



**Arbitration CAS 2019/A/6334 FK Željezničar v. Football Federation of Bosnia and Herzegovina (FFBH), award of 30 October 2019**

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

*Football*

*Eligibility to participate in UEFA Club Competitions*

*Admissibility of new evidence submitted after the prescribed deadline*

*Burden of the risks linked to the fulfilment of a monetary obligation*

1. **If the applicable regulations regarding the issuance of license clearly state that any document indicating that the criteria have been met with respect to unpaid due liabilities after the deadline set as of 31 March will not be taken into account, such regulations will supersede the general procedural provision of Article R57, para. 3, of the CAS Code as *lex specialis*. Indeed, allowing a party to file new evidence after the prescribed deadline would undermine the authority of the domestic licensing bodies and create unequal treatment of the clubs.**
2. **The risk of error or delay in payment through a bank is borne by the debtor of the monetary obligation.**

**I. PARTIES**

1. F.K. Željezničar (the “Club” or the “Appellant”) is a professional football club, based in Sarajevo, Bosnia and Herzegovina. It is a member of the Football Federation of Bosnia and Herzegovina (the “FFBH” or the “Respondent”).
2. The FFBH, based in Sarajevo, is the chief officiating body of football in Bosnia and Herzegovina, affiliated to the Union of European Football Associations (“UEFA”), which is in turn affiliated to the Fédération Internationale de Football Association (“FIFA”).

**II. FACTUAL BACKGROUND**

**A. Background Facts**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. Additional facts and allegations found in the Parties’ written submissions 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 this Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. The Club applied with the FFBH for a license to enter UEFA club competitions for season 2019/2020.
5. On 3 May 2019, with decision no. 02-1829-4/19, the FFBH First Instance Commission for Club Licensing rejected the request made by the Club affirming that the latter did not provide the necessary evidence of compliance with all the mandatory criteria prescribed by the FFBH's Regulations on Club Licensing for Participation in UEFA Club Competitions ("the Club Licensing Regulations"). The FFBH First Instance Commission for Club Licensing found that as of 31 March 2019, the Club did not prove that it had no outstanding debts towards its employees, as set forth under Article 49 of the Club Licensing Regulations. Specifically, it was determined that as of 31 March 2019, there was an outstanding debt towards the former coach Mr Slavko Petrović amounting to BAM 20,211.07.

#### **B. Proceedings before the FFBH Second Instance Commission for Club Licensing**

6. On 13 May 2019, the Club appealed the decision rendered by the FFBH First Instance Commission for Club Licensing asking the FFBH Second Instance Commission for Club Licensing to (i) annul the decision no. 02-1829-4/19 dated 3 May 2019 and (ii) issue a license to F.K. Željezničar for participating in the UEFA club competition during the season 2019/2020.
7. The FFBH Second Instance Commission for Club Licensing rendered its decision no. 02-2193/19 on 27 May 2019, confirming that the FFBH First Instance Commission for Club Licensing correctly applied the provisions of the Club Licensing Regulations and made the right decision not to grant the license to the Club for participating in UEFA club competitions. Also, this decision was based on the fact that F.K. Željezničar did not comply with the provision of Article 49 of the Club Licensing Regulations. Indeed, the Club did not prove that there were no unpaid liabilities towards its employees as of 31 March 2019 in relation to contractual legal obligations that arose before 31 December 2018. Therefore, the appeal was rejected as unfounded and the decision of the FFBH First Instance Commission for Club Licensing was confirmed.

#### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

8. On 18 June 2019, the Club lodged a Statement of Appeal in accordance with Articles R47 and R49 of the Code of Sports-related Arbitration (the "CAS Code") against the FFBH before the Court of Arbitration for Sport (the "CAS"), with respect to the decisions rendered by the FFBH First Instance Commission for Club Licensing no. 02-1829-4/19 of 3 May 2019 and the FFBH Second Instance Commission for Club Licensing no. 02-2193/19 of 27 May 2019, requesting that the dispute be submitted to a sole arbitrator, suggesting the appointment of Mr Bernhard Heusler, and requesting an expedited procedure.

9. On 21 June 2019, the CAS Court Office initiated the procedure. The Respondent was invited to provide its position both on the composition of the Panel and the expedited procedure.
10. On 27 June 2019, the Appellant informed the CAS Court Office that the Statement of Appeal also constituted the appeal brief. On the same day, the Respondent was invited to submit its answer and expressed its disagreement with an expedited procedure and with the appointment of a sole arbitrator.
11. On 3 July 2019, the Respondent was invited to indicate by 5 July 2019 whether it intended to pay its share of the advances of costs. The Respondent was further informed that its silence in this respect will be deemed as a negative answer.
12. On 11 July 2019, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the case will be submitted to a sole arbitrator.
13. On 19 July 2019, the FFBH requested that the time limit to file its answer be set after the payment by the Club of its share of the advance of costs, pursuant to Article R55, para. 3, of the CAS Code.
14. On 23 July 2019, the CAS Court Office set a new deadline for the filing of the answer by the FFBH pursuant to Article R55, para. 3 of the CAS Code and informed the Parties that Mr Jacopo Tognon, Professor and Attorney-at-law in Padova, Italy, had been appointed as Sole Arbitrator in this procedure.
15. On 26 July 2019, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held or for the Sole Arbitrator to render an award based solely on their written submissions.
16. On 30 July 2019, both the Appellant and the Respondent informed the CAS Court Office that they preferred a decision to be issued based solely on the Parties' written submissions.
17. On 7 August 2019, the FFBH filed its Answer pursuant to Article R55 of the CAS Code.
18. On 9 August 2019, the Parties were invited to confirm to the CAS Court Office their position regarding the holding of a hearing or the issuance of an award based on their written submissions.
19. On 13 August 2019 and 11 August 2019, respectively, the Appellant and the Respondent confirmed to the CAS Court Office that they did not wish a hearing to be held in the matter at stake.
20. On 21 August 2019, the Parties were informed that the Sole Arbitrator had decided not to hold a hearing in these proceedings and were invited to sign the Order of Procedure.
21. On 21 August 2019 and on 26 August 2019, the Respondent and the Appellant, respectively, returned a signed copy of the Order of Procedure. By signing the Order of Procedure the

Parties confirmed their agreement that this matter be decided based on the Parties' written submissions and confirmed CAS' jurisdiction to hear the appeal.

#### **IV. SUBMISSIONS OF THE PARTIES**

22. The Appellant's submissions, in essence, may be summarised as follows:

- The Appellant argued that it fulfilled all of the criteria necessary for the issuance of license for UEFA club competitions and that the decision of the FFBH First Instance Committee rejecting it was unfounded. The payment of its one and only debt was made within the deadline set of 31 March 2019. Indeed, the Appellant had more than sufficient funds on its bank account on the day of payment.
- The payment was made on 28 March 2019, in accordance with the time limit. The bank subsequently informed the Appellant that an error was made in making the payment order. The Appellant underlined that that date was on a Thursday and that the Appellant was only subsequently informed about the existence of the error due to the administrative procedures at the bank.
- Both the FFBH First and Second Instance Committees included in the licensing process a third party, namely the legal representative of the coach Slavko Petrović, the attorney at law Mr Dražen Nikolić, while the Rulebook of licensing of Clubs UEFA competitions prescribes that the parties are only the grantor of the license and the applicant. The FFBH First and Second Instance Committees claimed that they had determined the facts based on the documents provided by the attorney at law Mr Dražen Nikolić. Such documents were inadmissible and could not be used during licensing process. Mr Dražen Nikolić acted for many years as part of management of the Football club Radnik Bijeljina, which is the club that replaced the Appellant in the UEFA club competitions on the basis of having had the license refused.
- There is no evidence that would allow to consider the debt towards coach Slavko Petrović as outstanding on 31 March 2019. What has resulted in the payment going through shortly after the deadline of 31 March 2019, could not have been anticipated by the Appellant.
- Considering the payment – which was made prior to the deadline and went through shortly after due to unforeseen conditions – as outstanding debt is unjust and unfounded. It basically puts on the same level a club that has met all the criteria with clubs that have significant outstanding debts.
- The Appellant has fulfilled all its obligations and all sport, infrastructure, legal, financial, staffing and administration requirements within the prescribed deadlines. With reference to the management of salaries, taxes and contributions, the Appellant is the only club in Bosnia and Herzegovina that fulfils its obligations in due time and in accordance with the prescribed rates.

- The Appellant sets a positive example of meeting the criteria of the UEFA Club Licensing Rulebook and financial fair play, further to increasing transparency and credibility.
23. In its appeal brief, the Appellant makes the following requests for relief:
- “1. *The request of the Appellant is accepted.*
  2. *The decision of the First instance Committee for licensing for participation in UEFA competition of Football Federation of Bosnia and Herzegovina no. 02-1829-4/19 dated 3<sup>rd</sup> May 2019 is annulled.*
  3. *The decision of the Second instance Committee for licensing for participation in UEFA competition of Football Federation of Bosnia and Herzegovina no. 02-2193/19 dated 27<sup>th</sup> May 2019 is annulled.*
  4. *The Appellant FK Željezničar Sarajevo is granted license to participate in UEFA club competitions in the 2019/2020 sporting season. Football Federation of Bosnia and Herzegovina is obliged to immediately announce to UEFA the participation of FK Željezničar Sarajevo in the 2019/2020 UEFA competitions, withdrawing any previous announcement made to UEFA regarding the participation of another club replacing FK Željezničar Sarajevo in the 2019/2020 UEFA competitions, if any.*
  5. *The Respondent is obliged to bear all the costs incurred with the present procedure”.*
24. The Respondent’s submissions, in essence, may be summarised as follows:
- During the proceedings before FFBH First and Second Instance Committees for Club Licensing the Club firstly assured having paid the outstanding debt on 4 April 2019, but at a later stage, it alleged that a bank error had occurred, which cannot be considered as late payment, and which is the reason for the present appeal.
  - Article 49 of the Club Licensing Regulations (edition December 2018) provides that “*the license applicant must prove that as of 31 March preceding the license season it has no overdue payables (as defined in Annex VI) in respect of its employees as a result of contractual or legal obligations that arose prior to the previous 31 December*”.
  - Points 17 and 34 of the FFBH Key Process of the Club Licensing Regulations provide, *inter alia*, that “*if the Applicant has submitted any document to the Licensing Administration after deadlines, the First Instance Commission for Club Licensing may decide to sanction that club (e-g- a fine). However, any document indicating that the criteria have been met in respect of unpaid due liabilities after the deadline set as 31 March (e.g. after that date) will not be taken into account*” and “*any document proving that a criteria in respect of unpaid due liabilities has been met after the deadline fixed as 31 March will not be taken into account*”.
  - Since the *lex specialis* of the FFBH does not regulate the question of which party carries the responsibility for bank errors, the relevant applicable provision to this issue is Article 318, para. 1, of the Law on Obligations of the Federation of Bosnia and Herzegovina and Republic of Srpska, according to which: “*If payment is made through a bank or other organization with the creditor’s account, it shall be deemed, unless otherwise provided by the contracting parties, that*

*the debt is settled when the bank or organization to which the account is kept receives a remittance in favour of the creditor or the order (transfer) of the debtor's bank or organization to approve the creditor's account the amount indicated in the order".* Therefore, the risk of error of the bank or the unit of payment service or the delay in their work is borne by the debtor, the same being also true under Swiss law (cf. pursuant to Article 74 of the Swiss Code of Obligations).

- The FFBH's deciding bodies are conducting their proceedings freely, meaning that they may also consider evidence not presented by the party and evaluate evidence at their free discretion. The FFBH had been informed by FIFA and the Club's creditor that there was still an outstanding debt related to the decision of the Single Judge of the Players' Status Committee of FIFA on 19 September 2018 (the "FIFA decision"). Therefore, the FFBH was obliged to investigate that information and thus, it was required to contact the creditor for further clarification on the outstanding debt and it therefore contacted his representative who was in charge of requesting the execution of the FIFA decision.
- Having the deadline of 31 March 2019 expired, the Acting Head of the Licensing Department of the FFBH, Mr Adi Osmanović, and the independent Financial Auditor, Ms Elvira Pidro, noticed the outstanding debt to the former employee of the Club while reviewing the Club's license application and informed the Club that it appeared that it did not meet the requirements due to the existing debt to its former employee.
- On 4 April 2019, the Club presented to the members of the FFBH licensing department a document signed by the Club's director Mr Mirsad Šiljak, in which the director confirmed that the Club had paid the remaining debts amounting to BAM 20,211.07 to Mr Slavko Petrović on 4 April 2019 and that the latter only needed to sign the repayment schedule.
- The Licensing Department of the FFBH contacted the legal representative Mr Dražen Nikolić who forwarded to the FFBH two emails received from the Club on 4 and 5 April 2019. In the first one, the Club sent a proof of payment of all the outstanding amounts due and a debt restructuring agreement for signature, to the creditor's lawyer. In the second email, the Club sent to the creditor's lawyer the document signed by the Club's director where the payment of the debt was confirmed and asking once again to return a signed version of the debt restructuring agreement.
- The Club's declarations in the licensing process were full of contradictions: first the Club argued that it had paid the remaining debt on 4 April 2019. When the Club realised that the deadlines must be strictly applied it forwarded after 12 April 2019 an alleged payment order of BAM 20,211.07 dated 28 March 2019, a declaration dated 29 March 2019 stating that it would pay the remaining amount by 30 April 2019 and an unsigned letter from its bank dated 30 April 2019 confirming that it had received a payment order from the Club of BAM 20,211.07 that was to be sent to the account of Mr Petrović (without indicating the bank account number) but that due to an incorrect account number the payment had not been executed.

- Moreover, Mr Petrović declared during an interview that he felt sorry for the Club because of the FFBH's negative decision, while confirming that the Club had missed the deadline to pay him the outstanding debt on time and that he would not sign anything retroactively putting his "PROFI" license in danger.
- In these proceedings before CAS the Club submitted two new documents: (i) a translation of a payment order and (ii) a bank statement of its account dated 28 March 2019. For the payment order no original has been presented. Furthermore, the order should be identical to the alleged payment order made on 28 March 2019 presented to FFBH on 12 April 2019, but the account numbers are different. The Club realised that in the version presented to the FFBH on 12 April 2019 it put the correct bank account number of the creditor. Therefore, in the document presented in the appeal procedure, the Club had to put an incorrect bank account number to be in line with its new claims of having already paid on 28 March 2019, only to an erroneous bank account. Also, the second document presented by the Club does not support the Club's allegations, since the bank statement only shows the balance of the Club on 28 March 2019 and not the intended payment of BAM 20,211.07 to the creditor.
- The Club's first three partial payments made to the same creditor were executed without any difficulties and therefore the Club's allegations are null and void.
- According to point 34 of the Key Process of the Club Licensing Regulations, any document presented after 31 March 2019 should in any event not be considered by the licensing department.
- Even if the Club's claims were true, the risk of an error or delay in payment through the bank would be borne by the debtor. Even if the Club had wrongly made the payment to an incorrect bank account on 28 March 2019 and this mistake had only been corrected by the bank on 4 April 2019, the Club bears the risk of this late payment, which is the non-fulfilment of the present license requirements.

25. In its answer, the Respondent makes the following requests for relief:

- “1. To reject the Appellant's appeal and to confirm the decisions passed by the First and Second Instance Club Licensing Commissions dated 3 and 27 May 2019.
2. To order the Appellant to bear all costs incurred through the present procedure, as well as all legal costs incurred by the Respondent”.

## V. JURISDICTION

26. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific*

*arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

27. The jurisdiction of the CAS derives from Article 5 of the Statute of the Football Federation of Bosnia and Herzegovina (2017 edition) that provides, *inter alia*, as follows:

*“The Football Federation of BiH is a FIFA and UEFA member. Pursuantly it takes over the obligation: (...) d) to acknowledge the authorities of the Court of Arbitration for Sports (CAS) in Lausanne (Switzerland), as stated in the relevant provisions of the Statute of FIFA and Statute of UEFA. (...) b)(VI) All disputes of national character that result or incur from implementing the Statute of the Football Federation of BiH, provisions, directives or decisions made pursuant to the Statute or in reference to any contract, are presented in the final instance to the exclusive authority of the independent and impartial arbitrary tribunal, i.e. CAS in Lausanne (Switzerland), as stated in relevant provisions of FIFA and UEFA statute, until the provisions of Bosnia and Herzegovina establish a corresponding arbitrary [sic] tribunal in the territory of Bosnia and Herzegovina that fulfils the minimum requirements of FIFA and UEFA. CAS will provide the final resolutions of such disputes without the involvement of the regular court, unless this is explicitly prohibited by the valid legislation in Bosnia and Herzegovina”.*

28. The jurisdiction of the CAS was not contested by either Party and it is further confirmed by the Order of Procedure, which was duly signed by both Parties.
29. Furthermore, it should be highlighted that the appeal hereof shall be referred only and exclusively to the decision rendered by the FFBH Second Instance Commission for Club Licensing no. 02-2193/19 dated 27 May 2019. Indeed, all claims made by the Parties that led to the decision of the FFBH First Instance Commission for Club Licensing no. 02-1829-4/19 dated 3 May 2019 shall not be taken into consideration by the Sole Arbitrator since they were already addressed by the mentioned Commission. Indeed, Article R47 of the CAS Code has been generally interpreted as indicating that appealable decisions are the ones that fulfil the principle of exhaustion of internal legal remedies available to the appellant.

## **VI. ADMISSIBILITY**

30. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

31. According to the Appellant, the decision rendered by the FFBH Second Instance Commission for Club Licensing no. 02-2193/19 dated 27 May 2019 was notified to it on May 28, 2019. Even if no proof has been submitted in these proceedings with respect to the date of notice of such decision to the Parties, the Respondent has not contested the date communicated by the Appellant, which, therefore, could be considered correct.

32. In light of the above, the Club lodged its appeal on 18 June 2019 and, thus, within the time limit provided for by Article R49 of the CAS Code. Moreover, the appeal complied with all other requirements set forth in Article R48 of the CAS Code.
33. The appeal is therefore admissible.

## VII. APPLICABLE LAW

34. Article R58 of the CAS Code states as follows:

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

35. The matter hereof is a national dispute between a Bosnian club and the Football Federation of Bosnia and Herzegovina.

36. Article 71 of the Statutes of the FFBH provides as follows:

*“1. In all cases, if necessary, in addition to these Statutes, Regulations, Directives and Rules of Procedure on the work of the General Assembly of the BHFF (including the decisions of the competent bodies of the BHFF), the relevant FIFA and UEFA statutes, regulations and directives shall apply firstly as subsidiary regulation and prior to the legislation of Bosnia and Herzegovina.*

*2. The proceedings conducted before the statutory bodies of the BHFF shall be conducted in accordance with relevant provisions of the BHFF regulations. If those regulations do not provide an answer, firstly, the relevant FIFA and UEFA statutes, regulations and directives shall be applied as subsidiary regulation, before the implementation of the Law on Administrative Procedure of Bosnia and Herzegovina”.*

37. Therefore, the statutes and regulations of the FFBH shall apply first, secondly the FIFA and UEFA statutes and regulations and, finally, the laws of Bosnia and Herzegovina.

## VIII. MERITS

38. The main issues to be addressed by the Sole Arbitrator are the following:

**A. What evidence is to be taken into account by the Panel to appraise whether the Club should be granted the licence to take part in the UEFA club competition during the season 2019/2020?**

39. With regard to the case at stake, it is the Sole Arbitrator’s understanding that the FFBH Second Instance Committee for Club Licensing, by requesting additional information and additional documents acted in accordance with Annex IX, item 29, of the Club Licensing Regulations. Furthermore, such documents are completely in line with the matter hereof so that their filing

does not represent an abusive procedural behaviour. Moreover, the Appellant had the full opportunity to discuss such evidence and comment on it so that no violation of the right to be heard occurred in the case at stake.

40. The Sole Arbitrator shall also establish whether the FFBH's decision making bodies committed some procedural violations, as alleged by the Appellant, for having considered in their decisions the documentation submitted by the lawyer of the coach Mr Slavko Petrović, namely Mr Dražen Nikolić. The Appellant's argument shall be dismissed. Indeed, Mr Nikolić, was not only part of the management of the club that replaced the Appellant in the UEFA club competition but also, he was the legal representative in charge of requesting the execution of the FIFA decision. In the Sole Arbitrator's opinion, the relevant statutes and regulations of FIFA with regard to the "*taking of evidence*" and UEFA procedural article referring to the "*collection of evidence*", shall apply.
41. Indeed, Article 12.4 of the FIFA Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber states that "*the Player's Status Committee and the DRC may also consider evidence not presented by the parties*". Moreover, Article 12.6 of the same Rules points out that "*evidence shall be considered with free discretion, taking into account the conduct of the parties during the proceedings [...]*". Furthermore, UEFA Procedural rules governing the UEFA Club Financial Control Body (ed. 2019) not only highlights in Article 13.2 that "*all means of evidence may be considered by the CFCB chief investigator [...]*" but also set forth in Article 23 that "*the adjudicatory chamber may request either the reporting investigator or the defendant to produce such evidence as the adjudicatory chamber may consider appropriate for the determination of the case. The adjudicatory chamber determines the admissibility, relevance, materiality and weight of the evidence offered*". Hence, the documentation mentioned above was rightly taken into consideration by the FFBH's deciding bodies and the Sole Arbitrator will thus take them into consideration.
42. Finally, the Sole Arbitrator will ascertain whether the Appellant was entitled to submit documents after the deadline provided for under Points 17 and 34 of the FFBH Key Process of the Regulations on Club Licensing for Participation in UEFA Club Competitions (December 2018 edition) and whether such document submitted after the prescribed deadline shall be taken into account.
43. With regard to the evidence submitted by the Appellant after 31 March 2019 - which was the deadline prescribed by Points 17 and 34 of the FFBH Key Process of the Club Licensing Regulations - according to the CAS jurisprudence [see, *ex multis*, CAS 2017/A/5205], if the applicable regulations regarding the issuance of license clearly state that any document indicating that the criteria have been met with respect to unpaid due liabilities after the deadline set as of 31 March will not be taken into account, such regulations will supersede the general procedural provision of Article R57, para. 3, of the CAS Code as *lex specialis*. Indeed, allowing a party to file new evidence after the prescribed deadline would undermine the authority of the domestic licensing bodies and create unequal treatment of the clubs. The Sole Arbitrator notes here that, as it will be seen below, even if these documents had been timely submitted, the issue of the present case would remain unchanged.

**B. Did the Appellant comply with all requirements set forth by Article 49 of the FFBH's Regulations on Club Licensing for Participation in UEFA Club Competitions?**

44. After having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, the Sole Arbitrator considers that the appeal is in any event not grounded for the following reasons.
45. According to Article 49 of the FFBH Regulations on Club Licensing for Participation in UEFA Club Competitions *"the license applicant must prove that as of 31 March preceding the license season it has no overdue payables in respect to its employees as a result of contractual or legal obligations that arose prior to the previous 31 December"*.
46. Despite the allegations made by the Appellant, all documents and evidence produced by both Parties confirmed that the outstanding debt of the Club towards the coach Mr Slavko Petrović was only paid on 4 April 2019; hence, after the deadline of 31 March 2019 prescribed by the applicable law and regulations.
47. Indeed, on 29 March 2019, the Club's director, Mr Mirsad Šiljak, confirmed the existence of the debt towards Mr Slavko Petrović and, on 4 April 2019, Mr Šiljak certified that on the same day the Club paid the remaining debts of BAM 20,211.07 to Mr Slavko Petrović. Had the payment been made on 28 March 2019, most likely no debt would exist on the following day. It is however without any doubt – also because expressly confirmed by the Club itself – that payment to the coach Mr. Slavko Petrović only went through on 4 April 2019.
48. Furthermore, it has to be underlined that also the new documentation submitted by the Appellant in these proceedings does not prove that the Club fully complied with Article 49 of the FFBH Regulations on Club Licensing for Participation in UEFA Club Competitions.
49. As a matter of fact, the bank statement of the Club's bank account dated 28 March 2019 (filed as an exhibit to the appeal brief) only shows the Club's balance amounting to BAM 160,330.36. Yet, it does not report any intended payment in favour of the creditor Mr Slavko Petrović.
50. With reference to another document enclosed to the Appellant's brief, the Sole Arbitrator notes that it is a translation of an alleged payment order made on 28 March 2019. Yet, no original document has been produced. Such payment order should be identical to the one submitted by the Appellant to the FFBH on 12 April 2019. Nevertheless, the creditor's account numbers are different. Therefore, the Sole Arbitrator does not consider such evidence as a proof that the relevant payment was made before 31 March 2019. In any case, having inserted an incorrect bank account number in the order is an error exclusively attributable to the Club.
51. In these proceedings the Appellant has clearly changed its defence strategy. As a matter of fact, before the FFBH Second Instance Commission for Club Licensing, the Club affirmed that the relevant payment to Mr Slavko Petrović had been made on 28 March 2019 but went through only on 4 April 2019 because of an error due to the bank administrative procedures.

In fact, it must be noted that the account number of the debtor indicated in the payment order submitted in such proceedings was correct.

52. Only in the appeal at hand the Club has adopted a different position, claiming that the payment of BAM 20,211.07 to Mr. Slavko Petrović was not realised on 28 March 2019 due to an erroneous bank account number. Indeed, the payment order submitted together with the Appellant's brief -this time - reported a different and erroneous account number. Probably the change was driven by having understood the significance of the 31 March 2019 deadline.
53. In light of the above, the new strategy presented by the Appellant in this appeal appears not consistent compared to one applied in the proceedings before the FFBH Second Instance Commission for Club Licensing.
54. In any event, the Sole Arbitrator does not consider the new evidence submitted as a proof that the relevant payment was made before 31 March 2019. Moreover, having inserted in the order an incorrect bank account is an error exclusively attributable to the Club.
55. In addition, in order to define the moment considered to be a fulfilment of a monetary obligation, according to Article 318 para. 1 of the Law on Obligations of the Federation of Bosnia and Herzegovina and Republic of Srpska, which is the law applicable to this matter, *"If payment is made through a bank or other organization with the creditor's account, it shall be deemed, unless otherwise provided by the contracting parties, that the debt is settled when the bank or organization to which the account is kept receives a remittance in favour of the creditor or the order (transfer) of the debtor's bank or organization to approve the creditor's account the amount indicated in the order"*. Therefore, the risk of error or delay in payment through a bank is borne by the debtor. Such rule is also confirmed by the Supreme Court of the Federation of Bosnia and Herzegovina in its judgment Vs FB&H, Pž. 307/98, dated 09.02.1999 – Bulletin of Vs FB&H 1/99 – 5.
56. In light of the above, the FFBH Second Instance Commission for Club Licensing correctly applied the provisions of the Regulations on Club Licensing for Participation in UEFA Club Competitions and made the right decision not to grant the license to FK Željezničar Sarajevo for participating in the UEFA club competitions. Indeed, the Club did not fully act in compliance with the provisions set forth by Article 49 of the Regulations on Club Licensing for Participation in UEFA Club Competitions since it did not prove that there were no outstanding liabilities towards its employees as of 31 March 2019 with reference to contractual obligations started before 31 December 2018.
57. The Sole Arbitrator finally notes that the fourth relief requested by the Appellant would a priori directly affect Football club Radnik Bijeljina, which, according to the Appellant, is the club that replaced it in the UEFA club competition on the basis of having had the license refused. In view of the CAS case-law according to which *"no order for relief can be granted which affects the rights of absent third party"* (CAS 2016/A/4642), one can thus wonder whether the FFBH would have alone standing to be sued with respect to such relief. Since the appeal shall in any event be dismissed, this question can be left open.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by FK Željezničar on 18 June 2019 is dismissed.
2. The decision issued by the FFBH Second Instance Commission for Club Licensing no. 02-2193/19 dated 27 May 2019 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.