Arbitration CAS 2019/A/6246 Ruslan Zaerko v. FC Nizhny Novgorod & Football Union of Russia (FUR), award of 27 May 2020

Panel: Mr André Brantjes (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract by the club
Applicable law
Liquidated damages clause and link with a buyout clause
Validity of the liquidated damages clause in case of disparity between the amounts of damages

1. **By submitting their dispute to CAS, by signing the Order of Procedure and/or not filing any objections in this regard, parties implicitly and indirectly choose for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the rules and regulations of the federation concerned. This conclusion is in line with the main purposes of Article R58 of the CAS Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.**

2. **A liquidated damages clause is a provision by means of which the parties quantify the damages resulting from a breach of contract, as an exception to the regulatory regime that is ordinarily applied to calculate the damages incurred. If an employment contract contains a buyout clause as well as a liquidated damages clause, there is no reason to decide that the liquidated damages clause is void because the buyout clause is invalid. Both clauses have a different rationale, as it is clear that they are separate clauses with separate objectives.**

3. **Disparity between the amounts of damages set out in a liquidated damages clause does not necessarily lead to the invalidity of the clause.**

I. THE PARTIES

1. Mr Ruslan Zaerko (the "Player" or the "Appellant") is a Russian citizen and former football player of Football Club Nizhny Novgorod.

2. Football Club Nizhny Novgorod (the "Club" or "First Respondent") is a professional football club with its registered seat in Nizhny Novgorod, Russian Federation. The Club is affiliated to the Football Union of Russia ("FUR").

3. The FUR (the "Second Respondent") is the national governing body of football in the Russian Federation. The FUR is affiliated to the Fédération Internationale de Football Association ("FIFA"), world football's governing body.

II. FACTUAL BACKGROUND

A. Facts

4. The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the submissions of the parties to this proceeding (the "Parties"), the exhibits produced and the declarations of the witnesses. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 1 February 2018, the Appellant signed an employment contract (the "Employment Contract") with the First Respondent for a fixed period from 1 February 2018 until 5 June 2019. In accordance with Clause 2.2. of the Employment Contract, the Player was hired by the Club to prepare for football sporting competitions and participate in such events as part of the Club's football teams.

6. The Employment Contract contains the following relevant clauses:

> *"8.1. The Employee is granted a monthly salary assigned to the position exclusive of the compensation, incentive and welfare payments amounting to 75,000 (seventy-five thousand only) rubles before tax deduction in accordance with the law of the Russian Federation ("gross").*
>
> *8.2. In accordance with Article 191 of the Labor Code of the Russian Federation, the Employee is granted a monthly reward of 25,000 (twenty-five thousand only) rubles before tax deduction in accordance with the legislation of the Russian Federation ("gross"), which is paid by the Employee* [sic] *for the conscientious performance of employment duties. The Employer is entitled to "decuct"* [sic] *the Employee from this amount of the reward, under the following conditions:*
>
> *1) The amount of the reward specified in cl. 8.2 of this Labor Contract can be reduced (including to "0") by the decision of the Employer in the event of the Employee's violation of the Sporting Regime or another violation of this Labor Contract and local regulations;*
>
> *2) The list of violations that entail a reduction of the monthly reward (specifying the rate of such reduction) is determined by the Parties in the Annexure No. 2 to this Labor Contract;*
>
> *3) The Employer does not have the right to reduce the amount of the reward, the payment date of which has already occurred by the time the Employee commits the violation.*
>
> […]

8.6. The Employer shall pay a quarterly cash payment in the amount of 150,000 (one hundred fifty thousand only) rubles before tax deduction to the Employee in accordance with the legislation of the Russian Federation ("gross") within 1 (one) month after the end of the subsequent quarter of this Labor Contract in proportion to the time worked. If the Employee spends on the pitch (featuring in the starting lineup or stepping in for) 70% (seventy percent) of playing time during the football matches of the Russian Football Championship among the teams of the Football National League clubs, from the date of this Labor Contract conclusion until the end of the 2017-2018 sporting season or scores 7 (seven) points according to the "goal plus pass" system in these matches, the quarterly monetary payment will be increased from 150,000 (one hundred and fifty thousand) rubles to 300,000 (three hundred thousand) rubles before tax deduction in accordance with legislation of Russian Federation ("gross")".

7. Clause 11 of the Employment Contract refers to the termination and reads as follows:

"11.1. The Labor Contract can be terminated on the grounds provided for in Article 13 and Article 348.11 of the Labor Code of the Russian Federation.

11.2. The termination Labor Contract shall be executed by the order (decree) of the Employer. The Employee shall read and sign the order (decree) of the Employer for termination of the Labor Contract.

11.3. The validity of this Labor Contract can be terminated without payment of compensation and (or) imposition of sporting sanctions upon expiry of the Labor Contract, as well as in other cases stipulated by the FUR Regulations on the Status and Transitions (transfer) of Football Players.

11.4. Termination of this Labor Contract during the sporting season is not allowed as a general principle, except for the cases stipulated by the FUR Regulations on the Status and Transitions (transfer) of Football Players.

11.5. The validity of this Labor Contract can be terminated at the initiative of one of the Parties without any consequences if there are grounds provided for in the FUR Regulations on the Status and Transitions (transfer) of Football Players. In case of termination of the Labor Contract without a valid reason, the defaulting party shall pay a compensation to the other party in all cases. The valid reasons for the termination of the Labor Contract are deemed to be the reasons specified in the FUR Regulations on the Status and Transitions (transfer) of Football Players.

11.6. The Employee has the right to terminate this Labor Contract without sport sanctions being imposed on it and take job with another professional football club, provided that the Employee carries out a monetary payment in the amount of 2 500 000 (two million five hundred thousand) rubles ("buy-out clause") in favor of the Employer. This payment is made by the Employee or another person on its instruction, or with its consent, on the last working day, unless otherwise agreed by the Parties. In case the Labor Contract termination was initiated by the Employee (at its own volition) without just cause (save as provided in the first paragraph of this clause), as well as in case the Labor Contract termination was initiated by the Employer in case of wrongful acts or omissions of the Employee, the Employee shall carry out the payment in the amount of 2 500 000 (two million five hundred thousand) rubles ("liquidated damages") in favor of the Employer. The specified payment is made within 2 (two) months from the date of termination of the Labor Contract. The stipulated payment does not exempt the Employee and his new

football club from the sports sanctions that may be imposed on them according to the regulatory documents of FIFA and the FUR.

11.7. The Employer has the right to terminate this Labor Contract by giving the Employee a one month's notice about such termination in the written form, without sport sanctions being imposed on it, provided that the monetary payment in the amount equal to 3 (three) fixed official salary envisaged in clause 8.1 of this Contract is carried out in favor of the Employee. The specified payment is carried out on the last working day of the Employee. The entire Employer's liability towards the Employee ("liquidated damages") is limited to 3 (three) fixed official salary, envisaged in clause 8.1 of this Contract. The implementation of dismissal in accordance with this paragraph shall be executed by the order of the General Director of the Employer on grounds envisaged in paragraph 1 of part 1 of Article 77 of the Labor Code of the Russian Federation (agreement of the parties). At the same time, drafting and signing of an agreement to terminate the Labor Contract are not mandatory due to the achievement of such an agreement between the Parties in this clause.

11.8. The terms and procedures of the Employee's transfer to another employer ("transfer"), as well as payment of compensations shall be established by the FUR Regulations on the Status and Transitions (transfer) of Football Players".

8. On 11 July 2018, the Club sent an email to the Player notifying him of the termination of the Employment Contract referring to Clause 11.7. This termination letter reads as follows:

"Dear Ruslan Valeryevich,

We hereby notify you of the termination of the employment contract dated February 1, 2018 concluded between you and Nizhny Novgorod FC, ANCO (formerly called – Olimpiets FC, ANCO) on August 13, 2018 by virtue of cl.11.7 of this employment contract.

We kindly ask you to be present for preparation of human resources documents and receipt of your employment book at the address: 171 Rodionova Str., Nizhny Novgorod (Na Delovoy Business Center), during working hours (from 9 hours 00 minutes to 18 hours 00 minutes, lunch time from 13 hours 00 minutes to 14 hours 00 minutes) on August 13, 2018.

Best regards,

Director General

Metlin M.E".

9. On 13 August 2018, the Club issued an Order, which reads as follows:

"IT IS HEREBY ORDERED:

1. *The column "the grounds for termination (cancellation) of the employment contract (dismissal), Article of the Labor Code of the Russian Federation" to be read as follows: "cl. 1 Part 1 Article 77 of the Labor Code of the Russian Federation. Mutual agreement of the Parties, cl. 11.7 of the employment contract of February 1, 2018".*

2. To acquint Zayerko R.V. with this Order.

Deputy Director General

Head of the Security Department

Toropygin V.V".

B. Proceedings Before the FUR Dispute Resolution Chamber ("DRC")

10. On 27 November 2018, the Player filed a claim in front of the FUR DRC requesting the following:

> *"(1) To recognize the Labor Contract to be terminated by the Club without a valid reason; (2) To compel the Club to pay compensation for termination of the Labor Contract in the amount of 1,076,274.39 Rubles exclusive of personal income tax, as well as interest for delayed payments under Art. 236 of the Labor Code of the Russian Federation, starting from October 13, 2018 until the date of actual payment; (3) To apply to the Club an interim relief in the form of a ban on the registration of new players until the Football Player is paid in full".*

11. On 20 December 2018, the FUR DRC decided (the "Appealed Decision"), *inter alia*, the following:

> *1. "To partially satisfy the statement of the professional football player Zayerko R.V. in relation to the Nizhny Novgorod FC, Autonomous Non-Commercial Organization on the recognition of the Labor Contract to be terminated without a valid reason, on the charge of compensation.*
>
> *2. To compel Nizhny Novgorod FC, Autonomous Non-Commercial Organization to pay arrears of compensation for termination of the Labor Contract in favour of the professional football player Zayerko R.V. in the amount of 29,250 (Twenty-nine thousand two hundred fifty) rubles, within 14 (fourteen) working days from the effective date of the Resolution.*
>
> *3. To compel Nizhny Novgorod FC, Autonomous Non-Commercial Organization to pay interest in favour of the professional football player Zayerko R.V. for the delay in the payment of arrears, established by cl. 2 of this Resolution, in accordance with Article 236 of the Labor Code of the Russian Federation for each day of delay for the period from October 13, 2018 to the actual settlement date inclusive.*
>
> *4. To dismiss the rest of the claims of the professional football player Zayerko R.V. in relation to the Nizhny Novgorod FC, Autonomous Non-Commercial Organization.*
>
> *5. In accordance with Article 31 of the FUR Regulations for Dispute Resolution, to compel the parties to pay fees in favour of the FUR for the consideration of the case in the amount of 25,000 (Twenty-five thousand) rubles within 30 (thirty) days from the effective date of the Resolution in the following proportion: the professional football player Zayerko R.V. in the amount of 20 000 (Twenty*

thousand) rubles, Nizhny Novgorod FC, Autonomous Non-Commercial Organization in the amount of 5 000 (Five thousand) rubles.

[…]*"*.

12. On 19 February 2019, the Appealed Decision was notified to the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. The Appellant filed his Statement of Appeal at the Court of Arbitration for Sport ("CAS") against the Respondents regarding the Appealed Decision, pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (2019 edition) (the "Code"). The Statement of Appeal is dated 12 March 2019. It is mentioned on the Statement of Appeal that it was *"Sent by electronic mail as well as courier delivery"*.

14. On 10 April 2019, the CAS Court Office acknowledged receipt of a hard copy of the Statement of Appeal, which was received on 26 March 2019. As the Appealed Decision was notified to the Appellant on 19 February 2019 and because the time limit to file an appeal was 21 days pursuant to Article R49 of the Code, the CAS Court Office asked the Appellant for a valid explanation.

15. On 12 April 2019, the Appellant filed a "Way-bill" from the courier service "Gepard" and explained that the hard copy of the Statement of Appeal was submitted on 12 March 2019 to Gepard. According to the Appellant, on 26 March 2019, Gepard asked courier service FedEx to execute the transportation of the Statement of Appeal to the CAS Court Office. In this letter, the Appellant also indicated that the Statement of Appeal was to be considered as his Appeal Brief pursuant to Article R51 of the Code and that he requested the case to be submitted to a sole arbitrator.

16. On 18 April 2019, the First Respondent informed the CAS Court Office that the appeal was not admissible because the Statement of Appeal had been filed too late and not within the time limit of 21 days, and that the Appellant has not provided sufficient proof of timely filing the Statement of Appeal. The First Respondent indicated that neither in the Way-bill nor in the letter of 12 April 2019 was there any enclosure of the transfer from Gepard to FedEx. The First Respondent also indicated that a search of the tracking number on the Way-bill did not lead to a match.

17. In a second letter of 18 April 2019, the First Respondent asked the CAS Court Office, *inter alia*, that the case be submitted to a panel of three arbitrators.

18. On 23 April 2019, after being invited to do so by the CAS Court Office, the First Respondent indicated that it did not intend to pay its share of the advance of costs but still maintained its request for a panel of three arbitrators.

19. On 6 May 2019, the CAS Court Office informed the Parties that, pursuant to Article R50 of the Code, the President of the CAS Appeals Arbitration Division had decided to submit the

case to a sole arbitrator, who would be appointed in due course pursuant to Article R54 of the Code.

20. On 15 May 2019, the First Respondent asked the Sole Arbitrator, once constituted, to render a preliminary award about the inadmissibility of the appeal, pursuant to Article R55 of the Code.

21. On 22 May 2019, the Appellant responded to the request of the First Respondent about inadmissibility, arguing it had timely filed the Statement of Appeal by using Gepard as a courier service.

22. On 17 July 2019, the First Respondent filed its Answer further to Article R55 of the Code.

23. On 19 July 2019, the CAS Court Office informed Parties that the Second Respondent had failed to submit an Answer.

24. On 23 July 2019, the First Respondent informed the CAS Court Office that its preference was for a hearing to be held.

25. On 24 July 2019, the Player indicated he wanted an award to be issued solely on the basis of the written submissions, without a hearing. The Second Respondent did not provide a position on the matter.

26. On 9 August 2019, pursuant to Article R54 of the Code and on behalf on the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Sole Arbitrator appointed to decide the present matter was appointed as follows:

    - Mr André Brantjes, Attorney-at-Law in Amsterdam, the Netherlands

27. On 16 August 2019, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing, and also asked the Appellant to provide him with information about how and when he paid for the Gepard courier service and to provide proof of that.

28. On 21 August 2019, the Appellant provided the CAS Court Office with a copy of the operation check of Sberbank online ("Operation Check") showing payment by one of the lawyers of the Appellant (Mr Artem Anuchkin) to Gepard on 12 March 2019.

29. On 27 August 2019, the First Respondent filed a letter to the CAS Court Office stating, *inter alia*: that the Operation Check was not sufficient evidence; that the authenticity of this check raised doubts and could not be verified; and that the Appellant had not provided any objective evidence that the Statement of Appeal was filed on 12 March 2019. It asked the Sole Arbitrator to invite the Appellant to provide the original Operation Check and a cash receipt from Gepard.

30. On 29 August 2019, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Appellant to submit these (original) documents.

31. On 3 September 2019, the Appellant provided the CAS Court Office with a copy of the statement of 2 September 2019 of Ms Svetlana Kondratova, General Director of Gepard. This

statement confirmed: that Gepard received a set of documents specified as *"Statement of Appeal (Appeal Brief)"* from Mr Anuchkin on 12 March 2019; that the delivery costs were paid to Gepard by transferring funds to the bank account; and Gepard transferred these documents to FedEx for delivery to Switzerland.

32. On 5 September 2019, the Appellant provided the CAS Court Office with the original Operation Check of 12 March 2019 and Ms Kondratova's statement of 2 September 2019.

33. On 11 September 2019, the First Respondent provided the CAS Court Office with a bank form that, according to the First Respondent, should be submitted by the Appellant so the authenticity could be verified. The First Respondent reiterated furthermore that the statement by Gepard of 2 September 2019 was not credible. The First Respondent asked the Sole Arbitrator to declare the Operation Check and the statement of 2 September 2019 inadmissible.

34. On 19 September 2019, the CAS Court Office, on behalf of the Sole Arbitrator, denied the First Respondent's request to invite the Appellant to submit a new check performing payment and invited the Appellant to act in the best of his ability to secure the participation of Ms Kondratova at the hearing as a witness.

35. On 19 September 2019, the First Respondent requested that the hearing be postponed *"until the end a criminal investigation of forgery"* and to make a request to Sberbank of the authenticity of the Operation Check of 12 March 2019.

36. On 21 September 2019, the Appellant responded to the First Respondent's letter of 11 September 2019 stating, *inter alia*, that the bank form requested by the First Respondent is not mandatory, that there is no *"conspiracy"* between the representatives of the Appellant and Gepard, and that the arguments presented by the First Respondent in this respect are unfounded.

37. On 23 September 2019, the Appellant objected to the First Respondent's request to postpone the hearing.

38. On 27 September 2019, the CAS Court Office, on behalf of the Sole Arbitrator, denied the First Respondent's request to postpone the hearing, and also directed the Appellant to invite Ms Kondratova to attend the hearing and to submit evidence of the invitation.

39. On 30 September 2019, the First Respondent requested Mr Anunchkin to demonstrate the authenticity of the payment at the hearing by showing this payment on *"Sberbank Online"*.

40. On 1 and 2 October 2019, the Appellant and the First Respondent, respectively, signed the Order of Procedure. The Second Respondent did not submit a signed Order of Procedure.

41. On 4 October 2019, the Appellant provided the CAS Court Office with a telegram to Ms Kondratova of 1 October 2019, in which she was invited to participate in the hearing.

42. On 7 October 2019, the CAS Court Office on behalf of the Sole Arbitrator denied the request by the First Respondent concerning checking the Mr Anuchkin's bank account during the hearing.

43. On 8 October 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Appellant and the First Respondent confirmed not to have any objection as to the constitution and composition of the arbitral tribunal. The Second Respondent was duly invited to attend the hearing, but did not appear.

44. In addition to the Sole Arbitrator and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

    a) For the Appellant:

        1) Mr Luca Tettamanti, Counsel;
        2) Mr Arthur Egiyan, Counsel (by video-conference).

    b) For the First Respondent:

        1) Mr Mikhail Prokopets, Counsel;
        2) Ms Maria Tokmakova, Counsel.

45. No witnesses or experts were heard. The Appellant and the First Respondent had the full opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

46. Before the hearing was concluded, the Appellant and the First Respondent expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

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

IV. SUBMISSION OF THE PARTIES

A. The Appellant's Submissions and Requests for Relief

48. The Appellant's submissions on the merits of the case, in essence, may be summarized as follows:

- Clause 11.7 of the Employment Contract conflicts with the Articles 77, 81 and 341.11 of the Labor Code of the Russian Federation. According to the latter articles, an employer has limited *("exhaustive")* grounds to terminate a contract. Because there was no just cause for termination, the First Respondent did not have grounds to terminate the contract and therefore violated the procedure for termination.

- Due to the termination by the First Respondent unilaterally without just cause, it has to pay compensation.

- The Appellant finds that he did not give his consent on termination of the Employment Contract and that Article 78 of the Labor Code of the Russian Federation is not applicable. An agreement on termination cannot be included in an employment agreement, since this would reserve the right for the First Respondent to unilaterally shape the future of the labor relationship.

- Moreover, according to Article 14 of the Labor Code of the Russian Federation, a termination by agreement should contain a specific calendar on when a contract would be terminated. As Clause 11.7 of the Employment Contract does not contain a specific calendar, this clause cannot constitute an agreement to terminate.

- The FUR DRC erred therefore in deciding that the Club was not liable to pay the Appellant compensation for early termination and its decision that a separate agreement on termination is not obligatory.

- Clause 11.7 of the Employment Contract also conflicts with FIFA regulations and CAS practice. The Appellant points out that when he initiated the termination, according to Clause 11.6 he had to compensate the First Respondent 2,500,000 Russian Rubles. This worsens his position since the extent of liability is disproportionate now the First Respondent only has to pay 225,000 Russian Rubles, and furthermore he was also subject to sport sanctions while the First Respondent was not.

- Moreover, the conditions of Clause 11.7 allowed the First Respondent to dismiss the Appellant any time even outside registration period, which leads to a violation of the preservation of contractual stability. According to the Appellant, this is prohibited due to FIFA and FUR Regulations. The Appellant refers to Article 16 of the FIFA Regulations and Article 8 of the FUR Regulations.

- The Appellant refers to *CAS 2014/A/3707* in which the panel decided that a clause is void if the employment agreement constitutes a disguised way for the club to terminate at the end of any season whereas the player does not have such a possibility. The Appellant also refers to a FUR DRC decision of 31 October 2013 about disproportionate rights.

- The FUR DRC mistakenly concluded that Clause 11.7 is a buy-out option and not a penalty for early termination. Clause 11.7 cannot be seen as a buy-out option as it is contrary to FIFA Regulations.

- Consequently, Clause 11.7 violates the principle of contract stability *("pacta sunt servanda")* according to the Appellant. This shows the discriminatory nature of the Appealed Decision.

- The amount of compensation does not comply with labor legislation of the Russian Federation. The Appellant does not agree with the Appealed Decision that it is legitimate to compensate in the amount of salaries and not in the amount of *average monthly earnings*, as well as the decision that the contracting parties were free to act and could establish any amount of compensation.

- The Appellant also refers to Article 9 of the FUR Regulations.

- According to the Appellant, pursuant to Article 178 Labor Code of the Russian Federation and earlier FUR DRC decisions, a severance benefit should be carried out in average monthly earnings.

- The Appellant finds that his average monthly earnings should include his monthly bonus of 25,000 Russian Rubles and the quarterly monetary payment of 150,000 Russian Rubles. The average monthly earning is 150,000 Russian Rubles and three average monthly earnings is 450,000 Russian Rubles. This means thatClause 11.7 does not comply with requirements of the labor legislation of the Russian Federation.

- The Appellant's position therefore is that the amount of compensation for early termination should be the residual value of the contract. The Appellant refers to several FIFA DRC decisions and *CAS 2014/A/3707* as mentioned above.

- The residual salary is 1,338,713,95 Russian Rubles and only part of this, 225,000 Russian Rubles, is paid.

- In view of the termination by the Club without just cause, the Appellant should be compensated for early termination with an amount of 1,113,713.95 net Russian Rubles.

49. In its prayers for relief, the Appellant requests as follows:

"1) To change the FUR DRC's decision No 265-18 of December 20, 2018

and render an award, declaring that

2) To declare the termination of the Labor Contract of February 01, 2018 as executed by Autonomous non-commercial organization "Football club "Nizhny Novgorod" at its own initiate, early, unilaterally and without just cause.

3) To condemn Autonomous non-commercial organization "Football club "Nizhny Novgorod" to pay Mr. Ruslan Zaerko the compensation for early termination of the Labor Contract of February 1, 2018, in the amount of 1 113 713,95 (one million one hundred thirteen thousand seven hundred thirteen) Russian rubles (net).

4) To condemn Autonomous non-commercial organization "Football club "Nizhny Novgorod" and the Football Union of Russia to the payment of the whole CAS administrative costs, the costs and fees of

the arbitrators, or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the Code of Sports-related Arbitration (edition 2019).

5) To condemn Autonomous non-commercial organization "Football club "Nizhny Novgorod" and the Football Union of Russia to pay wholly any expenses, connected to the arbitration proceedings, and to pay Mr. Ruslan Zaerko wholly all his expenses connected to this proceeding, including the costs of legal services and the costs of the services of the interpreters".

B. The First Respondent's Submissions and Request for Relief

50. The First Respondent's submissions on the merits of the case, in essence, may be summarized as follows:

- The Club finds that the appeal is ungrounded and has to be dismissed. In the Employment Contract, the parties have explicitly expressed their will on how it can be terminated. According to the Club, Clause 11.7 of the Employment Contract is not in violation of Russian law.

- The buy-out clause in Clause 11.7 is valid under Russian labor law and FUR regulations, which was repeatedly confirmed by the FUR DRC in recent decisions. In the case-at-hand, the parties mutually agreed on conditions for termination on the Employment Contract. This does not conflict with Article 78 of the Labor Code of the Russian Federation. This article does not establish any requirements for such an agreement.

- The First Respondent also refers to a Resolution of the Supreme Court of the Russian Federation of 10 March 2004. This Resolution does not indicate that the parties have to agree on a specific date for termination. Moreover, the Resolution indicates that a labor contract can be terminated any time.

- According to the First Respondent, the conditions of the Employment Contract were not unilaterally amended. The parties reached an agreement on circumstances triggering the termination.

- For the termination to be valid, there shall be a possibility to determine the will of the parties to terminate. This criterion was fulfilled.

- Even if a separate agreement were needed, the First Respondent finds that an agreement was reached by the parties in summer 2018. The Appellant never expressed any objection regarding the termination on the basis of Clause 11.7. He signed the Order and Correction Order (submission 8 and 9) without expressing any disagreement.

- The Appellant even began searching for a new club and signed a new labor agreement with Botev FR (Vratsa).

- The First Respondent finds that the Appellant – by changing his behavior and position by objecting to Clause 11.7 after his failure with his new club – violated the principle of *"venire contra factum proprium"*. According to the First Respondent, the Appellant is not allowed to change his decision.

- The First Respondent submits that Clause 11.7 does not contradict the Labor Code of the Russian Federation, as the will of the parties prevails over provisions of legislation. Article 178 of the Labor Code of the Russian Federation does not establish any limitation of compensation payable under termination upon mutual agreement. Article 178 of the Labor Code of the Russian Federation only applies in a closure or staff reduction. A severance is solely an employer's goodwill act, which was established in several Russian State courts.

- The First Respondent submits, therefore, that the buy-out clause in Clause 11.7 is valid under Russian Labor law and that the Labor Code of the Russian Federation does not preclude the parties from using this instrument.

- Pursuant to Article of the 8 FUR Regulations, an employment contract can be terminated without paying compensation and applying sports sanctions or by agreement. Based on the principle of freedom on contract, parties may include a buy-out clause for the benefit of the club unless it contradicts national legislation.

- As for the violation of the principle of contractual stability, the First Respondent finds this argument should be rejected as it conflicts with well-established FUR DRC jurisprudence. The First Respondent finds that the claim of the Appellant that the buy-out clause contradicts football regulations is ungrounded and not confirmed by any FUR or FIFA Regulations. The Appealed Decision was issued in conformity with well-established FUR DRC jurisprudence.

- The argument of the Appellant is also merely based on FIFA and CAS jurisprudence, but does not refer to any legal norm. The essential purpose of citing jurisprudence is to provide guidelines regarding the interpretation and application of provisions.

- The First Respondent refers to the first part of Article 9.2 of the FUR Regulations, which shows that when determining the proper amount of compensation, parties should primarily be guided by the amount established in the contract.

- The First Respondent points out that Clause 11.7 has two parts. The first part can be qualified as a buy-out clause and the second part as a liquidated damages clause. The allegedly invalidity of the first part does not affect the second part. The second part does not conflict with any provisions of the Russian labor legislation or FUR Regulations.

- So even if the buy-out clause is invalid, the compensation paid by the Club corresponds with the amount for unilateral termination established in the liquidated damages clause in Clause 11.7 of the Employment Contract.

- The Labor Code of the Russian Federation does not stipulate any requirement for liquidates damages as reciprocity or proportionality for its validity. The only case in which the liquidated damages clause may be changed is in case of excessiveness. This does not allow a player a higher penalty, but if he is deprived of the possibility to terminate, the penalty can be reduced. The First Respondent refers to Article 33 of the CC RF.

51. In its prayers for relief, the First Respondent requests the Sole Arbitrator to rule as follows:

> *"1. The appeal filed by the Appellant against the decision passed on 20 December 2018 by the RFU Dispute Resolution Chamber in the case no. 265-18 is inadmissible.*
>
> *Alternatively, if the above item 1 is rejected*
>
> *2. The appeal filed by the Appellant against the decision passed on 20 December 2018 by the RFU Dispute Resolution Chamber in the case no. 265-18 is dismissed.*
>
> *3. The decision passed on 20 December 2018 by the RFU Dispute Resolution Chamber in the case no. 265-18 is confirmed.*
>
> *In any event*
>
> *4. The Appellant shall bear all the costs incurred with the present procedure.*
>
> *5. The Appellant shall pay to the First Respondent a contribution towards its legal and other costs, in the amount to be determined at the discretion of the Panel".*

C. The Second Respondent's Submissions and Requests for Relief

52. As indicated above, the Second Respondent remained inactive throughout the entire proceedings. The Second Respondent did not provide the CAS with any submissions, it did not submit any requests for relief and it did not attend the hearing.

V. JURISDICTION

53. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

54. Article 53 of the FUR Dispute Resolution Regulations ("FUR Regulations") states (in a translation submitted by the Appellant and not contested by the First Respondent) the following:

> *"The PSC decisions or DRC decisions rendered under lit. b, c, d, f, h of par. 1 Article 13 FUR Regulations can be appealed to the Court of Arbitration for Sports in Lausanne (Switzerland) within 21 calendar days following the receipt of grounds of the decision".*

55. Article 47 paragraph 1 of the FUR Statutes states (in a translation submitted by the Appellant and not contested by the First Respondent) as follows:

> *"In accordance with certain provisions of the Statutes of FIFA and UEFA and Articles of Association of FUR, any appeal against final and binding decisions of FIFA, UEFA and FUR may be heard by CAS* […]*".*

56. Based on the aforementioned articles, CAS has jurisdiction to decide the matter-at-hand. In signing the Order of Procedure, the Appellant and the First Respondent further have explicitly confirmed CAS jurisdiction, and at no point as the Second Respondent objected thereto.

57. Therefore, the Sole Arbitrator is of the opinion that the CAS has jurisdiction in this matter.

VI. ADMISSIBILITY

58. Article 53 of the FUR Regulations states (in a translation submitted by the Appellant and not contested by the First Respondent) the following:

> *"The PSC decisions or DRC decisions rendered under lit. b, c, d, f, h of par. 1 Article 13 FUR Regulations cab be appealed to the Court of Arbitration for Sports in Lausanne (Switzerland) within 21 calendar days following the receipt of grounds of the decision".*

59. Article R49 of the Code provides the following:

> *"*[…] *the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

60. Article R32 of the Code provides the following:

> *"The time limit fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location where the notification has to be made, on the last day on which such time limits expire".*

61. The Appealed Decision was rendered by the FUR DRC on 20 December 2018. The grounds of the Appealed Decision were delivered to the Appellant and the First Respondent by email on 19 February 2019. According to the Appellant, the Statement of Appeal was handed over to the courier service Gepard on 12 March 2019, thus within the 21-day deadline set by Article 53 of the FUR Dispute Resolution Regulations. The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

62. The hard copy of the Statement of Appeal was delivered by courier to the CAS Court Office on 26 March 2019.

63. The admissibility of the Statement of Appeal is contested by the First Respondent.

64. As the Appealed Decision of 20 December 2018 was delivered to the Appellant and the First Respondent by email on 19 February 2019, the last day the hard copy of the Statement of Appeal could have been filed was 12 March 2019. The Sole Arbitrator finds therefore that if the Statement of Appeal was filed on 12 March 2019, the appeal is admissible pursuant to Article R32 of the Code.

65. The Statement of Appeal was dated 12 March 2019. Indeed, the first page of the Statement of Appeal provides *inter alia* the following: *"Sent by electronic mail and courier delivery"*.

66. The CAS Court Office never received the Statement of Appeal by email, rather only by FedEx courier on 26 March 2019.

67. The Appellant submitted a Gepard Way-bill stating that the *"Statement of Appeal (Appeal Brief of Ruslan Zaerko regarding the Decision of the FUR DRC* […]*"* was sent by Gepard to the CAS. The Way-bill is dated 12 March 2019.

68. The First Respondent questioned the Way-bill and argued that there is no credible evidence that the Statement of Appeal was filed on or before 12 March 2019, and that the Appellant did not provide sufficient proof of the transfer from Gepard to FedEx.

69. The First Respondent also argued that a search of the tracking number on the Way-bill (93556), did not lead to a match.

70. The Appellant submitted an Operation Check of Sberbank of 12 March 2019 and a statement of Ms Kondratova, General Director of Gepard, of 2 September 2019. The Operation Check shows a payment from the bank account of Mr Anuchkin to Gepard of 12 March 2019. The Check contains a bank seal.

71. In her statement of 2 September 2019, Ms Kondratova confirms that: (a) Gepard received the Statement of Appeal on 12 March 2019; (b) the costs of the delivery (7,800 Rubles) were made by Mr Anuchkin by a *"non-cash way"* i.e. by bank transfer; and (c) Gepard has asked FedEx to deliver the documents to Switzerland because Gepard does not execute all transportations on its own.

72. These new submissions were also disputed by the First Respondent. The First Respondent objected to the Operation Check because it was not the original version of a confirmation from Sberbank. The First Respondent is of the opinion that this Operation Check was forged.

73. Ms Kondratova's statement of 2 September 2019 is contested by the First Respondent, because there appears to be a connection or affiliation between the representatives of the Appellant and Gepard, because of the use of similar email addresses.

74. The Sole Arbitrator asked the Appellant to invite Ms Kondratova to appear as a witness. The witness was indeed invited by the Appellant but the witness did not show up at the hearing and was not available to be cross-examined on her statement of 2 September 2019.

75. At the hearing, the First Respondent was shown the originals of the Operation Check and Ms Kondratova's statement of 2 September 2019 which were sent by the Appellant to the CAS Court Office at the request of the Sole Arbitrator. During the hearing no further objections were raised against these submissions other than those raised before.

76. The Sole Arbitrator notes that the Statement of Appeal was filed only by courier and not email as indicated on the first page of the Statement of Appeal. Also, the fact that the Statement of Appeal was received by the CAS Court Office only on 26 March 2029 raises questions as to why the delivery took so long, which were also addressed by the First Respondent.

77. The Appellant, however, submitted the Way-bill and the Operation Check that show the Statement of Appeal indeed was handed over on 12 March 2019 to Gepard and that the shipment was paid for on the same day by bank transfer. In the statement of Ms Kondratova of 2 September 2019, both arguments were confirmed. In addition to that, in Ms Kondratova's statement even the instruction of Gepard to FedEx was confirmed, which statement contradicts the suggestion of the First Respondent that the lawyer of the Appellant asked FedEx to file the documents after the expiration of the time limit.

78. As to the defence raised by the First Respondent that Ms Kondratova's statement and Operation Check with a bank seal were (probably) forged, the Sole Arbitrator finds that the First Respondent has not offered any tangible evidence for that conclusion. It is the Sole Arbitrator's opinion that there is no reason to question the authenticity of the documents provided to him by the Appellant, which conclusion is corroborated by Ms Kondratova's statement.

79. The Sole Arbitrator has established that the Appellant invited Ms Kondratova by telegram for the hearing on 8 October 2019. The Sole Arbitrator also acknowledges that Ms Kondratova is not involved with the substance of the present proceedings, and is not affiliated to or related to the Appellant as far as can be determined, i.e. the latter does not have control or authority over Ms Kondratova. Despite the Appellant's invitation, she did not attend the hearing. The Sole Arbitrator does not hold this against the Appellant because sufficient efforts were made to invite her as a witness.

80. The Sole Arbitrator therefore is of the opinion that the Statement of Appeal was filed on 12 March 2019 and thus within the deadline of 21 days.

81. The Sole Arbitrator decides therefore that the appeal is admissible.

VII. APPLICABLE LAW

82. 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

83. The preamble of the Employment Clause states:

> *"*[…] *recognizing that this Labor Contract 13.1 is subject to the legislation of the Russian Federation, the rights and obligations of the Parties are governed by labor legislation and other laws and regulations of the Russian Federation containing employment and labor statutes, collective contracts, agreements, as well as regulations adopted by the Employer based on the FUR regulations, regulatory documents of FIFA, UEFA and FUR".*

84. Articles 3.2 and 4.3 of the Employment Contract states as follows:

> *"3.2. The Employee has the rights and obligations in accordance with the labor legislation and other normative legal acts of the Russian Federation containing employment and labor laws, collective agreements, agreements, as well as local normative acts, adopted by the Employer taking into consideration the norms of the FUR, regulatory documents of FIFA, UEFA and the FUR".*
>
> *"4.3. The Employer has the rights and obligations in accordance with the labor legislation and other normative legal acts of the Russian Federation containing employment and laws, collective agreements, agreements, as well as local normative acts, adopted by the Employer taking into consideration the norms of the FUR, regulatory documents of FIFA, UEFA and the FUR".*

85. Article 11.7 of the Employment Contract states as follows:

> *"11.7. The Employer has the right to terminate this Labor Contract by giving the Employee a one month's notice about such termination in the written form, without sport sanctions being imposed on it, provided that the monetary payment in the amount equal to 3 (three) fixed official salary envisaged in clause 8.1 of this Contract is carried out in favour of the Employee. The specified payment is carried out on the last working day of the Employee. The entire Employer's liability towards the Employee ("liquidated damages") is limited to 3 (three) fixed official salary, envisaged in clause 8.1 of this Contract.*
>
> *The implementation of dismissal in accordance with this paragraph shall be executed by the order of the General Director of the Employer on grounds envisaged in paragraph 1 of part 1 of Article 77 of the Labor Code of the Russian Federation (agreement of the parties). At the same time, drafting and signing of an agreement to terminate the Labor Contract are not mandatory due to the achievement of such an agreement between the Parties in this clause".*

86. Article 1 of the FUR Regulations states:

> *"Constitution of the Russian Federation, federal constitutional laws, normative acts of the President of the Russian Federation and resolutions of the Government of the Russian Federation, regulatory legal acts of federal executive bodies, regulatory legal acts of constituent entities of the Russian Federation and other normative legal acts in force in the territory of the Russian Federation, the RFU Statute, the rules adopted by the FIFA, UEFA and the RFU, decision of the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) (hereinafter referred to as "CAS") in terms of court*

practice of applying these norms, usual and customary business practices, as well as contracts, agreements, if they are concluded in accordance with the legislation of the Russian Federation".

87. The Appellant states in his Statement of Appeal that based on Clauses 3.2 and 4.3 of the Employment Contract, labor legislation of the Russian Federation is applicable and the regulations and rules of FIFA, UEFA and the FUR should be applied.

88. The First Respondent argues that because the Appealed Decision was based on the FUR regulations, these regulations should be applied and, subsidiarily, the Russian labor law legislation and other normative acts containing labor law norms apply.

89. By submitting their dispute to CAS, by signing the Order of Procedure and/or not filing any objections in this regard, according to the Sole Arbitrator, the parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the Code, leading to the primary application of the FUR Regulations.

90. This conclusion is in line with the main purposes of Article R58 of the Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.

91. The Sole Arbitrator also adheres to the HAAS-doctrine (TAS/CAS Bulletin 2015/2): *"in appeal proceedings [article R58] assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework choses by parties* […]*".*

92. The Sole Arbitrator is satisfied to accept application of the various regulations of FUR Regulations and, subsidiarily, Russian Labor law.

VIII. MERITS

93. As a result of the above, the main issues to be resolved by the Sole Arbitrator are the following:

    i. Does Clause 11.7 first paragraph of the Employment Contract conflict with FUR Regulations or Russian law?

    ii. Did the Appellant accept the termination and its conditions, and did he change his position afterward and therefore violate the principle *"venire contra factum proprium"?*

    iii. Does Clause 11.7 second paragraph of the Employment Contract conflict with FUR Regulations or Russian law?

    iv. Does the amount of 3 months' salary comply with FUR Regulations or Russian law?

i) Does Clause 11.7 first paragraph of the Employment Contract conflict with FUR Regulations or Russian law?

94. The Sole Arbitrator notes that it is undisputed that the Employment Contract was terminated without motivation by the First Respondent on 11 July 2018.

95. However, the Club argues that it was entitled to do so, because such right had been granted to it in the Employment Contract. Accordingly, the Club submits that the termination was not done unilaterally because the parties had reached a pre-agreement on circumstances triggering the termination by means of Article 11.7 of the Employment Contract, which provides as follows:

> *"The Employer has the **right to terminate** this Labor Contract by giving the Employee a one month's notice about such termination in the written form, without sport sanctions being imposed on it, provided that the monetary payment in the amount equal to 3 (three) fixed official salary envisaged in clause 8.1 of this Contract is carried out in favor of the Employee. The specified payment is carried out on the last working day of the Employee. The entire Employer's liability towards the Employee ("liquidated damages") is limited to 3 (three) fixed official salary, envisaged in clause 8.1 of this Contract.*
>
> *The implementation of dismissal in accordance with this paragraph shall be executed by the order of the General Director of the Employer on grounds envisaged in paragraph 1 of part 1 of Article 77 of the Labor Code of the Russian Federation (agreement of the parties). At the same time, drafting and signing of an agreement to terminate the Labor Contract are not mandatory due to the achievement of such an agreement between the Parties in this clause"* (emphasis added by Sole Arbitrator).

96. In football, various termination clauses are used in employment agreements, such as, *inter alia*, liquidated damages clauses, penalty clauses and buy-out clauses. In the case at hand, Article 11.7 of the Employment Contract seems to refer to a buy-out clause in the first paragraph (*"The Employer … the Employee"*) and a liquidated damages clause in the second paragraph (*"The entire … clause"*).

97. The Sole Arbitrator notes that the Appellant and the First Respondent, in their arguments about the validity of the buy-out clause, refer to the Labor law of the Russian Federation and not to Article 9 of the FUR Regulations. In the discussion about the minimum amount of compensation and the validity of the liquidated damages clause, this article is introduced and referred to by both of the above Parties and used to support their position.

98. The Sole Arbitrator will first discuss the validity of the buy-out clause accordingly. As Article 1 of the FUR Regulations explicitly refers to Russian law and because the Appellant and the First Respondent in their submissions explicitly refer to Russian law, the validity of this part of the clause has to be assessed on that basis too.

99. However before deciding on the validity of the buy-out clause on the basis of Russian Labor Law, it has to be established whether or not the buy-out clause could validly be invoked by the Club. This can only be the case if the Club strictly respected the terms of the buy-out clause. This is not so in the case-at-hand.

100. According to the buy-out clause in 11.7 of the Employment Contract, the Club had the right to terminate respecting one month notice and payment of *"3 (three) fixed official salary envisaged in clause 8.1 of this Contract* […]*"*.

101. According to the following part this payment has to be: *"*[…] *carried out on the last working day of the Employee"*.

102. As the FUR DRC decided in the Appealed Decision that the Club had to pay arrears of compensation to the Player in the amount of 29,250 Russian Rubles, during the hearing, the Appellant and the First Respondent informed the Sole Arbitrator that the amount of 29,250 Russian Rubles was tax-related and was paid to the Player after the Appealed Decision. The Club did not challenge the Appealed Decision.

103. The Club obviously did not comply with the terms in the buy-out clause by not paying for the full 3 months' salary of 225,000 Russian Rubles before 13 August 2018, the last working day. It only paid 195,750 Russian Rubles to the Player and deducted tax without grounds. The Sole Arbitrator finds that the Club, by paying the remaining amount without challenging the Appealed Decision, conceded that it had not fully complied with the terms of the buy-out clause.

104. The Sole Arbitrator finds therefore that the Club did not validly invoke the buy-out clause. A judicial review of this clause under Russian Labor law is therefore no longer necessary.

ii) Did the Appellant accept the termination and its conditions, and did he change his position afterward and therefore violate the principle *"venire contra factum proprium"*?

105. The Sole Arbitrator still needs to address the defence made by the Club that the parties mutually agreed on the terms for termination in Clause 11.7 of the Employment Contract. The Club maintains that the Player agreed on termination by conclusive actions, because, *inter alia*, he signed a new contract with Botev FK.

106. The Sole Arbitrator finds that the Player did not agree with the termination of 13 August 2018 and did not compromise his position by talking with other clubs. The Player challenged the decision of the Club to terminate the Employment Contract before the FUR DRC, by filing a statement to the FUR DRC on 27 November 2018. The Club did not argue that the Player missed any prescription period and the Sole Arbitrator finds that a period of 3 months is not unreasonably long to set up FUR DRC proceedings.

107. Moreover, the Player never unambiguously acknowledged the termination by the Club nor is it proven by the Club that he accepted alternative employment at another club. During the hearing, the Player confirmed that he searched for other clubs, but that he did not find a club. The Sole Arbitrator finds that even if the Player would have found another club, the situation would in any event not have resulted in a conclusion that the Player agreed with the termination after the Club gave notice. It would only have mitigated the Player's damages arising from the premature termination of his Employment Contract.

108. By signing the Order and Correction Order, the Sole Arbitrator finds that the Player did not accept the termination conditions and did not waive his rights to claim for any additional compensation. He only acknowledged receipt of the Club's decision to terminate the Employment Contract on 13 August 2018.

109. The Sole Arbitrator therefore finds that the Player did not change his mind after failure in a new club and did not violate the *"venire contra factum proprium"* principle.

110. Based on the above, the Sole Arbitrator finds that the Club terminated the Employment Contract without just cause and is liable for damages caused to the Player by this termination.

111. In Clause 11.7 second part the parties appear to have made a pre-arrangement for the damages caused in that situation. The Sole Arbitrator will decide about the validity of this second part in the following section.

iii) Does Clause 11.7 second paragraph of the Employment Contract conflict with FUR Regulations or Russian law?

112. The Sole Arbitrator is of the opinion that Clause 11.7 second paragraph of the Employment Contract is a typical clause for liquidated damages, i.e. a provision by means of which the parties quantify the damages resulting from a breach of contract, as an exception to the regulatory regime that is ordinarily applied to calculate the damages incurred. It clearly states that *"The entire Employer's liability towards the Employee ("liquidated damages") is limited to 3 (three) fixed official salary, envisaged in clause 8.1 of this Contract"*.

113. The Sole Arbitrator finds that there is no reason to decide that the liquidated damages clause is void because the buy-out clause is invalid. Both clauses have a different rationale, as it is clear that they are separate clauses with separate objectives.

114. The Player submits that Clause 11.7 of the Employment Contract is invalid because it is unbalanced and disproportionate. He points out that 3 months compensation is disproportionate if compared to the situation in Clause 11.6, which is applicable to the situation when the Player would terminate the Employment Contract prematurely without just cause, in which case he has to compensate the Club with 2,500,000 Rubles.

115. The Club argues that pursuant to Article 8 of the FUR Regulations, parties may agree on the consequences of a premature termination at any time and any conditions, and that the argument the Player is using follows CAS and FIFA DRC jurisprudence, which is not applicable to the matter-at-hand because this is a domestic Russian dispute.

116. The Sole Arbitrator agrees with the Club that before referring to CAS and FIFA DRC jurisprudence, the legal norm has to be established. That norm is found in Russian Labor law and FUR Regulations.

117. The Sole Arbitrator finds that, according to Article 8 of the FUR Regulations, the parties were free to come to an agreement in this respect and that the disparity between the amount of damages does not lead to invalidity of Clause 11.7.

118. But even seen from a CAS and FIFA DRC perspective, the case does not necessarily have to be judged differently. When there is disparity between the amount of damages set out in a liquidated damages clause, this does not necessarily lead to the invalidity thereof. The Sole Arbitrator subscribes to the views expressed in *CAS 2016/A/4826*, paragraphs 105-107, in this respect.

119. It might well be that the disparity is compensated by other more favourable provisions in the Employment Contract to the benefit of the Player. According to the Sole Arbitrator and on the face of the evidence, it does not appear that there is an overall disparity.

120. Furthermore, there is no evidence on file that the autonomy of the parties was impaired in the case-at-hand or that one of the parties exercised undue influence on the other Party.

121. In view of the above, the Sole Arbitrator finds that the liquidated damages clause in Clause 11.7 is valid. The Player was entitled to a liquidated damages compensation of 225,000 Russian Rubles and the Club in case of a termination by the Player of 2,500,000, and the Sole Arbitrator finds that the difference between these amounts is not of such a level that it should lead to the invalidity of Clause 11.7.

iv) Does the amount of 3 months' salary comply with the FUR Regulations and/or Russian law?

122. As foreseen in the FUR Regulations, the parties explicitly agreed in the Employment Contract that in case of early termination without just cause, the Club is liable towards the Player and that such compensation is *limited* to 3 months fixed official salary, as envisaged in Clause 8.1.

123. The Club compensated the Player with 225,000 Russian Rubles, which is in total 3 months' fixed salary. The Player argues that he should be compensated with 450,000 Russian Rubles and that the additional components of his salary based on Clause 8.2 of the Employment Contract, should be included in the 3 months compensation.

124. The Player argues that the compensation awarded should be 3-month *average* salary as a minimum, pursuant to Article 9 paragraph 2 of the FUR Regulations.

125. The Sole Arbitrator has to determine first if Russian Labor law establishes a minimum compensation in a case like this. In this respect, the Sole Arbitrator follows the argument of the Club and finds that Article 178 Labor Law of the Russian Federation does not establish a minimum amount for damage compensation.

126. The Player refers to Article 9 of the FUR Regulations. According to the second part of Article 9 of the FUR Regulations, a minimum of 3 (three) average monthly earnings only applies when the parties have not (pre)agreed an amount for compensation in the Employment Contract.

The first part of Article 9 explicitly refers to the freedom of the parties to agree upon any amount but only if this is established in the relevant contract.

127. As the parties have explicitly incorporated the compensation in the Employment Contract, the Sole Arbitrator is of the opinion that Clause 11.7 does not conflict with Article 9 of the FUR Regulations.

128. This compensation calculated in accordance with the Employment Contract is also not obviously disproportionate. The Player did not submit arguments to support this argument, so the Sole Arbitrator finds that no reduction of such amount of compensation is warranted.

129. The Sole Arbitrator, therefore, comes to the conclusion that the calculation of the compensation due to the Player made by the Club was correct. He therefore confirms the Appealed Decision. Hence, all claims brought forward by the Appellant are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 March 2019 by Ruslan Zaerko against FC Nizhny Novgorod and the Football Union of Russia with respect to the decision issued on 20 December 2018 by the Russian Football Union's Players' Status Committee DRC is dismissed.

2. The decision of the Russian Football Union's Players' Status Committee dated 20 December 2018 is confirmed.

3. (…).

4. (…).

5. (…).

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