Arbitration CAS 2009/A/1997 & 1998 Akranes Football Club v. Vjekoslav Svadjumovic and Dario Cingel, award of 9 August 2010

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Bård Racin Meltvedt (Norway); Mr Goetz Eilers (Germany)

Football
Termination of contract with just cause
Article 22 b of the FIFA Regulations and general competence of the FIFA bodies
Conditions for the constitution of an arbitration court at national level
Non-payment of remuneration by an employer due to extraordinary circumstances
Outstanding salaries and just cause for the termination of the contract
Compensation for breach of contract

1. **The spirit of Article 22 b of the FIFA Regulations on the Status and Transfer of Players (RSTP) supports the principle of a general competence of the FIFA bodies to rule on any dispute that would occur on an international level between a player and his club. This legislative relies on the concern to grant access to an impartial appeal body to the concerned parties. Article 22 b RSTP however provides an exception in case the concerned country has set up a domestic independent arbitration tribunal guaranteeing fair proceedings and respecting the principal of equal representation of players and clubs at national level.**

2. **The constitution of an arbitration court at national level raises serious questions with regards to its composition and the way its arbitrators are to be nominated if each party may nominate an arbitrator of its choice but the third arbitrator is chosen by the Disciplinary and Dispute Resolution Committee of the National Federation. The nomination of the third arbitrator by one of the bodies of the National Federation itself, in the absence of any list of arbitrators guaranteeing that they are free of any connections with clubs, does not meet the requirements of impartiality and of equal representation implied by the Article 22 b RSTP. In other words, such a domestic arbitral body fails to ensure fair proceedings that would justify its substitution to the FIFA Dispute Resolution Chamber. To meet those conditions, the third arbitrator would have to be elected among persons who do not have any connections with the clubs or the National Federation, or at least the parties would have to benefit from an appropriate process to remove the appointed third arbitrator if his impartiality raises doubts.**

3. **The fact that a football club had to face an unusual and dramatic financial situation due to the very specific context experienced at national level at the time the facts of the case occurred can constitute an explanation for the delays in the player's payments, as the club was in a situation in which it was almost impossible to proceed to any bank transfers. Although these particular circumstances might be taken into consideration to**

appreciate the extent of the club's responsibility, for example when calculating compensation, they do not change anything to the fact that the club, in its quality of employer, was to be found in breach of its contractual obligations.

4. **The non payment or late payment of remuneration by an employer does in principle – and particularly if repeated - constitute "just cause" for termination of the contract. The employer's payment obligation is his main obligation towards the player. If therefore he fails to meet his obligation, the employee can as a rule no longer be expected to be bound by the contract in the future.**

5. **In a case where the players did not have the intention to fulfil their contractual obligations for the season and did not cautiously deal with the administrative steps to be taken, it is adequate to lower the amount of compensation for termination of contract with just cause, by deducting the outstanding salaries due for the next season.**

Akranes Football Club is a football club with its registered office in Akranes, Iceland ("Akranes" or the "Appellant"). It is a member of the Football Association of Iceland (FAI), itself affiliated to the Fédération Internationale de Football Association (FIFA).

Mr Vjekoslav Svadjumovic (the "first Respondent") is a Croatian football player.

Mr Dario Cingel (the "second Respondent") is a Croatian football player.

It first has to be noted that both cases brought before the Court of Arbitration for Sport (CAS) - CAS 2009/A/1997 Akranes FC v. Vjekoslav Svadjumovic and CAS 2009/A/1998 Akranes FC v. Dario Cingel - rely on the same factual background. Both cases have been examined by the Dispute Resolution Chamber of FIFA on 16 July 2009, which led to the two decisions currently under appeal before CAS.

Moreover, the two cases have been ruled by CAS during the same hearing of 23 March 2010, the parties having expressly accepted that both cases be conducted jointly and submitted to the same Panel.

The Panel decided to render one award, applying to both cases. Therefore, the factual background considered hereunder will apply to both cases, which will be distinguished later on minor differences which may arise.

On 4 September 2007, both Respondents and the Appellant signed employment contracts valid from 5 September 2007 until 16 October 2009.

A signed Appendix to the contracts provided for the payments that the players were entitled to obtain:

- ISK 110'000 plus EUR 11'000 for the month of April for each year of the contract, due on 1st of April;
- ISK 110'000 plus EUR 1'667 for the months of May, June, July, August, September and October of each year of the contract, due on 1st of each month.

Moreover, the contract signed by the players and the Appellant foresaw additional expenses that were to be borne by the Appellant:

- Accommodation plus heating and electricity;
- Lunch five times a week;
- Three return airline tickets per year to their home country;
- Access to a car.

On 27 February 2009, both players contacted FIFA claiming that the Appellant had failed to pay the following amounts to which they were entitled for the year 2008:

- A part of their monthly salaries for June 2008, amounting to EUR 500 each;
- Their full monthly salaries for July, September and October 2008 (ISK 110'000 plus EUR 1'667 each month);
- An amount of EUR 1'750 necessary to buy airline tickets.

On this basis, the players initially requested that a total missing amount for the year 2008 of ISK 330'000 and EUR 7'451 be paid by the Appellant to each of them.

Besides, both players alleged that the Appellant had sent them back home to Croatia in December 2008, at the end of the 2008 season, and informed them that it was not certain to keep them under contract for the year 2009.

According to the players, the Appellant moreover made each of the Respondents an offer by email to pay the amount of EUR 1'453 for the year 2008, plus an amount of EUR 5'500, as an indemnity for early termination of the contract.

Refusing this offer, the players additionally requested to be paid the amount of ISK 770'00 plus EUR 21'002 each, corresponding to the salaries they considered to be entitled to obtain for the year 2009.

Moreover, the players requested to obtain the appropriate provisory authorization to be registered by and temporally play for another club.

On 26 March 2009, the Appellant answered to the Respondents' claim and alleged that it had fulfilled its entire obligations towards the Respondents. It however admitted that some of the payments to be made had been delayed, due to the particular economic situation suffered in Iceland. At the time the concerned payments should have been made, the banks were not allowed by the Government to do so.

With regards to the outstanding payments related to the year 2008, the Appellant alleged that the Respondents had requested changes in their previously negotiated accommodation, which were not covered by the contract. According to the Appellant, in such a context, it was agreed that the additional costs resulting form these changes would be deducted from the players' salaries.

Moreover, since the players had requested pay-tv and internet services, which again, in the Appellant's opinion, were not covered by their respective contracts, the related sums of EUR 648 per player, according to the Appellant's calculation, were to be deducted from the players' salaries.

Since the Appellant had taken responsibility for the concerned invoices, it considered it had overpaid the players in the same proportion.

The Appellant confirmed it had offered the players EUR 5'500 each as an indemnity if they accepted to prematurely terminate their contracts, which would also enable them to find another club.

As this offer was rejected by the players, the Appellant alleged that its intention was to fulfill its obligations towards the players until the term of their respective pending contracts.

In this perspective, the players were contacted by e-mail, and requested to provide the Appellant with the necessary documents in order for the latter to take the appropriate steps towards the Icelandic Immigration Services so that new work and residence permits be granted to the players in due course for the 2009 season.

Although they had undergone this procedure several times before, the players did allegedly not send any of the requested documents.

The Appellant then offered the players to carry on their contractual relationship until its term, under the condition that the players provide the necessary documents for the Appellant to regularize their working and residence permit in due course.

Alternatively, the Appellant offered to grant the players a transfer to another club, under the condition that no further payments in favor of the players would occur unless ordered by the Committee of Contracts and Transfers of the FAI.

On 1 April 2009, the players answered negatively and globally maintained their claims.

Mr Vjekoslav Svadjumovic confirmed his claim for the year 2008 minus EUR 1'653 which had apparently been paid in the meantime, thus ISK 330'000 and EUR 5'798 for 2008.

Mr Dario Cingel also confirmed his claim for the year 2008 minus EUR 1'453 which had apparently been paid in the meantime, thus ISK 330'000 and EUR 5'998 for 2008.

Furthermore, both players rejected the suggestion made by the Appellant to have the matter dealt with by the Committee of Contracts and Transfers of the FAI, claiming that only FIFA had jurisdiction to rule their cases.

Both players then claimed that they had sent the requested documents to the Appellant in order for their working and residence situation to be regularized and declared that they had contacted the Appellant several times to obtain an airline ticket to Iceland in order to join the team.

Mr Vjekoslav Svadjumovic informed the Appellant that he would go back to Iceland to join the team as soon as all contractual obligations have been fulfilled and an airline ticket sent to him. As a demonstration of his willingness to solve the situation, he offered to waive any unpaid amount due in ISK and only requested that the alleged outstanding amount of EUR 5'798 be paid.

Mr Dario Cingel also informed the Appellant that he would go back to Iceland to join the team as soon as all contractual obligations have been fulfilled and an airline ticket sent to him. As a demonstration of his willingness to solve the situation, he also offered to waive any unpaid amount due in ISK and only requested that the alleged outstanding amount of EUR 5'998 be paid.

Both players were granted a deadline by FIFA's Dispute Resolution Chamber (DRC), in which they were invited to examine any possibility to reach a mutual agreement with the Appellant.

By letter of 18 April 2009, both players informed the DRC that no agreement had been reached, and notably emphasized that they had been irritated by the Appellant's conduct and therefore maintained most of their claims.

Mr Vjekoslav Svadjumovic confirmed that he considered to be entitled to request EUR 5'798 for the year 2008, plus EUR 21'002 and ISK 770'000 for the year 2009.

Mr Dario Cingel confirmed that he considered to be entitled to request EUR 5'998 for the year 2008, plus EUR 21'002 and ISK 770'000 for the year 2009.

Both players also expressly mentioned, in a letter dated 14 April 2009 sent to the Appellant, that they considered all correspondence with the Appellant as terminated.

By its correspondence of 15 May 2009, the Appellant firstly questioned the jurisdiction of FIFA to rule the two cases at stake, claiming that a competent national body had jurisdiction to do so.

The Appellant justified its position by stressing out that the so-called national Icelandic body was perfectly in line with FIFA's requirements. In fact, the Icelandic Negotiations and Transfer Committee would, in the Appellant's view, allegedly guarantee fair proceedings and respect the principle of equal representation of players and clubs.

According to chapter VII of the FAI Regulations on Transfer, Contracts and Status of Players and Clubs, the Negotiations and Transfer Committee shall be made up of *"three individuals, with three alternate committee members…the Board of Directors of the Football Associations of Iceland appoints the members of the committee"*.

The Committee's role is to assume *"a position in matters of dispute after a ruling and after all parties have been given the opportunity to make claims, present evidence, acquaint themselves with pertinent documentation and comment on the charges. The utmost equality shall be maintained"*.

Notwithstanding this defence of lack of jurisdiction, the Appellant maintained its previous position on its enforcement of its contractual obligations, and moreover claimed that the deductions made from the players' salaries for the additional accommodation costs and pay-tv and internet services had not been contested by the players.

Furthermore, the Appellant clarified that the players had failed to provide the Appellant with a criminal record certificate as required by the rules of the Icelandic Directorate of Immigration.

The Appellant also provided the DRC with an extensive collection of e-mails and correspondence between the parties in which both the alleged missing salaries and the needed documents for working and residency purposes were discussed between December 2008 and January 2009.

On 10 June 2009, the players informed the DRC that they had received, via e-mail, an authorization form of the Icelandic Directorate of Immigration which had been completed by the Appellant and which had been sent to them for signature.

In both cases, the DRC followed the same reasoning.

The DRC ruled, in the case of Mr Vjekoslav Svadjumovic, that the Appellant was liable to pay to the player unpaid salaries as well as compensation for breach of contract for justified cause, calculated as follows:

Mr Svadumovic's claims	**EUR**	**ISK**	
Unpaid salary June 2008	500		
Unpaid salary July, August and September 2008	5'001	330'000	(waived by the player)
Unpaid salary from 1st April to 14 April 2009	5'500	55'000	(waived by the player)
Compensation for justified breach of contract	15'502	715'000	
Air ticket for Croatia	1'000		
Instalment paid in February 2009	-1'653		
Total amount due	25'850	715'000	
Total amount due in Euros (exchange rate of the day)	**29'848**		

Concerning Mr Dario Cingel, the DRC made a similar calculation, as follows:

Mr Cingel's claims	EUR	ISK	
Unpaid salary June 2008	500		
Unpaid salary July, August and September 2008	5'001	330'000	(waived by the player)
Unpaid salary from 1st April to 14 April 2009	5'500	55'000	(waived by the player)
Compensation for justified breach of contract	15'502	715'000	
Air ticket for Croatia	1'000		
Instalment paid in February 2009	-1'453		
Total amount due	26'050	715'000	
Total amount due in Euros (Exchange rate of the day)	**30'048**		

On the basis of these calculations, the DRC ruled that the Appellant was liable to pay, within a 30 days deadline as from the notification of its decision, the amount of EUR 29'848 to Mr Vjekoslav Svadjumovic and the amount of EUR 30'048 to Mr Dario Cingel.

On 16 November 2009, the Appellant filed two statements of appeal with the CAS. It challenged both decisions of 16 July 2009 rendered by the DRC.

In its appeal against the decision rendered by the DRC concerning Mr Vjekoslav Svadjumovic, in the case CAS 2009/A/1997, it submitted the following request for relief:

> *"In its Statement of Appeal Akranes Football Club requests to be relieved from the decision made by the Dispute resolution Chamber of FIFA, in which Akranes Football Club has been ordered to pay the Claimant EUR 29'848.- within 30 days from the notification of that decision. Primary the Club request that the decision made by the Dispute Resolution Chamber of FIFA in case ref. Lea 09-00513 will be annulled, secondary that the club will be acquitted of all claims made by the player and tertiary that the amount awarded to the player will be significantly lower than ordered in the above mentioned decision".*

In its appeal against the decision rendered by the DRC concerning Mr Dario Cingel, in the case CAS 2009/A/1998, it submitted the following request for relief:

> *"In its Statement of Appeal Akranes Football Club requests to be relieved from the decision made by the Dispute resolution Chamber of FIFA, in which Akranes Football Club has been ordered to pay the Claimant EUR 30'048.- within 30 days from the notification of that decision. Primary the Club request that the decision made by the Dispute Resolution Chamber of FIFA in case ref. Lea 09-00514 will be annulled, secondary that the club will be acquitted of all claims made by the player and tertiary that the amount awarded to the player will be significantly lower than ordered in the above mentioned decision".*

In both cases, the Appellant also filed an application to stay the execution of the decisions of 16 July 2009 rendered by the DRC until a final decision is made by CAS, alleging that, should these decisions be reversed, it would be impossible for the Appellant to recover the money paid to the players. It however withdrew its requests to stay the challenged decisions by fax of 20 November 2009 sent to CAS.

On 14 December 2009, both Respondents filed a common answer, with the following requests for relief:

"Based on the aforementioned, the Respondents believe that the Decision of the DRC in the legal matters of the Respondents Vjekoslav Svadjumovic and Dario Cingel is just and lawful. And therefore request that the Appellant's appeal be rejected and the Decision of the FIFA DRC of 16 July 2009, case ref. No: lea 09-00513, regarding Vjekoslav Svadjumovic and the Decision of the FIFA DRC of 16 July 2009, case ref. No: lea 09-00514, regarding Dario Cingel both be confirmed and upheld. The Respondents also request that the CAS order the Appellant to bear the arbitration costs as well as the fees of legal representation of the Respondent's attorney".

On 19 November 2009, the CAS Court Office duly informed FIFA of the appeals filed by the Appellant against the decisions rendered on 16 July 2009 by the DRC. Pursuant to Article R54 paragraph 4 and R41.3 of the Code of Sports-related Arbitration (the "Code"), FIFA was expressly invited to state whether it intended to participate as a party in the present arbitration.

By letter of 29 December 2009, FIFA expressly renounced its rights to take part to the present arbitration and only limited itself to providing CAS with clean copies of the challenged decisions.

The Respondents contested the Appellant's arguments according to which no valid termination of contract would have occurred, as the Respondents validly terminated their contracts on 14 April 2009 and request to be released from any costs related to the present arbitration.

A hearing was held on 23 March 2010 at the CAS headquarters in Lausanne, Switzerland. At the outset of the hearing, the parties declared that they had no objection with regard to the composition of the Panel.

The Respondents did not take part to the hearing and were not represented, after having informed the Panel that they could not afford coming to Switzerland on this occasion.

During the hearing, the Appellant made full oral submissions and answered the questions asked by the Panel. No witness or experts were called by the parties.

The Panel requested the Appellant to clarify its position regarding FIFA's purported lack of jurisdiction. The Chairman of the Panel notably asked the Appellant's representatives to explain how the Icelandic arbitral court, which in the Appellant's opinion should have had jurisdiction to rule the dispute, would have been nominated.

The Appellant exposed that the integrity of the Committee, which is empowered to take a decision of first instance in Iceland, has never been questioned before. The FAI Regulations however provide that, if a player or a club is not satisfied with the decision taken, the constitution of a domestic arbitral tribunal can be requested.

The Appellant confirmed that each party chooses its own arbitrator and then the third is nominated by the Disciplinary and Dispute Resolution Committee of the FAI, as mentioned in Article 23.1.4 of the FAI Regulations.

In answer to a question of a coarbitrator, asking whether the third arbitrator can be removed from the Panel if he has any connections with clubs, the Appellant denied this possibility and confirmed that this third arbitrator would be nominated as provided in the FAI Regulation and is supposed to be impartial.

The Chairman of the Panel then asked the Appellant if any written evidence exists concerning the renegotiation between the parties with respect to the expenses deducted from the Respondents' salaries. The Appellant repeated, as alleged in its appeal briefs, that the deduction of these expenses had been agreed on orally.

After the Appellant's final arguments, the Panel closed the hearing and announced that its award would be rendered in due course.

At the end of the hearing, the Appellant expressly confirmed that it had no objection or reservation in relation to the conduct of the proceedings and that its right to be heard had been fully respected.

LAW

Admissibility

1. The appeals were filed on 16 November 2009, within the deadline provided by Article R49 of the Code and by Article 63 of the FIFA Statutes, namely within 21 days following the notification of the challenged decisions, and therefore comply with the requirements of the aforementioned provisions.

2. Accordingly, the Appellant's appeals are admissible.

Jurisdiction

3. The jurisdiction of CAS to rule appeals against final decisions rendered by FIFA's bodies, which is not as such contested by the parties, derives from Articles 62 et seq. of the FIFA Statutes 2008 and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties. Consequently, CAS has jurisdiction to decide the present dispute.

4. Under Article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel, therefore, in the exercise of its jurisdiction, does not examine only the formal aspects of the appealed decision, but holds a trial *de novo*, evaluating all facts, including new facts, which had not been previously mentioned by the parties, and all legal issues involved in the dispute.

5. It follows that CAS has jurisdiction to decide the present dispute concerning the decisions of 16 July 2009, taken by the DRC.

Applicable Law

4. Article R58 of the Code provides that the Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate.

5. Article 62 par. 2 of the FIFA Statutes, in their version in force, further provides that CAS shall primarily apply the various Regulations of FIFA, and, additionally, Swiss law.

6. The Panel is of the opinion that the parties have not formally agreed on the application of any specific national law. It is comforted in its position by the fact that, in their respective submissions, the parties refer exclusively to FIFA's regulations.

7. As a result, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

Merits

8. Even if the competence of CAS is not as such questioned by the Appellant, the latter however maintains that the contractual dispute between its club and the Respondents should have been submitted to the Icelandic arbitral body provided by the FAI Regulations, rather than to the DRC.

9. The Panel therefore has to decide, as a first step, whether the DRC had jurisdiction or not in the present case. The answer to this question, should it be negative, could indeed lead to consider CAS as incompetent to deal with the matters at stake.

10. To rule on this specific question, it is necessary to examine the concerned provision in the FAI Regulations and to determine whether this provision validly grounds the competence of the domestic arbitral authority.

11. At the moment the present disputes occurred, the Appellant was a duly registered member of the FAI, itself member of FIFA, which is undisputed by the parties. The Respondents were themselves duly registered as players of the Appellant's club. As such, the parties are to be deemed bound by FAI regulations.

12. Article 23.1 of the FAI Regulations on Transfer, Contracts and Status of Players and Clubs (FAIR), to which the Appellant refers to ground the Icelandic arbitral body's jurisdiction, reads as follows:

"The Committee shall resolve any issues that arise from any disputes between the club and player due to interpretation of contractual clauses. The following principles shall be followed:

23.1.1. Any and all claims shall be clear and submitted in writing.

23.1.2 The committee assumes a position in matters of dispute after a ruling and after all parties have been given the opportunity to make claims, present evidence, acquaint themselves with pertinent documentation and comment on the charges. The utmost equality shall be maintained.

23.1.3 The Findings of the Negotiations and Transfer Committee on matters of dispute are final and binding for all parties concerned.

23.1.4 Each party may solicit that the dispute be arbitrated, as stipulated in statue nr. 53 from the year 1989 on contractually binding arbitration. Such claim shall be submitted in writing before the Committee convenes on the matter. Each party shall appoint one individual to appear before the arbitrary court, and the Disciplinary and Dispute Resolution Committee of the Football Association shall appoint an impartial third party".

13. Article 22 b of the RSTP, reads as follows:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

…

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.

…".

14. After a careful analysis of the two above-mentioned provisions, the Panel observes that the spirit of Article 22 b of the FIFA Regulations supports the principle of a general competence of the FIFA bodies to rule on any dispute that would occur on an international level between a player and his club. This legislative relies on the concern to grant access to an impartial appeal body to the concerned parties.

15. Article 22 b of the FIFA Regulations however provides an exception in case the concerned country has set up a domestic *"independent arbitration tribunal guaranteeing fair proceedings and respecting the principal of equal representation of players and clubs at national level".*

16. The Panel cautiously examined the domestic arbitral body that Article 23.1 of the FAIR intends to set up.

17. It first noted that such an arbitral body has never been constituted, since, as declared by the Appellant, the integrity of the Icelandic Committee had never been questioned before. The

constitution and the legitimacy of the foreseen domestic arbitral body can therefore only be evaluated on a theoretical basis.

18. It can however be observed that the constitution of the foreseen Icelandic arbitration court raises serious questions with regards to its composition and the way its arbitrators are to be nominated. According to Article 23.1.4 of the FAIR, each party may nominate an arbitrator of its choice. The third arbitrator is however chosen by the Disciplinary and Dispute Resolution Committee of the FAI.

19. The Panel considers that the nomination of the third arbitrator by one of the body of the FAI itself, in the absence of any list of arbitrators guaranteeing that they are free of any connections with clubs, does not meet the requirements of impartiality and of equal representation implied by the Article 22 b of the FIFA Regulations. In other words, such a domestic arbitral body fails to ensure fair proceedings that would justify its substitution to the DRC.

20. Indeed, to meet those conditions, the Panel would assume that the third arbitrator would be elected among persons who do not have any connections with the clubs or the FAI, or at least that the parties benefit from an appropriate process to remove the appointed third arbitrator if his impartiality raises doubts.

21. The Panel thus comes to the conclusion that the arbitration clause, provided in favor of a theoretical Icelandic arbitral body under Article 23.1.4 of the FAIR does not meet the conditions of impartiality and equal representation required by the FIFA Regulations and does therefore not ground the arbitral competence of the foreseen Icelandic arbitral body.

22. For the same reasons, the arbitral clause contained in the contracts signed by the Respondents cannot be considered as a solution that would justify the jurisdiction of the domestic body rather than the jurisdiction of the DRC.

23. It follows that FIFA's Dispute Resolution Chamber had full jurisdiction to deal with the appeals filed by Akranes.

24. Now that the Panel considers that the DRC had jurisdiction to decide these disputes, the main issues to be resolved by the Panel in deciding these disputes are the following:

    A. Did a valid contractual termination occur?

    B. If so, was it justified?

    C. If so, which is the correct calculation of the compensation to be granted?

A. Termination of the contracts

25. With regards to the termination of the contracts, the Panel is of the view that the analysis made by the DRC is relevant and can be followed.

26. The parties have exchanged several correspondence related to the way the issue of the unpaid salaries for the season 2008 would be solved. The Respondents' counsel notably sent letters on 26 January, 2 February, 30 March 2009 by means of which they were clarifying the conditions under which they were willing to fulfil their contractual obligations.

27. In their letter of 30 March 2009, the Respondents clearly indicated:

"Inspite of the above stated, as sign of good will and the intention of fulfilling the contractual obligations until the end of the contracts, we once again, for the third time, submit the requested certificates, this time by registered mail, though the attorney's office…We also once again emphasize that we are willing to join the club immediately as soon as you have fulfilled the following conditions …".

28. The letter of 14 April 2009 sent by the Respondents 'counsel to the Appellant follows a letter of the same day sent by the Appellant to the Respondents' counsel, and by which the Appellant, at least partially, refused the conditions under which the Respondents were willing to continue their employment relationships with the Appellant.

29. The very explicit expressions used by the Respondents, such as *"the players you have thrown away from your club without paying them»* or *«we hereby consider all further correspondence terminated!"*, clearly indicate that the Respondents, considering the failure of their negotiations with their employer, held their employment relationships as terminated.

30. The letter of 18 April 2009 sent by both Respondents to FIFA clearly states the failure of the above-mentioned negotiations and confirm, by enclosing the letter of 14 April 2009 sent to the Appellant, that the players deem *"impossible to believe that any kind of agreement could ever be reached in this matter".*

31. The Panel is of the view that these two documents undoubtedly demonstrate that the Respondents did not foresee any continuation of their employment relationships with the Appellant.

32. Therefore, the only reasonable interpretation of the elements submitted to the Panel leads to hold the termination of the Respondents' contracts as having occurred on 14 April 2009.

B. Termination with just cause?

33. Despite the fact that the Appellant unquestionably had to face an unusual and dramatic financial situation due to the very specific context experienced in Iceland at the time the facts of the case occurred, it cannot be denied that it failed to pay the Respondents' salaries during more than three months for the season 2008.

34. The total collapse of the Icelandic economy during the autumn 2008 can of course constitute an explanation for the delays in the Respondents' payments, as the Appellant was in a situation in which it was almost impossible to proceed to any bank transfers.

35. Although these particular circumstances might be taken into consideration to appreciate the extent of the Appellant's responsibility, for example when calculating compensation, they do not change anything to the fact that the Appellant, in its quality of employer, was to be found in breach of its contractual obligations.

36. According to constant CAS jurisprudence, notably the one quoted by the Respondents (CAS 2006/A/1180), *"The non payment or late payment of remuneration by an employer does in principle – and particularly if repeated – constitute "just cause" for termination of the contract. The employer's payment obligation is his main obligation towards the player. If therefore he fails to meet his obligation, the employee can as a rule no longer be expected to be bound by the contract in the future".*

37. The Panel, observing that the delays in the players' payments concerned at least a period of three months for the season 2008, considering the reiterated attempts by the Respondents to obtain payment of their outstanding wages, taking into account that the non payment of three months of salaries is even harder in a situation in which players only get paid from April to October, holds the Respondents' contracts as terminated with just cause.

C. Compensation for Contract termination with just cause

38. After having concluded that the contracts between the parties were terminated on 14 April 2009, the Panel first has to decide on the item of the non-paid salaries by the Appellant to the Respondent.

a) Outstanding wages in Euros for the year 2008

39. After having studied the documents submitted by the parties, the Panel comes to the following findings. It is undisputed between the parties that for the season 2008 there were no payments made by the Appellant during the months of July, September and October, which represents three times EUR 1'667, thus **EUR 5'001**.

40. Furthermore, it is undisputed that the Appellant had to pay the fare for the air ticket as contractually agreed upon up to the amount of **EUR 1'750**. This leads to a total due of **EUR 6'751**.

41. In February 2009, two extra down payments were made by the Appellant for an amount of **EUR 1'653** for Mr Vjekoslav Svadjumovic and for an amount of **EUR 1'453** for Mr Dario Cingel.

42. As admitted by the Appellant at the time of the hearing, these down payments were meant for the amounts due in 2008, because of the fact that the banks blocked the transfers of money during a period between September and October 2008.

43. It is undisputed that an amount of **EUR 500**, related to the players' salary for June 2008, remains unpaid.

44. The total amount due to the Respondents in Euros is therefore **EUR 5'598** for Mr Vjekoslav Svadjumovic and **EUR 5'798** for Mr Dario Cingel, just for the season 2008.

b) Outstanding wages in Iceland Krones (ISK) for the season 2008

45. The Panel now has to decide whether there is any amount owed by the players in ISK (Iceland Krones), as submitted by the Appellant.

46. According to the documents filed by the Appellant, the Respondents still owed the Appellant an amount of **ISK 186'124**. The Respondents did not dispute this amount and the Panel finds, in the Respondents' statements, an argument that this sum is correct and that the Respondents waive their claims in ISK on the Appellant.

47. As already concluded above, it was clear to the Panel that both parties did not want to fulfil their obligations from the existing contracts for the upcoming season which was to start in April 2009, as evidenced by the email exchanges between the parties from February 2009. The Panel refers particularly to the correspondence between the parties on the item of the working permit for the Respondents.

48. This conclusion is underlined by the fact that the Appellant made the last down payments to both players in February 2009. The amount in Iceland Krones owed by the Respondents to the Appellant up to **ISK 186,124** should be deducted from the amount in Euros due to the players. This deduction, at the exchange rate available in February 2009, represents an amount of **EUR 1'277**.

49. Taking this deduction into consideration, the total amount of outstanding salaries due to the Respondents in Euros therefore represents **3'821** for Mr Vjekoslav Svadjumovic and **4'071** for Mr Dario Cingel.

c. Outstanding wages in Euros for the season 2009

50. As the Panel considers the contracts to be terminated with just cause on 14 April 2009, the salaries due to the players from 1 April 2009 until 14 April 2009 were due by the Appellant.

51. It is undisputed that the players were entitled to a salary of **EUR 11'000** for the month of April 2009. Therefore, for the 14 first days of April 2009, each Respondent was entitled to an amount of **EUR 5'133**.

d. Oustanding wages in Iceland Krones (ISK) for the season 2009

52. It is undisputed that the players were entitled to a salary of **ISK 110'000** for the month of April 2009. Therefore, for the 14 first days of April 2009, each Respondent was entitled to an amount of **ISK 51'333**.

e. Extra costs deducted from the Respondents' salaries

53. Then the Panel has to make a decision about the extra costs that were invoiced by the Appellant to the Respondents for car, apartment, pay TV and Internet connection, up to **EUR 4'615** for Mr Vjekoslav Svadjumovic, and up to **EUR 4'569** for Mr Dario Cingel, which were deducted by the Appellant from the amounts due to the Respondents.

54. The Panel examined the large volume of emails exchanged between the parties. The numerous emails and correspondence produced by the Appellant clearly shows that the Appellant was very experienced in communicating with its players.

55. Despite that, not a single letter about the compensation costs that the Appellant claims for car, apartment, pay TV or Internet connection was found among the important correspondence exchanged by the parties, which would demonstrate that the deduction of these costs would have been agreed upon by the Respondents, or at least discussed. The Panel cannot come to any other conclusion than that this reduction on the players' salaries was not agreed upon.

56. The Panel therefore concludes that the extra costs for those items have to be borne by the Appellant itself and that no deduction on the players' salaries should have been made.

f. Compensation for breach of contract

57. It is again undisputed that the Appellant had to pay outstanding salaries to the players in 2008, which it refused to pay, even after being asked by the players several times. Therefore, as exposed above, the Panel concludes that the termination of the contracts by the players was with just cause, which means that the Appellant is liable to pay compensation for the committed breach of contract.

58. The Panel however has its own appreciation of the amount of compensation for breach of contract due by the Appellant, as the Respondents' will to pursue their contractual relationship with the Appellant have, in the Panel's opinion, been overestimated by the DRC, which was not in possession of all the correspondence submitted by the Appellant before CAS.

59. Again, it appears obvious to the Panel, on the one hand, that the Respondents did not have the intention to fulfil their contractual obligations for the season 2009. This appreciation is underlined by the numerous emails sent by the Appellant to the players in order to obtain necessary documents to request their work permit and their visas for the year 2009. The players

did obviously not cautiously deal with the administrative steps to be taken, despite the fact they had gone through this procedure before the season 2008. The Panel is of the opinion that the players pretended they wanted to come back to Iceland, in order not to jeopardize their chances to obtain their unpaid salaries.

60. On the other hand, the Panel considers, despite the fact that the Appellant pretended to be willing to fulfil its obligations towards the Respondents until the term of their contracts, that the Appellant was however actively examining any available possibility to shorten its employment relationships with the Respondents. By making rather unattractive amicable offers or by claiming that the players' salaries would be cut off by 50% for the season 2009, the Appellant was obviously trying to persuade the Respondents to terminate their contracts in a way or another.

61. The Panel therefore considers adequate to lower the amount of compensation for termination of contract with just cause, by deducting the outstanding salaries due for the season 2009.

62. Taking all the facts into account, such as the intention of both the parties not to fulfil their obligations under their contracts for the season 2009, the relative small amounts that were involved, the duration of the contracts, the circumstances in which Akranes entered as a result of the financial crisis, the Panel finds it in line with the criteria of article 17.1 of the FIFA Regulations that the compensation that the Appellant should pay to each Respondent be **EUR 2,500**.

63. In conclusion, the amount that the Appellant shall be liable to pay to Mr Vjekoslav Svadjumovic, can be presented as follows:

Mr Svadumovic's claims	**EUR**	**ISK**
Unpaid salary June 2008	500	
Unpaid salary July, August and September 2008	5'001	
Unpaid salary 1 April 2009 to 14 April 2009 in EUR	5'133	
Unpaid salary 1 April 2009 to 14 April 2009 in ISK	305	51'333
Compensation for justified breach of contract	2'500	
Air ticket for Croatia	1'750	
Instalment paid in February 2009 by the Appellant	-1'653	
Amount due by the Respondent to the Appellant	-1'277	-186'124
Total amount due in Euros	**12'259**	

64. The amount that the Appellant shall be liable to pay to Mr Dario Cingel can be presented as follows:

Mr Cingel's claims	EUR	ISK
Unpaid salary June 2008	500	
Unpaid salary July, August and September 2008	5'001	
Unpaid salary 1 April 2009 to 14 April 2009 in EUR	5'133	
Unpaid salary 1 April 2009 to 14 April 2009 in ISK	305	51'333
Compensation for justified breach of contract	2'500	
Air ticket for Croatia	1'750	
Instalment paid in February 2009 by the Appellant	-1'453	
Amount due by the Respondent to the Appellant	-1'277	-186'124
Total amount due in Euros	**12'459**	

The Court of Arbitration for Sport rules:

1. The appeals of Akranes Football Club against the decisions issued by the Dispute Resolution Chamber of FIFA on 16 July 2009 in cases referenced under numbers 09-00513 concerning the player Vjekoslav Svadjumovic, and 09-00514 concerning the player Dario Cingel, are admissible.

2. The decisions issued by the Dispute Resolution Chamber of FIFA on 16 July 2009 in cases referenced under numbers 09-00513 concerning the player Vjekoslav Svadjumovic, and 09-00514 concerning the player Dario Cingel are partially upheld.

3. Akranes Football Club shall pay to Vjekoslav Svadjumovic the amount of EUR 12'259 (twelve thousand two hundred and fifty nine Euros).

4. Akranes Football Club shall pay to Dario Cingel the amount of EUR 12'459 (twelve thousand four hundred fifty nine Euros).

5. (…).

6. (…).

7. All other or further claims are dismissed.