercise his right of set-off"*), the Sole Arbitrator finds that the Club was not entitled to set-off the Player's salary.

75. The Sole Arbitrator observes that the Recognition was signed on 10 August 2010, 40 days after the signing of the First Contract, which contract, apart from bonuses, guaranteed a total remuneration of EUR 96,000 for three seasons (EUR 10,000 for the 2010-2011 season, EUR 36,000 for the 2011-2012 season and EUR 50,000 for the 2012-2013 season). The Sole Arbitrator has no hesitation to conclude that the Player entered into an excessive commitment by signing the Recognition on 10 August 2010, being liable to pay EUR 260,000 to Antalyaspor, when he is only entitled to a guaranteed remuneration in the amount of EUR 96,000 for three full sporting seasons. The Sole Arbitrator does not take into account the agreed bonuses as these bonuses are dependent on the Player's appearances at the league matches. Consequently, the Sole Arbitrator finds the Recognition null and void, and, as such, considers that Antalyaspor was not entitled to set-off its alleged training compensation claim based on the Recognition.

76. Although, on 30 April 2012, the Player and Antalyaspor amended the payment terms of the First Contract related to the 2012-2013 season by increasing the Player's guaranteed remuneration from EUR 50,000 to EUR 167,500, plus bonuses, and on the same day concluded the Second Contract, modifying the duration of their contractual relationship as from 1 June 2013 until 31 May 2016, guaranteeing, apart from bonuses, a total remuneration of EUR 673,500 (EUR 196,000 for the 2013-2014 season, EUR 224,500 for the 2014-2015 season and EUR 253,000 for the 2015-2016 season), the Sole Arbitrator does not find this relevant for the assessment of the excessiveness of the Recognition, as (i) LOCS had already informed Antalyaspor of its training compensation claim in February 2012; (ii) by concluding the Second Contract a new situation emerged and therefore the First Contract and the Recognition lost their legitimacy; and (iii) the Second Contract does not contain any reference to the Player's liability for payment of training compensation, but only maintained article 5(a) which does not refer to training compensation, which made it allegedly necessary to draft the Recognition in addition to the First Contract. If Antalyaspor would have desired to maintain the Player's responsibility for payment of training compensation, Antalyaspor should have amended article 5(a) of the Second Contract in conformity, which it did not. Therefore, after the signing of the Second Contract on 30 April 2012, any set-off cannot be based anymore on the Recognition dated 10 August 2010.

77. Consequently, the Sole Arbitrator finds that the Player had just cause to terminate the Employment Contract on 5 November 2014.

78. As a consequence of this conclusion, any claim against Minnesota is moot.

ii) If the Player had just cause to terminate the employment relationship, to what amount of outstanding remuneration is the Player entitled?

79. The Sole Arbitrator notes that Antalyaspor did not dispute that it failed to pay outstanding remuneration until the date of termination of the Employment Contract with the Player in the amount of EUR 153,971.

80. The Sole Arbitrator observes that the FIFA DRC granted EUR 152,305 as it did not take into account the non-payment of the November days, amounting to EUR 1,666. As the Player did not file an appeal at CAS against the Appealed Decision, the Sole Arbitrator is not allowed to grant the Player a higher amount then established by the FIFA DRC, because this would be *ultra petita*.

81. Consequently, the Sole Arbitrator finds that the Player is entitled to the total amount of EUR 152,305 as outstanding remuneration, with interest at a rate of 5% *p.a.* accruing as from the due dates, in accordance with the Appealed Decision.

iii) If the Player had just cause to terminate the employment relationship, to what amount of compensation for breach of contract is the Player entitled?

82. The Sole Arbitrator observes that article 14 of the FIFA Regulations reads as follows:

> *"A contract may be terminated by either party without consequences of any kind (either payment or compensation or imposition of sporting sanctions) where there is just cause".*

83. Although it has been established *supra* that the Player had just cause to terminate the Employment Contract with Antalyaspor, Article 14 of the FIFA Regulations does not specifically determine that the Player is entitled to any compensation for breach of contract by Antalyaspor.

84. The Sole Arbitrator, however, is satisfied that the Player is in principle entitled to compensation because of Antalyaspor's breach of its contractual obligations pursuant to the Employment Contract. In this respect, the Sole Arbitrator makes reference to the FIFA Commentary. According to article 14(5) and (6) of the FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*. Hence, although it was the Player who terminated the Employment Contract, Antalyaspor was at the origin of the termination by breaching its contractual obligations and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2012/A/3033, §72 of the abstract published on the CAS website).

85. The Sole Arbitrator observes that article 17(1) of the FIFA Regulations provides as follows:

> *"The following provisions 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 (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

86. The Sole Arbitrator observes that the parties did not deviate from the application of article 17(1) of the FIFA Regulations by means of a liquidated damages clause. The compensation for breach of contract to be paid to the Player by Antalyaspor is therefore to be determined in accordance with article 17(1) of the FIFA Regulations.

87. The Sole Arbitrator takes due note of previous CAS jurisprudence establishing that the purpose of article 17 of the FIFA Regulations is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, para. 6.37).

88. In respect of the calculation of compensation in accordance with article 17(1) of the FIFA Regulations and the application of the principle of "positive interest", the Sole Arbitrator follows the framework as set out by a previous CAS panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*

> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations".* (CAS 2008/A/1519-1520, at §85 *et seq.*)

89. The Sole Arbitrator finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Sole Arbitrator will proceed to assess the Player's objective damages, before applying his discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

90. The Sole Arbitrator notes that, as also correctly held by the FIFA DRC in the Appealed Decision, the remaining value of the Employment Contract related to the fixed remuneration as from the moment of termination (*i.e.* 5 November 2014), until the date of regular expiration (*i.e.* 31 May 2016), amounts to EUR 323,000.

91. Since it remained undisputed that the Player earned a total amount of USD 133,000 with Minnesota (which undisputedly equals the approximate sum of EUR 125,000 as established by the FIFA DRC) until the end of the initial duration of his employment relationship with Antalyaspor, the Sole Arbitrator finds that this amount is to be deducted from the amount of compensation for breach of contract to be awarded to the Player. The Player is therefore in principle entitled to an amount of EUR 198,000 (EUR 323,000 -/- EUR 125,000).

92. Insofar Antalyaspor argues that the amount of compensation should be reduced because it *"indeed believed that the Player had acted in conformity with pacta sunt servanda and agreed with his former club in compliance with training compensation entitlements accordingly […] trusted the Player's word and assumed that his former club will not ask training compensation"* and therefore should somehow be protected pursuant to Article 337(b)(2) SCO, the Sole Arbitrator finds that these arguments must be dismissed.

93. The Sole Arbitrator is of the opinion that Antalyaspor's representatives were either negligent or naive in solely relying on self-serving statements made by the Player that LOSC was not planning to claim training compensation. After all, the only entity which had the right under the FIFA rules to decide whether or not to claim training compensation, and which could thus signal its willingness to waive such right *vis-à-vis* the Player and/or Antalyaspor, was LOSC.

94. Not having obtained from LOSC a waiver of its right to training compensation, the Sole Arbitrator finds that Antalyaspor could not simply rely on the expedient assurances of the Player.

95. It must be emphasised that LOSC's discretion in deciding whether or not to claim training compensation did not prevent Antalyaspor and the Player from concluding an employment contract.

96. The Sole Arbitrator finds that there were ample possibilities at the disposal of Antalyaspor to ensure that it would not be held to pay training compensation if this was of crucial importance to it. As alluded to above, and as, in principle, Antalyaspor was obliged to pay training compensation within 30 days following the registration of the Player with the TFF, pursuant to article 3 Annexe 4 of the FIFA Regulations, Antalyaspor could have sought to obtain a clear and unequivocal declaration from LOSC that it would not request training compensation, or could have included a condition precedent in the Player's employment contract determining that the effectiveness thereof was dependent on LOSC's willingness to waive training compensation within 30 days following the registration of the Player with the TFF.

97. In the absence of any other elements being advanced by Antalyaspor that could be relevant in determining that the amount of compensation awarded by the FIFA DRC in the Appealed Decision was disproportionally high, the Sole Arbitrator sees no reason to deviate from the amount of compensation awarded by the FIFA DRC.

98. Consequently, the Sole Arbitrator finds that the Player is entitled to compensation for breach of contract in the amount of EUR 198,000, with interest at a rate of 5% *p.a.* as from 7 April 2015 until the effective date of payment, in accordance with the Appealed Decision.

B. Conclusion

99. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

i) The Player had just cause to terminate the employment relationship on 5 November 2014.

ii) The Player is entitled to the total amount of EUR 152,305 as outstanding remuneration, with interest at a rate of 5% *p.a.* accruing as from the due dates, in accordance with the Appealed Decision.

iii) The Player is entitled to the total amount of EUR 198,000 as compensation for breach of contract, with interest at a rate of 5% *p.a.* accruing as from 7 April 2015 until the effective date of payment.

100. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 June 2017 by Club Antalyaspor against the decision issued on 24 November 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 24 November 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.