Arbitration CAS 2019/A/6502 Rizespor Futbol Yatirimlari San. Ve Tic. A.Ş. v. Jakob Jantscher, award of 27 March 2020

Panel: Mr Marco Balmelli (Switzerland), President; Mr Emin Özkurt (Turkey); Mr João Nogueira Da Rocha (Portugal)

Football
Termination of the employment contract
Time of performance of a financial obligation
Compensation for damages

1. **According to Art. 78 of the Swiss Code of Obligations, where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day (para. 1). Any agreement to the contrary is unaffected (para. 2). According to the Federal Law on time limits on Saturdays, Saturday shall be treated as a recognised public holiday only with regard to the statutory time limits under federal law and the time limits set by authorities under federal law (Article 1). Therefore, time limits agreed upon by contract are not extended if they end on a Saturday, unless the circumstances of the specific legal relationship suggest otherwise. With regard to employment contracts in the football sector, the specific legal relationship does not suggest any exception from the rule: in this sector, Saturday is often a match day and therefore a normal working day. Hence, there is no need to protect the debtor from having to perform on a day of rest.**

2. **In the absence of any contractual provision determining the financial consequences of a unilateral breach of contract, the applicable consequences are set out in Article 17 para 1 of the FIFA Regulations on the Status and Transfer of Players. When establishing the amount of compensation due, the judging authority has a considerable scope of discretion and relies on the principle of the *"positive interest"*.**

I. INTRODUCTION

1. Rizespor Futbol Yatirimlari San. Ve Tic. A.Ş. (the "Appellant" or the "Club") brings an appeal against Jakob Jantscher (the "Respondent" or the "Player") challenging the decision rendered on 25 October 2018 (notified with grounds on 16 September 2019) by the Dispute Resolution Chamber ("DRC") of the Fédération Internationale de Football Association ("FIFA"), condemning the Appellant to pay to the Respondent (a) EUR 63,482 plus 5% interest, (b)

EUR 747,000 plus 5% interest since 11 December 2017 and (c) dismissing the Appellant's claim of EUR 1,810,000 (the "Appealed Decision").

II. THE PARTIES

2. The Appellant is a football club that is domiciled in Turkey and that is affiliated with the Turkish Football Association, which is affiliated with FIFA.

3. The Respondent is an Austrian football player currently employed by the Austrian football club SK Sturm Graz.

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Overview

5. The dispute between the Parties arises from the Respondent's termination of the employment contract between the Parties on 27 November 2017. While the FIFA DRC established that the Respondent had just cause to terminate the employment contract and is entitled to a compensation, the Appellant argues that the Respondent terminated the employment contract without just cause and must therefore pay a compensation to the Appellant.

B. The Contract and termination of the same by the Respondent

6. On 31 August 2016, the Parties entered into an employment contract valid as from 31 August 2016 until 31 May 2020 (the "Contract").

7. The Appellant undertook to pay the following salary to the Respondent:

> *"**FOR THE SEASON 2016-2017***
> ***Total Amount**: 600.000 (Six Hundred Thousand) Euro150.000 (One Hundred Fifty Thousand) Euros advancement will be paid within 7 days after the Club receives the player's ITC.*
> ***Guaranteed Receivable**: The Club will pay to the player 250.000 (Two Hundred Fifty Thousand) Euros; divided 10 months between September 2016 and June 2017; 25.000 (Twenty-Five Thousand) Euros per month will be paid at the end of the each month as equal installments.*

***Per Matches**: 200.000 (Two Hundred Thousand) Euros partitioned by 32 league Matches thus 6.250 (Six Thousand Two Hundred Fifty) Euros will be due following month of per 4 four matches that the player participated in and will be paid in 2016 — 2017 season.*

FOR THE SEASON 2017-2018
***Total Amount**: 650.000 (Six Hundred Fifty Thousand) Euros 150.000 (One Hundred Fifty Thousand) Euros advancement will be paid 30.08.2017*
***Guaranteed Receivable**: The club will pay to the player 300.000 (Three Hundred Thousand) Euros; divided 10 months between August 2017 and May 2018; 30.000 (Thirty Thousand) Euros per month will be paid at the end of the each month as equal installments.*
***Per Matches**: 200.000 (Two Hundred Thousand) Euros partitioned by 34 league Matches thus 5.882 (Five Thousand Eight Hundred Eighty-Two) Euros will be due following month of per 4 four matches that the player participated in and will be paid in 2017 — 2018 season*

FOR THE SEASON 2018-2019
Total Amount: 700.000 (Seven Hundred Thousand) Euro 150.000 (One Hundred Fifty Thousand) Euros advancement will be paid 30.08.2018
***Guaranteed Receivable**: The club will pay to the player 350.000 (Three Hundred Fifty Thousand) Euros; divided 10 months between August 2018 and May 2019; 35.000 (Thirty-Five Thousand) Euros per month will be paid at the end of the each month as equal installments.*
***Per Matches**: 200.000 (Two Hundred Thousand) Euros partitioned by 34 league Matches thus 5.882 (Five Thousand Eight Hundred Eighty-Two) Euros will be due following month of per 4 four matches that the player participated in and will be paid in 2018 — 2019 season*

FOR THE SEASON 2019-2020
***Total Amount**: 700.000 (Seven Hundred Thousand) Euro 150.000 (One Hundred Fifty Thousand) Euros advancement will be paid 30.08.2019*
***Guaranteed Receivable**: The club will pay to the player 350.000 (Three Hundred Fifty Thousand) Euros; divided 10 months between August 2019 and May 2020; 35.000 (Thirty-Five Thousand) Euros per month will be paid at the end of the each month as equal installments*
***Per Matches**: 200.000 (Two Hundred Thousand) Euros partitioned by 34 league Matches thus 5.882 (Five Thousand Eight Hundred Eighty-Two) Euros will be due following month of per 4 four matches that the player participated in and will be paid in 2019 — 2020 season".*

8. On 28 August 2017, the Appellant allowed the Respondent to enter negotiations with another club for a loan for the season 2017/2018 without a transfer fee. This permission was valid until 6 September 2017. The Parties also signed an agreement stating that the Appellant would not charge any transfer fee and the Respondent would waive any remuneration from the Appellant, including the "past receivables". Said agreement was valid until 6 September 2017 as well. No loan transfer was arranged thereafter.

9. On 22 September 2017, the Respondent put the Appellant in default for the payment of EUR 180,000 (comprising a part of the payment due on 30 August 2017 and the salary of August 2017).

10. On 27 September 2017, the Parties signed a document titled "Protocol" (the "Protocol") which *"governs and defines the terms and conditions for the removing of the notification dated 22.09.2017 that send by the player to the club according the contract […]"*. Further, the Protocol included the following:

    1. *"Pursuant to this Protocol, the Club shall pay the Soccer Player a total sum of 210,000 […] Euro on 25.11.2017, including the advance payment for 2017-2018 season and wages for August and September,*

    2. *In case the SOCCER PLAYER terminates the Professional Player's Contract signed between him and the Club without just cause or the said Contract is mutually terminated or the soccer player is transferred to another club until 25.11.2017, the SOCCER PLAYER hereby agrees, represents and undertakes that he shall waive the above-mentioned receivables and all other claims and that he shall not assert any further rights and receivables, and the Club hereby agrees, represents and undertakes that it accepts such waiver and it shall not demand any fee in case the soccer player is transferred to another club until 25.11.2017.*

    3. *If the club doesn't full fill the obligations in this protocol on the date of 25.11.2017 player has a special right to terminate the professional football player contract without giving any notice or warning.*

    4. *By paying this amount, neither Party shall be entitled to any further right or receivable from the other Party for these months, retroactively and under any other name whatsoever, irrespective of whether such rights or claims are governed in negotiable instruments, and the Parties hereby irrevocably and definitely release each other".*

11. On 27 November 2017, 1:05 pm local time, the Respondent terminated the Contract since no payment was received from the Appellant. In the same letter, the Respondent alleged that also mobbing had incurred to him.

12. On 27 November 2017, 2:07 pm local time, the Respondent received a payment of EUR 210,000 made by the Appellant. On 28 November 2017, the Appellant sent a letter to the Respondent, stating that the termination was unfair since the payment was made and it denied any mobbing accusations.

13. Both Parties initiated proceedings before the FIFA DRC claiming that the other party was responsible for the early termination of the Contract and both requesting the respective compensation.

C. Decision of the FIFA DRC

14. The FIFA DRC applied the Regulations on the Status and Transfer of Players (the "RSTP"). It referred to the Protocol which stated that the Respondent was allowed to terminate the Contract without any further notice if the Appellant did not pay EUR 210,000 on 25 November 2017. It further established that no payment was made on the due date (i.e. on 25 November 2017). The payment was still outstanding when the Respondent terminated the Contract on 27 November 2017. Therefore, the FIFA DRC held that the Respondent

terminated the Contract with just cause and that a compensation must be fixed according to Article 17 RSTP.

15. The FIFA DRC established that the Respondent was entitled to EUR 63,482 for outstanding remuneration and bonus payment until the termination of the Contract. Further, the FIFA DRC further held that the Respondent would have earned EUR 1,180,000 until the regular termination of the Contract on 31 May 2020. Taking into account the Respondent's new employment contract with Sturm Graz until 31 May 2020 with a remuneration of a total amount of EUR 433,000, the FIFA DRC concluded that the mitigated damage for the early termination of the Contract is EUR 747,000.

16. On 16 September 2019, the FIFA DRC rendered its decision, condemning the Appellant to pay to the Respondent (a) EUR 63,482 plus 5% interest, (b) EUR 747,000 plus 5% interest since 11 December 2017 and (c) dismissing the Appellant's claim of EUR 1,810,000.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 4 October 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") pursuant to Article R47 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code") against the Respondent and FIFA with respect to the Appealed Decision. In its Statement of Appeal, the Appellant nominated as arbitrator Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey.

18. On 16 October 2019, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief.

19. On 21 October 2019, FIFA requested to be excluded as a Respondent in this proceeding.

20. On 22 October 2019, the Appellant agreed to remove FIFA as a Respondent in this proceeding; such removal was confirmed by the CAS Court Office on the same day.

21. On 25 October 2019, the Respondent nominated as arbitrator Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal.

22. On 4 November 2019, upon request of the Respondent and pursuant to Article R55(3) of the CAS Code, the CAS Court Office informed the Parties that a new deadline for submitting the answer would be fixed upon the Appellant's payment of its share of the advance costs.

23. On 14 November 2019, pursuant to Article R54 of the CAS Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute was constituted as follows:

President: Dr Marco Balmelli, Attorney-at-law in Basel, Switzerland

Arbitrators: Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey

Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal.

24. On 3 December 2019, in accordance with Article R55 of the CAS Code, the Respondent filed his Answer.

25. On 27 December 2019, the CAS Court Office informed the Parties that a hearing would take place in the present procedure on 12 February 2020 in Lausanne, Switzerland.

26. On 9 January 2020, the Appellant and the Respondent each submitted a duly signed copy of the Order of Procedure.

27. On 12 February 2020, a hearing took place at the office of the CAS Anti-Doping Division in Lausanne, Switzerland.

28. The Panel was assisted by Ms Delphine Deschenaux-Rochat, CAS Counsel. In addition, the following persons attended the hearing:

a) For the Appellant:

- Ms Anil Gürsoy Artan, Counsel.

b) For the Respondent:

- Mr Bora Imadoglu, Counsel;
- Ms Didem Sunna, Counsel;
- Mr Jakob Jantscher, the Respondent himself.

29. Before the hearing was concluded, each of the Parties expressly confirmed that they did not have any objection with the procedure and that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

V. SUBMISSIONS OF THE PARTIES

30. What follows is a summary of the Parties' submissions. To the extent that it omits any contentions, the Panel notes that it has considered all of the evidence and arguments submitted by the Parties.

A. The Appellant's submission

31. The Appellant claims the following:

(a) To put the dispute into context: At the end of the season 2016/2017, the Player wanted to leave the Club because the Club – due to bad performance – was relegated into the First League (2nd highest league in Turkey). The Player was not satisfied playing in a lower

league and at the same time, the Club faced financial difficulties because it did not receive any broadcasting rights income anymore. In the Protocol, the Parties agreed that the Player may transfer on a loan basis without any loan fee. The Player did not enter a loan agreement because he was not offered a financially equally attractive contract by another club.

(b) The agreed payment date on 25 November 2017 was a Saturday which is a non-working day for banks in Turkey. Consequently, the Club made the payment on Monday, 27 November 2017.

(c) This is in line with Article 78 of the Swiss Code of Obligation (the "SCO") which holds the following:

> *"***Art. 78 SCO**:
> Time of performance / II. Obligations subject to time limit / 3. Sundays and public holidays
>
> *3. Sundays and public holidays*
>
> *[1] Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday[1] at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day.*
>
> *[2] Any agreement to the contrary is unaffected.*
>
> *[1] In relation to the statutory time limits under federal law and the time limits fixed by authorities by virtue of federal law, Saturday is now regarded as equivalent to a public holiday (Art. 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3)".*

(d) The Appellant was not allowed to make the payment in cash due to Turkish tax law. It was also not able to use online-banking because it does not use online banking at all.

(e) From a Swiss law perspective and the Parties' intentions, it was clear that the payment could not be performed on a Saturday. The payment was therefore made in due time (Article 78 SCO) and the Player terminated the Contract without just cause. As a compensation, the Appellant claims for EUR 593,625 (EUR 394,875 transfer fee paid to the Player's former club and EUR 198,750 for the payment made to the agent involved in the transfer).

(f) At the hearing, the Club's representative stated that the request for the bank transfer was communicated to the bank early in the morning of 27 November 2017.

B. The Respondent's submission

32. The Respondent relies on the following arguments:

(a) The Player sent the first notice on 11 January 2017 for EUR 206,250. On 28 August 2017, the Parties then signed a memorandum of understanding in order to settle the outstanding

payments. The Parties agreed that the Club would not ask for any transfer fee in case the Player was transferred on a loan basis to another Club.

(b) The Player put the Club in default for the second time on 22 September 2017, requesting EUR 180,000 from the Club. On 27 September 2017, the Parties agreed on the Protocol. The agreed payment in the amount of EUR 210,000 on 25 November 2017 was paid only on 27 November 2017 (after the Player terminated the Contract) and therefore too late.

(c) The Parties did not agree on a time limit in days but expressively agreed on a due date on 25 November 2017. The Player terminated the Contract on 27 November 2017, 1.05 pm local time, whereas the transfer of money was made at 14.07 pm local time.

(d) The Protocol was drafted by the Club and the payment date of 25 November 2017 was suggested by the Club. The Player's lawyers only added para. 3 to the Protocol.

(e) It would not be appropriate to rely on Article 78 para. 1 SCO. The Club could – at least – have notified the Player that it was not able to perform any bank transfers on a Saturday. The Club also had the possibility to make the transfer one day earlier on 24 November 2017 in order to fulfil its obligation or to propose a different payment date.

(f) The Player was entitled to terminate the Contract. Therefore, the Club must pay a compensation according to Article 17 RSTP.

VI. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

A. Jurisdiction

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

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

34. The jurisdiction of CAS, which is not disputed, derives from Article 58 para. 1 of the FIFA Statutes as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

35. The Parties further confirmed the jurisdiction of CAS by signing the Order of Procedure.

36. It follows that CAS has jurisdiction to decide on the present dispute.

B. Admissibility

37. Article R49 of the CAS Code provides:

"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".

38. In addition, Article 58 para. 1 of the FIFA Statutes states:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

39. The appeal was filed within the 21 days set by Article 58 para. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

40. It follows that the appeal is admissible.

C. Applicable Law

41. Pursuant to Article R58 of the CAS Code:

"[t]he 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".

42. Article 9 of the Contract holds that the FIFA Regulations shall be applicable to all disputes. The Panel notes that Article 57 para. 2 of the FIFA Statutes stipulates the following:

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

43. The Parties both refer in their submissions to the FIFA Regulations and – in case of a lacuna – to Swiss law. In light of the above, the Panel will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, in accordance with Swiss law in case of any lacuna in the FIFA Regulations.

VII. MERITS

A. Did the Appellant fulfil its obligations pursuant to the Protocol on time?

44. It is not disputed that the Player received the agreed payment on 27 November 2017 whereas the Protocol provides for the 25 November 2017 as payment date.

45. At the hearing, the Club's representative stated that the bank transfer was communicated to the bank early in the morning of 27 November 2017, i.e. before the Player terminated the Contract. The Panel notes however that no evidence has been provided to support this allegation. The Panel therefore relies on the evidence provided by the Player which states that he received the payment one hour after he terminated the Contract.

46. Also at the hearing, the Appellant's representative claimed that there is a provision under Turkish Law according to which the time of performance or the last day of a time limit is deemed to be the next working day in case the time of performance or the last day of a time limit falls on a Saturday, Sunday or on a day officially recognised as a public holiday. The Appellant alleges that it was of the opinion that it could fulfil its obligations on Monday because the Swiss and the Turkish Code of Obligations are practically identical. Considering this claim, the Panel notes that the applicable law to the dispute is Swiss law. The Panel will therefore not examine the rules under Turkish law.

47. The Panel therefore examines the Appellant's argument that the payment on 27 November 2017 was in time and relies on Article 78 SCO, which reads as follows:

> "**Art. 78 SCO**:
> Time of performance / II. Obligations subject to time limit / 3. Sundays and public holidays
>
> *3. Sundays and public holidays*
>
> *[1] Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday[1] at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day.*
>
> *[2] Any agreement to the contrary is unaffected.*
>
> *[1] In relation to the statutory time limits under federal law and the time limits fixed by authorities by virtue of federal law, Saturday is now regarded as equivalent to a public holiday (Art. 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3)".*

48. Turning to Swiss law and doctrine, the Panel determines the following: Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day (Article 78 SCO para. 1). Any agreement to the contrary is unaffected (para. 2).

49. According to the Federal Law on time limits on Saturdays (SR 173.110.3), Saturday shall be treated as a recognised public holiday with regard to the *statutory time limits* under federal law and the *time limits set by authorities* under federal law (Article 1).

50. Therefore, time limits agreed upon by contract are not extended if they end on a Saturday, unless the circumstances of the specific legal relationship suggest otherwise (Berne

Commentary SCO-WEBER, Art. 78 N 21 f.; Basel Commentary SCO-LEU, Art. 78 N 3; Zurich Commentary SCO-SCHRANKER, Art. 78 N 21).

51. The payment date on 25 November 2017 – a Saturday – was agreed as the end of the time limit by the Parties. It remained undisputed that the Club drafted the Protocol and suggested the 25 November 2017 as a payment date. The specific date indicates a binding character of the time limit in question (Article 78 para. 2 SCO). Further and as a general rule, the Swiss Federal Law on time limits on Saturdays is not applicable to time limits agreed in contracts. The specific legal relationship does not suggest any exception from this rule: the time limit agreed in the Protocol concerns an employment contract in the football sector. In this sector, Saturday is often a match day and therefore a normal working day. Hence, there is no need to protect the debtor from having to perform on a day of rest. An extension of the time limit according to Article 78 para. 1 SCO does therefore not comply with Swiss law.

52. The Panel thus establishes that the Appellant did not fulfil its obligations pursuant to the Protocol in time.

B. Consequences

53. Pursuant to para. 3 of the Protocol, the Respondent had the right to terminate the Contract without any further notice in case the Appellant did not pay the agreed amount in time. The FIFA DRC established that the Appellant was responsible for the early termination of the Contract and therefore must pay a compensation according to Article 17 RSTP.

54. In this respect, the Panel relies on the long-standing practice of the FIFA legal bodies and CAS, which consistently holds the following (*cf. CAS 2017/A/5111, para. 132-135)*:

"[…] that the purpose of Article 17 of the FIFA RSTP is basically nothing else than to reinforce contractual stability, i.e., to strengthen the principle of pacta sunt servanda in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, whether they be committed by a club or by a player (CAS 2005/A/876, page 17: "[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"; CAS 2007/A/1358, no. 90; CAS 2007/A/1359, no. 92: "[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"; confirmed in CAS 2008/A/1568, no. 6.37).

Moreover, the Panel refers to the FIFA RSTP Commentary (N5 and N6 to Article 14), which reads as follows: "5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions. 6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

134. Accordingly, although Respondent was the one who terminated the Contract, it was the Appellant who caused and provoked the termination by breaching its contractual obligations. The Appellant is, thus, liable to pay compensation for the damage incurred by the Respondent as a consequence of the early termination. In

taking this approach the Panel finds itself in line with the standing jurisprudence of the CAS (cf. CAS 2012/A/3033, no. 72: "The Panel, however, is satisfied that the Player is, in principle, entitled to compensation because of the breach of the Employment Contracts by the Club. In this respect, the Panel makes reference to the Commentary to the FIFA Regulations on the Status and Transfer of Players (hereafter referred to as the "FIFA Commentary").

According to Article 14 (5), (6) of the FIFA Commentary, a party "responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed". Accordingly, although it was the Player who terminated the Employment Contracts by filing a claim against the Club with FIFA, the Club was at the origin of the termination of the Employment Contracts and is thus liable to pay compensation for damages suffered by the Player as a consequence of the early termination")".

55. The Panel therefore concludes that the Appellant must pay a compensation according to Article 17 RSTP.

C. Amount of compensation

56. The Panel observes that in the absence of any contractual provision determining the financial consequences of a unilateral breach of contract, the applicable consequences are set out in Article 17 para 1 of the FIFA RSTP, which reads as follows:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

57. The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, para. 9.4; CAS 2007/A/1299, para. 134; CAS 2006/A/1100, para. 8.4.1.).

58. The FIFA DRC relied on the principle of *"positive interest"* which has been applied by various previous CAS Panels (cf. i.a. CAS 2008/A/1519-1520, para. 85 et seq [and similarly in CAS 2005/A/801, para. 66; CAS 2006/A/1061, para. 15; CAS 2006/A/1062, para. 22; and CAS 2014/A/3527, para. 78).

59. The Panel notes that if the Contract would have been fulfilled by the Parties entirely, the Respondent would have been entitled to a remuneration of at least (without bonuses, etc.) EUR 1,180,000. Taking into account the Respondent's new employment contract with Sturm Graz until 31 May 2020 with a remuneration of a total amount of EUR 433,000, the Panel concludes – in line with the Appealed Decision – that the mitigated damage for the early

termination of the Contract is EUR 747,000. This amount was further not disputed by the Parties.

D. Conclusion

60. The Panel concludes the following:

(a) Parties agreed on a deadline until 25 November 2017 to pay outstanding salaries. In case of non-fulfilment by the Club, the Player was allowed to terminate the Contract without further notice. It was not the first time that the Club failed to pay the salary on time.

(b) The Club paid only on 27 November 2017 and therefore too late.

(c) Therefore, the Respondent had just cause to terminate the Contract.

(d) Since the Club was responsible for the early termination of the Contract, it must pay a compensation according to Article 17 RSTP.

(e) The compensation in the amount of EUR 747,000 was calculated correctly.

(f) Therefore, the appeal is dismissed and the Appealed Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Rizespor Futbol Yatirimlari San. Ve Tic. A.Ş. on 4 October 2019 against the decision issued on 25 October 2018 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 25 October 2018 is confirmed.

3. (…).

4. (…).

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