Arbitration CAS 2018/A/5607 SA Royal Sporting Club Anderlecht (RSCA) v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba (CA Belgrano) & CAS 2018/A/5608 Matías Ezequiel Suárez & CA Belgrano v. RSCA, award of 22 January 2019

Panel: Prof. Massimo Coccia (Italy), President; Mr Bernard Hanotiau (Belgium); Mr Gonzalo Bossart (Chile)

Football
Termination of contract without just cause
Force majeure
Ex officio analysis of a violation of a player's right to actively participate in his profession/personality rights
Non-violation of players' rights to actively participate in their profession/personality rights
Disclosure of grounds to terminate a contract
Application of art. 17 FIFA RSTP
Application of the principle of positive interest to calculate compensation under art. 17 para. 1 FIFA RSTP
Determination of the value of a player's services based on clubs' offers
Proof of the recruitment of a "replacement" player
Non-application of the average residual value of a player's old and new contracts of employment
Concept of specificity of sport
Correction in the amount of compensation to be awarded as a result of specificity of sport requirements

1. **For "force majeure" to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition must be narrowly interpreted because, as a justification for non-performance, it represents an exception to the fundamental obligation of *pacta sunt servanda*.**

2. **Given the public policy character of the protection of personality rights in Swiss law, whether a club violated a player's right to actively participate in his profession can be addressed *ex officio*.**

3. **A coach is entitled to manage a team as he sees fit, provided that he does so on proper football/sporting reasons and does not abuse his rights and does not arbitrarily infringe on players' own rights. If a player remained registered/eligible to play, if he always trained with the first team and played a certain amount of matches of a club's first team official matches, in the absence of signs that a coach abused his right to manage the team or mobbed/bullied him, it should be found that a coach did not violate a player's right to actively participate in his profession/violate his personality rights. Save for a contractual provision stating otherwise, a player does not have a right to be a starter.**

4. **Except under restrictive conditions, a party may not, in order to justify the termination of an employment contract, rely on circumstances which it was aware of at the time of**

termination but did not then invoke.

5. **The list of criteria set out in Art. 17, para. 1 of the FIFA Regulations on the Status and Transfer of Players (RSTP) is not exhaustive. Other objective factors can and should be considered, such as a loss of a possible transfer fee (*lucrum cessans*) and a player's replacement costs, provided that there exists a logical nexus between a breach and a loss claimed. The order by which the objective criteria are set forth by Art. 17 para. 1 RSTP is irrelevant and need not be exactly followed. While each of the factors set out in Art. 17 para. 1 or in CAS jurisprudence may be relevant, any of them may be decisive on the facts of a particular case. Additionally, while the judging authority has a *"wide margin of appreciation"* or a *"considerable scope of discretion"*, it must not set the amount of compensation in a fully arbitrary away, but rather in a fair and comprehensible manner.**

6. **The "positive interest" or "expectation interest" principle must apply in calculating compensation for unilateral unjustified termination of a contract under Art. 17 para. 1 RSTP. Accordingly, CAS panels shall determine an amount of compensation which shall basically put an injured party in the position that it would have had if no contractual breach had occurred.**

7. **Only third party's offers to recruit a player made in good faith may be relevant indicators of the value of a player's services. Conversely, a damaged club's offer made to another club to transfer it a player, even if made *in tempore non suspecto*, is usually too subjective and unreliable to be considered in assessing the value of a player's services.**

8. **In order for a club to successfully claim replacement costs, such club must substantiate that it hired a player in order to replace the player that left the club following the termination of contract. This requires said club to prove (i) that the two players played in more or less the same position, and (ii) that there is a link between the player's premature termination of his employment contract and the new player's hiring. Said link can be established based *inter alia* on the chronology of the events, the similarity of the players' positions on the field, the equivalence of the players' remunerations, or the others departures of players from the club. There is no need for there to be an internal/external written correspondence explicitly indicating that the incoming player was replacing the outgoing player. It is sufficient that the whole factual circumstances support to a panel's comfortable satisfaction that a player replaced another player.**

9. **Awarding the average residual value of a player's old and new contracts on top of his replacement costs would create a double compensation for a damaged club. In awarding replacement costs, a CAS panel has already set the lost value of a player.**

10. **The concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words,**

the specificity of sport is subordinated, as a possible correcting factor, to the other factors. In particular, the criterion of the specificity of sport is not meant to award additional amounts where the facts and circumstances of a case have been taken already sufficiently into account when calculating a specific damage head. Furthermore, the element of the specificity of sport may not be misused to undermine the purpose of Art. 17 para. 1 RSTP, *i.e.* to determine the amount necessary to put the injured party in the position that it would have had if the contract was performed properly.

11. One of the factors to consider when deciding whether the specificity of sport requires a correction in the amount of compensation calculated is the behaviour of the parties, in particular of the party that failed to respect its contractual obligation(s). Ill-advised manners on its side (lack of consistency/transparency/correctness) can lead to an increase of the amount of compensation to be otherwise awarded to the damaged party. A judging authority may estimate the value of such compensation at its discretion in light of the normal course of events and the measures taken by the damaged party to limit the damages.

I. INTRODUCTION

1. The Belgian football club SA Royal Sporting Club Anderlecht brings the appeal docketed as CAS 2018/A/5607, while the Argentinian footballer Matías Ezequiel Suárez and the Argentinian football club Club Atlético Belgrano de Córdoba jointly bring the appeal docketed as CAS 2018/A/5608. Both appeals are against a decision of the FIFA Dispute Resolution Chamber rendered on 21 September 2017 and issued on 8 February 2018, which (i) ordered Mr Matías Ezequiel Suárez to pay to SA Royal Sporting Club Anderlecht the amount of EUR 540,350, plus five percent interest *p.a.* from 14 July 2016 until the date of effective payment, for the Player's early termination without just cause of his employment contract, and (ii) held Club Atletico Belgrano de Córdoba as jointly liable for the aforementioned payment. Both appeals, as consented by the parties, are jointly dealt with in this award.

II. PARTIES

2. SA Royal Sporting Club Anderlecht (hereinafter "RSCA") - Appellant in CAS 2018/A/5607 and Respondent in CAS 2018/A/5608 - is a professional football club seated in Brussels (Belgium) and currently competing in the Belgian First Division A. RSCA is affiliated to the Royal Belgian Football Association (URBSFA), itself affiliated since 1904 to FIFA (*Fédération Internationale de Football Association*).

3. Mr Matías Ezequiel Suárez (hereinafter also the "Player") - First Appellant in CAS 2018/A/5608 and First Respondent in CAS 2018/A/5607 - is a professional football player of

Argentinian nationality born on 9 May 1988, who played for RSCA from 2008 until 2016 and since then for Club Atlético Belgrano de Córdoba.

4. Club Atlético Belgrano de Córdoba (hereinafter "CA Belgrano") - Second Appellant in CAS 2018/A/5608 and Second Respondent in CAS 2018/A/5607 - is a professional football club seated in Córdoba (Argentina) and currently competing in the Argentine *Primera División*. CA Belgrano is affiliated to the Argentine Football Association (AFA), itself affiliated to FIFA since 1912.

III. BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the written submissions, oral pleadings and evidence adduced by the parties. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Factual background

6. On 18 January 2008, CA Belgrano and RSCA signed an agreement to definitively transfer the Player from the former to the latter club for EUR 2.6 million.

7. On 30 March 2008, the Player signed an employment contract with RSCA and renewed it twice - first on 6 May 2010 until 30 June 2015 and again on 1 July 2013 until 30 June 2017 (the "Employment Contract"). Under Article 2 of the last extension agreement, RSCA agreed to pay the Player EUR 42,000 gross per month plus a yearly gross signing bonus of EUR 505,380. In addition, RSCA agreed in that same provision to provide the Player a maximum monthly allowance of EUR 1,000 for the leasing of a car, and EUR 2,000 for housing. RSCA was also responsible to pay the Player loyalty bonus (Article 3), employer's contribution valued at EUR 310,000 (Article 4), and double holiday pay (Article 16).

8. To reach this last extension with the Player, RSCA signed an agreement on 24 May 2013 with the Player's agent, Mr Cristian Colazo, in which the club agreed to pay the agent the total amount of EUR 1,050,000, in three installments of EUR 350,000, falling due on 1 July of 2013, 2014 and 2015 (hereinafter the "Agency Agreement"). The RSCA's obligation to pay the last installment, however, was conditioned on the Player still being under contract with RSCA at that time. The Belgian club duly paid all of the installments.

9. During his eight-year tenure with RSCA, the Player's game statistics were as follows:

- 2008-2009 season (injured for part of the season): 16 matches played in all competitions, 6 as a starter.

- 2009-2010 season: 51 matches played in all competitions, 36 as a starter.

- 2010-2011 season: 48 matches played in all competitions, 34 as a starter.

- 2011-2012 season: 45 matches played in all competitions, 32 as a starter.

- 2012-2013 season (injured for part of the season): 11 matches played in all competitions, 8 as a starter.

- 2013-2014 season (injured for part of the season): 16 matches played in all competitions, 16 as a starter.

- 2014-2015 season (injured for part of the season): 18 matches played in all competitions, 7 as a starter.

- 2015-2016 season: 36 matches played in all competitions, 21 as a starter.

10. On 15 September 2012, RSCA and CSKA Moscow agreed to transfer the Player to the Russian club for EUR 10,773,000. However, CSKA Moscow ultimately cancelled the transfer, with no legal objections from RSCA or the Player, because the Player failed his physical examination due to an injury.

11. On 13-14 November 2015 and 22 March 2016, a series of terrorist attacks occurred in Paris, France and Brussels, Belgium, respectively.

12. On 11 June 2016, CA Belgrano expressed an interest in acquiring the Player on loan for the 2016-2017 season. CA Belgrano wrote the following to RSCA: *"Atletico Belgrano is interested in employing the services of the player Matias Suarez. Accordingly, we have met with his agent, Mr Cristiano Colazo, who has confirmed to us that the player, for family and affective reasons, would like to stay in Córdoba for a while to recover his football skills, surrounded by his family and friends, his customs, and his culture, which are essential to improve his spirit and form"* (translated from the Spanish original).

13. In the same email, CA Belgrano went on to propose to RSCA that the latter (i) extend the Employment Contract (which was set to expire on 30 June 2017), (ii) loan the Player to CA Belgrano for free, and (iii) after the loan and the Player's possible increase in value, trade the Player's rights to a third club. CA Belgrano explained: *"In that case the idea would be that Matias Suarez be loaned and Matias Suarez would be willing to sign a contract extension with Anderlecht, so that if things go well here, he could later be sold by Anderlecht under better financial conditions since he would have continued his playing career at a highly competitive level such as that of Argentina"* (translated from the Spanish original).

14. On 13 June 2016, RSCA replied as follows: *"After having spoken to Mr van Holsbeeck* [RSCA's manager]*, RSCA is not opposed to transferring the player but not as a loan. If CA Belgrano is interested in Matías Suárez it should pay the price: 4,000,000 Euros (4 million Euros)"* (translated from the Spanish original).

15. The same day the Player's agent entered the discussions between RSCA and CA Belgrano and explained to RSCA by email that *"Given the reply which Herman sent Belgrano, I should tell you that Matías needs to stay in Argentina for 6 months for his family, following the attacks which have taken place. We confirm that he would indeed like to leave the club. This is a request made given Matías' time with Anderlecht, for the championships which we have won together. May I please ask you to respect this so that Matías can go to Belgrano. With so few matches played, he cannot leave for 4 million"* (translated from the Spanish original).

16. Neither the free loan proposed by CA Belgrano nor the definitive transfer for 4 million proposed by RSCA were eventually agreed; hence, the Player remained under contract with RSCA.

17. The Player was scheduled to return to Belgium to resume training on 20 June 2016. However, on 17 June 2016, the Player's agent informed RSCA that *"For health reasons (…) it is possible that the player Matías Suárez will not be able to attend training"* (translated from the Spanish original).

18. On 28 June 2016, the Player's agent explained by email to RSCA that the Player had gastroenteritis and that he had not yet recovered from it. The Player's agent informed the Belgian club that he had a medical certificate excusing his absence until 4 July 2016. However, no medical certificate was attached to such email or ever sent to RSCA.

19. On 1 July 2016, the Player sent a termination letter to RSCA (hereinafter the "Termination Letter"), which RSCA received on 4 July 2016. The letter read:

> *"I hereby inform you that I have decided, with effect from this communication, to terminate the sports employment relationship contract entered into with you, effective from 1 July 2013 to 30 June 2017, pursuant to and in accordance with the provisions of the FIFA Regulations on the Status and Transfer of Players.*
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> *The termination is based on personal, family and sports reasons. Given that lately I have not been considered by the coach of Anderlecht as a starting player, and after 8 seasons as a player of that club where I have performed at all times as a great professional, I made the decision, together with my family, to return home to Argentina.*
>
> *This is a fundamental personal and family decision because after more than 8 years of rootlessness and detachment of my affections, I understand that the best for my family at this time is to be near our beloved ones.*

Crucial to this decision is the situation experienced in the last semester as a result of the terrorist attacks in Brussels. My family and I have lived months of high tension, fear, and anxiety in our daily life with the distressing uncertainty that it could happen again at any time, especially when similar attacks have taken place again in different parts of Europe and it is a war that seems endless. In addition, I should specifically mention my mother's health, which is in a delicate state, so I need to be close to her.

I have told all this to the authorities of Anderlecht repeatedly, but unfortunately they have only obstructed my departure, with demands that have no relation to my sports position in the club, leaving me with no alternative but to write this.

Notwithstanding this, I am very grateful to the club for the years I spent there and hope my decision is understood and accepted" (translated from the Spanish original).

20. On 4 July 2016 and 6 July 2016, RSCA, through its counsel, attempted without success to contact the Player and his agent.

21. On 5 July 2016, the Player signed a three-year employment contract with CA Belgrano until 30 June 2019. Under this contract, CA Belgrano agreed to pay the Player the following remuneration: ARS 120,000 per month between July 2016 and June 2017, ARS 144,000 per month between July 2017 and June 2018, and ARS 175,000 per month between July 2018 and June 2019. Additionally, CA Belgrano agreed to pay the Player a signing bonus of ARS 7,755,000 between July 2016 and June 2017, ARS 9,843,000 between July 2017 and June 2018, and ARS 11,840,000 between July 2018 and June 2019.

22. On 6 July 2016, CA Belgrano requested RSCA to complete a declaration on third party ownership, a compulsory document that the FIFA Transfer Matching System (TMS) requires for all international transfers pursuant to Article 4.2, Annexe 3 of the FIFA Regulations on the Status and Transfer of Players (hereinafter "RSTP").

23. On 7 July 2016, CA Belgrano officially presented the Player to the Argentinian media and club supporters. At the press conference, the President of CA Belgrano explained that *"The contractual situation is very complicated. Matías Suárez thus decided to be free. His wish to come back and that of supporters to see him again were the most important thing"*. The Player declared that his *"only intention for several years now (…) was to return* [to CA Belgrano]*"* and that he was completely fit and ready to play.

24. On 11 July 2016, RSCA demanded EUR 4 million for the Player's early termination of his Employment Contract, warning that a failure to pay such amount would result in a claim before FIFA.

25. On 12 July 2016, the Player replied directly to RSCA, explaining that he had just cause to terminate the Employment Contract and that his decision to end his employment relationship with the Belgian club was final.

26. On 30 August 2016, RSCA acquired the […] player M, on loan from […]. Pursuant to the loan agreement, RSCA had to pay […] EUR 500,000 as a loan fee in two equal installments of EUR 250,000 payable on 1 September 2016 and 1 January 2017. Additionally, RSCA had a purchase option for a definitive transfer, which it ultimately elected not to exercise. On the same day, RSCA also signed an employment contract with Mr [M] valid from 30 August 2016 until 30 June 2017, under which he would receive EUR 270,000 gross in salary (*i.e.* EUR 22,500 per month) and EUR 1,000,000 gross in signing bonus, as well as a maximum monthly allowance of EUR 1,500 for leasing a car, loyalty bonus to be calculated pursuant to the collective bargaining agreement, double holiday pay, and an employer's contribution with an estimated yearly value of EUR 124,000 (which eventually became an amount actually paid by RSCA of EUR 156,232.89). The employment contract with Mr [M] also included certain performance bonuses, which ultimately yielded EUR 164,787 for this player.

B. Proceedings before the FIFA Dispute Resolution Chamber

27. On 14 July 2016, RSCA filed a complaint against the Player and CA Belgrano before the FIFA Dispute Resolution Chamber (hereinafter the "DRC").

28. On 8 February 2018, the DRC issued the grounds of its decision passed on 21 September 2017. It ordered the Player to pay RSCA the amount of EUR 540,350, plus five percent interest *per annum* from 14 July 2016 until the date of effective payment, for the early termination without just cause of his Employment Contract with RSCA and held that CA Belgrano was jointly liable for that amount (the "Appealed Decision").

29. In summary, the DRC reasoned as follows:

- The grounds invoked by the Player for terminating his Employment Contract were manifestly insufficient to justify its termination, because (i) they were exogenous to the contractual relationship with RSCA and, in any case, (ii) the Player did not provide any plausible argument on how the terrorist attacks in Brussels concerned him in a particular way or more than to any other person.

- The offer of EUR 4 million made by RSCA to CA Belgrano cannot be considered in calculating damages to RSCA because it *"corresponds to a purely unilateral offer from* [RSCA] *to* [CA Belgrano]*, and that is not based on any objective criteria"*.

- In accordance with Article 17, para. 1 RSTP, the total damages awardable to RSCA are EUR 540,350, calculated as follows: by averaging EUR 528,000, corresponding to the remainder of the Player's salary plus housing under the Employment Contract, and EUR 552,700, corresponding to the Player's salary for 2016-2017 under his new employment contract with CA Belgrano.

- No amount is due in relation to: (i) the transfer fee RSCA paid CA Belgrano for the Player's transfer in 2008, because that fee has been fully amortized, (ii) replacement costs, as RSCA failed to establish that Mr [M] effectively replaced the Player, (iii) the fees of the Player's agent for assisting in extending the Employment Contract in 2013.

- Pursuant to Article 17, para. 2 RSTP, CA Belgrano is jointly and severally liable for the payment of compensation.

- The breach of contract occurred outside of the protected period. Therefore, the Player and CA Belgrano are not subject to any sporting sanctions.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 21 February 2018, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the "CAS Code"), RSCA filed its statement of appeal.

31. On 1 March 2018, in accordance with the same provisions of the CAS Code, Mr Suárez and CA Belgrano filed their joint statement of appeal.

32. On 9 March 2018 and 3 April 2018, in accordance with Article R51 of the CAS Code, RSCA and Mr Suárez and CA Belgrano filed their respective appeal briefs.

33. On 15 March 2018, in accordance with the agreement of the parties, the CAS consolidated the proceedings.

34. On 3 April 2018, in accordance with Article R55 of the CAS Code, Mr Suárez and CA Belgrano filed their joint answer.

35. On 11 April 2018, the CAS Court Office notified the parties that, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Prof. Massimo Coccia as chairman, Mr Bernard Hanotiau, designated by RSCA, and Mr Gonzalo Bossart, jointly designated by Mr Suárez and CA Belgrano.

36. On 19 April 2018, the CAS Court Office notified the parties that Mr Francisco Larios had been appointed as *ad hoc* clerk.

37. On 26 April 2018, in accordance with Article R55 of the CAS Code, RSCA filed its answer.

38. On 14 May 2018, the Panel requested Mr Suárez and CA Belgrano to file written witness statements for the requested witnesses - Mr Cristian Colazo (agent of the Player), Mrs Magali Campos Olave (wife of the Player) and Mr Jorge Franceschi (President of CA Belgrano) - failing which said individuals would not be heard at the hearing.

39. On 28 May 2018, Mr Suárez and CA Belgrano filed written witness statements signed by Mr Cristian Colazo and Mrs Magali Campos Olave.

40. On 28 May 2018, the FIFA file was incorporated in the arbitration file and notified to the parties.

41. On 23 July 2018, the CAS Court Office sent the parties the Order of Procedure, which was signed and returned by RSCA on 23 July 2018 and by Mr Suárez and CA Belgrano on 13 August 2018.

42. On 21 August 2018, in a communication to the CAS about its expected attendees to the hearing, RSCA listed Mr Gerard Witters as a witness expected to give testimony.

43. On 2 October 2018, the Panel ruled that, unless the parties found a different agreement between themselves, it did not intend to hear as witnesses (i) Mr Jorge Franceschi, because he did not submit any written witness statement (noting however that, as President of CA Belgrano, he would have the right to be heard as a party representative if he so wished) and (ii) Mr Gerard Witters, because his testimony was belatedly requested under Article R56 of the CAS Code, as RSCA did not mention him as a witness in its appeal brief in CAS 2018/A/5607 or its reply in CAS 2018/A/5608.

44. On 18 October 2018, the hearing took place at CAS Headquarters in Lausanne, Switzerland.

45. The following persons attended the hearing:

- The Panel, assisted by Messrs. Francisco Larios (*ad hoc* clerk) and William Sternheimer (CAS Counsel).

- For RSCA: Messrs. François Beghin and Guy San Bartolomé (both as counsel), and Mr René Trullemans (Secretary of the Board for RSCA).

- For Mr Suárez and CA Belgrano: Messrs. Rafael Trevisán and Mariano Clariá (both as counsel), and Mr Gabriel Córdova (Interpreter).

46. At the outset of the hearing, the parties confirmed that they had no objections to the constitution and composition of the Panel.

47. Of the announced witnesses, Mr Colazo (the Player's agent) testified by teleconference, while the Player and CA Belgrano declined to hear Mrs Olave (the Player's wife), given that RSCA accepted her written testimony as genuine and did not wish to cross-examine her. Mr Franceschi (President of CA Belgrano) declined to make any declarations in his capacity as party representative.

48. The parties' attorneys presented their opening statements and their closing pleadings and related rebuttals, answering the questions posed by the Panel during the hearing.

49. At the end of the hearing, the parties made no procedural objections and acknowledged that the Panel had fully respected their rights to be heard and to be treated equally throughout the proceedings.

V. SUBMISSIONS OF THE PARTIES

A. SA Royal Sporting Club Anderlecht

50. In its appeal brief (case CAS 2018/A/5607), RSCA sets forth the following motions for relief:

> *"TO DECLARE the Appeal admissible and founded;*
>
> *TO REFORM partially the decision pronounced on 21 September 2017 (in Zurich) by the FIFA DRC as follows:*
>
> *AS PRINCIPAL*
> *To CONDEMN Mr M. E. SUAREZ and (jointly) CA BELGRANO to pay a compensation for breach of contract amounting to € 4,000,000 increased by an interest at 5%* per annum *from 4 July 2016 until the date of effective payment to the RSCA;*
>
> *AS SUBSIDIARY*
>
> *To CONDEMN Mr M. E. Suarez and (jointly) CA BELGRANO to pay a compensation for breach of contract amounting to € 3,014,001.33 increased by an interest at 5%* per annum *from 4 July 2016 until the date of effective payment to the RSCA;*
>
> *TO ORDER the Respondents to be born* [sic] *all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);*
>
> *TO ORDER the Respondents to pay to the Appellant a total amount of CHF 10'000 as a contribution towards the expense incurred in connection with these proceedings".*

51. In its answer (case CAS 2018/A/5608), RSCA sets forth the following motions for relief:

> *"TO DECLARE the Appeal of Mr M.E SUAREZ and CA BELGRANO admissible but no* [sic] *founded;*

TO DECLARE that Mr M. E. SUAREZ has terminated unilaterally and without just cause the contract of employment concluded with RSCA.

TO REFORM partially the decision pronounced on 21 September 2017 (Zurich) by the FIFA DRC as follows:

AS PRINCIPAL

To CONDEMN Mr M. E. SUAREZ and (jointly) CA BELGRANO to pay a compensation for breach of contract amounting to € 4,000,000 increased by an interest at 5% per annum from 4 July 2016 until the date of effective payment to the RSCA;

AS SUBSIDIARY

To CONDEMN Mr M. E. SUAREZ and (jointly) CA BELGRANO to pay a compensation for breach of contract amounting to € 3,014,001.33 increased by an interest at 5% per annum from 4 July 2016 until the date of effective payment to the RSCA;

IN ALL ASSUMPTIONS

TO REJECT the argumentation of Mr M. E. SUAREZ and CA BELGRANO;

TO ORDER the Respondents to be born [sic] *all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);*

TO ORDER the Respondents to pay to the Appellant a total amount of CHF 10'000 as a contribution towards the expense incurred in connection with these proceedings".

52. The RSCA's submissions, in essence, may be summarized as follows:

- The Player colluded with CA Belgrano and unilaterally terminated the Employment Contract without just cause in order to have him sign with the Argentinian club. The reasons invoked by the Player in the Termination Letter of 1 July 2016 - his allegedly decreasing role with the club, family pressures, the ailing mother, and terrorist attacks in Belgium - do not constitute a just cause.

- RSCA never orally agreed in the meetings of December 2015 and March 2016 to transfer the Player after the 2015-2016 season. The Player has failed to provide any proof to substantiate this allegation. Moreover, the alleged oral agreement is not even mentioned in any communication between the parties, including in the Termination Letter.

- Due to the Player's unilateral termination of the Employment Contract without just cause, the Player violated Article 16 RSTP.

- Having violated Article 16 RSTP, RSCA is entitled to receive compensation for the damages suffered, which must be calculated in accordance with the criteria set forth in Article 17, para. 1 RSTP. CA Belgrano knew that the Player provided a certain value for RSCA. This is evident from the email dated 11 June 2016, in which CA Belgrano proposed that RSCA extend the Player's Employment Contract, loan him for free to CA Belgrano to maximize his value, and then sell him for a higher price.

- To calculate the damages for the Player's termination of the Employment Contract without just cause, the Panel must apply the "positive interest" approach pursuant to CAS jurisprudence and Swiss law. That is, the Panel must determine the amount that would place the damaged party - RSCA - in the position it would have been in had the Player properly performed the Employment Contract.

- Damages amount to EUR 4,000,000 or, alternatively, EUR 3,014,001.33:

  (i) <u>RSCA's damages can be assessed at EUR 4,000,000 owing to the following considerations:</u>

  FIFA and CAS jurisprudence have held that the loss of a possible transfer fee and third party offers may be considered in evaluating the amount of damages suffered by the non-breaching club. In this case, RSCA made an offer of EUR 4 million *in tempore non suspecto*. CA Belgrano never rejected the offer and, with full knowledge of the Player's EUR 4 million price tag, went on to hire him after his unjustified, premature termination of the Employment Contract with RSCA. Under the circumstances, it is clear that CA Belgrano simply sought to avoid the EUR 4 million transfer fee and that RSCA's offer must be seen as a true indicator of the Player's value. This amount is reasonable considering the following elements: (i) the well-known website *transfermarkt.com* currently values the Player at EUR 2.5 million and valued him at EUR 3.2 million at the time of the early termination; (ii) in 2012, RSCA had agreed to transfer the Player to CSKA Moscow for EUR 10,773,000, a deal which only fell through due to a failed medical examination for an injury from which the Player subsequently fully recovered; (iii) CA Belgrano took the risk that it would assume EUR 4 million in damages when it acquired the Player while knowing he had prematurely terminated his contract without just cause.

(ii) Alternatively, RSCA's damages can be assessed at EUR 3,014,001.33 by taking into account the following elements of calculation:

(a) The average residual value between the old and new contract, amounting to at least EUR 1,023,304. The minimal residual value of the old contract totals EUR 1,355,800, calculated as follows: (i) EUR 504,000 corresponding to 12 months of salary for the 2016-2017 season, (ii) EUR 505,380 corresponding to a sign-on fee for that same period, (iii) EUR 12,000 corresponding to the value of the car granted to the Player for that same period, (iv) EUR 24,000 corresponding to the value of housing for that same period, and (v) EUR 310,000 corresponding to employer's contributions. This amount slightly increases if Belgian law is considered. The average residual value of the new contract is EUR 691,228, calculated as follows: EUR 549,401.25 (salary for the 2016-2017 season), plus EUR 691,367.75 (salary for the 2017-2018 season), plus EUR 832,915 (salary for the 2018-2019 season), divided by three years.

(b) The unamortized part of the agency fees paid by RSCA to the Player's agent, amounting to EUR 262,500. This was part of the amount paid to the Player's agent in relation to the renewal of the Player's Employment Contract from 1 July 2013 until 30 June 2017.

(c) The replacement costs of the Player amounting to EUR 2,078,910.22. To replace the Player, RSCA loaned the services of Mr [M] for the 2016-2017 season. RSCA paid the Player EUR 1,578,910.22 in total remuneration (including bonuses) and EUR 500,000 in transfer fees.

(d) RSCA's savings for not having to pay the Player's salary of EUR 1,355,380 for the 2016-2017 season. This, according to CAS jurisprudence, is an amount that should be deducted, but only in the replacement scenario.

(e) The specificity of sport and aggravating circumstances, which warrant adjusting the compensation by an increase of 50 percent. The bad faith behavior of the Player and CA Belgrano is an aggravating circumstance. While the Player technically terminated his Employment Contract with RSCA outside of the Protected Period, in reality the termination was orchestrated beforehand. Moreover, the Player and CA Belgrano negotiated their employment contract before the termination of the Employment Contract with RSCA.

- The amount awarded by the DRC is incompatible with Belgian law under which damages would amount to EUR 1,601,770.70, calculated as follows: (i) EUR 504,000 corresponding to 12 months of salary for the 2016-2017 season, (ii) EUR 505,380

corresponding to a sign-on fee for that same period, (iii) EUR 170,031 in average bonuses during the last 12 months, (iv) EUR 12,000 corresponding to the value of the car granted to the Player for that same period, (v) EUR 24,000 corresponding to the value of housing for that same period, (vi) EUR 24,859.70 six flight tickets, (vii) EUR 49,500 in annual holiday pay, (viii) EUR 2,000 in loyalty bonuses and (v) EUR 310,000 corresponding to employer's contributions. It is also incompatible with the transfer fee of EUR 2.6 million which RSCA paid to CA Belgrano in 2008 for the Player, who was then younger and less experienced.

- In accordance with Articles 102.2 and 104.1 of the Swiss Code of Obligations, the Player and CA Belgrano must also pay an interest of 5 percent *per annum* from 4 July 2016 until the effective date of payment.

- In accordance with Article 17, para. 2 RSTP, CA Belgrano is jointly and severally liable to pay the amounts awarded.

B. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba

53. In their joint appeal brief (case CAS 2018/A/5608), Mr Suárez and CA Belgrano set forth the following motions for relief:

> *"97. CLUB ATLÉTICO BELGRANO & MATIAS EZEQUIEL SUAREZ, as Appellants, request the Court for relief in order to solve the present dispute, so that the appealed decision adopted by FIFA on September 2017 is revoked and that the claim of the club RSCA is fully rejected, on the merit that there was just cause for THE PLAYER to terminate the contract with RSCA.*
>
> *98. Subsidiary, in case the decision of the FIFA DRC is upheld by the panel on its substance (that there were no grounds to terminate the contract with just cause) CLUB ATLÉTICO BELGRANO and Matias Ezequiel Suarez requests:*
>
> *(a) that the amount of the compensation shall be eliminated since RSCA did not suffer any damage as a consequence of the termination of the contract.*
>
> *(b) that the joint and several liability of CLUB ATLÉTICO BELGRANO shall be revoked, because BELGRANO did not induce a breach of contract between Suarez and RSCA.*
>
> *99. S.A. Royal Sporting Club Anderlecht shall pay the costs of the arbitration and the legal fees and other expenses incurred by BELGRANO in connection with this arbitration procedure".*

54. In their joint answer (case CAS 2018/A/5607), Mr Suárez and CA Belgrano set forth the following motions for relief:

"85. We ask PANEL to reject the appeal filed by the RSCA for having just cause to terminate the contract and, eventually, for no compensable damages.

86. In fact, in the best of cases, we have the following calculation:

a. Residual value of the contract: Euros 495,746.99. Even if we average the residual value of the Player with RSCA and the value of the contract of the Player with Belgrano, that would amount to Euros 495,746.99 + Euros 1.357.380 = Euros 1.853.126 / 2 = Euros 926.563,49

b. RSCA's savings: Euros 1.357.380.

c. That is, as a consequence of the termination of the contract, the RSCA not only did not suffer any damage, but benefited as a result of saving the player's contract in the last season.

RESIDUAL VALUE OF THE PLAYER: Euros 926.563,49

RSCA's savings: Euros 1.357.380 (even considering as remunerative certain amounts that do not correspond).

RESULT: RSCA SAVE MORE MONEY THAN THE AVERAGE RESIDUAL VALUE OF THE PLAYER'S CONTRACT.

d. The fixing of any amount of compensation would be to consecrate an enrichment without cause, which would imply a flagrant violation of the Swiss Code, making consequently express reservation to go to the Swiss Supreme Court".

55. The submissions of Mr Suárez and CA Belgrano, in essence, may be summarized as follows:

- The Player had just cause to terminate the Employment Contract. The Player terminated his Employment Contract with RSCA because of (i) a *force majeure* event, *i.e.* the continuous, alarming terrorist attacks that occurred in Belgium and in Europe, which caused him and his family fear and anguish and rendered the continuation of the employment relationship in good faith unconscionable, (ii) his declining role at the Belgian club, and (iii) his mother's poor health. The causes invoked by the Player to terminate his Employment Contract should not be analyzed individually but rather in consideration of an overall assessment of the situation.

- Since November 2015 the Player pleaded that RSCA allow him to leave the club. Ultimately, RSCA orally agreed in December 2015 to facilitate the Player's transfer to another club after the 2015-2016 season. The Player and RSCA ratified this agreement in March 2016. However, in the end, RSCA failed to keep its word. Left with no other option, the Player was forced to terminate his Employment Contract.

- His departure did not come as a surprise to anyone. RSCA knew that the Player wished to depart. Moreover, he said his goodbyes to the fans following the final match of the season. That said, his move to CA Belgrano was not in any way *"premeditated"*.

- The Player accepted a lower salary than he had with RSCA as a sacrifice to be closer to his family.

- Even if the Player terminated the Employment Contract without just cause (*quod non*), no compensation would be due since RSCA incurred in no damages as a result of the Employment Contract's early termination. Indeed, RSCA saved more in not having to pay the Player's salary in 2016-2017 than the average residual value of the old and new contracts.

- In calculating compensation, the following should be taken into account:

  (i) the residual value of the Employment Contract;

  (ii) the time remaining on the Employment Contract;

  (iii) that all acquisition costs were fully amortized: the 2008 transfer fee for the Player was fully amortized. The agent's fees related to the renewal of the Employment Contract in 2013 do not count towards acquisition costs as they were paid voluntarily by RSCA without the Player's participation and are not related to the Player's acquisition. In any case, they were fully amortized by 1 July 2015;

  (iv) that the early termination occurred outside the Protected Period;

  (v) that there are no replacement costs: Mr [M] did not replace the Player, as is evident *inter alia* from the fact that they did not play the same position and that Mr [M] could have replaced other players departing in that same transfer window;

  (vi) that RSCA had no expectation of transferring the Player and obtaining a profit: since the Player's Employment Contract with RSCA only had a year left and the Belgian club had no interest in renewing it, the chances of transferring the Player to a third club in exchange for compensation was very low; in fact, RSCA had not received any offers from third clubs and did not have transfer value since he would not be able to successfully pass a medical exam;

  (vii) RSCA's savings for not having to pay the Player's remaining salary;

  (viii) that the new employment contract with CA Belgrano was considerably lower than the Employment Contract with RSCA;

(ix) that RSCA did not receive a third party offer for the Player: the EUR 4 million sale proposal sent by RSCA to CA Belgrano was a unilateral request, not an offer made by a third party. In fact, CA Belgrano had inquired about obtaining the Player on a free loan. Thus, the EUR 4 million offer cannot be considered as an indicator of the Player's market value;

- RSCA did not raise Belgian law or replacement costs in the FIFA proceedings. Doing so at this stage is a violation of the basic principles of procedural estoppel, due process and the right of defense.

56. CA Belgrano also submits that it should not be held jointly liable for any compensation awarded to RSCA, because it did not induce the Player into breaching the Employment Contract. In its view, holding the Argentinian club jointly and severally liable merely due to its status as the *"new club"* under the RSTP is arbitrary, unfair and in violation of Swiss law (since the liability does not derive from a contractual obligation and lacks a valid justifying cause). Furthermore, CA Belgrano believes that this automatic liability approach, under which the Argentinian club's only option would have been to refrain from signing the Player, is incompatible with the true spirit of Article 17 RSTP and with the contractual stability principle, and also prejudices the right to work and free movement of players.

VI. JURISDICTION

57. Article R47 of the CAS 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".*

58. Pursuant to Articles 57, para. 1 and 58, para. 1 of the FIFA Statutes (2016 edition), respectively:

- *"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and license match agents"*;

- *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS".*

59. It follows, as the parties did not dispute and is confirmed by their signature of the Order of Procedure, that the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

60. Article R49 of the CAS Code states the following:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

61. According to Article 58, para. 1 of the FIFA Statutes (2016 edition), *"*[a]*ppeals (…) shall be lodged with CAS within 21 days of notification of the decision in question".*

62. FIFA notified the grounds of the Appealed Decision on 8 February 2018. Considering that February 2018 has 28 days, both sides lodged their respective appeals with the CAS within the 21 days allotted under Article 58, para. 1 of the FIFA Statutes. In fact, RSCA lodged its appeal on 21 February 2018 and the Player and CA Belgrano filed their joint appeal on 1 March 2018. It follows that both sides' appeals are admissible.

VIII. APPLICABLE LAW

63. Article R58 of the CAS 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".*

64. According to Article 57, para. 2 of the FIFA Statutes (2016 edition), *"[t]he 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".*

65. In accordance with those provisions, accepted by the parties, the Panel must decide the present dispute in accordance with the various FIFA regulations, in particular the 2016 edition of the FIFA Regulations on the Status and Transfer of Players (RSTP) and, additionally, Swiss law.

IX. MERITS

66. RSCA requests the Panel to uphold the Appealed Decision's pronouncement that the Player terminated his Employment Contract without just cause. However, RSCA seeks an increase in the amount of compensation awarded by the DRC under Article 17, para. 1 RSTP (EUR 540,350 plus interest). The Player and CA Belgrano, for their part, seek to have the Appealed

Decision fully overturned so as not to pay any compensation. In their view, the Player terminated his Employment Contract with RSCA with just cause and, in any case, did not cause any damages to RSCA. Moreover, CA Belgrano submits that it is not jointly or severally liable for any compensation awarded because it did not induce the Player's alleged breach of the Employment Contract.

67. In view of the parties' different stances, the Panel must first determine (A) whether the Player terminated his Employment Contract with just cause and, if not, (B) what amount must be awarded to RSCA as compensation for such breach under Article 17, para. 1 RSTP, and (C) whether CA Belgrano is jointly and severally liable under Article 17, para. 2 RSTP for any amount awarded to RSCA.

A. There was not a just cause to terminate the Employment Contract with RSCA

i. The concept of "just cause" under Article 14 RSTP

68. The Panel observes that one of the fundamental tenets of the RSTP - a set of rules which, as is generally known, was first issued by FIFA in 2001 on the basis of an agreement with the EU Commission which closed an antitrust investigation into the FIFA rules on players' international transfers - is the principle of contractual stability, based on the notion that employment contracts between professional clubs and players must be respected until their natural expiry and may not be terminated unilaterally (Articles 13 and 16 RSTP). Evidently, there are exceptions to such principle of contractual stability, as the same FIFA rules provide that clubs or players may unilaterally and prematurely terminate an employment contract without any consequences if there is a *"just cause"* (Article 14 RSTP) or with limited consequences if there is a *"sporting just cause"* (Article 15 RSTP). However, those exceptions - as any exceptions - must be stringently construed in order to avoid that the basic principle of contractual stability be capsized.

69. The above remarks are in line with the prevailing CAS jurisprudence, as the following quote shows:

> *"the principle of* pacta sunt servanda *lies at the basis of the football system, since it gives legal foundation to the stability of contractual relations, which would be severely jeopardized if the parties to employment contracts - the players and the clubs - could all too easily get rid of the obligations undertaken thereunder: while clubs make investments in players, to be recovered over the term of the contract, the players derive their living from the contract. Both parties' expectations, objectively understood, are therefore that contracts are respected until their expiry. Such principle of contractual stability is expressly recognized by Article 13 RSTP, which confirms that* 'a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement'. *However, the principle of contractual stability is not absolute as Article 14 of the RSTP provides that* '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'. *Such exception to a fundamental*

principle is to be interpreted narrowly: therefore, only if there is 'just cause' *can a binding employment contract be terminated by either the player or the club"* (CAS 2015/A/4046 & 4047, at paras. 92-93).

70. The concept of *"just cause"* is not defined in the RSTP. However, it has often been analyzed by CAS panels, relying on Swiss law and in particular on the Swiss Code of Obligations ("CO"). It is now well-established by CAS jurisprudence that:

> *"Under Swiss law, such a* 'just cause' *exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of* 'just cause'*, as well as the question whether* 'just cause' *in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for* 'just cause' *must be accepted only under a narrow set of circumstances (*ibidem*). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is* 'just cause' *(Article 337 para. 3 CO). As a result, only a violation of a certain severity justifies the early termination of a contract; and a breach is sufficiently severe only if it excludes the reasonable expectation of continuation of the employment relationship"* (CAS 2015/A/4046 & 4047, at para. 98, referring to Article 337 para. 2 CO; see also CAS 2014/A/3463 & 3464 and CAS 2008/A/1447).

71. In light of this jurisprudence, the Panel must thus determine whether the grounds relied on by the Player for terminating his Employment Contract with RSCA were so severe that he could not have reasonably been expected to continue his employment relationship with the Belgian club.

ii. Grounds invoked by the Player for terminating the Employment Contract

72. According to the Termination Letter, the Player terminated his Employment Contract with RSCA for *"personal, family and sports reasons"*. More specifically, the Player terminated the contract because of (i) the terrorist bombings in Brussels of March 2016 (which followed by a few months those in Paris), which had left him and his family living in constant fear and anxiety, (ii) his need to be closer to his ailing mother, and (iii) his dissatisfaction with RSCA's coaching staff, who no longer viewed him as a starting player. The Player argues that these three factors, taken individually and cumulatively, constituted a just cause for his early termination of the Employment Contract with RSCA.

73. During the DRC proceedings, the Player then added another ground. The Player claimed that during two meetings held in Belgium in December 2015 and March 2016 between the Player's agent and RSCA's Club Manager, Mr Herman Van Holsbeeck, the latter orally agreed to facilitate the Player's departure at the end of the 2015-2016 season. According to the Player,

RSCA failed to uphold this oral agreement, forcing the Player to terminate the Employment Contract prematurely.

74. In light of the above, the Panel will address in the subsections to follow: first, whether, *separately*, any of the three grounds invoked by the Player in the Termination Letter - (a) the terrorist attacks, (b) his mother's ailing health, and (c) the lack of playing time - justified his premature termination of the Employment Contract with RSCA; then, (d) whether, *cumulatively*, the three grounds were sufficiently severe to justify that termination; finally, (e) whether there existed any oral agreement between the Player and RSCA which could be invoked as a just cause to terminate the employment relationship.

a. The terrorist attacks

75. The Panel notes that RSCA does not contest that the Player's wife, Mrs Olave, could have suffered from fear and anguish after the Brussels terrorist attacks in 2016 (preceded by the terrorist attacks in Paris of November 2015, which also had some connection with the Belgian territory). In fact, at the hearing, RSCA accepted as genuine her subjective feelings and, for this reason, the parties ultimately agreed to not hear her as a witness.

76. On the other hand, RSCA does express doubt as to the genuineness of the Player's feelings on the same subject. And, in fact, looking at the evidence on the record, the Panel shares the same doubt. The Panel notes, for instance, that not too long after his departure from RSCA, the Player declared, without expressing any concern whatsoever about safety, that he would return to Belgium, and even admitted that his reason for terminating his Employment Contract with RSCA in 2016 was related more to disputes he was having with the club's managers, and not principally on the terrorist attacks. Indeed, on 7 February 2018, a Belgian sports newspaper reported that the Player had declared in an interview that: (i) *"I would especially like to return to Anderlecht: I miss Belgium"*, (ii) *"I want to play at Anderlecht again, to bid farewell to the people of Brussels. The supporters have really helped me and I want to give back to them what they have given me in the past few years"*, (iii) *"For the time being, no* [I do not see the possibility to return to Belgium]. *Given the people that work at the club, it would seem complicated to me, for non-football reasons, but if those people leave (…). A change in the presidency? That would be perfect. I could return"*, (iv) *"I had problems with Herman (van Holsbeech) and disputes with a few people. I did not want to leave like this, but I had no choice. I did not want the situation to get any worse. Of course, I was concerned about my family, with the attacks, as everyone was. But that is not the main reason* [for my departure]*"*, and (v) *"My wife and I miss life and security in Belgium, the Anderlecht supporters and the stadium also"* (translated from the original French article entitled *"SUAREZ: I would like to Return to Anderlecht"* from the *"Dernière Heure, les Sports"* newspaper). The Panel notes that there is no evidence that the Player ever denied the content of such interview.

77. Moreover, RSCA argues that in any case the terrorist attacks and/or the fear and angst they allegedly caused the Player and his family would not be a legitimate ground for the Player to prematurely terminate his Employment Contract with RSCA. This is in response to the Player's

argument that the terrorist attacks were a *"force majeure event"* which modified his working conditions to such a severe degree that it prevented him from continuing his employment relationship with RSCA. In the Player's opinion, the fact that the terrorist attacks were exogenous (*i.e.* that they were beyond RSCA's control and did not constitute a *"breach"* by the Belgian club) does not disqualify them as a *"just cause"* or *"valid cause"*.

78. According to CAS jurisprudence, for *force majeure* to exist there must be *"an objective (rather than a personal) impediment, beyond the control of the* 'obliged party'*, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible"* (CAS 2013/A/3471, at para. 49; see also CAS 2015/A/3909, at para. 72). This definition of *force majeure* must be narrowly interpreted, because, as a justification for non-performance, it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is at the basis of the football system and necessary for maintaining contractual stability.

79. The Panel notes that in a CAS case dealing with whether a club had *"suitable justification"* - contemplated as something less than *force majeure* - to skip a match based on security concerns, the panel remarked:

> *"It is a regrettable fact that in the modern world many places from time to time become acute trouble spots; Beirut, Belfast and the Basque region of Spain provide other examples. Terrorism is the scourge of our age. (To that extent this appeal raised a matter of general importance in the sporting world). But, if possible, sport, like life, must go on. Despite the violence in Israel, there is no example of sportsman being either targets or victims. Other teams visited Israel at the material time, and returned unscathed"* (CAS 2002/A/388, at para. 8).

80. The panel in that case (composed by eminent arbitrators such as the Hon. Michael Beloff QC, Prof. Pierre Lalive and Mr Peter Leaver QC) held that a *"suitable justification"* did not exist because: (i) the Turkish club that had to play in Israel was not a direct target of terrorists and had not received threats; (ii) there were no incidents in the host country related to other professional athletes or clubs being targets or victims of the terrorism; (iii) the sports events in that country kept being carried out normally; and (iv) the organizers had adequate security measures in place (*Ibidem*; see also CAS 2004/A/605 reiterating such reasoning).

81. Relying on this persuasive jurisprudence, the Panel notes that in the present case:

- There is no evidence whatsoever that the Player and/or his family and/or any other professional athletes in Belgium were directly targeted by, or were victims of, terrorist threats or attacks.

- The Player produced no expert evidence, such as a medical report, which could objectively support his allegation of subjective feelings of fear and anguish.

- The Panel was shown no evidence whatsoever that, after the first few days of unrest, the terrorist attacks caused a disruption to life in Brussels preventing it from going on normally. Indeed, there is no proof on record that the Belgian population suffered a meaningful change in its everyday behavior and lifestyle (nor is the Panel able to take judicial notice of any fact demonstrating such a change).

- There is no evidence on file that the terrorist attacks prevented the Belgian First Division A, any other Belgian or European competition held in Belgium, or RSCA's matches and training sessions from taking place normally.

- No incidents of terrorism occurred at football training grounds or at a Belgian stadium during the relevant period; nor is there any evidence that the Player's safety was ever at risk at those places or at home. As the RSCA's Secretary of the Board, Mr René Trullemans, declared at the hearing in response to a Panel's question, following the terrorist attacks RSCA took adequate security measures to ensure the safety of its players. For instance, RSCA: (i) required its players on match days to meet at the club's training facilities from which they would depart together on a team bus to the stadium; (ii) stopped releasing the schedule for training sessions; (iii) closed most training sessions to the public; and (iv) had security checks at the entrance of any club's premises. Such declarations remained unrebutted and uncontroverted.

- The Player only had one year remaining on his Employment Contract with RSCA when he terminated it; to ease his safety concerns, his family could have simply returned to Argentina for that year and he could have rejoined them once the contract ended in June 2017.

82. The Panel takes judicial notice of the fact that, in recent times, significant terrorist attacks have troubled several European cities where important football clubs (playing both in top national leagues and in UEFA competitions) are located: besides Brussels and Paris, one can mention for example Barcelona, Berlin, Istanbul, Nice and London. However, the Panel also takes judicial notice that it has seen no evidence and heard no news that any of those prominent football competitions has been halted or that - besides Mr Matías Suárez - any footballer playing for a club in one of those cities has invoked such circumstances as a justification to terminate his Employment Contract.

83. In view of the above, the Panel concludes that the terrorist attacks were not an objective impediment which rendered impossible or unreasonable the Player's duty to perform his contractual obligations and finish the remaining year of his Employment Contract with RSCA. Accordingly, the Player was not justified on this ground to prematurely terminate his Employment Contract with RSCA. If a player were permitted to simply terminate his Employment Contract based on subjective feelings of fear and angst, with no objective evidence of any actual threat to his safety or of anything that would prevent him from carrying out said

contract as agreed, contractual stability would be seriously undermined, thereby damaging the sport and all those involved therein.

b. Moving closer to his ailing mother

84. The second element on which the Player relied to prematurely terminate his Employment Contract was the alleged poor health of his mother. According to the Player, she was in a delicate state and so he needed to be closer to her.

85. The Panel first observes that the Player has failed to submit any proof whatsoever that his mother was ill and that she required his immediate presence and care.

86. Second, the Panel recognizes that it is common for athletes - as is for all people - to have relatives become ill at some point or another during their careers; this is an unfortunate but normal part of life with which a footballer must deal, and which does not entitle him to unilaterally and prematurely terminate an employment contract. If a footballer were on this basis free to prematurely end his employment relationship and move to a new club, it would seriously undermine the principle of contractual stability. In the present case, the Panel observes that the Player never even requested a temporary leave of absence to tend to his mother or mentioned his mother's condition to RSCA until the Termination Letter.

87. In light of the foregoing, even though the Panel sympathizes with the Player and his family if in fact his mother was ill, it holds that her condition has not been proven, and was not a just cause for the premature termination of the Employment Contract he had with RSCA.

c. Lack of playing time

88. The third element that *"pushed the Player and his family"* to end his employment relationship with RSCA was that his coach no longer considered him a permanent starter, fielding him considerably less than in previous years. The Panel must therefore decide whether the alleged lack of playing time constituted a just cause for the Player to terminate his Employment Contract with RSCA.

89. In the Panel's opinion, it is difficult to see how the lack of playing time could be invoked by a professional footballer as a generic just cause to terminate his contract under Article 14 RSTP, since such matter is explicitly regulated by Article 15 RSTP under the notion of *"sporting just cause"*.

90. Article 15 RSTP reads as follows:

> *"An established professional who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such*

cases. The existence of sporting just cause shall be established on a case-by-case basis. In such a case, sporting sanctions shall not be imposed, though compensation may be payable. A professional may only terminate his contract on this basis in the 15 days following the last official match of the season of the club with which he is registered".

91. Therefore, according to Article 15 RSTP, for sporting just cause to exist, a player must *inter alia* provide evidence that he appeared in less than 10 percent of his club's official matches (see CAS 2012/A/2844; 2005/A/940; 2007/A/1369).

92. In the present case, the record shows that the Player participated in 36 matches (21 as a starter) out of 52 matches during all competitions in the 2015-2016 season, *i.e.* in 69 percent of RSCA's matches. This far exceeds the 10 percent threshold. Accordingly, Article 15 RSTP is not relevant to the case at hand and the Player may not raise the exception of *"sporting just cause"*.

93. The case is *a fortiori* with respect to the exception of *"just cause"*. Indeed, given that the Player's actual playing time with RSCA does not permit him to trigger the exception of sporting just cause under Article 15 RSTP (which, if upheld, would merely limit his liability), even less may he invoke his playing time to trigger the exception of just cause under Article 14 RSTP (which, if upheld, would totally exclude his liability). To do otherwise in applying those two provisions would run counter the interpretive principle of effectiveness, as the threshold of 10 percent of the matches provided by Article 15 RSTP would be rendered meaningless.

94. It could be argued that, conceivably, a footballer could invoke the lack of playing time as a violation of his personality rights under Swiss law - in particular, the personality right consisting in a professional's right to actively participate in his profession - in order to terminate an employment contract. This legal ground was not explicitly raised by the Player but his attorneys perhaps alluded to it when they mentioned the right to work and the right to free movement of players. In any event, given the public policy character of the protection of personality rights in Swiss law, the Panel deems opportune even *ex officio* to address whether RSCA violated the Player's right to actively participate in his profession.

95. On this issue, the Panel first notes that a coach is entitled to manage the team as he sees fit (*e.g.* select starters and substitutes based on fitness, performance, tactics, strategy, attitude, technical and personal chemistry with other teammates etc.), provided that he does so on proper football related or sporting reasons and does not abuse his rights and arbitrarily infringe on the player's own rights (CAS 2013/A/3091, 3092 & 3093; CAS 2014/A/3642). Save for a contractual provision stating otherwise, a player does not have a right to be a starter, as expressly acknowledged by the Player and CA Belgrano in the present arbitration. In the present case, no such contractual provision existed. On the contrary, Article 1.2 of the Employment Contract provided that the *"Player shall participate as a starter, reserve player or spectator to all the matches of all the teams for which he is designated by the competent body of the Club"* (in the original French text: *"Le Joueur participera, soit comme titulaire, soit comme joueur de réserve, soit comme spectateur, à tous les matches de toutes les équipes pour lesquelles il sera désigné par l'organe compétent du Club"*). The Panel then observes that

the Player was never deregistered, and that he remained eligible to play, always trained with the first team, and played 69 percent of RSCA's first team official matches (even if his role may have slightly decreased from past years in which he was more consistently featured as a starter, see *supra* at para. 9 for statistics). Moreover, there are no signs that the coach abused his right to manage the team and no evidence whatsoever that the Player was mobbed or bullied at work. Under the circumstances, the Panel finds that no violation of the Player's right to actively participate in his profession occurred and that, accordingly, no violation of his personality rights occurred.

96. Given that no sporting just cause existed and that the Player's personality rights were not violated, the Panel holds that the Player's alleged lack of playing time was not a just cause for the premature termination of the Employment Contract.

d. Even taken cumulatively, the three grounds invoked by the Player are insufficient to establish a just cause

97. The Panel was solicited by the Player's counsel to consider the above three occurrences (the angst from the terrorist attacks, the ailing health of his mother and the lack of playing time) as cumulative factors which, taken together, determined the existence of a just cause to terminate the Employment Contract. The Panel considers that, in principle, it could be possible for just cause to exist based on the sum of several factors, as opposed to only a single factor.

98. However, in the present case, the Panel is not persuaded that, even considered jointly, the sum of the three factors cited by the Player is sufficiently severe to justify his early termination of the Employment Contract, especially considering that (i) the genuineness of the Player's subjective feelings of fear and anguish from the terrorist attacks is doubted by the Panel, (ii) there is no evidence on record to substantiate the mother's alleged illness or even any details of that supposed illness, (iii) the record shows that the Player's playing time was still significant, and (iv) the Player made a candid admission in an (unrebutted) interview that his move was mainly due to some unspecified arguments he had with some RSCA's executives (see *supra* at para. 76).

e. The alleged oral agreement

99. Preliminarily, the Panel notes that, pursuant to the Swiss Supreme Court's jurisprudence, a party generally may not, in order to justify the termination of an employment contract, rely on circumstances which the terminating party was aware of at the time of termination but did not then invoke (ATF 127 III 310 consid. 4 a); it may only do so *"under restrictive conditions"* (in the French original *"sous certaines conditions restrictives"*, *ibidem*). Considering that the Player, by his own account, knew about the alleged oral agreement but did not mention it at all in the Termination Letter or at any point leading up to the termination (and not until the DRC proceeding), it is highly doubtful that the Player may now under Swiss law rely on said agreement as a valid reason to terminate the Employment Contract.

100. The Panel, however, need not address whether the particular circumstances of the case at hand permit the Player to rely on the alleged oral agreement under Swiss law, because the Player - who carries the burden of proof in this regard - has failed to sufficiently substantiate that such agreement ever existed.

101. In support of his allegation, the Player has only introduced testimony from his agent Mr Colazo. According to the agent, he went to Brussels in December 2015 to meet with Mr Van Holsbeeck, RSCA's manager, to negotiate the Player's departure from the club and was allegedly told by Mr Van Holsbeeck that if the Player remained with the club until season's end, RSCA would allow him to return to Argentina at that time. The Player's agent further declared that Mr Van Holsbeeck confirmed in March 2016 that at the end of the season the Player would be *"released by RC Anderlecht without putting obstacles"*. RSCA vigorously denies that any such agreement was ever reached.

102. The Panel observes, first, that the credibility of the Mr Colazo's testimony is undermined by his evident self-interest in protecting his own work and the Player's position and, second, that his testimony is uncorroborated.

103. The wife's written testimony on the parties allegedly reaching such an agreement cannot serve to corroborate the agent's account, because it is mere hearsay (since she did not personally attend any meetings). Furthermore, the rest of the evidence submitted seems to contradict the agent's account and actually suggests that the parties never reached any agreement of the sort. The Panel notes, in particular, that:

- There is no written evidence whatsoever of the alleged agreement. At the hearing, the Player's agent confirmed that no written agreement was entered into subsequent to the oral agreement. Mr Colazo explained that (i) he requested Mr Van Holsbeeck to put the agreement into writing but that Mr Van Holsbeeck said no, and (ii) the parties did not consider it necessary to put the agreement into writing given their good relationship and practice of agreeing to agreements orally and subsequently committing them to writing (but the Panel has seen no evidence of such alleged practice).

- The alleged agreement is not mentioned either explicitly or implicitly in the Termination Letter.

- There is no email correspondence whatsoever between the parties referring to the alleged oral agreement. Had the parties reached such an agreement, the Player's agent most probably would have mentioned it in one of the communications leading up to the termination, especially in the email dated 13 June 2016 in which he tried to convince RSCA to allow the Player to return to Argentina (see *supra* at para. 15).

- By Mr Colazo's own testimony, some *essentialia negotii*, such as the Player's price tag or possible destinations of the transfer, were not discussed in the meetings of December 2015 and March 2016.

- The Player declared in the Termination Letter that RSCA has *"only impeded his departure"* (in the Spanish original: *"solo han puesto trabas"*), which seems to imply that no such agreement was ever reached (see *supra* at para. 19).

104. In light of the above, the Panel is not satisfied that the alleged oral agreement existed or that the meetings of December 2015 and March 2016 yielded any definite understanding between the Player and RSCA with regard to some of the essential elements of a transfer agreement (such as, the transfer price and the club of destination). Therefore, the Panel does not take such alleged agreement into consideration in assessing whether the Player had just cause to prematurely terminate the Employment Contract.

iii. Conclusion

105. For the foregoing reasons, the Panel concludes that the grounds invoked by the Player to terminate his Employment Contract with RSCA, viewed either individually or collectively, do not constitute a *"just cause"*. Therefore, the Player breached the Employment Contract and, pursuant to Article 17 RSTP, he must pay compensation to RSCA for such breach.

B. Calculation of compensation

i. Criteria set out in Article 17, para. 1 RSTP and in CAS jurisprudence

106. It is common ground between the parties - and rightfully so - that compensation for the unilateral, unjustified termination of an employment contract is to be calculated pursuant to Article 17, para. 1 RSTP. However, both sides disagree with the calculations the DRC made in the Appealed Decision.

107. According to Article 17, para. 1 RSTP: *"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"*.

108. In other words, so long as the parties to an employment contract did not agree to a specific amount of liquidated damages, the compensation for an unjustified, premature termination must be calculated taking into consideration:

- the law of the country concerned;

- the specificity of sport;

- and any other objective criteria, including in particular:

    - remuneration and other benefits due to the player under the existing and/or the new contract;

    - the time remaining on the existing contract up to a maximum of five years;

    - the fees and expenses paid or incurred by the former club (amortized over the term of the contract); and

    - whether the contractual breach falls within the Protected Period as defined under the *"Definitions"* chapter in the FIFA Regulations.

109. As repeatedly confirmed in CAS jurisprudence, the list of criteria set out in Article 17, para. 1 RSTP is illustrative and not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, provided that there exists a logical nexus between the breach and loss claimed (CAS 2010/A/2145, 2146 & 2147, at para. 66; see also CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881). CAS precedents also indicate that, in the analysis of the relevant criteria, the order by which those criteria are set forth by Article 17, para.1 RSTP is irrelevant and need not be exactly followed by the judging body (see CAS 2009/A/1880 & 1881 at para. 79).

110. The Panel further observes that, according to CAS jurisprudence, it is for the judging authority to carefully assess, on a case by case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation under Article 17, para. 1 RSTP (CAS 2008/A/1519 & 1520, at paras. 77 and 89; CAS 2010/A/2145, 2146, & 2147, at paras. 74 and 86). In particular, CAS precedents indicate that while each of the factors set out in Article 17, para. 1 or in CAS jurisprudence may be relevant, any of them may be decisive on the facts of a particular case (CAS 2009/A/1880 & 1881, at para. 77). According to said CAS case law, while the judging authority has a *"wide margin of appreciation"* or a *"considerable scope of discretion"*, it must not set the amount of compensation in a fully arbitrary away, but rather in a fair and comprehensible manner (CAS 2009/A/1880 & 1881, at paras. 76 and 77; CAS 2008/A/1519 & 1520, at paras. 87 and 89). At the same time, as the CAS Code sets forth an adversarial rather than inquisitorial system of arbitral justice, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17 para. 1 or set out in the CAS jurisprudence, if the parties do not actively substantiate their allegations with evidence and arguments based on such factor (CAS 2009/A/1880 & 1881, at para. 78).

111. The Panel also observes that there is an established consensus in CAS jurisprudence that the "positive interest" principle must apply in calculating compensation for an unjustified, unilateral termination of a contract under Article 17, para. 1 RSTP (it has been applied, among other cases, in CAS 2008/A/1519 & 1520, CAS 2009/A/1880 & 1881, CAS 2013/A/3411, and CAS 2015/A/4046 & 4047). As aptly stated by another CAS panel, *"given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, it will be guided in calculating the compensation due by the principle of the so-called "positive interest" or "expectation interest" (…)* [and] *accordingly (…) determin*[e] *an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred"* (CAS 2009/A/1880 & 1881, at para. 80).

112. The Panel concurs with the approach followed in the above mentioned CAS jurisprudence.

a. No liquidated damages clause

113. In accordance with Article 17, para. 1 RSTP, the Panel must first verify whether the Employment Contract contained a liquidated damages clause which specifically addressed the financial consequences of an unjustified, unilateral termination by either party. The Panel finds, as is undisputed by the parties, that there is no such clause in the Employment Contract between the Player and RSCA. Consequently, the Panel must calculate the compensation in accordance with other factors.

b. No lost earnings or third party offer

114. RSCA principally requests that the Panel take into consideration the EUR 4 million transfer fee offer it made to CA Belgrano on 13 June 2016 in calculating compensation under Article 17, para. 1 RSTP. In RSCA's view, the offer adequately reflects the value of the Player and, therefore, the Panel must award EUR 4 million in compensation.

115. The Panel recognizes that, with the exception of the *Webster* case (nowadays an isolated and overturned precedent), the CAS has accepted the possibility, in line with Swiss employment law on the loss of earnings (*lucrum cessans*), that the loss of a transfer fee can be considered as a compensable damage, provided that there is a necessary logical nexus between the unjustified, unilateral termination of the employment contract and the lost opportunity to realize that profit (CAS 2008/A/1519 & 1520, at para. 117; CAS 2009/A/1880 & 1881, at paras. 92 and 93).

116. While the Panel concurs with this approach, it notes that in the present case there is no evidence that RSCA suffered such a lost opportunity. In the present case, RSCA never received an offer from a third club to acquire the Player for EUR 4 million. There is no question that CA Belgrano and RSCA discussed the possibility of transferring the Player from the Belgian club to the Argentinian club. However, CA Belgrano never made any financial offer to RSCA. It only inquired about possibly obtaining the player on a *free* loan and then, once RSCA made a EUR 4 million request, sent no response at all, thereby implicitly manifesting its lack of interest in acquiring the Player at that price. Therefore, it cannot be said that RSCA lost out on a transfer

fee of EUR 4 million, as such hypothetical price was set out by RSCA itself with no evidence on the record that in the market there could be any club interested in spending that amount for the Player.

117. Moreover, the Panel does not consider the EUR 4 million proposal to be relevant in determining the value of the Player, *i.e.*, more precisely, what RSCA would have had to spend on the market to contract the services of an analogous player. In the Panel's view, only a third party offer made in good faith may be a relevant indicator of the Player's value, because only that type of offer confirms the amount that a club would actually be willing and ready to pay for acquiring the Player's services. As *Matuzalem* held, a third party offer *"can provide important information on the value of the services of the player, and a panel shall take into consideration a third party good faith offer made to the club as an additional element to assess the value of the services of the player"* (CAS 2008/A/1519 & 1520, at para. 104). Conversely, the Panel considers that an offer made by the damaged club, even if made *in tempore non suspecto*, does not necessarily reflect the true player's value. The Panel sees it as very plausible for a selling club to begin negotiations putting forward a much higher price than the concerned player's actual market value, to then lower the amount throughout the negotiations. Moreover, it is not uncommon for a club to set as a price tag an unreasonable amount far above the market value in the situation where it does not truly wish to part with the player. An offer from the damaged club is therefore too subjective and unreliable to be considered in assessing the value of the Player's services. The Panel's conclusion is not affected by the fact that:

- The specialized website *transfermarkt.com* valued the Player at EUR 3.2 million when he prematurely terminated the Employment Contract and it currently values him at EUR 2.5 million. The Panel does not consider this valuation to be reliable for the purposes of this arbitration. The Panel is unaware of how *transfermarkt.com* assessed the value of the Player. RSCA has merely submitted the website's valuation of the Player, without explaining how it was calculated and whether objective criteria were used in the calculation, such as a comparison to players of the same position, attributes, age, career path, etc. RSCA has also not substantiated the *transfermarkt.com* valuation with any expert evidence, reports or statements which could objectively appraise the value of the Player's services.

- RSCA had agreed to sell the Player in 2012 to CSKA Moscow for EUR 10,773,000. The Panel finds the Player's transfer fee in the CSKA Moscow agreement irrelevant, because (i) it is from 2012 and it is well-known that a footballer's value fluctuates, at times drastically, throughout his career depending on different circumstances, and (ii) CSKA Moscow ultimately cancelled the Player's transfer by reason of a failed physical examination (due to an important injury), meaning that it no longer valued the Player at the agreed-upon price or even viewed him as worthy of acquisition at that time.

118. RSCA also argues that since CA Belgrano knew the Player had terminated his Employment Contract without just cause, it assumed the risk of having to pay EUR 4 million. The Panel finds that by signing the Player, CA Belgrano may have assumed the risk of potentially having

to pay *some* compensation under Article 17, para. 2 RSTP, but not necessarily the EUR 4 million demanded by RSCA.

119. To conclude, the Panel finds that the offer of EUR 4 million made by RSCA to CA Belgrano is irrelevant for the purposes of determining compensation due under Article 17, para. 1 RSTP.

c. Player's remuneration under the CA Belgrano employment contract

120. The Panel acknowledges that a player's remuneration with his new employer can in principle provide some insight as to the value of that player's services and aid in calculating compensation under Article 17, para. 1 RSTP (CAS 2009/A/1960 & 1961, at paras. 53 and 57: *"Alors que la rémunération sous l'ancien contrat pourra donner des indications utiles sur la valeur attribuée par l'ex-employeur aux services du jouer, les salaires convenus avec le nouvel employeur peuvent donner des éléments de réponses quant à la valeur du marché des services du jouer et quant à savoir ce qui a motivé l'employé à rompre son contrat de manière unilatérale et prématurée"*; see also CAS 2009/A/1880 & 1881, at para. 88).

121. In the present case, however, the Panel holds that the Player's remuneration with CA Belgrano does not provide any insight on the value of his services. As the Player admitted, he sacrificed a considerable amount of remuneration to move back to Argentina. This is confirmed by simply comparing the amount of EUR 1,009,380 the Player would have received in guaranteed salary plus signing bonus with RSCA in the 2016-2017 season to the Player's guaranteed salary plus signing bonus at CA Belgrano for that same season, which was calculated at EUR 495,746.99 by the Player and CA Belgrano and at EUR 549,401.20 by RSCA (the difference simply deriving from RSCA not taking into account fluctuations in the exchange rate between the ARS and EUR). Therefore, the Player's remuneration at CA Belgrano does not accurately reflect the value of the services of the Player and, thus, the amount that RSCA would have to spend on the open market to hire a player of analogous value. The Panel considers that in order for RSCA to replace the Player with one of analogous value, it would have had to pay the incoming player a European-level salary - as it did with Mr [M] (see *infra* at para. 123 *et seq.*) - and not the significantly discounted salary that CA Belgrano paid the Player.

122. Therefore, the Panel shall not consider the Player's remuneration with CA Belgrano in assessing the compensation due to RSCA under Article 17, para. 1 RSTP.

d. Replacement costs

123. According to CAS jurisprudence, in the absence of any concrete evidence with respect to the value of the Player, the judging authority may also take into account the value of replacement costs, *i.e.* the cost incurred by the club to acquire the services of a new player to replace the outgoing player (CAS 2010/A/2145, 2146 & 2147, at paras. 67 and 86). In the present case, the parties disagree as to whether RSCA replaced the Player with Mr [M]. RSCA argues that Mr [M] replaced the Player, while the Player and CA Belgrano argue that he did not.

124. In order for RSCA to successfully claim replacement costs, RSCA must substantiate that Mr [M] was hired to replace the Player. Only then can Mr [M]'s acquisition costs be claimed as compensation under Article 17, para. 1 RSTP. Following *Matuzalem*, this requires the RSCA to prove (i) that the players played in more or less the same position on the field, and (ii) that there is a link between the Player's premature termination of the Employment Contract and the hiring of the new player (CAS 2008/A/1519 & 1520, at para. 136). The Panel finds that RSCA satisfied both requisites.

125. First, the evidence before the Panel confirms that Mr [M] and the Player played more or less the same position. The player' profiles and statistics show that both Mr [M] (in 2016-2017) and the Player (in 2015-2016) were predominantly wingers, or in any event offensive players, for RSCA.

126. Second, there is a clear link between Mr [M] and the Player's premature termination of his Employment Contract. This link is established by the following circumstances: (i) as stated above, the Player and Mr [M] played by and large in the same position; (ii) RSCA signed Mr [M] on 30 August 2016, *i.e.* after the Player left the Belgian club and within the same transfer window; (iii) the guaranteed salary plus signing bonus the Player was set to receive in 2016-2017 (EUR 1,009,380) is comparable to what RSCA agreed to pay Mr [M] as salary plus signing bonus in that same season (EUR 1,270,000), and (v) the other players who left RSCA during that transfer window - Messrs. Stefano Okaka, Steven Defour and Dennis Praet - played a less similar position. With regard to the latter point, based on the Internet pages referred by the Player and CA Belgrano in their briefs as well as the Panel's judicial notice of the public career and reputation of those players, the Panel notes:

- Mr Stefano Okaka is a center forward and exclusively played in that position throughout his career, including the 2015-2016 season.

- Mr Steven Defour is a central midfielder. In the 2015-2016 season, Mr Defour played 38 of his 42 matches in this central role.

- Mr Dennis Praet is mainly a central midfielder, who occasionally plays left winger. During the 2015-2016 season with RSCA, Mr Praet's role was less defined. He was used as an all-around utility player. Mr Praet was fielded in seven different positions throughout the season, serving as either left or right winger in 27 of the 45 games played, in various midfield roles in 11 games, and as a second striker in one game. In years prior, he served in a more central role (attacking and central midfielder), while also being periodically deployed on the left wing.

127. In any event, the fact that other players also moved from RSCA to third clubs in the summer of 2016 cannot erase the undeniable fact that the Player suddenly left RSCA and forced this club to look for an alternate player with comparable features, as Mr [M] definitely is. In light of the foregoing, the Panel is comfortably satisfied that RSCA acquired Mr [M] to replace the

Player and that, therefore, the Belgian club suffered actual damages in replacement costs. In the Panel's view, there is no need for there to be an internal or external written correspondence explicitly indicating that the incoming player was replacing the outgoing player, as the Player and CA Belgrano suggest; it is sufficient that the factual circumstances as a whole support to the satisfaction of the Panel that he was a replacement player.

128. The Panel calculates the actual replacement costs for the Player were EUR 2,131,519.89, as follows: (i) EUR 500,000 for the transfer fee that RSCA paid to […] to acquire [Mr M] on loan, plus (ii) EUR 1,270,000 for [Mr M]'s remuneration for his services during the 2016-2017 season (*i.e.* EUR 270,000 in salary, plus EUR 1,000,000 in signing bonus), plus (iii) EUR 22,500 in double holiday pay, plus (iv) EUR 18,000 as allowance for leasing a car, plus (v) EUR 156,232.89 in employer's contribution, plus (vi) EUR 164,787 in performance bonuses paid to [Mr M].

129. The Panel concludes by addressing the Player's and CA Belgrano's contention that, since replacement costs were not raised in the DRC proceeding, considering them at this stage would allegedly violate procedural estoppel, due process and the right of defense. The Panel finds that not only did RSCA raise the issue of replacement costs in the DRC proceeding, as is clear from the FIFA case file, but, in any case, it is well-established under CAS jurisprudence that a CAS panel has complete power to review the facts and the law and to rule on the case *de novo*, even examining new evidence and applying different rules of law (CAS 2009/A/1920, at para. 87). Therefore, no violation of these principles occurred.

e. Fees and expenses paid or incurred by RSCA: Agency fees

130. The Player and CA Belgrano argue that, at the time the Player terminated the Employment Contract, there were no longer any fees and expenses paid by RSCA left to amortize. They submit that the commission payable to Mr Colazo under the Agency Agreement were not fees and expenses incurred by RSCA to acquire the Player and, in any case, were already fully amortized by the time the Player terminated the contract in 2016. In their view, the agency fees should therefore not be considered when calculating damages under Article 17, para. 1 RSTP. RSCA takes the opposite position. The Panel must therefore determine (i) whether the agency fees were related to the acquisition of the Player (since only fees related to that acquisition may be considered in calculating damages under Article 17, para. 1 RSTP), and (ii) whether they were fully amortized by the time the Player terminated the Employment Contract.

131. With regard to the first point, the Panel observes that even though the Agency Agreement was entered into between RSCA and the Player's agent, the Player's agent represented the Player. The Player's agent explicitly confirmed this at the hearing by declaring that he was the Player's life-long agent. This means that RSCA paid the agency fees on behalf of the Player and, in turn, that the fees were part of the Player's cost and linked to the RSCA's acquisition of the Player. This link is further confirmed in the Agency Agreement, which conditions the third installment payment of the agency fees on the Player still being under contract with RSCA.

132. As to the second point, the Panel notes that under the Agency Agreement, RSCA had to pay the Player's agent, Mr Colazo, a total of EUR 1,050,000, in three equal installments of EUR 350,000 to be paid on 1 July of 2013, 2014, and 2015. The Panel is not persuaded by the Player's and CA Belgrano's contention that, since all payments were due and paid by 1 July 2015, the agency fees were fully amortized when the Player terminated his Employment Contract a year later on 1 July 2016.

133. In the Panel's view, amortization occurs over the entire term of an employment contract and is not based on the dates when payments are made. This is confirmed by:

- the wording of Article 17 RSTP, which states *"fees and expenses paid or incurred by the former club (amortised over the term of the contract)"* (emphasis added), and

- the CAS' interpretation of this provision: *"Art. 17 para. 1 requires those expenses to be amortised over the whole term of the contract. This is independently on whether the club - because of any applicable accounting rule - has amortized the expenditures in such a linear way or not"* (emphasis added, CAS 2008/A/1519 & 1520, at para. 126; see also CAS 2015/A/4046 & 4047, at para. 112).

134. Since the term of the Employment Contract was four years, from 1 July 2013 until 30 June 2017, the amount of EUR 1,050,000 paid as agency fees must be considered as amortized in equal portions over that four-year term. This means that when the Player terminated his employment relationship with RSCA on 1 July 2016, EUR 262,500, *pro quota* corresponding to the last year of the Employment Contract, remained unamortized.

135. The fact that the third year's installment under the agency contract was conditional has no effect on this calculation. That condition was met and, accordingly, RSCA paid the final EUR 350,000 installment.

136. In light of the foregoing, the Panel concludes that EUR 262,500 in unamortized agency fees shall be added to the amount of EUR 2,131,519.89 spent by RSCA to replace the Player, totaling EUR 2,394,019.89 in compensation under Article 17, para. 1 RSTP.

f. Non-application of the average residual value of the old and new contracts

137. The Panel notes that RSCA, in its alternative calculations, added the average residual value of the Player's old and new contracts to the replacement costs and unamortized parts of the agency fees. This formula is incorrect in light of the established CAS jurisprudence (see, among other cases, CAS 2010/A/2145, 2146 & 2147).

138. Awarding the average residual value of the contracts on top of replacement costs would create a double compensation for RSCA. In awarding replacement costs, the Panel has already determined the lost value of the Player.

139. Accordingly, the Panel shall not consider the average residual value of the Player's old and new contracts in calculating compensation under Article 17, para. 1 RSTP.

g. Deduction for the Player's remuneration under the Employment Contract

140. In accordance with CAS jurisprudence, the Panel must subtract any costs that RSCA saved in the Player's departure (CAS 2008/A/1519 & 1520, at paras. 123-124; CAS 2009/A/1880 & 1881, at para. 102). The Panel observes that at the time the Player terminated his employment relationship with RSCA, there remained a full year on his Employment Contract, under which - based on RSCA's own submissions and evidence - he was set to earn EUR 1,009,380 as guaranteed remuneration (EUR 504,000 in salary plus the yearly signing bonus of EUR 505,380). The Player was also set to receive, in accordance with the Employment Contract and Belgian law: (i) an allowance of EUR 12,000 for a car, (ii) EUR 24,000 for housing, (iii) EUR 42,000 in double holiday pay, (iv) EUR 2,000 in loyalty bonus, (v) an estimated EUR 310,000 in employer's contribution, (vi) six flight tickets, valued at an estimated EUR 24,859.70 based on the amount RSCA spent on the Player's flights the prior season. No performance bonus can be added to the above saved amounts because it is a variable sum that, under the Employment Contract, depends on haphazard circumstances like the results of the team and the Player's presence in official matches (the latter element being particularly aleatory in light of the Player's propensity to injuries in recent years).

141. Due to the Player's premature termination of his employment contact, RSCA thus saved itself from having to pay EUR 1,424,239.70. Accordingly, the Panel shall deduct that amount from EUR 2,394,019.89 (*i.e.* the replacement costs plus unamortized agency fees) to total EUR 969,780.19 as compensation under Article 17, para. 1 RSTP.

h. Law of the country concerned

142. In accordance with CAS jurisprudence, the *"law of the country concerned"* is Belgian law, since it is the law governing the employment relationship between the Player and his former club, RSCA (see CAS 2009/A/1880 & 1881, at paras. 81 to 84).

143. In this connection, RSCA argues that any awarded sum lower than EUR 1,601,770.70 would be incompatible with Belgian law, as that is the amount that RSCA would have received under that law. The Player's and CA Belgrano's, however, contend that Belgian law cannot be relied upon at this stage for not having been referred to in the DRC proceeding. The Panel rejects this contention because, as already mentioned *supra* at para. 129, it is well-established under CAS jurisprudence that, in accordance with Article R57 of the CAS Code, a CAS panel has complete power to review the facts and the law and to rule on the case *de novo*, even examining new evidence and arguments that were not raised before the lower instance (see CAS 2009/A/1920, at para. 87).

144. Therefore, the Panel finds that, if relevant, it may consider Belgian law in calculating compensation under Article 17, para. 1 RSTP. However, the rules of law applicable on the merits of this case - as held above in Section VIII - are the FIFA regulations (such as the RSTP) and, additionally, Swiss law. Accordingly, Belgian law, as *"law of the country concerned"*, cannot be used to substitute for the calculation undertaken under Article 17, para. 1 RSTP. Rather, it should only be residually used where a mandatory rule of law requires that a certain item (for example, social security contributions) be included in or excluded from the remuneration of a player and/or in the calculation of damages for early termination of an employment contract.

145. Therefore, the Panel is of the view that it is irrelevant if under Belgian law RSCA could have allegedly been entitled to a greater amount than under Article 17, para. 1 FIFA RSTP. That circumstance alone does not warrant an increase of the amount determined as compensation here. On the other hand, the Panel finds that Belgian law is relevant in establishing the remuneration due to the Player under the old contract with RSCA and, in fact, has taken it into account for calculating the costs saved by the Belgian club with the Player's early departure (*supra* at para. 140).

ii. Specificity of sport

146. Article 17, para. 1 RSTP also lists the *"specificity of sport"* as a factor to take into account in determining the amount of compensation due for an unjustified, premature termination of an employment contract. In this regard, a CAS panel has previously explained:

> *"109. Article 17.1 of the FIFA Transfer Regulations also asks the judging body to take into due consideration the "specificity of sport", that is the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the player and the club, but also, more broadly, those of the whole football community (CAS 2008/A/1644, at para. 139; CAS 2008/A/1568, at paras. 6.46-6.47; CAS 2008/A/1519-1520, at paras. 153-154; CAS 2007/A/1358, at paras. 104-105). Based on this criterion, the judging body should therefore assess the amount of compensation payable by a party keeping duly in mind that the dispute is taking place in the somehow special world of sport. In other words, the judging body should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case (CAS 2008/A/1519-1520, at para. 155).*
>
> *110. Taking into account the specific circumstances and the course of the events, a CAS panel might consider as guidance that, under certain national laws, a judging authority is allowed to grant a certain "special indemnity" in the event of an unjustified termination. The specific circumstances of a sports case might therefore lead a panel to either increase or decrease the amount of awarded compensation because of the specificity of sport (CAS 2008/A/1519-1520, at para. 156; CAS 2008/A/1644, at para. 139).*

> *111. However, in the Panel's view, the concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors. In particular, according to CAS jurisprudence, this criterion* 'is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account when calculating a specific damage head. Furthermore, the element of the specificity of sport may not be misused to undermine the purpose of art. 17 para. 1, *i.e.* to determine the amount necessary to put the injured party in the position that the same party would have had if the contract was performed properly' *(CAS 2008/A/1519-1520, at para. 156)"* (CAS 2009/A/1880 & 1881, at paras. 109 to 111; see also CAS 2013/A/3411, at para. 118).

147. In the case at hand, RSCA suffered actual damages for the Player's unjustified, premature termination of his Employment Contract. However, the Panel is not convinced that the replacement costs incurred plus unamortized agency fees minus costs saved (amounting to a total of EUR 969,780.19) would fully compensate RSCA for the loss it suffered as a result of the Player's breach of Article 16 RSTP.

148. According to CAS jurisprudence, one of the factors to consider when deciding whether the specificity of sport requires a correction in the amount of compensation awarded is the behavior of the parties, in particular, of the side that failed to respect its contractual obligation (CAS 2008/A/1519-1520, at para. 168).

149. With regard to the behavior of the parties, the Panel observes that the Player and CA Belgrano acted in an ill-advised manner leading up to the Player's sudden and unjustified termination of the RSCA Employment Contract.

150. Not only did the Player wait until the first day after the Protected Period to send the Termination Letter (as is undisputed by the parties), but the reasons for his departure have been rather inconsistent. The Panel observes, in particular, that:

- On 11 June 2016, CA Belgrano explained to RSCA that the Player's agent had informed it of the Player's wish to move back to Argentina for *"family and affective reasons"* (see *supra* at para. 12-13).

- Only two days later, on 13 June 2016, RSCA made clear that it was not interested in loaning the Player for free and that, instead, was willing to definitively transfer him for a fee of EUR 4 million (see *supra* at para. 14). On the same day, the Player's agent insisted with RSCA, to no avail, that the Player wished to part to CA Belgrano (see *supra* at para. 15).

- Then, when no transfer agreement was reached between RSCA and CA Belgrano, the Player remained absent from training camp. His agent claimed on 17 June 2016 that the

Player's absence was for *"health reasons"*. Then on 28 June 2016 the Player's agent specified that the Player was suffering from gastroenteritis but that he had not recovered from it. The Player's agent claimed to have a medical certificate excusing the Player's absence until 4 July 2016. However, he never sent this medical certificate to RSCA, and, in fact, did not reveal it until sometime during the DRC proceeding. Instead of returning to RSCA on 4 July, the Player: (i) on 1 July 2016 prematurely terminated his Employment Contract with RSCA without just cause, (ii) on 5 July 2016 signed a new employment agreement with CA Belgrano, and (iii) on 7 July 2016 declared at his first press conference in Argentina that he was completely fit and ready to play for CA Belgrano (see *supra* at paras. 17-23).

- In the Termination Letter, the Player added two new reasons not mentioned before. The Player explained that he wished to terminate his Employment Contract not only because of the terrorist attacks, but also because of his wish to be closer to his ailing mother and of his diminishing role within RSCA.

- Moreover, during his first press conference on 7 July 2016, the Player declared that *"My only intention for several years now (…) was to return* [to CA Belgrano]*"*, without mentioning any of the reasons cited in the Termination Letter.

- Then, during the DRC proceeding, the Player referred to an alleged oral agreement between the RSCA and the Player's agent, under which RSCA supposedly agreed to facilitate the Player's departure following the conclusion of the 2015-2016 season.

- Then, on 7 February 2018, the Player declared, without expressing any safety concerns about Belgium, that if the situation presented itself, he would like to return to Brussels and play for RSCA, and that the principal reason for leaving in the first place was not the terrorist attacks but the sore relationship with some RSCA's executives (see *supra* at para. 76).

151. In the Panel's view, the above conduct of the Player denotes lack of consistency, transparency and correctness on his part, tainting the justifications he advanced as excuses to do what he wished, disregarding his contractual commitments.

152. As for CA Belgrano, the Panel observes that the Argentinian club knew it was hiring a Player who had a contract until 30 June 2017 with RSCA, a club which CA Belgrano had contacted less than a month before to inquire about possibly acquiring the Player on loan and which had in turn requested a substantial transfer fee to trade him. Nevertheless, CA Belgrano went ahead and signed the Player without contacting again RSCA to probe the situation and try and reach an agreement. Moreover, there is reason to believe that CA Belgrano may have been long before in contact with the Player to discuss a potential move to Argentina. In fact, in his first press conference with CA Belgrano, the Player admitted that he had spoken to the head coach of CA Belgrano a month before.

153. In addition, neither the Player nor CA Belgrano did anything to attempt to mitigate RSCA's damages.

154. All this must be juxtaposed to the fact that there is no evidence of RSCA acting in an ill-advised manner or breaching the Employment Contract.

155. The Panel recognizes that the exact damage caused by the above is hard to establish. Therefore, considering Articles 99, para. 3 and 42, para. 2 of the Swiss Code of Obligations ("CO"), under which a judging authority may estimate the value of damages at its discretion in light of the normal course of events and the measures taken by the damaged party to limit the damages, the Panel finds it is appropriate to set an additional indemnity equal to 25 percent of the amount of compensation initially calculated, *i.e.* 25 percent of EUR 969,780.19. This additional amount of EUR 242,445.04 is less than six months of the Player's remuneration under the Employment Contract (*i.e.* less than EUR 504,690 of salary plus signing bonus), which is in line with what other CAS panels have awarded by way of the specificity of sport (CAS 2008/A/1519 & 1520, at para. 178; CAS 2010/A/2145, 2146 & 2147, at para. 102).

156. The Panel considers that the 50 percent adjustment increase requested by RSCA would be excessive and a misuse of the specificity of sport's correcting factor, particularly because of the short time remaining in his contractual relationship with RSCA. The Panel notes that only one year remained on the Employment Contract out of the four-year term, meaning that (i) it was a short period of time with only two transfer windows before the Player became "free agent", making it quite difficult to obtain a substantial fee for the sale of the Player's rights, and (ii) when the Player terminated the contract on 1 July 2016, he was only six months away from being allowed to freely negotiate his next contract with a new club pursuant to Article 18, para. 3 RSTP (*"A professional shall only be free to conclude a contract with another club if his contract with this present club has expired or is due to expire within six months"*). Under the circumstances, exerting the discretion allowed by the RSTP and Swiss law, the Panel views a 25 percent increase as a more appropriate correcting percentage than that suggested by RSCA and, therefore grants to RSCA an additional amount of EUR 242,445.04 due to the *"specificity of sport"* factor.

iii. Final calculations

157. In accordance with Article 17, para. 1 RSTP and the "positive interest" notion, the Panel concludes that RSCA is entitled to a total amount of EUR 1,212,225.23 as compensation for the Player's unjustified, premature termination of the Employment Contract. The Panel calculated this amount as follows:

- EUR 2,131,519.89 for replacement costs (see *supra* at para. 123 *et seq.*),
- plus EUR 262,500 in unamortized Player's agent fees (*supra* at para. 130 *et seq.*),
- minus EUR 1,424,239.70 as costs saved by RSCA (see *supra* at para. 140 *et seq.*),

- plus EUR 242,445.04 based on specificity of sport (see *supra* at para. 146 *et seq.*).

iv. Interest

158. To put RSCA into the same position it would have been in had the Player not prematurely terminated his Employment Contract, the Panel finds, in accordance with Swiss law and in line with CAS jurisprudence (CAS 2009/A/1880 & 1881, at para. 243), that RSCA should be entitled to interest at the rate of five percent *per annum* starting on 4 July 2016. The Panel recognizes that in a claim for compensation for the unjustified, premature termination of an employment contract, interest accrues from the day following the termination date, without any reminder being necessary (CAS 2008/A/1519 & 1520, at paras. 184, 185, and 186; CAS 2010/A/2145, 2156 & 2147). Therefore, in principle, interest started to accrue on 2 July 2016, the day after the Player terminated his Employment Contract. However, since RSCA only requested interest as of 4 July 2016 in its motions for relief, the Panel will take that date as *dies a quo*; accordingly, the Panel grants to RSCA interest on EUR 1,212,225.23 at the rate of five percent *per annum* from 4 July 2016 until effective payment.

C. Joint and several liability of CA Belgrano

159. CA Belgrano argues that it should not be held jointly and severally liable for any compensation awarded to RSCA, because it did not induce the Player into prematurely terminating his Employment Contract with that club. CA Belgrano submits that if the DRC's strict liability approach is adopted, the club could only have avoided liability by not signing the Player. Moreover, CA Belgrano believes that players, knowing that the responsibility to pay for compensation under Article 17 RSTP would fall on their respective new clubs, would be more prone to prematurely terminate their employment contracts. In its view, the DRC's approach would be incompatible with the purpose of Article 17 RSTP and with the principle of contractual stability, and would prejudice the free movement players, thereby *"carrying us back (…) to a pre-Bosman state"*. In support of its argument, CA Belgrano cites the *Chelsea-Juventus* award related to the player [A], in which the CAS panel stated: *"If Chelsea's interpretation were to be followed, it would mean that Article 14.3 would result in the imposition upon the New Club of an automatic and unconditional liability, without a finding of a fault or negligence and without a contractual basis - and hence without causation. Swiss law does not countenance such a result (SFT 105 II 183 and Silvia Tevini, op. cit. ad. art. 17, n 4, p. 129 and numerous references)"* (CAS 2013/A/3365 & 3366, at para. 170). CA Belgrano also cites several provisions of the Swiss Code of Obligations, including Articles 55, 97, 109 and 145 CO.

160. The Panel observes that Article 17, para. 2 RSTP so reads in the relevant part: *"If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment"*. The FIFA official commentary further explains that:

- *"Whenever a player has to pay compensation to his former club, the new club, i.e. the first club for which the player registers after the contractual breach, shall be jointly and severally liable for its payment"*; and

- *"The new club will be responsible, together with the player, for paying compensation to the former club, regardless of any involvement or inducement to breach the contract"*.

161. CAS jurisprudence has repeatedly confirmed that Article 17, para. 2 RSTP requires that the new club, so long as it is identified as such, be held jointly and severally liable with the player for the payment of any compensation awarded against the player under Article 17, para. 1 RSTP, regardless of whether there is evidence that it was truly involved in or induced the player to breach his contract (*e.g.* CAS 2015/A/3953 & 3954, at para. 52; CAS 2014/A/3852, at paras. 110 to 114; CAS 2013/A/3149, at para. 99; CAS 2013/A/3411, at para. 125).

162. CA Belgrano's reliance on the *Chelsea-Juventus* case (CAS 2013/A/3365 & 3366) to try to dissuade the Panel from applying the clear terms of Article 17, para. 2 RSTP and the related CAS jurisprudence is misplaced. The Panel acknowledges that the *Chelsea-Juventus* award found inapplicable Article 14, para. 3 of the 2001 edition of the RSTP (the predecessor to Article 17, para. 2 of the current edition of the RSTP), according to which *"If a player is registered for a new club and has not paid a sum of compensation within the one month time limit referred to above, the new club shall be deemed jointly responsible for payment of the amount of compensation"*. However, a careful reading of that CAS award reveals that the panel so decided on the grounds that (i) it was the old club's decision to dismiss the player, who had no intention to leave the old club in order to sign with the new club, and (ii) the new club was, so to say, nowhere in sight when the old club terminated the employment relationship with Mr [A]. In other words, that CAS panel rightly held that, under a proper interpretation of Article 14, para. 3 of the 2001 RSTP (exactly as under a proper interpretation of the current Article 17 para. 2 RSTP) in the context of the legislative purpose of contractual stability, the new club is only liable when the player it hires had unilaterally terminated his employment contract with the previous club and not in the reverse situation, when the previous club had willingly released that player. The *Chelsea-Juventus* panel correctly reasoned as follows: *"When Chelsea put an end to the Player's Employment Contract, no issue of contract stability (…) was at stake. As Chelsea took the decision to sever its relationship with the player, it strains logic for the club now to contend that the Appellants somehow enriched themselves by acquiring an asset (the player) which it chose to discard (…) It is undisputed that the joint and several liability for compensation (together with disciplinary sanctions if the requirements are met) will discourage any club from inducing a player to breach his contract with a former employer. However, such a deterrent effect has no purpose when a Player was dismissed by his former employer and is left with no other option but to find a new employer"* (CAS 2013/A/3365 & 3366, at paras. 161, 163 and 170).

163. This Panel finds that the *Chelsea-Juventus* precedent does not apply to the present case because the two cases can be easily distinguished. Here it was the Player that prematurely terminated his contract and signed a contract with CA Belgrano.

164. The Panel also finds that Article 17, para. 2 RSTP, as interpreted by CAS jurisprudence, is compatible (i) with the purpose of that provision and the principle of contractual stability, given that it clearly works as a deterrent to hire a player under contract with another club, as well as (ii) with the right to work and free movement, given that the RSTP and the principle of contractual stability received the blessing of the EU Commission (as mentioned *supra* at para. 68). Accordingly, the related argument of CA Belgrano fails.

165. Moreover, the Panel does not find the cited Articles of the Swiss Code of Obligations relevant, as the FIFA rules thoroughly govern the issue of compensation for a premature termination of the contract and, in this specific respect, there is no lacuna that would warrant resorting to Swiss law.

166. Having decided that Article 17, para. 2 is applicable, and considering that it is undisputed that CA Belgrano is the *"new club"* as defined by the RSTP, the Panel holds that the Argentine club is jointly and severally liable for the amount of EUR 1,212,225.23 awarded to RSCA, plus five percent interest *p.a.*, irrespective of whether CA Belgrano was involved in or induced the Player to terminate his Employment Contract.

D. Further or different motions

167. All further or different motions or requests of the parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SA Royal Sporting Club Anderlecht on 21 February 2018 (proceeding CAS 2018/A/5607) is partially upheld.

2. The appeal filed by Mr Matías Ezequiel Suárez and Club Atlético Belgrano de Córdoba on 1 March 2018 (proceeding CAS 2018/A/5608) is dismissed.

3. Mr Matías Ezequiel Suárez and Club Atlético Belgrano de Córdoba are ordered to pay SA Royal Sporting Club Anderlecht, jointly and severally, EUR 1,212,225.23, plus five percent interest *per annum* on this sum from 4 July 2016 until effective payment.

(…)

7. All further or different motions or prayers for relief are dismissed.