Arbitration CAS 2017/A/5465 Békéscsaba 1912 Futball v. George Koroudjiev, award of 20 September 2018

Panel: Prof. Petros Mavroidis (Greece), President; Mr Mika Palmgren (Finland); Mr Manfred Nan (The Netherlands)

Football
Termination of the employment contract with just cause by the player
Distinction between lex arbitri and lex causae
Determination of the lex causae in football-related disputes
Applicable law with regard to "just cause"
Conditions for "just cause"
Obligation to train alone as just cause of termination

1. **A distinction should be made between the *lex arbitri* and the *lex causae*. Whereas procedural issues are governed by the law of the seat of the arbitration, *i.e.* Switzerland, the law applicable to the merits of the dispute depends on the applicable conflict of law rules.**

2. **The starting point for determining the applicable law to the merits in football-related disputes is firstly the *lex arbitri.* By submitting their dispute to CAS, the parties elect to subject themselves to the more specific conflict of law rule of Article R58 of the CAS Code. Because its intention is to mandatorily restrict the parties' freedom of choice of law, Art. R58 of the CAS Code always takes precedence over any explicit (direct or indirect) choice of law by the parties. Hence any choice of law made by the parties is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law. The FIFA Regulations on the Status and Transfer of Players (RSTP) lay down uniform standards for these questions of law at global level. Where the FIFA Statutes "additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. Rather, the reference to the "additionally" applicable Swiss law is merely intended to clarify that the RSTP are based on a normatively shaped preconception, which derives from having a look at Swiss law. Consequently the purpose of the reference to Swiss law in the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry. However, issues that are not governed by the RSTP should not be subject to Swiss law.**

3. **The concept of "just cause" and thus the question of whether a club or a player was entitled to unilaterally and prematurely terminate an employment contract is addressed in the RSTP and is thus subject to the additional application of Swiss law, and not the law chosen by the parties in the employment contract. This is the only way in which a**

uniform interpretation and application of the provision can be ensured.

4. **An employment contract may be terminated immediately when the main terms and conditions (either general/objective or specific/personal), under which it was entered into are no longer respected. The circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations. Only material breaches of a contract can possibly be considered as *"just cause".* Furthermore, for a party to be allowed to validly terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations, if it consents to the just cause. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning are necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.**

5. **Absent reasonable explanation related to a player's exclusion from his/her team and proof that s/he was instructed to train with the reserve team, the fact that a player was left on his/her own and obliged to train alone gives said player just cause to terminate the employment contract. Not allowing a professional football player to train with his/her teammates can indeed be – absent specific circumstances such as injury recovery - equivalent to a severe breach of said player's personality rights by the club which employs him/her (and implicitly of the employment agreement concluded between the two).**

I. THE PARTIES

1. Békéscsaba 1912 Futball (the "Club" or "Appellant") is a football club from Békéscsaba, Hungary. It is a member of the Hungarian Football Association ("HFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. Mr. George Koroudjiev (the "Player" or "Respondent") is a professional football player. He was born on 2 March 1988 and he is of Bulgarian nationality. He is currently registered with the club FC Tsarsko Selo, based in Sofia, Bulgaria.

II. FACTUAL BACKGROUND

A. The Dispute between the Parties

3. The Appellant challenges the decision (the "Appealed Decision") passed by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 31 August 2017, which partially accepted a claim brought by the Player against the Club, imposing upon the latter the obligation to pay the amount of HUF 25,500,000 plus 5% interest p.a. This amount had to be paid within 30 days of

notification of the Appealed Decision. The circumstances stated below are a summary of the main relevant facts as submitted by the Parties.

4. On 9 July 2015, the Player and the Club signed an employment contract valid until 30 June 2017 (the "Employment Agreement").

5. Chapter 3 para. 1 and 2 of the Employment Agreement reads as follows:

> *"1. Employer shall pay to Employee a salary whose gross monthly amount shall be HUF 1,612,324, i.e. one million six hundred and twelve thousand and three hundred and twenty four Hungarian Forints, to be paid by Employer to Employee after having deducted the proper amount of taxes and levies, via bank transfer to the bank account to be stated by Employee, not later than the 10th day of the month following the subject month. The Contracting Parties hereby agree to increase the amount of Employee's gross salary by 50% as of the second year provided that Employee is appointed, during the 2015/2016 season, to the initial team in more than 75% of the matches. Furthermore, the Contracting Parties agree to renegotiate the terms of the present Contract if Békéscsaba 1912 Elöre Futball Plc shall be unable to retain its place in the NB-I category of the national football championship regarding the 2016/2017 term. If the Contracting Parties can not (sic) agree on the new terms, they shall terminate this Contract by common agreement and the Player may subsequently be traded without any limitation. The player can be traded during the first and second year in exchange for EUR 100,000, i.e. one hundred thousand EUR.*
>
> *2. Employer undertakes to pay to Employee bonuses in accordance with the Rules of Bonus Payments".*

6. Pursuant to Chapter IV para. 1 and 2 of the Employment Agreement, the Player agreed to undertake the following obligations:

> *"1. Employee binds himself to make use of his professional activities and sports capacity exclusively to the benefit of Employer's purposes and shall make all efforts needed to improve his professional standards. Employee shall forbear from anything capable of making detrimental effects upon his professional activities or is in contradiction with such activities or is out of accord with his contractual obligations. He shall conduct a healthy way of life and shall maintain his physical and mental condition at a high level throughout the entire period of the present Contract.*
>
> *2. Furthermore, Employee binds himself to act/behave as follows:*
>
> *a. participates in trainings, courses, training camp events, football matches, conferences, meetings, etc. furthermore in trips organized by Employer in Hungary or abroad, using vehicles chosen by Employer and shall co-operate with Employer's managers, coaches, other players and physicians, during such activities;*
>
> *b. subjects himself to trainings, other exercises or physical work-out programs carried out individually or in groups, as prescribed by professional managers of Employer;*
>
> *(…)".*

7. In accordance with Chapter IV para. 5 of the Employment Agreement, the Club agreed to undertake the following obligations:

"5. Employer shall:

a. ensure availability of every and all professional, personal and material conditions needed by Employee to adhere to the terms of the present Contract and to perform his preparations successfully;

(…)

e. support improvement of Employee's professional capabilities, as far as its possibilities allow to do so;

(…)

g. refrain, in the course of Employee's employment, from manifesting any discriminative attitude towards Employee".

8. On 26 January 2016, the Club's first team left for Turkey, in order to attend a training camp taking place during the winter mid-season break. The Player was not among the squad members who left for the camp.

9. On the afternoon of the same day, the Player, acting through his legal representative, sent a letter to the Club stating that on 25 January 2016 he had been informed by the Club's head coach about the fact that his services were no longer needed, as well as that he had been approached by another representative of the Club, who proposed to mutually terminate the Employment Agreement in exchange for the payment of the salary for the month of January. The Player also outlined that on 26 January 2016 he had not been allowed to travel to the winter training camp which was taking place in Antalya, Turkey, along with his teammates. Finally, the Player demanded to be reintegrated into the Club's first team immediately, and to be allowed to take part in the training camp.

10. On 28 January 2016, the Player sent another letter to the Club, reiterating the requests expressed two days before, while also emphasising that he was training alone, without the aid of medical personnel and without the assistance of a professional coach.

11. On 1 February 2016, the Player wrote again to the Club, reiterating all previous requests. He further stated that he had still not received any explanation from a representative of the Club as to the reasons of his omission from the training camp. The Player also outlined that should the Club's behaviour not change, he would terminate the Employment Agreement and submit a claim against the Club before the FIFA DRC.

12. On 2 February 2016, the Player forwarded its three previous letters to Club at the hotel's address in Antalya, Turkey, where the Club was holding its winter training camp, and to the Hungarian Football Association as well.

13. The Club did not reply in any way to any of the previous letters sent by the Player. On 4 February, nevertheless, a meeting took place between the Club's representatives and the Player, with the purpose of discussing the latter's current status at the Club.

14. On the same day (4 February 2016), the Player sent the Club a so-called *"final notice before termination of the employment contract"*, stressing that ten days had passed since the Club had suspended him from training activities and that this conduct was equivalent to the Club no

longer being interested in retaining his services. The Player also referred in his communication to an offer to mutually terminate the Employment Agreement in exchange for one monthly salary that he had allegedly received from the Club, as well as a few other payments which the Club had brought to his attention (apparently payments that were destined to the Player's lawyer), indicating that the offer was unacceptable. Furthermore, the Player expressly requested to be reintegrated into the Club's first team, and to be allowed to exercise his professional activity *"which he is qualified for, i.e. professional football player"* by 7 February 2016, underlining once again that, unless this had been the case, he would terminate the Employment Agreement.

15. On 5 February 2016, another meeting took place between the Club's representatives and the Player.

16. On 6 February 2016, the Player wrote again to the Club, indicating that he had been pressured by the latter's management to accept a mutually acceptable termination of the Employment Agreement. The Player underlined that the proposed offer consisting of the cash payment of two or three monthly salaries in exchange for an amicable termination of the Employment Agreement was unacceptable as far as he was concerned. The Player further stated that he had been training alone for twelve days, and that the Club's conduct constituted a serious violation of the Employment Agreement.

17. On 8 February 2016, the Player sent the Club a notice of termination of the Employment Agreement *"with just cause"*, underlining that the Club had not reacted in any way to his request to be reinstated. Furthermore, the Player outlined that because of his unjustified exclusion from the team during the winter training camp, as well as the Club's interest in recruiting another player for his position, he had lost confidence in the Club, and thus, was led to the conclusion that it would not continue to perform its obligations towards him.

18. The Club on the other hand, stated that on 8 February 2016 it wrote a letter addressed to the Player, informing him that it did not acknowledge his unilateral contractual termination and that it was the Club which had terminated the Employment Agreement, and not the Player. According to the Player, this letter was never delivered to him.

19. On 1 July 2016, the Player signed a subsequent employment contract (the "First Subsequent Employment Agreement") with the Bulgarian second tier club PFC Montana, valid from the date of signature until 30 June 2017. In accordance with this agreement, the Player's monthly remuneration was BGN (Bulgarian Lev) 1,000.

20. On 7 February 2017, the Player and PFC Montana mutually agreed to terminate the First Subsequent Employment Agreement and on 30 March 2017, the Player signed a new employment contract (the "Second Subsequent Employment Agreement") with the Bulgarian second tier club Tsarsko Selo Sofia, valid until 5 June 2017. As per said contract, the Player was entitled to a monthly remuneration of BGN 600.

B. Proceedings before the FIFA Dispute Resolution Chamber

21. On 19 February 2016, the Player lodged a complaint against the Club before the FIFA DRC,

alleging that the Club had unilaterally breached the Employment Agreement and requesting from the Club (i) primarily, *"the payment of EUR 88,368.21, which corresponds to 17 instalments of EUR 5,198.31"* as well as *"that interest of 5% p.a. be applied on the aforementioned sum, calculated as from 8 February 2016"*. The Player also requested for sporting sanctions to be imposed upon the Club. In the submissions it was argued that the Parties had concluded a valid Employment Agreement, which the Club breached when it decided that it no longer needed the Player's services and omitted him from the training camp organised during the winter break. The Player claimed that he had been left to train alone for several days, and that on various occasions the Club's training facilities were locked. The Player, so his argument goes, had terminated his Employment Agreement with just cause and, consequently, was entitled to the compensation that he had requested from the FIFA DRC.

22. In its response submitted before the FIFA DRC, the Club argued that it was the Player who breached his contractual obligations by not agreeing to train with the Club's reserve team. The Club underlined that after having been instructed to report to the reserve team coach for training, the Player did not attend training anymore. The Club indicated that this conduct constituted in itself a serious breach of the Employment Agreement, which entitled the Club to terminate it. The Club underscored that it had attempted several times to notify the termination notice to the Player, both by post and in person and that all attempts in this regard had been unsuccessful.

23. On 31 August 2017, the FIFA DRC issued the Appealed Decision and partially accepted the Player's claim.

24. The operative part of the Appealed Decision reads as follows:

> *"1. The claim of the Claimant, George Koroudjiev, is partially accepted.*
>
> *2. The Respondent, Békéscsaba 1912 Elöre Futball, has to pay to the Claimant* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of Hungarian Forint (HUF) 25,500,000 plus 5% interest p.a. as from 19 February 2016 until the date of effective payment.*
>
> *3. In the event that the amount due to the Claimant is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further claim lodged by the Claimant is rejected.*
>
> *5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

25. The Appealed Decision with grounds was notified to the Appellant on 27 November 2017.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 13 December 2017, the Appellant filed with the Court of Arbitration for Sport (the "CAS") the Statement of Appeal against the Appealed Decision that the Club had filed in accordance with Article R47 *et seq*. of the Code of Sports-related Arbitration (hereinafter "the Code"). In its statement of appeal, the Appellant nominated Mr. Mika Palmgren, attorney-at-law in Turku, Finland, as an arbitrator in the present dispute.

27. On 22 December 2017, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

28. On 2 January 2018, the Player nominated Mr. Manfred Nan, attorney-at-law in Arnhem, the Netherlands as arbitrator.

29. On 1 February 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President:	Mr. Petros C. Mavroidis, Professor, Commugny, Switzerland
Arbitrators:	Mr. Mika Palmgren, Attorney-at-law in Turku, Finland
	Mr. Manfred Nan, Attorney-at-law in Arnhem, the Netherlands

30. On 2 March 2018, following an extension granted in accordance with Article R32 of the Code, the Respondent filed his Answer in accordance with Article R55 of the Code.

31. On 11 April 2018, the CAS Court Office informed the Parties that Mr. Lucian Novacescu, attorney-at-law in Lausanne, Switzerland, had been appointed *ad hoc* clerk for the current proceedings.

32. On 13 and 16 June 2018, the Respondent and Appellant, respectively, signed the Order of Procedure.

33. On 26 April 2018, a hearing was held at the CAS headquarters in Lausanne, Switzerland. Except for the Panel, Mr. Brent J. Nowicki, Managing Counsel to the CAS, and Mr. Novacescu, the *ad hoc* clerk attended the hearing.

    - Békéscsaba 1912 Futball was represented by Dr. Laszlo Bagdi, attorney-at-law and Mr. Tamas Ilyes, member of the Club's board of directors, as well as Dr. Aron Bagdi, interpreter;

    - Mr. George Koroudjiev attended the hearing in person and was assisted by Mr. Radostin Vasilev and Mr. Georgi Gradev, attorneys-at-law.

34. At the outset, the Parties declared that they had no objection with regard to the composition of the Panel, and did not point to any procedural issues. At the end of the hearing both the Appellant and the Respondent explicitly confirmed that their right to be heard and to be treated equally in the arbitration proceedings had been fully observed.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

35. The following section summarises the Parties' main arguments in support of their respective prayers for relief.

A. The Appellant

36. Throughout the entire contractual period, the Appellant fulfilled all of its contractual obligations towards the Respondent with respect to the Employment Agreement.

37. The Appellant disputes the assessment made in the Appealed Decision, to the effect that the Respondent had discharged its burden of proof in the procedure before the FIFA DRC. According to the Appellant, the Respondent had advanced mere allegations that the Club breached the Employment Agreement, which were never supported by any evidence. In this regard, the Appellant pointed out that its Head Coach could have never made an offer of mutually acceptable termination of the Employment Agreement to the Respondent, as only the Club's President had such prerogatives.

38. On the other hand, the Appellant acknowledges that its Head Coach sent the Player to train with the reserves because of his lack of sporting performance in the previous games.

39. The Appellant also outlines that the Employment Agreement did not expressly indicate that the Respondent had to train and play only with the Club's first team, and that it was the Respondent's duty to attend whichever training sessions the Club assigned him to, an obligation that the Player failed to comply with. Furthermore, by insisting to attend the training camp which took place in Turkey during the winter mid-season break and refusing to attend the training sessions of the reserve team, the Respondent had ipso facto refused to carry out his contractual duties.

40. According to the Appellant, the Respondent's allegations of not having been allowed to train at the Club's training ground are untrue. The Appellant underlines that should the Respondent have wanted to train, he could have attended the training sessions of the Club's reserve team, under the supervision of the reserve team coach. The Appellant underlines that the Respondent did not attend the reserve team training sessions for two weeks. Moreover, the Respondent had never been prevented from entering the Appellant's training ground.

41. The Appellant stresses that it had sent the Respondent a notice of termination following his refusal to attend the Club's training sessions as instructed, but this communication could not be notified to the Player, as he denied to the Club representatives access to his flat. Nevertheless, the Respondent had knowledge of the Appellant's notice of termination and, in accordance with Hungarian law, which governs the Employment Agreement, the Respondent was entitled to lodge an appeal against it, which he did not.

42. In light of the foregoing, the Appellant requests that its appeal be upheld and the Challenged Decision be set aside, dismissing the Respondent's initial claim lodged with the FIFA DRC.

43. As requests for relief, the Appellant requested from the CAS:

"that the decision of the Chamber be vacated, and the motion of the Claimant be denied".

B. The Respondent

44. The Respondent argues that the Appellant had failed to discharge its burden of proof and rebut the arguments which the Appealed Decision relies upon.

45. The Respondent claims that he had been side-lined by the Appellant in order to accept the latter's proposal to amicably terminate the Employment Agreement. To this purpose, the Respondent was not allowed to attend the training camp which took place during the mid-season winter break in Turkey and was subsequently prohibited from training for two weeks, between 26 January 2016 and 8 February 2016. The Respondent outlines that he had been offered to amicably terminate the Employment Agreement on several occasions, for the first time on 26 January 2016, in exchange for one month's salary, and afterwards on 4 and 5 February 2016, in exchange of two or three monthly salaries, paid in cash.

46. The Respondent further underlines that the Appellant never succeeded in proving that it had instructed him to attend the reserve team training sessions. According to the Respondent, the Appellant managed to prove at best that it had issued an instruction to the Club's interpreter in this regard, but not that the message in question had been passed on to the Respondent.

47. According to the Respondent, the Employment Agreement is governed by FIFA Regulations and subsidiarily, by Swiss law. The Appellant's actions can be understood, as means to offload the Respondent, whom, consequently, had just cause to terminate the Employment Agreement.

48. What is more, the Respondent outlines that even if one were to accept that the Player had indeed been instructed to train with the reserve team, this too would have constituted a breach of the Employment Agreement, and would have provided him with just cause for contractual termination: in accordance with established CAS case law, excluding a professional player from training with his teammates as a sanction for poor performance can have a decisive impact on his career, as it might dramatically decrease his market value. The Respondent acknowledges that he had played one time for the Appellant's reserve team, as did other first team squad members, but that he had never trained with them. The reserve team was composed of young players, most of who were amateurs, and thus, clearly not at the same sporting level as the Respondent.

49. The Respondent stresses that the he repeatedly protested against the Appellant's unlawful behaviour by means of several letters, sent between 26 January 2016 and 8 February 2016, and that the Appellant never replied to any of them. The Respondent further ignored his requests to be reintegrated in the squad.

50. According to the Respondent, the Appellant's behaviour and numerous offers to amicably terminate the Employment Agreement clearly showed a lack of interest in further retaining the Respondent's services. This behaviour made his termination of the contract fully justified.

Furthermore, the Respondent underlines that the Appellant's first reaction to the Respondent's termination notice of 8 February 2016 was not to ask him to withdraw it and stay at the Club. On the contrary, it was an attempt by the Appellant to terminate the Employment Agreement on false grounds and without having provided the Respondent with adequate notice.

51. The Respondent also indicated that as the Appellant has not criticised the Appealed Decision in the part regarding the compensation which was due following the Appellant's contractual breach, the Panel should confirm that part of the Appealed Decision.

52. In light of the foregoing, the Respondent requests that the appeal be dismissed and the Challenged Decision upheld, submitting the following requests for relief before the CAS:

> *"1. To dismiss the appeal filed by the Appellant against the Respondent with regard to the decision passed on 31 August 2017 by the FIFA Dispute Resolution Chamber.*
>
> *2. To confirm the decision passed on 31 August 2017 by the FIFA Dispute Resolution Chamber.*
>
> *3. To order the Appellant to bear all the costs incurred with the present procedure.*
>
> *4. To order the Appellant to pay the Respondent a contribution towards his legal and other costs in an amount to be determined at the discretion of the Panel".*

V. JURISDICTION

53. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Article 58 para. 1 of the FIFA Statutes, in force as of 27 April 2016, in connection with Article 24 para. 2 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"). The Parties have confirmed the jurisdiction of the CAS by signing the Order of Procedure.

54. Article R47 of the CAS Code stipulates:

> *"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 him prior to the appeal, in accordance with the statutes or regulations of that body".*

55. Article 57 para. 1 of the FIFA Statutes states:

> *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players' agents".*

56. Article 24 para. 2 of the FIFA RSTP provides that:

> *"[…] Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration*

for Sport (CAS)".

57. The present appeal is directed against a final decision of the FIFA DRC, the statutes and regulations of which provide for an arbitration clause in favour of the CAS. Thus, the appeal falls within the scope of Article R47 of the Code. It follows that CAS has jurisdiction over the present matter.

58. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

VI. ADMISSIBILITY

59. In accordance with Article 58 para. 1 of the FIFA Statutes,

> *"appeals against final decisions passed by FIFA's legal bodies* […] *shall be lodged with CAS within 21 days of notification of the decision in question".*

60. The Appealed Decision was notified to the Appellant on 27 November 2017 and there is no dispute that the Statement of Appeal was filed within the statutorily permissible 21 days. The appeal is thus admissible.

VII. APPLICABLE LAW

61. The Appellant argues that the Employment Agreement is governed by Hungarian law and in particular refers to the Act I of 2012 on the Labour Code of Hungary, without quoting any specific provisions thereof. The Respondent argues that the FIFA rules and regulations apply primarily, in particular the FIFA RSTP, and Swiss law applies subsidiarily.

62. At the hearing, the Appellant indicated in particular that the Hungarian Labour Code provides for a possibility for the Respondent to appeal the Appellant's contractual termination and underlined that the Respondent had not done so. Under these circumstances, the Appellant argues that the FIFA DRC was "unlawful" as it had ignored the legal consequences of this omission.

63. Article R58 of the Code, provides the following:

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

64. 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".

65. The Employment Contract (Chapter IV) states, *inter alia*, the following:

"3. Should any legal dispute arise in connection with the present Contract, the Parties will attempt to settle it in an amicable way. If the negotiations are unsuccessful, the Parties shall subject the case to the jurisdiction of the law-court or court of arbitration having competence according to the valid Act on Sports Activities or the proceedings specified in the Act on Arbitration, and accepted also by the Hungarian Football Federation.

4. What concerns any issue not stipulated in the present Contract, the regulations issued by the Hungarian Football Federation, the provisions of the Labour Code and the Act on Sports Activities shall be considered the governing law.

5. The Contracting Parties understand that in cases mentioned in the FIFA Regulations on the Status and Transfer of Players, the Dispute Resolution Chamber (DRC) of FIFA can make decisions, allowing for possibilities to lodge an appeal to the Court of Arbitration for Sports (CAS).

6. Employee and Employer understand that they are obliged to accept the charter, the rules and resolutions of FIFA, UEFA and the national federation which constitute integral parts of the present Contract and such acceptance is confirmed by appending their respective signatures thereto. Employee and Employer understand that these rules may be revised or altered from time to time by the respective authorities".

66. The Panel observes that the Appellant has merely indicated that the Hungarian law in general was applicable to the Employment Agreement, without making any concrete argument in order to specify the precise provisions of the Hungarian Labour Code that should be applicable. The Applicant further, did not provide the Panel with any information to the effect that Hungarian Law was different from FIFA Regulations and Swiss law. The Appellant did not explain what the outcome would have been had Hungarian law been privileged, either.

67. Article 176(1) 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".

68. Since neither the Club nor the Player is based in Switzerland, chapter 12 of the PILS is applicable.

69. The Panel finds that a distinction should however be made between the *lex arbitri* and the *lex causae*. Whereas procedural issues are governed by the law of the seat of the arbitration, *i.e.* Switzerland, the law applicable to the merits of the dispute depends on the applicable conflict of law rules.

70. The starting point for determining the applicable law to the merits in football-related disputes is firstly the *lex arbitri*, *i.e.* the arbitration law at the seat of arbitration.

71. 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".*

72. The Panel finds that, by submitting their dispute to CAS, the parties elected to subject themselves to the more specific conflict of law rule of Article R58 of the CAS Code. As indicated in this provision, the Panel shall decide the dispute according to the applicable regulations.

73. An issue that frequently occurs in proceedings before CAS is that parties on the one hand make an implicit (and indirect) choice of law, but also an explicit choice of law at the same time. This issue has been addressed in legal literature:

> *"The latter situation arises if the parties agree not only on the jurisdiction of the CAS as the arbitral tribunal to decide on the case, and thus implicitly also agree on the application of the CAS Code, but also – for example in the contract – directly and explicitly specify the law that applies to the case. In such a case the question then arises as to the nature of the relationship between the implicit choice of law on the one hand and the explicit choice of law on the other. In particular the question is raised as to whether in such a case any room at all is left for the application of Art. R58 of the CAS Code"* (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin 2015-2, p. 10).

74. As to how this apparent contradiction is to be resolved, the Panel fully subscribes to the views expressed by Professor Haas:

> *"To summarise, it must therefore be concluded that Art. R58 of the CAS Code – because its intention is to mandatorily restrict the parties' freedom of choice of law – always takes precedence over any explicit (direct or indirect) choice of law by the parties. Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin 2015-2, p. 13).

75. Since the applicable regulations in the matter at hand are the regulations of FIFA, a second apparent contradiction arises, as article 57(2) of the FIFA Statutes 2016 dictates that Swiss law shall be additionally applied, whereas the Employment agreement refers to Hungarian law.

76. This issue was also addressed by Professor Ulrich Haas:

> *"The RSTP lay down uniform standards for these questions of law at global level. Where Art. 66 (2) of the FIFA Statutes "additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. Rather, the reference to the*

> *"additionally" applicable Swiss law is merely intended to clarify that the RSTP are based on a normatively shaped preconception, which derives from having a look at Swiss law. Consequently the purpose of the reference to Swiss law in Art. 66 (2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry. Under Art. 66 (2) of the FIFA Statutes, however, issues that are not governed by the RSTP should not be subject to Swiss law"* (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin 2015-2, p. 15).

77. The Panel agrees with the view set out above and notes that the Club exclusively relies on the application of Hungarian law in respect of the question whether the one of the parties was entitled to prematurely terminate the Employment Contract with just cause.

78. The Panel notes that article 14 FIFA RSTP determines as follows:

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

79. The Panel finds that the concept of "just cause" and thus the question of whether a club or a player was entitled to unilaterally and prematurely terminate an employment contract is addressed in the FIFA RSTP and is thus subject to the additional application of Swiss law, and not the law chosen by the parties in the Employment Contract:

> *"By way of another example, Art. 14 of the RSTP specifies that "a contract may be terminated by either party without consequences of any kind … where there is just cause". But for the question of under what conditions a "just cause" can be assumed, the Panel must then refer to Swiss law. This is the only way in which a uniform interpretation and application of the provision can be ensured"* (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, CAS Bulletin 2015-2, p. 16).

80. Consequently, the Panel is satisfied that in determining the issues the applicable law is 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. In light of the foregoing and in accordance with Article R58 of the CAS Code and Article 57 para. 2 of the FIFA Statutes, the Panel rules that the Statutes and Regulations of FIFA shall apply primarily and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

81. With regard to the question of which edition of the FIFA RSTP shall apply, the Panel concludes that the FIFA RSTP (2015 edition) are applicable because the Employment Agreement was concluded in July 2015.

VIII. MERITS

82. Although the Appellant argues that it had sent a letter of termination of the Employment

Agreement on 8 February 2016, the Panel observes that it did so though, only after having received the termination letter which the Respondent himself had sent first. Consequently, the Appellant was denouncing a contractual relationship that had already ended. As such, in the Panel's view, the main issue to be resolved by the Panel is whether the Employment Agreement was terminated with just cause by the Respondent. The burden of proof in this respect lies with the Respondent.

> *"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*
>
> *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (CAS 2016/A/4580, para. 91, with further references to CAS 2015/A/309 [recte: 3909]; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).

83. The Panel, by virtue of Article R57 para. 1 of the Code, has the power to address the issues *de novo*. By doing so, it is not limited in reviewing the legality of the Appealed Decision, but it can issue a new decision without being limited by the legal and factual reasoning provided by the FIFA DRC. Thus, the Panel can reconsider and evaluate the legal arguments and evidence provided by the Parties anew. Procedural flaws occurred through the previous instance are cured by the *de novo* appeal to the CAS (MAVROMATI D., *"The Panel's right to exclude evidence based on Article R57 para. 3 CAS Code: a limit to CAS' full power of review?",* CAS Bulletin 2014-1, p. 50).

84. The Panel shall now address the substantive issues of the present case.

a. The validity of the Employment Agreement

85. The Panel notes that the validity of the Employment Agreement is not disputed. Therefore, based on the legal principle *"pacta sunt servanda"*, the Employment Agreement shall produce effect on the two Parties from the date of its signature.

b. The termination of the Employment Agreement

86. As it is disputed between the Parties whether the Respondent terminated the Employment Agreement with or without just cause, the Panel shall first address the issues related to the Respondent's contractual termination.

1) Was the Employment Contract terminated by the Respondent with just cause?

87. Pursuant to the principle *pacta sunt servanda*, contracts must be performed in good faith until the parties consensually adopt a new contractual arrangement (cf. ATF 135 III 1, c. 2.4 = JdT 2011 II 524).

88. Article 14 of the FIFA RSTP provides for the possibility of terminating a contract with just cause as follows: *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

89. The Commentary on the FIFA RSTP states the following with regard to the concept of *"just cause"*: *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally"* (FIFA RSTP Commentary, N2 to Article 14).

90. The CAS jurisprudence specifies that while the FIFA rules do not define the concept of *"just cause"*, reference should be made to the applicable law (CAS 2006/A/1062; CAS 2008/A/1447). When Swiss law applies, as in the particular case, Article 337 para. 2 of the Swiss Code of Obligations ("*CO*") may be considered. This rule provides that *"Any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason"*. The concept of *"just cause"* as defined in Article 14 FIFA RSTP can therefore be compared to that of *"good reason"* within the meaning of Article 337 para. 2 CO.

91. When considering the existence of a "just cause" or "good reason", respectively, the CAS has followed the jurisprudence of the Swiss Federal Tribunal, according to which *"good reason"* is given and an employment contract may be terminated immediately when the main terms and conditions (either general/objective or specific/personal), under which it was entered into are no longer respected (ATF 101 Ia 545). The Swiss Federal Tribunal stipulates in this regard that the circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2002; Judgment 4C.67/2003 of 5 May 2003; WYLER R., Droit du travail, Berne 2002, p. 364; TERCIER P., Les contrats spéciaux, Zurich 2003, N 3402, p. 496).

92. The Swiss Federal Tribunal has also held that when the employee terminates the contract, it can do so with just cause in case of serious infringement of the employee's rights (Judgment

4C.240/2000 of 2 February 2001), such as, for example, a unilateral or unexpected change in his status which is not related either to company requirements or to the organization of the work or to a failure of the employee to observe his obligations (Unpublished judgments of October 7, 1992 in SJ 1993 I 370, of November 25, 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81), or , in certain circumstances, a refusal to pay all or part of the salary (STAEHLIN A., Kommentar zum Schweizerishcen Zivilgesetzbuch, Obliagtionenrecht, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/WAEBER/BRUCHEZ, Commentaire du contrat de travail, Lausanne 2010, N 7 ad Art. 337 CO), may be deemed *"good reason"*.

93. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as *"just cause"* (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100).

94. Furthermore, for a party to be allowed to validly terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations, if it consents to the just cause. In this regard, in another CAS case, a Panel stated that *"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship"* (CAS 2006/A/1180). The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning are necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.

95. The Panel observes that the Respondent's name did not figure in the list of names travelling for the winter break, without any evidence to the effect that the Player was being punished for something he had done or omitted.

96. The Appellant argued that the Player had committed contractual breaches of the contract but has not provided any evidence to this effect. In this vein, the Appellant stated that it had instructed the Player to train with its reserve team.

97. However, both Mr. Igricz, the Appellant's Chief Executive and Mr. Tamas, one of the members of the Appellant's board of directors, who were heard at the hearing, failed to successfully show that the Respondent had been in fact instructed to train with the reserves and that he in fact was never obliged to train alone, as neither of them could testify as having given said instruction directly to the Respondent. All their statements could prove was that the Club's interpreter was instructed to ask the Player to report to training with the reserves. It could not be substantiated that the interpreter had indeed communicated these instructions to the Player. Furthermore,

the Player explicitly denied that he received instructions from the Appellant, the interpreter or anybody else connected to the Appellant. As such, the Panel has no hesitation to consider that the Respondent was not properly instructed by the Appellant to train with the reserves, and in fact was left on his own.

98. Indeed, the Panel points out that other CAS panels have ruled that not allowing a professional football player to train with his teammates could be – absent specific circumstances such as injury recovery - equivalent to a severe breach of said player's personality rights by the club which employs him (and implicitly of the employment agreement concluded between the two) (CAS 2013/A/3091, 3092 & 3093; CAS 2015/A/4322; CAS 2014/A/3579).

99. Furthermore, the Panel notes that the Appellant never replied to the letters sent by the Respondent who complained about having to train alone. To this extent, the aforementioned Club representatives stated at the hearing that they did not feel the need to reply in writing to the Respondent, even when confronted with a clear written request that any communication was to be addressed to the Respondent's legal representative, Mr. Vasilev (although having stated before the Panel that they communicate with their players in writing only when legal issues are at stake).

100. More specifically, the Appellant did not respond to a letter by Mr. Vasilev (dated 26 January 2016) indicating that the Respondent had been told one day before by the Head Coach that he did not figure in his plans for the team. The Appellant did not respond to the allegation in the letter that the Respondent was not allowed to fly to Turkey on 26 January 2016 precisely because he did not figure in the Coach's plan either. Moreover, at the hearing, the Appellant's representatives, while not denying that meetings had been held with the Respondent on 4 and 5 February 2016, rejected the claim that the objective of these two meetings was to propose an amicable solution to the Player. Nevertheless, the Appellant did not offer any persuasive explanation regarding the objective of the two meetings, either.

101. The only communication that the Appellant has allegedly sent to the Respondent was a letter of termination of the Employment Agreement (which the Player did not receive). The content of said letter was never known to the Respondent, and thus, he was not in position to defend himself against allegations made by the Appellant. As stated though, the legal relevance of this letter is moot as the Employment Agreement already was terminated by the Respondent.

102. In the Panel's view, not only did the Appellant not present arguments to substantiate its case, but its representatives' statements at the hearing were somewhat contradictory. For example, on the one hand the Appellant's representatives stated before the Panel that they wanted to keep the Respondent in the first team irrespective of their decision to omit him from the winter break training camp, but on the other, they also stated that they did terminate his contract on 8 February 2016. The Panel could not come up with a plausible explanation to the effect that the two facts could be read in congruous manner.

103. Furthermore, when asked whether they had received the letters by Mr. Vasilev, the Player's lawyer, the Appellant's representatives responded in the affirmative. The letters by Mr. Vasilev though, clearly state that the Club was to contact exclusively Mr. Vasilev for any legal issues

arising from the application of the Employment agreement, and nobody else. The Appellant also accepted that it had indeed received the Respondent's letter seeking termination of the Employment Agreement. This letter undeniably includes issues with very important legal consequences for both the Respondent and the Appellant. And yet, the Appellant did not contact Mr. Vasilev. On its own admission, it allegedly send a letter to the Respondent's apartment, and then argued that the lack of communication between it and the Respondent was due to the change of address by the latter. And yet, the Appellant also accepted, as the Panel has already indicated, that it should have sent its response and/or any other communication to Mr. Vasilev and no one else.

104. Whereas the Respondent repeatedly expressed his will to continue playing for the Appellant in various letters, requesting to be reinstated with the first team, the Appellant failed to demonstrate that the Respondent's behaviour was in breach of the Employment Agreement at any time.

105. Taking into account the specific circumstances of the present case, leads the Panel to believe that at the moment when the notice of termination was notified to the Appellant, the essential conditions under which the Employment Agreement was concluded between the parties were no longer present and, in this respect, due to the Appellant's behaviour, the Respondent could not in good faith be expected to rely on the performance by the Appellant of its contractual obligations and therefore, to continue the employment relationship.

106. The Panel observes that the Respondent complied with the duty to provide a warning to the Appellant before terminating the Employment Agreement.

107. In conclusion, the Panel could not find any evidence that the Respondent breached the Employment Agreement. Moreover, the Appellant has failed to prove that it instructed the Respondent to train with its reserve team or that it put the Respondent in default following his alleged missed training sessions. Furthermore, in the Panel's opinion, the Appellant has also failed to provide a reasonable explanation related to the Respondent's exclusion from the squad participating in the winter training camp as well as to its omission to answer the Respondent's letters, not challenging the information in these letters about meetings between the Respondent and Appellant's representatives offering the Respondent to terminate the Employment Agreement. As such, the Panel is satisfied that at that time the Appellant's behaviour demonstrated that it had no further interest in the services of the Respondent, and that the Respondent was left on his own. For all these reasons, the Panel finds that the breach of contract by the Appellant reached a level of severity which allowed the Respondent to unilaterally terminate the Employment Agreement with just cause on 8 February 2016.

2) Which is the amount of compensation to be awarded to the Respondent?

108. Having established that the Appellant is to be held liable for the early termination of the Employment Agreement, the Panel will now proceed to assess the consequences of the Appellant's breach.

109. The Panel is satisfied that the present case falls under the application of Article 17 para. 1 of

the FIFA RSTP which provides for financial compensation in favour of the injured party.

110. In fact, according to well-known FIFA doctrine and consistent CAS jurisprudence, in case of termination of an employment contract with just cause, the other party which has given rise to premature termination, is liable to pay compensation for damages suffered by the injured party (see Commentary under Article 14 FIFA RSTP; CAS 2008/A/1447; CAS 2014/A/3706).

111. Consequently, failing any compensation clause in the Employment Agreement, the Appellant shall therefore be liable to pay compensation to the Respondent according to the following objective criteria:

"the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

112. The Panel abides by CAS case law according to which *"in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801; CAS 2006/A/1061; CAS 2014/A/3706).

113. The Panel notes that the Appellant did not dispute the residual value of the Employment Agreement. Further, the Appellant did not dispute the value of the new employment contracts signed by the Respondent with other clubs, which amounts were taken into consideration by the FIFA DRC regarding the Respondent's obligation to mitigate his damages.

114. As such, the Panel concurs with the FIFA DRC and finds that the Appellant has to pay the amount of HUF 25,500,000 to the Respondent.

IX. CONCLUSION

115. In conclusion, the Panel finds that:

(1) The Respondent terminated the Employment Agreement with just cause;

(2) The Respondent is entitled to an amount of HUF 25,500,000 as compensation, with 5% interest per year as of 19 February 2016 until the date of effective payment.

116. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 December 2017 by Békéscsaba 1912 Futball against the decision of the FIFA Dispute Resolution Chamber of 31 August 2017 is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber of 31 August 2017 is confirmed.

3. (…).

3[1]. (…).

4. All other motions or prayers for relief are dismissed.

[1] [As in original award].