



Arbitration CAS 2018/A/5628 Hellas Verona FC v. Rade Krunić & FK Borac Čačak, award of 21 December 2018

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr Michele Bernasconi (Switzerland); Prof. Massimo Coccia (Italy)

Football

Termination of an offer to an employment contract

CAS jurisdiction

Scope of review of the CAS

Principle of tempus regit actum

Validity of a contract subject to the fulfilment of one or more conditions

1. Whether FIFA had jurisdiction or not to deal with a dispute is an issue related to the merits of the case appealed before the CAS. It has nothing to do with the question of whether CAS has jurisdiction to hear this case.
2. According to Article R57 of the CAS Code, *“The Panel has full power to review the facts and the law”* (the so-called *“de-novo”* review). On this basis, a CAS panel is able to review issues which were not contested before the first instance body. Moreover, a respondent before the CAS that prevailed in the first instance does not have to bring a separate appeal if it wants to challenge circumstances which were asserted in the first instance’s decision as it was not *“aggrieved”*, which is a requirement to have standing for lodging an appeal.
3. According to the principle *tempus regit actum*, substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs. Questions relating to jurisdiction are procedural issues as they pertain to the procedure rather than the nature of the obligations arising from a legal relationship.
4. As a matter of principle, Swiss law allows parties to make the validity of a contract subject to the fulfilment of one or more conditions. According to Article 151(1) of the Swiss Code of Obligations, a contract *“is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen”*.

I. PARTIES

1. Hellas Verona Football Club S.p.A. (hereinafter “Hellas Verona”) is an Italian football club with registered seat in Verona, Italy. It is affiliated with the Federazione Italiana Giuoco Calcio which, in turn, is a member of the Fédération Internationale de Football Association (hereinafter “FIFA”).
2. The First Respondent, Mr. Rade Krunić (hereinafter the “Player”), is a professional football player from Bosnia and Herzegovina, born on 7 October 1993, currently under contract with FC Empoli, Italy.
3. The Second Respondent, FK Borac Čačak (hereinafter “Borac”), is a Serbian football club with registered seat in Pećinci, Serbia. It is affiliated with the Football Association of Serbia which, in turn, is a member of FIFA.
4. The Appellant and the Respondents are hereinafter jointly referred to as the “Parties”.
5. The Player and Borac are hereinafter jointly referred to as the “Respondents”.

II. FACTUAL BACKGROUND

6. The facts stated below are a summary of the main relevant facts and allegations based on the Parties’ submissions and evidence provided in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the discussion on the merits which follows.
7. On 13 February 2013, the Player and the Serbian football club FK Donji Srem (hereinafter “Donji Srem”) entered into an employment agreement valid until 19 January 2015.
8. On 22 August 2014, the Player visited Hellas Verona. On that occasion, Hellas Verona made an offer (hereinafter the “Offer”) to the Player as follows:

“Rif.: Offer employment contract player Rade Krunić (born on 07.10. 1993)

Hellas Verona Football Club, formally represented, by this paper offer [sic] to the player Rade Krunić, born on 07.10.1993, an employment contract to the following conditions:

Season 2014-2015:

Fixed Amount: Euro 80,000 net (until to [sic] 30.06.2015);

Variable Amount: Euro 50,000 net at 3 official appearances (Serie A) which, if completed, will be added to the Fixed Amount for the next season.

Season 2015- 2016:

Fixed amount: Euro 80,000 net (from 01.07.2015 to 30.06.2016);

Variable Amount: Euro 50,000 net at 10 official appearances (Serie A) which, if completed, will be added to the Fixed Amount for the next season.; [sic]

Season 2016-2017:

Fixed Amount: Euro 80,000 net (from 01.07.2016 to 30.06.2017);

Variable Amount: Euro 50,000 net at 15 official appearances (Serie A);

This proposal is conditional upon the transfer of the player from FK Donji Srem to Hellas Verona”.

9. The Offer bears the Player’s signature.
10. On the same 22 August 2014, Hellas Verona sent an offer to Donji Srem for the transfer of the Player in exchange for EUR 300,000 and 15% of the profit of a future transfer of the Player.
11. On 3 October 2014, Hellas Verona and Donji Srem signed a transfer agreement (hereinafter the “Transfer Agreement”) for the transfer of the Player from Donji Srem to Hellas Verona under the aforementioned terms of the transfer offer.
12. On 17 November 2014, Hellas Verona received a letter from the Player’s lawyer with the reference “Cancellation of negotiations between R. and Hellas Verona” (hereinafter the “Cancellation Letter”). The Cancellation Letter reads as follows:

“(…) The clients [sic] was in contact with Hellas Verona Football Club S.P.A. (hereinafter: the Club) with the intention to conclude the professional contract with the Club. As a result of that, based on your invitation, the client visited the Club on 22.08.2014 when the Player received an offer from the Club with further contract details and the Club’s obligations but not with the Player obligations. The Player authorised the document with his signature as a proof that he received the offer from the Club. However, after that, the Club has never offer [sic] an official contract to the Player.

According to FIFA Regulations on the Status and Transfer of Players from the 2014, Commentary on the Regulations for the Status, Transfer of Players from the same year, the national legislation of the Italian Republic, where the paper is signed and the Serbian law, after delivering the offer, the Club is obliged to deliver a professional contract to the Player, in reasonable time. In these circumstances, 'the reasonable time' was the end of the summer transfer window in which the Club should deliver the professional contract to the Player. Since the Club didn't make the offer in that time, we understood that the Club has cancelled the contract negotiations with the Player.

Based on previous stated [sic], we would like to inform you, on behalf of our clients [sic], that the signed document is only offer [sic] but not contract, since it doesn't prescribe any obligations to the Player. Also, we we [sic] are not obliged with the signed document since the Club withdraw [sic] contract negotiations with the Player since it didn't make any professional contract to the Player by the end of the summer transfer window (...).”

13. By email dated 6 December 2014 from Hellas Verona to Donji Srem, Hellas Verona requested the Player to travel to Verona on 27 December 2014 in order to undergo his medical examinations before the start of the season. The Player did not respond to this e-mail nor did he show up on or after that day.

14. On 1 February 2015, the Player and Borac concluded an employment contract, valid until “*the start of the 2016 summer registration period*”.

III. PROCEEDINGS BEFORE FIFA

15. On 6 February 2015, Donji Srem lodged a claim before the FIFA Players’ Status Committee (hereinafter the “FIFA PSC”) against Hellas Verona claiming that the latter had breached the Transfer Agreement by failing to pay the transfer fee of EUR 300,000. On 24 November 2016, the FIFA PSC ordered Hellas Verona to pay the transfer fee as well as 5% interest until the date of effective payment.
16. On 18 February 2016, Hellas Verona appealed the aforementioned decision of the FIFA PSC before the Court of Arbitration of Sport (hereinafter the “CAS”). In its award delivered on 11 October 2016 (CAS 2016/A/4462), the appointed CAS panel confirmed the FIFA PSC decision and dismissed Hellas Verona’s appeal.
17. On 17 November 2016, Hellas Verona lodged a claim before the Dispute Resolution Chamber of FIFA (hereinafter the “DRC”) against the Player and Borac claiming compensation for breach of the Offer which it claims to be an employment contract between Hellas Verona and the Player.
18. On 30 November 2017, the DRC rejected the claim of Hellas Verona (hereinafter the “DRC Decision”):
19. The grounds of the DRC Decision can be summarised as follows:
- a) FIFA, not the relevant arbitration court in Italy, is competent to hear the matter;
 - b) the claim is not time-barred for FIFA to hear the dispute pursuant to Article 25, paragraph 5 of the Regulations on the Status and Transfer of Players (hereinafter “RSTP”) “*editions 2016 and 2017*”;
 - c) the 2016 edition of the RSTP (hereinafter the “2016 RSTP”) is applicable to the dispute;
 - d) the Offer contained the names of the parties, the duration of their relationship, the Player’s remuneration for providing his services as a football player and the signature of both parties. As a result, the DRC considered that all *essentialia negotii* were present in the Offer which should therefore “*per se*” be considered a valid player contract;
 - e) due to Hellas Verona's failure to obtain the Player’s International Transfer Certificate (hereinafter the “ITC”) and to complete his registration with Hellas Verona for the 2014/2015 season, in the course of which the contract was due to start, the Player had well-founded grounds to believe that Hellas Verona was no longer interested in his services.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 20 March 2018, pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter the “CAS Code”), Hellas Verona filed a Statement of Appeal before the CAS against the DRC Decision, nominating Mr. Petros Mavroidis as an arbitrator. In its Statement of Appeal Hellas Verona requested, *inter alia*, that the case be submitted to a three-arbitrator panel.
21. On 3 April 2018, Hellas Verona requested a five-day extension of the time limit for filing the Appeal Brief which was granted by the CAS Court Office on the same day.
22. On 6 April 2018, the Respondents nominated Mr. Massimo Coccia as an arbitrator.
23. On 16 April 2018, the CAS Court Office acknowledged receipt of Hellas Verona’s Appeal Brief dated 9 April 2018.
24. On 18 April 2018, the Player challenged Hellas Verona’s nomination of Mr. Mavroidis as an arbitrator in the proceedings, invoking legitimate doubts over his independence as Mr. Mavroidis had previously been a member of the panel of the related CAS decision in *re Hellas Verona FC v. FK Donji Srem* (see paragraph 16 above). The following day, Mr. Mavroidis recused himself from the case, albeit declaring that he did not agree with the Player’s allegations.
25. On 20 April 2018, Hellas Verona nominated as a new arbitrator Mr. Michele A. R. Bernasconi.
26. On 1 May 2018, the CAS Court Office confirmed that the three-member Panel was constituted as follows: Mr. Dirk-Reiner Martens, Attorney-at-law in Munich, Germany, President of the Panel; Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland, arbitrator nominated by Hellas Verona, and Mr. Massimo Coccia, Professor and Attorney-at-law in Rome, Italy, arbitrator jointly nominated by the Respondents.
27. On 21 May 2018, the Respondents filed their respective Answers. In his Answer, the Player objected to the jurisdiction of the CAS to hear the present matter.
28. On 6 June 2018, Hellas Verona filed its submissions on the Player’s objection to the jurisdiction of the CAS.
29. On 22 June 2018, Hellas Verona submitted to the CAS Court Office that a hearing was necessary.
30. On 4 July 2018, the CAS Court Office informed the Parties that the Panel – pursuant to Article R44.2 (applicable via Article R57) of the CAS Code – had decided not to hold a hearing, deeming itself sufficiently informed, but reserving the right to change its position based on future submissions of the Parties to be filed by 19 July 2018. In particular, the Panel invited

the Parties to comment on specific issues, in view of the fact that no hearing was going to be held. These issues were:

“2.1 Did FIFA have jurisdiction and, in case the answer were negative, could the lack of FIFA’s jurisdiction determine the lack of jurisdiction of the CAS, also in the light of the Swiss Federal Tribunal’s judgement no. 4A_432/2017 of 22 January 2018?”

2.2 Have all essentialia negotii required for a “player contract” been met in the document titled “Offer employment contract player Rade Krunić” of 22 August 2014 (hereinafter the “Document”)? Who drafted the Document?

2.3 Is the “condition” in the Document a “potestative condition” and, if so, what legal consequences need to be drawn from that qualification?

2.4 If the Document represents a player contract, was the “condition”, i.e. the conclusion of a transfer agreement between Hellas Verona and Donji Srem, intended to have to be fulfilled by no later than the end of the summer transfer window 2014?

2.5 Did the Player have a right to withdraw from the Document as he did in the 17 November 2014 letter by his attorney?

2.6 Was the Player “informed” about the conclusion of the transfer agreement between Hellas Verona and Donji Srem, and, if so, exactly when, by whom and by what means?

2.7 Did the Parties have direct contact during the period between 22 August 2014 and the lodging of the claim in March 2018? Please provide copies of the relevant evidence/ documents?”

31. On 24 July 2018, Hellas Verona and the Player filed their additional submissions in response to the issues raised by the Panel. Borac did not file any additional submission in this respect.
32. On 16 August 2018, the Parties filed their comments regarding Hellas Verona’s and the Player’s additional submissions.
33. On 4 October 2018, the CAS Court Office, on behalf of the President of the Panel, issued an Order of Procedure confirming that no hearing shall be held in the present matter, the Panel deeming itself sufficiently well-informed to issue an award based on the Parties’ written submissions. All the Parties signed and returned the Order of Procedure, confirming, *inter alia*, that their right to be heard had been respected.

V. THE PARTIES’ SUBMISSIONS AND PRAYERS FOR RELIEF

34. While the Panel has carefully reviewed all of the Parties’ submissions, the following sections will only summarize the Parties’ main arguments in support of their respective prayers for relief to the extent relevant for the Panel’s findings. Further reference to the Parties’ submissions may be made, where appropriate, in the sections on the merits.

VI. HELLAS VERONA'S SUBMISSIONS AND PRAYERS FOR RELIEF

35. Hellas Verona's submissions as set out in the Appeal Brief can be summarised as follows:

- a) Hellas Verona submits that the jurisdiction of CAS is established under Article 58 paragraph 1 of the FIFA Statutes.
- b) As to the Panel's scope of review of the appealed DRC Decision, Hellas Verona argues that the Panel may review the facts and the law of a case as defined by the Parties' prayers for relief. All circumstances of the DRC Decision that have not been contested in the Appeal shall be treated by the Panel as ascertained. Since the Respondents did not lodge an independent appeal against the DRC Decision, they may no longer contest such circumstances in the present proceedings. Otherwise, these arguments would have to be considered counterclaims or cross-appeals which are prohibited under the CAS Code. Therefore, by analysing such circumstances the Panel would rule *ultra petita*.
- c) As to the applicable law, Hellas Verona submits that the 2016 RSTP apply and, additionally, Swiss law.
- d) With respect to the merits, Hellas Verona argues that it entered into an "*employment contract*" (i.e. the Offer) with the Player which contained all *essentialia negotii* for such agreement to be valid: the offer, the acceptance, the indication of the parties who have legal capacity to conclude the agreement, the content of the agreement, the duration of the contractual relationship, the financial consideration and the date and signature of the parties. According to Hellas Verona this is corroborated by longstanding jurisprudence of the DRC and the CAS (DRC decision no. 0315187 of 12 March 2015, para. II/7; DRC decision no. 03152984 of 17 March 2015, para. II/9 and DRC decision no.11151019 of 26 November 2015, para. II/10; CAS 2014/A/3573, para. 66).
- e) With respect to the Transfer Agreement between Donji Srem and Hellas Verona, Hellas Verona submits that it was valid and binding and therefore the condition provided for in the Offer for its coming into effect had been met. Thus, it contends that the Offer was an employment contract binding upon the parties as of 3 October 2014 and that the Player should have joined Hellas Verona as soon as permitted by the applicable regulations i.e. the winter transfer window for the 2014/2015 football season.
- f) Hellas Verona further argues that the Player was fully aware of the negotiations and conclusion of the Transfer Agreement between Hellas Verona and Donji Srem and of the fact that he was obliged to join Hellas Verona in January 2015. This had been confirmed by Mr. Zambetti, as well as Mr. Stojanovic and Mr. Aleksic, Donji Srem's President at the time of the transfer, in their respective witness statements. Further,

Hellas Verona notes that the Player never raised any objections as to the validity of the Offer.

- g) Hellas Verona submits that by means of the Cancellation Letter of 17 November 2014, the Player acted in a contradictory manner and in breach of the principle of good faith vis-à-vis the other parties who relied on the Player's consent to the transfer.
- h) According to Hellas Verona, the DRC Decision was reached as a result of an erroneous interpretation of the Offer and of the applicable regulations. Hellas Verona argues that, pursuant to Swiss law, the personal belief of one of the parties— i.e. the Player's belief that Hellas Verona was no longer interested in his services – is not contemplated as grounds for the expiry of obligations.
- i) Hellas Verona submits that the DRC erroneously considered the validity of the employment contract (i.e. the Offer) to be conditional upon the application for the ITC. As already stated by the DRC in an earlier decision *“the validity of the contract (...) may not be made conditional upon the execution of (administrative formalities), such as, but not limited to the registration procedure”* (DRC Decision n. 0516963 of 26 May 2016, para.11).
- j) Hellas Verona argues that on 17 November 2014, the Player unilaterally terminated the employment relationship with Hellas Verona without just cause, in breach of the principle *pacta sunt servanda*. According to established jurisprudence, only a severe breach or misconduct may justify termination based on just cause, and only as *ultima ratio*. Moreover, the violation occurred during the protected period within the meaning of paragraph 7 of the Definition Section of the RSTP.
- k) With regard to the compensation for the unilateral termination without just cause of the purported “employment contract” (i.e. the Offer), Hellas Verona submits that, in accordance with FIFA and CAS jurisprudence, in the absence of any provision in the contract, the RSTP apply. Pursuant to Article 17, paragraph 1 of the RSTP:

“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 the sport and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing and/or 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”.

On the basis of this Article, Hellas Verona argues that as to the “*law of the country concerned*”, the provisions of the Italian Civil Code on contractual liability and damages due to non-fulfilment or delay (respectively Articles 1218 and 1223) apply to the matter, given that the purported “*employment contract*” (i.e. the Offer) was signed and the obligations were to be performed in Italy.

- l) With respect to the “*other objective criteria*” for calculating the compensation, Hellas Verona submits that these should include the remuneration and other benefits due to the Player under the existing contract and/or the new contract; the time remaining on the purported “*employment contract*” (i.e. the Offer); the fees and expenses incurred by Hellas Verona; whether the contractual breach occurred within the protected period.
- m) In light of the foregoing, Hellas Verona submits that the compensation for the unilateral termination of the purported “*employment contract*” to be paid by the Player should be fixed in an amount of at least EUR 1,660,802.15 plus 5% interest per annum calculated from 4 January 2015. The compensation, according to Hellas Verona, is to be calculated on the following basis, bearing in mind the duration of the employment contract and the fact that it was terminated within the protected period:
- the residual value of the employment contract (i.e. the Offer) of EUR 350,000;
 - the transfer fee plus expenses due to Donji Srem of EUR 343,802.15;
 - the replacement costs of the Player with the Brazilian footballer Fernandinho in the amount of EUR 967,000.
- n) Hellas Verona claims that the Player’s new club, Borac, is jointly and severally liable together with the Player to pay compensation under Article 17, paragraph 2 of the RSTP.

36. For all the above, Hellas Verona requests the Panel to rule as follows:

“i. to review the present case as to the facts and to the law, in compliance with article R57 of the CAS Code;

ii. to issue a new decision which sets aside the decision passed by the Dispute Resolution Chamber on 30th November 2017:

a. CONFIRMING that the Appellant and the First Respondent entered into a valid and binding employment contract;

b. CONFIRMING that the First Respondent unilaterally terminated the Employment Contract without just cause within the “protected period”;

c. CONDEMNING the First Respondent to pay to the Appellant the compensation for the unilateral termination of the Employment Contract in the amount of at least EUR 1,660,802.15 plus 5% interest per annum as from 4th January 2015, or alternatively in the amount that the Panel will deem appropriate in accordance with the criteria established by Article 17 of the FIFA Regulations;

d. CONDEMNING the Second Respondent to be jointly or severally liable to pay the Appellant the compensation due by the Player for the unilateral termination of the Employment Contract without just cause within the “protected period”.

iii. to order the Respondents to bear all costs of these proceedings and pay a contribution towards the legal fees of the Appellant according to Article R65.4 of the CAS Code”.

VII. THE PLAYER’S SUBMISSIONS AND PRAYERS FOR RELIEF

37. The Player’s submissions set out in his Answer can be summarised as follows:

- a) As to the jurisdiction of the DRC and of the CAS, the Player argues that both bodies do not have competence to adjudicate on the present matter. Pursuant to the 2014 edition of the RSTP (hereinafter the “2014 RSTP”), the dispute should have been dealt with, in the first instance, by an Italian arbitral tribunal. As FIFA was not competent to deal with the matter in the first place, so is CAS.
- b) According to the Player, the claim is time-barred since pursuant to Article 25, paragraph 5 of the RSTP, FIFA cannot hear a case if more than two years have elapsed since the event giving rise to the dispute has taken place. In the Player’s view, the fact giving rise to the dispute occurred on 22 August 2014, when the purported employment contract was signed or, at the latest, on 4 October 2014, when the Transfer Agreement was concluded. Thus, the claim of Hellas Verona against the Player, lodged on 17 November 2016, is inadmissible.
- c) As to the Panel's scope of review of the DRC Decision, the Player submits that, pursuant to Article R57, first paragraph, of the CAS Code, as corroborated by the jurisprudence, the Panel has full power to review the facts and the law, in particular whether a valid employment contract was concluded by the Parties. He further argues that by failing to decide on the validity of the employment contract, the Panel would violate the Player’s right to be heard.
- d) The Player further submits that, on the basis of the principle *tempus regit actum*, as interpreted by CAS jurisprudence, substantive aspects of a dispute should be governed by the regulations applicable at the time they occur. It follows that as the Offer is dated 22 August 2014, the 2014 RSTP should apply to the dispute in question as opposed to the 2016 version, which makes it more cumbersome to bring a dispute to the national arbitral tribunal, because the parties have to opt in to do so explicitly.
- e) Concerning the merits, the Player contends that it is evident that no employment contract was concluded between him and Hellas Verona. According to the Player, the Offer was only a “conditional proposal”.
- f) The Player argues that the conduct of Hellas Verona prior to the filing of the Appeal confirms that Hellas Verona and the Player did not conclude an employment contract.

In fact, in the proceedings brought by Donji Srem, Hellas Verona expressly denied the existence of an employment contract between the Player and Hellas Verona. Furthermore, the absence of any communication with the Player since 22 August 2014 demonstrates that Hellas Verona was no longer interested in the playing services of the Player. In addition, Hellas Verona did not request performance of the contract when the Player did not show up for training on 4 January 2015.

- g) The Player submits that Hellas Verona prevented the performance of the contract by failing to request the ITC for the Player at any point in time.
- h) Moreover, the fact that Hellas Verona did not consider that an employment contract had been concluded with the Player is confirmed by the Player's witness statement dated 15 May 2018 where he argues that on 22 August 2014 he had no intention to conclude an employment contract with Hellas Verona. His signature was only a confirmation of receipt of the hand-delivered document.
- i) Further, the Player argues that the intention of the Player and Hellas Verona was that the Offer enter into force upon the transfer of the Player on or before 1 September 2014 i.e. during the 2014 summer transfer window. The fact that Hellas Verona never requested the ITC for the Player confirmed that Hellas Verona was no longer interested in the services of the Player.
- j) With respect to the question whether the Offer included all *essentialia negotii* in order to be considered as a contract, the Player argues that the absence of the date of entry into force of the purported contract as well as its duration, confirms that the document does not contain all of the *essentialia negotii*. According to FIFA's jurisprudence, the starting date of the employment contract and the duration of the contract are considered *essentialia negotii* (FIFA DRC 11121214 of 16 November 2012; FIFA DRC 129263 of 10 December 2009; FIFA DRC 129263 of 10 December 2010; FIFA DRC 0813500 of 14 August 2013).
- k) The Player argues that even if the alleged contract was considered validly concluded, it never entered into force. In fact, the responsibility for the transfer of the Player was with Hellas Verona. The negotiations between the Player and Hellas Verona were based on the premise of a transfer during the 2014 summer transfer window. As the transfer was not carried out, the condition was not fulfilled. Further, there is no evidence that the Parties had agreed for the transfer to occur during the 2015 winter transfer window.
- l) As to the amount claimed as damages by Hellas Verona, the Player argues that the amount (i.e. EUR 1,660, 802) is unfounded and must be rejected. Under the CAS jurisprudence, salaries that the Player would have earned during the employment period are considered costs saved by the club rather than damages and therefore Hellas Verona cannot claim the respective amount. Moreover, Hellas Verona's payment to Donji Srem is unproven and the costs could have been avoided easily by Hellas Verona

if it had complied with its commitments. Finally, the Player considers the request for replacement costs unfounded as the footballer Fernandinho cannot be deemed to be a replacement for the Player, given the considerably higher salary agreed for the former and the differences between the types of services offered by the two players.

m) For all the above reasons, the Player requests the Panel to rule as follows:

“1) Declare that it has no jurisdiction;

Or, if the Arbitral Panel declares to have jurisdiction to:

1) Reject the Appeal of Hellas Verona FC;

Or, if the Arbitral Panel does not reject the Appeal of Hellas Verona FC to:

1) Decide that nothing is payable to Hellas Verona by Mr. Rade Krunić or to determine an amount of compensation the Arbitral Panel sees fit.

In any event, Mr. Rade Krunić hereby respectfully requests the Arbitral Panel to:

1. Grant any further or other relief to First Respondent as the Arbitral Panel sees fit;

2. Order Appellant to bear any and all costs of the proceeding;

3. Order Appellant to compensate the legal costs of Respondent amounting to a minimum sum of EUR 20,000.00 or in the amount as seen appropriate by the Arbitral Panel”.

VIII. BORAC'S SUBMISSIONS AND PRAYERS FOR RELIEF

38. Borac's submissions set out in its Answer can be summarised as follows:

- a) Concerning the subject matter of the appeal, Borac states to have been unaware of any agreement between Donji Srem and Hellas Verona.
- b) Concerning the merits, Borac argues that no valid agreement was concluded between Hellas Verona and the Player as there was no intention of the parties to conclude a contract. The Offer was merely a unilateral proposal of employment made by Hellas Verona. This is also corroborated by the fact that the latter had not considered the Offer to be a valid agreement in the proceedings with Donji Srem. Based on these facts, including the absence of any communication with the Player or with Borac, Hellas Verona created the legitimate expectation that it did not consider itself contractually bound with the Player, an expectation upon which also Borac relied.

- c) Furthermore, according to Borac the alleged employment contract lacks *essentialia negotii* to be valid (i.e. a specific starting date of the contract and its duration).
- d) Borac further states that in the event that the Panel considered the Offer to be a valid employment contract, it can only conclude that it was due to start within the 2014 summer transfer window. Consequently, the contract never entered into force as the condition therein included (i.e. the transfer of the Player during the 2014 summer transfer window) has never been fulfilled.
- e) With regard to the interpretation of the Offer, it refers to the 2014/2015, 2015/2016 and 2016/2017 sporting seasons. Thus, it can only be deducted that the alleged employment contract was due to start within the 2014 transfer window and not alternatively in the 2015 transfer window, as argued by Hellas Verona. Borac further submits that as the Offer has been drafted by Hellas Verona, any disagreement as to its interpretation must be decided pursuant to the principle "*in dubio contra stipulatorem*". This principle is recognized under Swiss law and CAS jurisprudence.
- f) Finally, Borac contends that no damages were sustained by Hellas Verona. Hellas Verona failed to proffer evidence for its interest in the Player after 22 August 2014. The remuneration Hellas Verona would have had to pay to the Player is a cost saved and not a damage, according to the positive interest principle. Borac further contends that the replacement cost is unfounded as there is no resemblance between the Player and the alleged replacement Fernandinho.

39. For all these reasons, Borac requests the Panel to rule as follows:

"a) Reject the Appeal of Hellas Verona;

b) Decide that Hellas Verona must bear all costs related to this present proceeding and the proceeding it initiated before the FIFA DRC; and

c) Decide that Hellas Verona must pay to Borac Čačak all legal costs it incurred in relation to the dispute or in an amount deemed appropriate by the Arbitral Panel".

IX. HELLAS VERONA'S COMMENTS ON THE PLAYER'S OBJECTION TO THE JURISDICTION OF CAS

40. Hellas Verona's comments on the Player's objection to the jurisdiction of CAS can be summarised as follows:

- a) As to the jurisdiction of CAS, Hellas Verona argues that the Player's objections must be rejected *in toto*.
- b) Regarding the Player's objections to the competence of FIFA to hear the claim of Hellas Verona and to the admissibility of the claim as regards its timeliness, Hellas

Verona submits that FIFA already considered these arguments and dismissed both of them. Hellas Verona contends that the Panel should consider these objections as counterclaims, which are no longer allowed in appeal proceedings under the CAS Code. The alleged flaws of the DRC Decision should have been challenged in a separate appeal lodged within the prescribed time limit. As the Player failed to do so, the relevant issues shall be deemed confirmed and can no longer be contested in the present appeal.

- c) As to the competence of FIFA, Hellas Verona argues that the applicable edition of the RSTP relative to its jurisdiction is the 2016 edition. Hellas Verona submits that in any case, even if the 2014 Regulations applied, the competence would nevertheless remain with FIFA, given that the dispute involves three parties including two clubs that are members of different national associations.
- d) Concerning the time limits for lodging the appeal, Hellas Verona contests that the event giving rise to the dispute occurred either on 17 November 2014 or on 4 January 2015. Thus, Hellas Verona's claim before FIFA on 17 November 2016 was lodged in time.

41. For the above-mentioned reasons, Hellas Verona requests the Panel:

I: to issue a preliminary decision ascertaining the inadmissibility of the First Respondent's counterclaims, and confirming that CAS has jurisdiction to decide this appeal;

II: to issue a new decision which sets aside the decision passed by the DRC on 30th November 2017:

- a. *CONFIRMING that the Appellant and the First Respondent entered into a valid and binding employment contract;*
- b. *CONFIRMING that the First Respondent unilaterally terminated the Employment Contract without just cause within the "protected period";*
- c. *CONDEMNING the First Respondent to pay the Appellant compensation for the unilateral termination of the Employment Contract in the amount of at least EUR 1,660,802.15 plus 5% interest per annum as from 4th January 2015, or alternatively in the amount that the Panel will deem appropriate in accordance with the criteria established by Article 17 of the FIFA Regulations;*
- d. *CONDEMNING the Second Respondent to be jointly and severally liable to pay the Appellant the compensation due by the First Respondent for the unilateral termination of the Employment Contract without just cause within the "protected period".*

III: to order the Respondent to bear all costs of the proceedings and pay a contribution towards the legal fees of the Appellant according to Article R64.5 of the CAS Code".

X. ADDITIONAL COMMENTS OF HELLAS VERONA WITH RESPECT TO THE ISSUES RAISED BY THE PANEL ON 4 JULY 2018

42. The additional comments of Hellas Verona with respect to the issues raised by the Panel on 4 July 2018 are summarised as follows:

- a) In response to question 2.1, Hellas Verona reconfirms that FIFA had jurisdiction to decide the case and refers to its submissions dated 6 June 2018. It further notes that regarding the Swiss Federal Tribunal's judgement no. 4A_432/2017 of 22 January 2018, the case was completely different than the present one. The jurisdiction of CAS derives from Article 58, paragraph 1 of the FIFA Statutes. On this basis, CAS has jurisdiction to hear the Appeal.
- b) In response to question 2.2, Hellas Verona submits that all *essentialia negotii* were present in the Offer. Regarding the starting date of the employment contract, Hellas Verona clarifies that this element was missing due to the fact that the Offer was conditional upon the transfer of the Player from Donji Srem to Hellas Verona. Accordingly, the Player accepted the transfer to occur on or before 1 September 2014 or in the next following winter transfer window. Hellas Verona submits that the Offer was drafted by it together with the Player's representatives.
- c) Regarding question 2.3, Hellas Verona claims that the condition is not a potestative condition as the fulfilment of the condition was not entirely under the control of Hellas Verona, but depended also on Donji Srem's actions. Hellas Verona argues that if the condition were to be potestative, it would be illegal and thus null and void according to CAS and FIFA jurisprudence. As a consequence, the condition would be removed and the Offer would be binding on the Player and Hellas Verona no matter whether the Transfer Agreement had been concluded.
- d) In response to question 2.4, Hellas Verona submits that the condition was not necessarily intended to be fulfilled by the end of the 2014 summer transfer window. This was confirmed by the fact that the Offer does not indicate a specific starting date for the first season, but only an end date i.e. "until to [sic] 30.06.2015". Thus, Hellas Verona and the Player had acknowledged and accepted the possibility for the contract to become effective at a later stage during the course of the season. Hellas Verona further states that, as the witness statements of Mr. Aleksic, Mr. Stojanovic and Mr. Zambetti confirm, it was clear to all parties involved that the Player's transfer could have occurred in the summer transfer window (2014) or in the winter transfer window (2015).
- e) In response to question 2.5, Hellas Verona argues that the Player had no right to withdraw from the alleged contract on 17 November 2014.
- f) With regard to question 2.6, Hellas Verona submits that the Player was informed about the developments and the conclusion of the agreement with Hellas Verona by Donji

Srem's representatives, as confirmed by Mr. Aleksic (President of Donji Srem) in his witness statement.

- g) In response to question 2.7, Hellas Verona states that the Player was kept informed by Donji Srem of the transfer negotiations. Hellas Verona further submits that the only means available for a club to contact a player who is under contract with another club, is to contact him via his club. After the Player had breached the contract, Hellas Verona initially did not lodge a claim against the Player thinking it could find an amicable solution with Donji Srem on the obligations arising from the Transfer Agreement.

XI. ADDITIONAL COMMENTS OF THE PLAYER WITH RESPECT TO THE ISSUES RAISED BY THE PANEL ON 4 JULY 2018

43. The additional comments of the Player with respect to the issues raised by the Panel on 4 July 2018 are summarised as follows:

- a) The Player states that according to Swiss law Hellas Verona bears the burden of proof: i) regarding the presence of *essentialia negotii* of the alleged employment contract and its existence; ii) that Hellas Verona and the Player intended to conclude an employment contract on 22 August 2014; iii) that the Player signed the Offer as an expression of his acceptance of its terms and not merely as proof of receipt of the document; iv) that the Player agreed on 22 August 2014 to join Hellas Verona during the 2014 summer transfer window or the 2015 winter transfer window; v) that the Player was aware of the Hellas Verona's alleged request to perform under the purported employment contract.
- b) With regard to question 2.1 raised by the Panel, the Player reiterates what he had already submitted in his Answer to the Appeal Brief, where he denied the jurisdiction of FIFA and CAS. Moreover, the Player states that his position regarding the jurisdiction of CAS is corroborated by the judgement no. 4A_432/2017 of the Swiss Federal Tribunal of 22 January 2018, where it is indicated that there must be an express (written) consent by the parties to arbitrate and to exclude disputes from state court jurisdiction.
- c) With regard to question 2.2, the Player submits that certain *essentialia negotii* are missing for the Offer to be considered an employment contract, and further reiterates the arguments presented in his submissions dated 21 May 2018.
- d) In response to question 2.3, the Player claims that the "condition" in the Offer is a limitative potestative condition, as its fulfilment also depends on the will of Donji Srem. As a result, under Swiss law, the party setting the condition has a duty not to prevent the fulfilment of the condition by acting in bad faith. On this point, the Player submits that, irrespective of the nature of the condition, the employment contract was not valid.

- e) Regarding question 2.4, the Player submits that he only signed the Offer as a proof of receipt. His understanding was that the Offer was intended for the summer transfer window 2014. No other interpretation of the document was possible as the language of the Offer is clear and explicit. Should the document be deemed unclear, the principle "*in dubio contra stipulatorem*" requires any ambiguity to be resolved against the stipulator, thus against Hellas Verona.
- f) In response to question 2.5, the Player argues that if the Panel considered that an employment contract has been concluded, then he was entitled to withdraw from the Offer as the condition precedent was not fulfilled since no transfer occurred within the 2014 summer transfer window.
- g) With regard to question 2.6, the Player has never been informed by Hellas Verona that the Transfer Agreement was concluded with Donji Srem. He became aware that Hellas Verona and Donji Srem were still in contact while the conversations regarding a possible renewal of his employment agreement with Donji Srem were ongoing. In order to avoid any misunderstanding, he instructed his legal representative to inform Hellas Verona that he was not interested to pursue an employment with the club.
- h) In response to question 2.7, the Player submits that there was no direct contact between him and Hellas Verona since 22 August 2014.

XII. ADDITIONAL COMMENTS OF BORAC WITH RESPECT TO THE ISSUES RAISED BY THE PANEL ON 4 JULY 2018

- 44. Borac submits that FIFA was not competent to rule on the claim of Hellas Verona against Borac. FIFA can only hear the present matter involving three parties if it assumes jurisdiction on the basis of article 22 a) of the RSTP, namely disputes related to contractual stability with the request of an ITC. As Hellas Verona never requested the ITC for the Player, Borac could not have been involved in the FIFA proceeding. Moreover, article 22 b) of the RSTP relates to employment-related disputes solely between the player and clubs i.e. two parties. Therefore, Hellas Verona could not involve Borac in the dispute. Finally, Borac submits that an Italian national dispute resolution chamber would have been competent to settle the present dispute.
- 45. As to the *essentialia negotii*, Borac reiterates what is stated in its submissions and denies that the drafting of the Offer was the result of a joint effort of Hellas Verona and the Player. Further, Hellas Verona did not provide any evidence in support of this allegation.
- 46. With respect to the legal nature of the condition in the Offer, according to Borac this is a potestative condition which is not invalid *per se* under Swiss law, but obligates the party in control of the condition to act in good faith.
- 47. As to the timing of the fulfilment of the condition, Borac states that it would be unrealistic to assume that Hellas Verona and the Player would have agreed for the transfer to occur after the 2014 summer transfer window.

48. Furthermore, there is no evidence that the Player was aware of the conclusion of the Transfer Agreement between Hellas Verona and Donji Srem. The witness statements are biased and unreliable.
49. Borac finally stresses that there is no valid reason why Hellas Verona did not contact directly the Player in the period between 22 August 2014 and the lodging of the claim. Moreover, Hellas Verona did not explain the reasons why it did not react to the letter sent on 17 November 2014 by the Player's legal representative.

XIII. JURISDICTION

50. The Panel notes that the Player objects to the jurisdiction of FIFA to hear the present matter and considers that, therefore, CAS has no jurisdiction either. The Panel considers that the issue of the jurisdiction of the CAS must be assessed on a formal basis. In this respect, in the present of a FIFA decision, the following considerations shall apply.

51. With respect to the Panel's jurisdiction, 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”.

52. Articles 57.1 and 58.1 of the FIFA Statutes provide as follows.

“Art. 57.1:

FIFA recognises 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 licensed match agents.

Art. 58.1:

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 within 21 days of notification of the decision in question”.

53. As the Appeal is directed against a final decision of FIFA, and based on the above, the Panel holds that the CAS has jurisdiction to hear this case.
54. The issue of whether FIFA had jurisdiction or not to deal with the present dispute is one which related to the merits of the case and will be analysed below.

XIV. ADMISSIBILITY

55. Article 58, paragraph 1 of the FIFA Statutes provides as follows:

“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 within 21 days of notification of the decision in question”.

56. The appealed FIFA DRC Decision was notified to Hellas Verona on 27 February 2018. The appeal was filed on 20 March 2018, thus within the time limit of 21 days provided by Article 58, paragraph 1 of the FIFA Statutes.

XV. APPLICABLE LAW

57. The law applicable in the present arbitration is determined by the Panel pursuant to Article R58 of the CAS Code:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

58. Article 176(1) of the Swiss Private International Law Statute ("PILS") determines as follows:

"The provisions of this chapter shall apply to arbitrations if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland."

59. Since neither of the parties is based in Switzerland, chapter 12 of the PILS is applicable.

60. Article 187(1) PILS determines the following:

"The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected."

61. The Panel notes that the Offer does not contain any choice of law clause.

62. Article 57(2) of the FIFA Statutes (2016) states the following:

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

63. In view of the above, the Panel shall decide the dispute according to the applicable sporting regulations (*cf.* CAS 2016/A/4846 *Amazulu FC v. Jacob Pinehas Nambandi & FIFA & NSL*, N 80).
64. Since the applicable sporting regulations in the matter at hand are the regulations of FIFA, in accordance with the above-mentioned statutory rule of Article 57(2) of the FIFA Statutes, the Panel is satisfied that it shall apply the various regulations of FIFA primarily, in particular the FIFA RSTP, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

XVI. THE MERITS

A. The Scope of the Panel's Review

65. According to Article R57 of the CAS Code "*The Panel has full power to review the facts and the law*" (the so-called "*de-novo*" review).
66. On this basis, Hellas Verona's argument that the Panel is unable to review issues which were not contested before the FIFA DRC, is rejected. Moreover, the Panel does not follow the Appellant's contention that the Respondents would have had to bring a separate appeal if they wanted to challenge circumstances which were asserted in the DRC's decision – if for no other reason, for the simple fact that the Respondents prevailed in the first instance and were thus not "*aggrieved*", which is a requirement to have standing for lodging an appeal (CAS 2015/A/4162; CAS 2009/A/1880).

B. The Player's requests for relief

67. The Panel notes that the Player, in his requests for relief, requests that, should CAS retain jurisdiction, the appeal be dismissed or, as a subsidiary request, that nothing is payable to the Appellant by the Player or to determine an amount of compensation the Panel sees fit.
68. The Panel considers that such latter claim by the Player actually confirms his request that the appeal be dismissed, or that the Appellant's appeal be only partially upheld. It is not therefore to be considered as a counterclaim and does not need to be specifically addressed as it is redundant.

C. FIFA's Competence

69. The Player argues that FIFA was not competent to deal with this case in that the 2014 version of the RSTP must apply to this case rather than the 2016 version. The relevant difference between these two versions consists in Article 22 of the 2014 version providing for FIFA jurisdiction in

“b) employment related disputes between a club and a Player of an international dimension, unless an independent arbitral tribunal ... has been established at national level ...”,

while under the 2016 version of the RSTP (Article 22) in

“b) employment related disputes of an international dimension ... the parties may ... explicitly opt in writing for such dispute to be decided by an independent arbitral tribunal ... at national level ...” (emphasis added).

70. As to the applicable version of the RSTP, the Panel refers to the principle *tempus regit actum* according to which substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (CAS 2016/O/4683; CAS 2016/O/4883). Questions relating to jurisdiction are procedural issues as they pertain to the procedure rather than the nature of the obligations arising from a legal relationship (CAS 2015/A/4059).

71. Thus, the Panel rules that the FIFA DRC correctly applied the 2016 RSTP in force at the time of the filing of the claim and therefore was competent to hear the dispute in question. The Panel further notes that none of the Parties to this dispute opted for its resolution by an Italian arbitral institution.

72. The Player further contests FIFA’s jurisdiction arguing that the present dispute lacks the *“international dimension”* required under both the 2014 and 2016 version of the RSTP. In this regard, the Panel agrees with the ruling in CAS 2016/A/4441 according to which

“As a general rule, the international dimension is represented by the fact that the Player concerned is not a national of the country of the association with which the relevant club is affiliated”.

73. The present matter concerns an employment-related dispute between a Bosnian player, an Italian club and a Serbian club. Under these circumstances, the Panel does not hesitate to qualify the matter as having an *“international dimension”*.

74. In conclusion, therefore, the FIFA DRC was competent to hear this case.

D. The Statute of Limitation

75. Pursuant to Article 25, paragraph 5 RSTP

“... the dispute resolution chamber ... shall not bear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute ...”.

76. The Player argues that the claim, having been brought on 17 November 2016, was outside the two-year limitation period, because *“the event giving rise to the dispute”* occurred on 22 August 2014, i.e. the date when the Offer was made, or, at the latest, on 4 October 2014 when the Transfer Agreement between Donji Srem and Hellas Verona was signed. Therefore, according

to the Player, Hellas Verona's claim was time-barred when the case was brought before the DRC.

77. The Panel disagrees. *"The event giving rise to the dispute"* occurred when the Player, by means of the Cancellation Letter, informed Hellas Verona that he did not consider himself bound by what he terms an *"offer but not a contract"*. Indeed, prior to this date no dispute between the parties had arisen.
78. Consequently, Hellas Verona's claim was timely filed before the FIFA DRC and is thus not time-barred under Article 25, paragraph 5 RSTP.

E. Hellas Verona's Appeal

79. In order to rule on Hellas Verona's requests, the Panel has to answer the following questions:
1. Was the 22 August 2014 Offer a (conditional) contract binding Hellas Verona and the Player?
 2. Was the *"condition"* in the Offer valid under the applicable law?
 3. Was the *"condition"* in the Offer capable of being fulfilled after the end of the 2014 summer transfer window?
 4. Was the Player authorised to *"terminate"* the purported employment contract as he did by means of the 17 November 2014 Cancellation Letter?
 5. On the basis of the answers to the foregoing questions, can the appeal be successful?
80. As will be shown below, in the Panel's view, even if the answers to the questions under 1 and 2 above were in favor of Hellas Verona, its case anyway fails on question 3, in that the *"condition"* could no longer be fulfilled after the closing of the 2014 summer transfer window.

1. The 22 August 2014 Offer

a. The essentialia negotii

81. The Parties are split over the question whether the Offer contains all the essential elements required for a binding contract. The FIFA DRC answered this question in the affirmative. Indeed, the CAS has ruled on this issue in CAS 2015/A/3953 and 3954 as follows:

"A document that includes i) a date, ii) the name of the parties, iii) the duration of the contract, iv) the amount of remuneration and v) the signature of the parties includes essentialia negotii, and thus is considered a valid and binding agreement".

82. Under the circumstances of this case, the Panel hesitates to conclude that the Offer contained all *essentialia negotii*, even under the generous interpretation in the above CAS rulings. First, the Panel notes that the Offer fails to specify the “*duration of the contract*”, in that it does not define the starting date. Indeed, according to Hellas Verona’s interpretation, the alleged contract could have started either during the 2014 summer transfer window or sometime during the 2015 winter transfer window. On the other hand, the Panel recognizes that in case of a contract which is subject to a suspensive condition, the uncertainty of the starting date is a built-in consequence of such condition.
83. Moreover, the Panel’s hesitation is reinforced when looking at the well-known and publicly available FIFA’s circular number 1171 dated 24 November 2008. The circular sets guidelines establishing minimum requirements for a professional football player contract “*with the aim to cover the most important and essential rights and duties of both contractual partners (professional clubs and players)*”. Based on this circular, a contract should include, inter alia, a clear starting date:
- “1.5 The agreement defines a clear starting date (day/month/year) as well as the ending date (day/month/year)”.
84. Furthermore, the contract should include the club’s obligation towards the player as well as the player’s obligations vis-à-vis the club.
- “4.1 The agreement defines the Club’s obligations towards the Player as follows:
4.2 The agreement defines all the Club’s financial obligations such as, for example:
 a. Salary (...);
 b. Other financial benefits (...);
 (...)
5.1 The agreement defines the Player’s obligations towards the Club as follows:
5.2 The agreement defines all the Player’s obligations to fulfil vis-à-vis the Club:
 a) to play matches to the best of his ability (...);
 b) to participate in training and match preparation (...);
 (...)”.
85. Ultimately, in view of the Panel’s conclusion that the condition could no longer be fulfilled after 1 September 2014, the Panel can leave open the question of whether all *essentialia negotii* were set out in the Offer.
86. In closing on this issue, the Panel notes that while Hellas Verona in these proceedings argues vehemently in favour of the existence of a valid and binding contract with the Player, it did exactly the opposite in the proceedings before the FIFA PSC which ruled in favour of Donji Srem when it sued for the payment by Hellas Verona of the transfer fee. For instance, according to the PSC ruling Hellas Verona “*stressed that the player never signed an employment contract*” and “*repeated that it never signed any of the two contracts, neither a valid transfer agreement nor an employment contract*”.

b. The Player's Signature

87. The Respondents submit that when signing the Offer, the Player had no intention of entering into a binding agreement of whatever kind. According to the Player, he signed the Offer simply in order to confirm receipt of the document.
88. The foregoing issue is irrelevant if the Offer does not contain all of the *essentialia negotii*: no matter what the Player's intentions were, his signature does not convert a non-contract into a binding agreement. If, on the other hand, all *essentialia negotii* were present in the Offer, then the question becomes relevant whether the Player – as he says – took the Offer as what it says it is: an offer, not a contract, and whether he was entitled to do so under the circumstances. There are, in fact, valid arguments in favour of the Player's position: if from Hellas Verona's perspective, the Offer was intended to be a contract the "Rij". would arguably have been "Employment Contract" rather than "Offer employment contract" and the last sentence would have said "This contract is conditional", rather than "This proposal is conditional...". (emphasis added). The Panel also notes that, in case of doubt, unclear provisions in a legal document are usually interpreted "*contra proferentem*". In this respect, the Panel notes that the evidence on file seems to show that the Offer was, in fact, proposed by Hellas Verona to the Player and not drafted jointly by both parties: in fact, Hellas Verona's submission to the contrary has not been substantiated.
89. Ultimately, given the decision taken in relation to point no. 2, the Panel will leave the question of the significance of the Player's signature open.

2. The Condition

90. The Offer and, as the case may be, the contract between Hellas Verona and the Player was made subject to the following condition:

"This proposal is conditional upon the transfer of the Player from FC Donji Srem to Hellas Verona".

a. Validity of the Offer

91. The first question to be answered is whether this type of a contractual arrangement is valid under the applicable law (see XV above).
92. As has been explained above, Swiss law applies in addition to the FIFA regulations if the latter are silent on a particular issue. This is the case here where the legal interpretation of a "condition" comes into play.
93. As a matter of principle, Swiss law allows parties to make the validity of a contract subject to the fulfilment of one or more conditions. According to Article 151(1) of the Swiss Code of Obligations (hereinafter "CO"), a contract "*is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen*".

94. In the present case, as at the time of the Offer the Player was still under contract with Donji Srem, the “transfer”, i.e. the fulfilment of the condition under the Offer required at least two steps: an agreement between the two clubs and, once accomplished, the entering of the requisite data/documents by Hellas Verona into the FIFA transfer matching system (“TMS”) in order to obtain the ITC. The first of these two steps, i.e. the Transfer Agreement, depended on an agreement between two distinct parties and was thus not under the exclusive control of one of them, i.e. Hellas Verona.
95. The Panel is therefore satisfied that the condition agreed by the Hellas Verona and the Player was a valid and completed transfer of the Player from FK Donji Srem to Hellas Verona. Further, it has remained undisputed that no such transfer happened.
96. It remains to be analysed whether by a legal fiction, the condition shall be nevertheless considered as fulfilled. Indeed, according to Article 156 CO, a condition “*is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith*”. Based on all the evidence submitted, the Panel is satisfied that Hellas Verona and the Player have not prevented in bad faith the transfer to happen. The latter’s behaviour following the submission of the Offer shows rather, as described above, that there was no final commitment of the involved parties to implement and execute the transfer of the Player.
97. It remains to be determined whether the above interim conclusion is confirmed also upon review of the arguments raised by the Parties in relation to the possible transfer windows, in other words the possible latest timing for the fulfilment of the condition.
- b. The Relevance of the Transfer Windows*
98. Hellas Verona claims that the condition in the Offer, i.e. the “transfer”, could be fulfilled either during the 2014 summer transfer window or the 2015 winter transfer window. In contrast, the Player and Borac submit that the Offer was intended to apply exclusively if the Player’s transfer to Hellas Verona would be implemented during the 2014 summer window. In this context the Parties have produced contradicting witness statements.
99. When interpreting the declarations of the parties to the Offer, the Panel considers primarily the wording of the expression of the parties’ will in the written document. In doing so, the Panel notes that there is no indication that the parties to the Offer had in mind a scenario where the Player would not be available for Hellas Verona until almost one half of its season would be over. On the contrary, on the very day of the Offer, Hellas Verona swiftly sent an offer to Donji Srem for the transfer of the Player in exchange for a transfer fee of EUR 300,000, obviously aiming at a transfer before the end of the summer transfer window.
100. But the Panel also takes into account the acts or omissions by the parties in connection with the proposed transaction. In this context, the Panel notes the following:
- The Player’s contract with Donji Srem was due to expire on 19 January 2015. If the parties to the purported contract between the Player and Hellas Verona had in fact contemplated

a scenario where the Player would not be available to play for Hellas Verona until the 2015 winter transfer window, the stipulation of the “*condition*” would not have made any sense at all: on 19 January 2015 the Player would have been a so-called “free agent” so that a transfer – in the sense of an agreement between two clubs by means of which the former club releases the player from existing contractual obligations – would not be required. On the occasion of the Player’s visit with Hellas Verona in August 2014, Hellas Verona could have simply entered into a contract with the Player, effective on 20 January 2015, i.e. after the end of the latter’s contract with Donji Srem. Indeed, the circumstance that, in the 3 October 2014 Transfer Agreement, Hellas Verona agreed to pay to Donji Srem a transfer fee of EUR 300,000 for the Player clearly indicates that the parties expected the Appellant’s hiring of the Player to occur within the 2014 summer transfer window, as during the 2015 winter transfer window the Player would have become a free agent and Hellas Verona could have hired him without the need to pay the transfer fee.

- Moreover, in the purported player contract Hellas Verona agreed to pay to the Player for the season 2014-2015 a “*Fixed Amount: Euro 80,000 net (until to 30.6.2015)*” without making any arrangement for an instance where the Player would only be available for roughly one half of the season (as of 20 January 2015). Why would Hellas Verona have been prepared to pay this “Fixed Amount” (for the entire season) to the Player if one of the two options – according to Hellas Verona – would have materialised, i.e. that the transfer would not happen until January 2015? In these circumstances, one would have expected the contract to provide for payment of the salary *pro rata temporis*.
- Finally, Hellas Verona’s conduct after the end of the 2014 summer transfer window confirms the Panel’s finding; had Hellas Verona been of the view that, as a result of the conclusion of the Transfer Agreement on 3 October 2014, a definite player contract with the Player had entered into force, it would certainly not have left the Player’s Cancellation Letter of 17 November 2014 unanswered. In fact, Hellas Verona’s invitation to the Player to undergo the medical examination was sent to Donji Srem and not to the Player’s attorney which would have been the natural addressee of such a message under the circumstances. Also, Hellas Verona never took any steps to obtain the ITC for the Player. Moreover, after the Player’s failure to show up for the medical examination and for the start of the training of the team, Hellas Verona kept complete silence until almost two years later when it lodged its claim before the FIFA DRC on 17 November 2016, obviously as a result of its liability towards Donji Srem for the EUR 300,000 transfer fee as decided by the CAS on 11 October 2016.

101. In conclusion, in the Panel’s view the declarations and behaviours of the parties in relation to the Offer must be interpreted to mean that the condition in the Offer was to have been fulfilled before the end of the 2014 summer transfer window. Subsequent to that date, the condition could no longer be fulfilled and thus a possible player contract could no longer take effect.

102. Against the above background, the condition agreed by Hellas Verona and the Player has not been fulfilled and no employment contract has come into force.

3. *The termination letter*

103. Having found that, after the end of the 2014 summer transfer window, the purported player contract could no longer enter into force as the condition could no longer be fulfilled, the Panel does not have to deal with the question whether the Termination Letter of the Player would have put an end to such purported player contract.

XVII. CONCLUSION

104. Based on the foregoing, the Appeal of Hellas Verona against the FIFA DRC decision must be dismissed.
105. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other or further prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 20 March 2018 by Hellas Verona FC S.p.A. against the decision of the FIFA Dispute Resolution Chamber dated 30 November 2017 is dismissed.
2. The decision of the FIFA Dispute Resolution Chamber dated 30 November 2017 is confirmed.
3. (...).
4. (...).
5. (...).
6. All other or further claims and counterclaims are dismissed.