Arbitration CAS 2019/A/6514 Ivan Temnikov v. FC Dynamo Moscow & Football Union of Russia (FUR), award of 16 October 2020

Panel: Mr Vladimir Novak (Belgium), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Admissibility of additional jurisprudence submitted late
Buyout clause
Contractual freedom and validity of a buyout clause
Requirement of clear and unequivocal drafting
Prohibition of excessive commitment vs full reciprocity of contractual obligations

1. **The need for consistent jurisprudence of the CAS, which enhances predictability of sports law and decision-making, ought to be balanced with the need for procedural efficiency and timely adjudication. If a relevant CAS award has been adopted (even if not yet published) and has come to the attention of a CAS panel in another pending procedure, that panel is bound to take it into account, provided the parties of the pending procedure are afforded the opportunity to submit their comments on such award. This approach ensures consistency of the CAS jurisprudence and the right to a fair hearing while not unduly prolonging the timely adjudication. And if such CAS award has been issued following the completion of the written procedure, it can, by definition, only be submitted by a party "belatedly".**

2. **Parties to a contract of employment are free to agree to an option to unilaterally terminate the said contract without any just cause. This agreement is commonly referred to as a "buyout clause", as it essentially enables a party to unilaterally buy itself out of a contract to which it no longer wishes to be bound. Whether such clauses are called "buyout clauses", "indemnity" or "penalty clauses" or otherwise, is irrelevant. Legally, such clauses correspond to liquidated damages provisions, at least so far as the real will of the parties to foresee in such clause the amount to be paid by the breaching party in the event of a breach and/or of a unilateral, premature termination of the employment contract is established.**

3. **The purpose of Article 17 of the FIFA Regulations on the Status and Transfer of Players, and buyout clauses more generally, is essentially to preserve the parties' contractual freedom and reinforce contractual stability. The principle of *pacta sunt servanda* is crucial for the well-functioning of international football and shall apply to all stakeholders, "small" and "big" clubs, unknown and top players, employees and employers, notwithstanding their importance, role or power. However, the principle of contractual freedom and stability is not absolute. In order for a buyout clause to be valid, essentially three cumulative requirements shall be met: (i) the clause shall be**

written in a clear and unequivocal manner; (ii) there shall be no evidence of coercion or duress in conclusion of the clause; and (iii) the clause shall not demonstrate excessive commitment by one party that grants the other party undue control.

4. **In order to be valid, buyout clauses should be drafted in a clear and unequivocal manner, allowing the parties to the contract to clearly understand their rights and obligations associated with unilateral termination: where such a clause exists, its wording should leave no room for interpretation and must clearly reflect the true intention of the parties.**

5. **Intervening with the parties' free will enshrined in a buyout clause should be confined to exceptional cases. This would, in principle, apply in the case of excessive disproportionality i.e., a buyout clause may be incompatible with the general principles of contractual stability and considered null and void if the reciprocal obligations it sets forth actually disproportionately favour one of the parties and gives it an undue control over the other party. However, the validity of the buyout clause is not conditional on the full reciprocity of the contractual obligations under the buyout clause. Indeed, upon termination of the employment contract, the situation of the club and that of the player may be substantially different. When a club terminates the contract, the player loses a source of income. In contrast, when a player terminates the contract, the club loses the value of the services of the said player, which is only partially reflected in the remuneration due to him, since a club has to make also certain expenditures to obtain such services. Such expenditures commonly include costs incurred in the arrangement of a transfer, ongoing training costs and other expenses in relation to the player.**

I. PARTIES

1. Mr. Ivan Temnikov (the "Appellant" or the "Player") is a professional football player of Russian nationality. He is currently employed with the Football Club Nizhny Novgorod.

2. FC Dynamo Moscow (the "First Respondent" or the "Club") is a Russian professional football club affiliated with the Football Union of Russia. The Club performs in the Russian Football Premier League.

3. Football Union of Russia (the "Second Respondent" or "FUR") is a Russian governing football body and a member of the Fédération Internationale de Football Association ("FIFA").

4. The First Respondent and the Second Respondent are collectively referred to as the "Respondents".

5. The Appellant and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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.

7. On 6 June 2016, the Player and the Club signed a professional contract of employment (the "2016 Contract"), valid from 6 June 2016 until 30 June 2018.

8. On 15 June 2018, the Player and the Club signed a new professional contract of employment (the "Contract"), along with an Annex No. 1 to the Contract (the "Annex"), valid from 1 July 2018 until 31 May 2020.

9. On 30 June 2018, the Player was legally dismissed by the Club due to expiration of the term of the 2016 Contract. Upon dismissal, the Player was paid for unused leave for the period from January to June 2018 in the amount of RUB 222,751.96.

10. The following day, on 1 July 2018, the Player started a new employment relationship with the Club in accordance with the Contract.

11. Pursuant to clause 7.2 of the Contract and clause 2.3 of the Annex, the Player's monthly salary under the Contract was RUB 1,494,253 gross and RUB 1,300,000 net. Moreover, the Player was provided with 28 regular and 4 additional paid leave days *per annum* as per clauses 8.2 and 8.3 of the Contract. The Player used 15 calendar days in the period between 10 December 2018 – 25 December 2018 and 16 calendar days in the period between 27 May 2019 – 10 June 2019. The Club paid leave allowance to the Player, which was calculated based on the Player's salary under the Contract.

12. In addition, the following clauses of the Contract are notable:

- Clause 2.5 of the Contract provides as follows:

  "The Football Player's work involve travelling, i.e. relates to travelling outside the Club's location either within the territory of the Russian Federation or outside the Russian Federation, in order to the Football Player's participation for the Team in official and friendly football matches, as well as in order to his participation in trainings, separate sports events, meetings of the Team, traineeships, press-conferences, match analyses and other events connected to the Club's sports activity".

- Clause 12.3 of the Contract provides as follows:

  "In the event of early termination of this Contract on the initiative of the Club in connection with the Club's decision on the early termination of this Contract for reasons not related to the violation of this Contract by the Football Player, the Club shall pay to the Football Player the compensation for the specified early termination of this Contract in the amount of the sum which is equivalent to 3 (three) average monthly earnings of the Football Player.

  At the same time, the amount of the average monthly earnings is calculated as the average earnings for the last 12 (twelve) months, or for the period of actual labor relations, if this period was less than 12 (twelve) months.

  In case the amounts payable are indicated in a foreign currency, payments are made in Russian rubles at the official exchange rate of the Central Bank of the Russian Federation (Bank of Russia) on the date of accrual. The parties shall agree that the date of accrual is understood as the date of the dismissal of the Football Player".

- Clause 12.4 of the Contract provides as follows:

  "Compensation (payment) for the early termination of the contract of employment on the initiative of the Club in connection with the Club's decision on the early termination of this Contract for reasons not related to the violation of this Contract by the Football Player shall be paid by a professional football club within 2 (two) months from the date of termination of this Contract".

- Clause 12.6 of the Contract provides as follows:

  "In the event this Contract is early terminated by the Club on the grounds related to disciplinary sanctions (part three of Article 192 of the Labour Code of the Russian Federation), as well as in the event this Contract is early terminated by the Football Player without just cause, (that is, in the absence of violation by the Club of legislative and other normative legal acts containing the employment and labour laws, the terms of a collective agreement, an agreement or this Contract directly, in the absence of a sports justification for the early termination of the contract of employment established by the regulatory and other documents of FIFA, UEFA and the FUR), as well as in case the Football Player does not start to work on the day specified in clause 4.2. of this Contract, the Football Player shall be obliged to pay the compensation in favor of the Club, consisting of the fixed payment in the amount of the sum which is equivalent to 3 (three) average monthly earnings of the Football Player and an additional payment consisting of the sums of all the expenses incurred by the Club for the preparation of the Football Player (including but not limited to the average earnings of the Football Player, taxes paid by the Football Player and insurance payments, the cost of the Football Player's medical insurance and the costs of his treatment for the period of work in the Club (but not more than five years), as well as expenses incurred by the Club for the transfer of a football player (transfer payment, compensation for preparation), with the exception of the agent's fee within thirty (30) calendar days after the termination thereof.

  In this case, the amount of average monthly earnings is calculated for the last 12 (twelve) months, or for the period of actual labour relations, if such a period is less than 12 (twelve) months.

The parties shall agree that the payment specified in this clause is not a transfer payment ("release amount"), compensation for training, preparation and improvement of the Football Player's skills, which are paid in the procedure prescribed by the regulatory and other documents of the FUR, FIFA, UEFA.

The Parties shall agree that, the provisions of this clause can't be interpreted in such a way that the Club gives its consent to the early termination of this Contract by the Football Player.

The Parties shall agree, that the payment stipulated by this clause shall become due and payable regardless of actual amount of damage caused to the Club. The payment shall be made by direct bank transfer to the banking account of the Club".

13. On 4 July 2019, the Club received a letter from Football Club Nizhny Novgorod requesting the transfer of the Player on loan from 4 July 2019 to 29 May 2020.

14. On 4 July 2019, the Club notified the Player of the early termination of the Contract pursuant to clause 12.3 of the Contract.

15. On the same day, the Club sent to the bank an order for the payment of the following sums to the Player:

    a. compensation for termination of the Contract, in the amount of RUB 4,991,623.56[1], which corresponds to the three average monthly remuneration of the Player on the day of dismissal;

    b. leave allowance for one unused day of paid leave in the amount of RUB 50,989.02;

    c. salary for the period of 1 July 2019 – 4 July 2019 in the amount of RUB 52,173.91; and

    d. incentive payment to the salary for the period of 1 July 2019 – 4 July 2019 in the amount of RUB 207,696.17.

16. The payment of the above stated amounts was executed by the bank on 5 July 2019.

17. On 5 July 2019, the Player concluded an employment contract with the Football Club Nizhny Novgorod (the "2019 Contract").

B. Proceedings before the FUR Dispute Resolution Chamber

18. On 21 July 2019, the Player filed a claim against the Club to the FUR Dispute Resolution Chamber (the "FUR DRC") requesting the recognition of the early and unilateral termination of the Contract by the Club, and collection of debts including compensation for the termination.

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1 The Respondent's Answer inadvertently referred to a slightly wrong amount of RUB 4,991,653.56.

19. On 2 August 2019, the FUR DRC rendered a decision (the "Appealed Decision"), in which it partially upheld the Player's claims. Namely, it recognized that the termination of the Contract by the Club was made early and unilaterally, and without just cause, but it dismissed all other claims of the Player.

20. The FUR DRC found that clause 12.3 of the Contract was a buyout clause, since it allowed the First Respondent to terminate the Contract early and unilaterally by paying a pre-determined amount of compensation of three average monthly earnings of the Player. The FUR DRC concluded that clause 12.3 of the Contract was a valid buyout clause and that the termination of the Contract pursuant to clause 12.3 was valid.

21. The operative part of the Appealed Decision concluded, among others, as follows:

"1. The claim of a professional football player Temnikov I.V. towards JSC "FC Dynamo-Moscow" on the recognition of termination of the contract of employment as made by the Respondent early and unilaterally, on collection of debts under the contract of employment, compensation for termination of the contract of employment is partially upheld.

2. The termination of the contract of employment concluded between professional football player Temnikov I.V. and JSC "FC Dynamo-Moscow" is recognized as made by JSC "FC Dynamo-Moscow" early and unilaterally at the initiative of JSC "FC Dynamo-Moscow" in the absence of any wrongful acts (omissions) by professional football player Temnikov I.V. without just cause.

3. The rest of the demands of professional football player Temnikov I.V. towards JSC "FC Dynamo-Moscow" are dismissed".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 7 October 2019, the Appellant filed, pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code"), the Statement of Appeal at the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS"), against the Appealed Decision (the "Appeal"). The Appellant selected English as the language of the procedure and requested that the CAS appoint a sole arbitrator to decide the Appeal.

23. The Appellant also requested an extension of 15 days (until 2 November 2019) of the deadline to file the Appeal Brief, claiming that the Appellant's counsel was occupied with another matter before the CAS and the Appellant needed to translate documents and legal norms from Russian to English.

24. By letter dated 16 October 2019, the CAS Court Office acknowledged receipt of the Appeal and, pursuant to Article R51 of the Code, invited the Appellant to file the Appeal Brief. The CAS Court Office also invited the Respondents to state whether they consented to the extension requested by the Appellant and to the appointment of a sole arbitrator.

25. By letter dated 21 October 2019, the First Respondent consented to the Appellant's language selection and request for extension. The First Respondent requested that the case be

submitted to a panel of three arbitrators and nominated Mr. Wouter Lambrecht as an arbitrator.

26. By letter dated 22 October 2019, the CAS Court Office, noting that the Second Respondent had not provided any comments or objected to the requested extension, granted the Appellant's request for an extension to file his Appeal Brief until 2 November 2019.

27. By letter dated 30 October 2019, the CAS Court Office took note of the First Respondent's declaration that it did not intend to pay its share of the advance of costs for this matter.

28. On 1 November 2019, the Appellant filed his Appeal Brief.

29. By letter dated 13 November 2019, the CAS Court Office informed the Parties that it had received the Appeal Brief dated 1 November 2019, and requested the Respondents to submit to the CAS an Answer within 20 days of receipt of the said letter.

30. By letter dated 2 December 2019, the First Respondent requested the CAS to suspend the time limit for the filing of the First Respondent's Answer pending the payment by the Appellant of his advance of the costs of the present CAS arbitration.

31. By letter dated 2 December 2019, the CAS Court Office, pursuant to Article R55.3 of the Code, set aside the time limit stipulated in the CAS Court Office letter of 13 November 2019 and informed the Parties that the time limit for the First Respondent's Answer shall be fixed upon the Appellant's payment of his share of the advance of the costs.

32. By letter dated 20 December 2019, the CAS Court Office informed the Parties that the deadline for the Answer of the Second Respondent had expired on 11 December 2019, and that up to that date, the CAS Court Office had not received the Second Respondent's Answer, or any communication from the Respondent in this regard.

33. By letter dated 14 January 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator.

34. By letter dated 15 January 2020, the CAS Court Office informed the Parties that the Appellant was granted Legal Aid and would not be required to pay his share of the advance of the costs. Consequently, in accordance with Article R55 of the Code, the CAS Court Office informed the First Respondent that its Answer should be submitted within 20 days of receipt of the CAS Court Office letter dated 15 January 2020.

35. On 22 January 2020, the CAS Court Office informed the Parties that President of the CAS Appeals Arbitration Division had decided to appoint Mr. Vladimir Novak as the Sole Arbitrator and that the file had been transferred to the Sole Arbitrator on the same day.

36. On 6 February 2020, the First Respondent filed its Answer within the deadline provided by the CAS Court Office.

37. By letter dated 10 February 2020, the CAS Court Office acknowledged receipt of the First Respondent's Answer dated 6 February 2020 and asked the Parties whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

38. By letter dated 14 February 2020, the Appellant informed the CAS that it preferred that the Sole Arbitrator issue an award based solely on written submissions of the Parties, noting that the Parties provided detailed written explanations, as the Appellant would otherwise be disadvantaged because he would not be able to ensure his participation on account of financial difficulties, and an oral hearing would increase the costs of arbitration.

39. By letter dated 19 February 2020, the CAS Court Office acknowledged receipt of the Appellant's position regarding the hearing and also informed the Parties that the Respondents had not provided their position on whether to hold a hearing in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

40. Also on 19 February 2020, the CAS Court Office informed the Parties that the Sole Arbitrator, having duly considered all the submissions, considered himself sufficiently well informed based on the written submissions of the Parties and had decided not to hold a hearing in this case. The CAS Court Office further informed the Parties that the Sole Arbitrator did not consider ordering any procedural or evidentiary measures pursuant to Article R44.3 of the Code at that stage.

41. On the same day, *i.e.* also on 19 February 2020, the First Respondent expressed desire to hold a hearing in this matter, and explained that it did not respond to the CAS letter of 10 February 2020 as the letter had accidentally been transferred to the First Respondent's "spam" folder. The First Respondent claimed that a hearing is necessary for a comprehensive review of the facts, in particular for the cross-examination of Mr. Evgeny Galkin, the Head Legal Counsel to Football Club Nizhny Novgorod, whom the First Respondent summoned as a witness in its Answer. The First Respondent also asked the Sole Arbitrator to reconsider the decision not to order any procedural or evidentiary measures pursuant to Article R44.3 of the Code in light of the fact that in its Answer, it had contested the translation of the Appealed Decision submitted by the Appellant as well as the need to request production of evidence from the Second Respondent.

42. On the same day (*i.e.* 19 February 2020), the CAS Court Office informed the Parties that the Sole Arbitrator, having duly considered the letter of the First Respondent of 19 February 2020, nevertheless deemed himself sufficiently well informed based on the written submissions of the Parties and maintained his decision not to hold an oral hearing in this case, in accordance with Article R57 of the Code. The CAS Court Office also informed the Parties that should the Sole Arbitrator deem any procedural or evidentiary measures necessary in the following, he would proceed accordingly in due course.

43. By letter dated 26 February 2020, the First Respondent submitted a witness statement of Mr. Evgeny Galkin (the "Witness Statement"). The First Respondent explained that, in the Answer, the First Respondent had explicitly reserved the possibility to call Mr. Galkin as a

witness to testify at the oral hearing, and that the late submission of the Witness Statement is a result of the Sole Arbitrator's decision not to hold an oral hearing.

44. On the same day (*i.e.* 26 February 2020), the CAS Court Office, on behalf of the Sole Arbitrator, invited the Appellant and the Second Respondent to comment as to whether they agree with the First Respondent's submission to be admitted to the file.

45. By letter dated 4 March 2020, the Appellant disagreed with the admission to the file of the First Respondent's submission of 26 February 2020. The Second Respondent did not respond and more generally did not participate in the present proceedings.

46. On 24 April 2020, the Appellant returned a duly signed copy of the Order of Procedure to the CAS Court Office.

47. On 27 April 2020, the First Respondent returned a duly signed copy of the Order of Procedure to the CAS Court Office. The First Respondent, with regards to the holding in the Order of Procedure that *"By signature of the present Order, the Parties confirm their agreement that the Sole Arbitrator may decide this matter based on the Parties' written submissions. The Parties confirm that their right to be heard has been respected"*, made a note in the Order of Procedure, stating that it *"claims reservations"*.

48. The Second Respondent did not return a signed Order of Procedure but did not raise any objections to its content either.

49. On 10 June 2020, the First Respondent submitted a recently issued, but yet to be published CAS award in the case CAS 2019/A/6246 and drew the Sole Arbitrator's attention to certain aspects of said decision, *i.e.*, issues of calculation of compensation under Article 9 RFU RSTP and proportionality of the amounts of compensation in favor of a player and a club.

50. On 12 August 2020, the CAS Court Office acknowledged receipt of the First Respondent's submission of 10 June 2020. On behalf of the Sole Arbitrator the Appellant and the Second Respondent were granted the opportunity to comment on the First Respondent's submission by 28 August 2020.

On 28 August 2020, the Appellant provided its comments on the First Respondent's submission of 10 June 2020. The Second Respondent did not provide any comments in this regard.

IV. SUBMISSIONS OF THE PARTIES

51. The Appellant's Appeal Brief contained the following request for relief:

"1) To upheld the Appeal filed by Ivan Temnikov.

2) To change the FUR'S DRC decision No. 112-19 of 2 August 2019 regarding the refusal to satisfy the demands of the Appellant and render an award, declaring that

3) To condemn Joint-Stock Company "Football Club Dynamo-Moscow" to pay Mr. Ivan Temnikov:

a. Compensation for early termination of the Contract at the initiative of the First Respondent unilaterally, in the absence of wrongful acts (omissions) of the Appellant (without just cause) in the amount of 13 969 328,81 rubles net.

b. Average earnings for the period of the Appellant's being on annual paid leave for the period from 10 December 2018 till 23 December 2018 in the amount of 290 946,00 rubles net.

c. Average earnings for the period of the Appellant's being on annual paid leave for the period from 27 May 2019 till 9 June 2019 in the amount of 794 175,89 rubles net.

d. Per diem allowance for the Appellant's fulfillment of his labour duties beyond his place of permanent residence for the period from 1 July 2018 till 4 July 2019 in the amount of 156 800,00 rubles net.

e. Interest established by Article 236 of the Labour Code of the Russian Federation, for violation of the terms for the payment to the Appellant of the debts claimed by the Appellant, calculated from the time when payments were to be made, to the date of actual payment of the debt by the First Respondent, inclusively.

4) To condemn Joint-Stock Company "Football Club Dynamo-Moscow" 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 Joint-Stock Company "Football Club Dynamo-Moscow" and the Football Union of Russia to pay wholly any expenses, connected to the arbitration proceedings, and to pay Mr. Ivan Temnikov wholly all his expenses connected to this proceeding, including the costs of legal services and the costs of the services of the interpreters".

52. In support of these requests, the Appellant relied on the following principal arguments:

- Clause 12.3 of the Contract is null and void because:
  - It cannot be regarded as an *"agreement of the parties to terminate a contract of employment"* as per Articles 77 and 78 of the Labour Code because clause 12.3 of the Contract does not take the form of a separate document and does not contain the period of termination.
  - It worsens the Player's position *vis-à-vis* the Club, contrary to the Russian labour legislation, since it releases the Club from the adverse consequences of an early termination of the Contract and deprives the Appellant of the opportunity to receive full compensation for the damage caused to the Appellant.
  - The respective termination clauses (12.3 and 12.6) are unbalanced and disproportionate as they provide for different consequences between the

Parties as a result of the same conduct. The disproportionality between these clauses led to excessive commitment of the Player.

- Clause 12.3 of the Contract does not establish a time limit for payment of compensation, whereas Article 140 of the Labour Code provides that upon termination of the contract of employment, all sums due to be paid to the employee from the employer are to be paid on the day the employee is dismissed. As the Club did not pay the required compensation on 4 July 2019, Clause 12.3 of the Contract is not applicable.

- The Club made an improper calculation and payment of leave allowance, which was calculated based solely on the Player's salary under the Contract. The payment for leave allowance should be calculated by taking into account the last 12 months of the employment relationship between the Club and the Player. This period includes the 2016 Contract, as the labour relationship was uninterrupted.

- The Club should have compensated the Player for performing his duties towards the Club outside his place of permanent residence (*e.g.*, while participating in away games or training camps) by paying a *per diem* travel allowance. Payment of the *per diem* travel allowance is not dependent on whether an employee actually incurs expenses while working outside the place of permanent residence.

53. The First Respondent's Answer contained the following requests for relief:

"1. Dismiss the appeal filed by the Appellant against the decision passed on 2 August 2019 by the RFU Dispute Resolution Chamber in full.

2. Confirm the decision passed on 2 August 2019 by the RFU Dispute Resolution Chamber.

3. Order the Appellant to bear all the costs incurred with the present procedure.

4. Order the Appellant to pay the First Respondent a contribution towards its legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator".

54. In support of its relief, the First Respondent relied on the following key arguments:

- Clause 12.3 of the Contract is a valid buyout clause because:

  - The compensation payable to the Player under clause 12.3 of the Contract is equivalent to the default compensation referenced in Article 9 of the FUR RSTP in cases where the parties did not agree a specific buyout clause.

  - Even if the financial compensation to the Player and to the Club is not equivalent under the respective termination clauses (12.3 and 12.6), this does not invalidate clause 12.3 *per se*, as financial consequences for contract termination are generally different for players and clubs.

- The Parties agreed in advance that the Contract may be terminated by any of the Parties at any time during the validity of the Contract, which renders clause 12.3 a valid ground for termination under Article 77 paragraph 1 of the Labour Code. As a result, there is no need to conclude a separate agreement to terminate the Contract.

- The Club calculated leave allowance based solely on the Player's salary under the Contract, as the 2016 Contract was validly terminated before conclusion of the Contract and all obligations towards the Player under the 2016 Contract were duly paid.

- The Club has no outstanding debts towards the Player regarding *per diem* travel allowance as it fully paid for travel, lodging, meals, and other household expenses whenever the Player travelled to away matches and training camps. Moreover, the Player did not claim, nor evidence, any such expenses during the term of the Contract.

55. As mentioned above, the Second Respondent did not participate in the present proceedings despite being repeatedly invited to do so. Nevertheless, in accordance with Article R44.5 of the Code, the Sole Arbitrator deems himself sufficiently informed in order to proceed with the arbitration and deliver an award.

V. JURISDICTION

56. The First Respondent accepted the jurisdiction of the CAS. The Second Respondent did not take a position on the jurisdiction of the CAS. In accordance with Article R39 of the Code, the CAS has the power to decide upon its own jurisdiction. Hence, the Sole Arbitrator proceeded with the jurisdictional analysis.

57. 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 it prior to the appeal, in accordance with the statutes or regulations of that body".

58. Accordingly, the CAS has the power to decide appeals against the decisions of a sports organization if: (i) there is a decision of a federation, association or another sports-related body; (ii) all internal legal remedies have been exhausted prior to appealing to the CAS; and (iii) the parties have agreed to the CAS's jurisdiction[2].

59. According to CAS jurisprudence, a decision is a unilateral act sent to one or more determined recipients and is intended to produce legal effects[3]. The Appealed Decision constitutes a unilateral act intended to produce legal effects insofar as it rules on the contractual rights and

2 CAS 2008/A/1583 & 1584.
3 CAS 2004/A/659; CAS 2008/A/1634.

obligations of the Parties i.e. it is a decision adopted under Article 13(1)(c) of the FUR Regulations on Dispute Resolutions (the "FUR Regulations") concerning a dispute over the terms of labour contracts of players. Accordingly, the Sole Arbitrator finds that the Appealed Decision constitutes a "decision" for the purposes of determining whether CAS has jurisdiction in the present dispute.

60. Article 53(2) of the FUR Regulations provides as follows:

"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".

61. The Sole Arbitrator notes that Article 53(2) of the FUR Regulations does not mandate any additional internal legal remedy path to be followed after the Appealed Decision was issued and explicitly states that the Appealed Decision, adopted pursuant to Article 13(1)(c) of the FUR Regulations, can be appealed to the CAS. Accordingly, the Sole Arbitrator finds that the Appealed Decision is deemed final for the purposes of determining whether CAS has jurisdiction in the present dispute.

62. Article 53(2) of the FUR Regulations explicitly provides for an appeal to CAS of decisions adopted pursuant to Article 13(1)(c) of the FUR Regulations, which formed the legal basis for the issuance of the Appealed Decision.

63. The Sole Arbitrator concludes that CAS has jurisdiction to entertain the present Appeal.

VI. ADMISSIBILITY

A. Appeal

64. The Appellant received the Appealed Decision on 17 September 2019. Pursuant to Article 53(2) of the FUR Regulations, appeals against decisions of the FUR DRC shall be filed with the CAS within 21 calendar days following receipt of the grounds of the decision.

65. On 8 October 2019, the Appellant filed the Statement of Appeal, and thus timely. Moreover, the Appellant filed the Appeal Brief on 1 November 2019, and thus within the extended deadline of 2 November 2019 granted by the CAS Court Office.

66. Accordingly, the present Appeal is admissible.

B. Witness statement submitted by the First Respondent

67. Article R55 of the Code provides as follows:

"Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS Court Office an answer containing: […] *the name(s) of any witnesses, including a brief summary of their*

expected testimony; the witness statements, if any, shall be filed together with the answer, unless the President of the Panel decides otherwise".

68. Article R56 of the Code provides as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. […]*".*

69. The Sole Arbitrator notes that while the Second Respondent did not take a position in this regard, the Appellant did not agree for the Witness Statement to be admitted to the file. Pursuant to Article R56 of the Code, the Sole Arbitrator may admit the Witness Statement only if there are "exceptional circumstances". However, the Sole Arbitrator did not identify any "exceptional circumstances" in this regard[4]:

- First, the First Respondent failed to present evidence explaining why it was not possible to submit the Witness Statement together with the Answer, in particular in circumstances when the deadline for the submission of the Answer was suspended.

- Second, the Sole Arbitrator appreciates that the First Respondent indicated its intention to call the witness at issue to give testimony during an oral hearing, which the Sole Arbitrator decided not to hold against the wishes of the First Respondent. However, there is no requirement to hold an oral hearing in every case. The First Respondent should have foreseen such possibility and submitted a written statement together with the Answer, consistent with Article R56 of the Code.

- Third, the Sole Arbitrator notes that the First Respondent did not present any exceptional circumstances that would call for the admissibility of the Witness Statement.

70. Accordingly, the Sole Arbitrator finds the Witness Statement to be inadmissible in the present proceedings.

C. Additional jurisprudence (CAS 2019/A/6246) submitted by the First Respondent

71. Article R56 of the Code provides as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. […]*".*

[4] For completeness, this finding anyway does not impact the present proceedings as the Appellant's claims were dismissed in their entirety.

72. The Sole Arbitrator notes that while the Second Respondent did not take a position in this regard, the Appellant did not agree for the recently adopted, but yet to be published, CAS award (CAS 2019/A/6246) and the First Respondent's submissions in that regard to be admitted to the file. Pursuant to Article R56 of the Code, the Sole Arbitrator may admit additional submissions only if there are "exceptional circumstances".

73. The Sole Arbitrator recognizes the need for consistent jurisprudence of the CAS. Indeed, CAS panels are frequently guided by the findings of their learned colleagues in previous cases, which enhances predictability of sports law and decision-making. And the Sole Arbitrator has likewise been guided by the prevailing CAS jurisprudence relevant to the issues in the case at hand. That said, this ought to be balanced with the need for procedural efficiency and timely adjudication. In undertaking such balancing exercise, the Sole Arbitrator notes that if a relevant CAS award has been *adopted* (even if not yet published) and has come to the attention of a CAS panel in another pending procedure, that panel is bound to take it into account, provided the parties of the pending procedure are afforded the opportunity to submit their comments on such award. This approach ensures consistency of the CAS jurisprudence and the right to a fair hearing while not unduly prolonging the timely adjudication. And if such CAS award had been issued following the completion of the written procedure, it could, by definition, only be submitted by a party "belatedly"[5].

74. On this basis, the Sole Arbitrator is satisfied that he is bound to consider and take into account CAS award 2019/A/6246 in the course of the present proceeding. Further, the Sole Arbitrator also finds that the requirement of "exceptional circumstances" per Article R56 of the Code is satisfied with respect to the admissibility of the First Respondent's submissions related to the CAS award 2019/A/6246, as those submissions could not have been made within the time-frame provided by Article R56 of the Code. The Sole Arbitrator is further comforted by this decision in light of the fact that both the Appellant and the Second Respondent had been granted the right to comment on the new submission of the First Respondent.

75. That said, the Sole Arbitrator holds that the CAS award 2019/A/6246 does not influence the reasoning or outcome in the present case as the fact-pattern therein is different to the present case insofar as the club in CAS 2019/A/6246 was found not to have validly invoked the buyout clause, which altered the legal assessment compared to the case at hand[6].

VII. APPLICABLE LAW

76. Article R58 of the Code provides as follows:

"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

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5 The Sole Arbitrator is not convinced about the argument of the Appellant that the First Respondent should have brought the CAS award 2019/A/6246 to the Sole Arbitrator's attention prior to its adoption. Indeed, until adoption, other pending CAS proceedings are generally confidential and do not constitute relevant CAS jurisprudence.

6 See 2019/A/6246, paras. 94 - 104.

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

77. The Appealed Decision was issued under the FUR Regulations, which is not disputed. However, the Parties are in dispute regarding the relevant hierarchy of applicable norms.

78. The Appellant claims that the following hierarchy of norms should apply:

"1) Labour legislation of the Russian Federation;

2) Regulations of the FUR, particularly, the FUR Regulations on the Status and Transfer of Football Players (the "FUR RSTP");

3) FIFA Regulations on the Status and Transfer of Players. As of the date of conclusion of the Contract (15 June 2018), the FIFA Regulations on the Status and Transfer of Players was in force in the version of 1 June 2018;

4) FIFA Statutes;

5) The interpretation of the FIFA Regulations on the Status and Transfer of Players shall be carried out in accordance with the FIFA Official Commentary on the FIFA Regulations on the Status and Transfer of Players" (the "FIFA Official Commentary").

79. The Appellant claims that the Russian labour legislation prevails over the FUR Regulations. In particular, parts 3, 4, and 7–11 of Article 5 of the Labour Code of the Russian Federation (the "Labour Code") establish that any normative acts in the Russian Federation containing labour law norms must comply with the Labour Code. Moreover, the Appellant submits, the supremacy of the Russian labour law over FUR Regulations results from the wording of paragraphs 2 and 4 of Article 7 of the FUR RSTP, which provides that *"[c]onditions that worsen the position of a professional football player in comparison with the labor legislation of the Russian Federation cannot be included into the contract of employment. If such conditions are included in the contract of employment, they are invalid".*

80. In contrast, the First Respondent claims that the FUR Statutes and Regulations shall apply primarily, whereas the FIFA Statutes and Regulations, the regulations of UEFA and the Russian Premier League, Russian labour legislation and other rules of labour law shall apply only on a subsidiary basis to fill in any gaps or lacuna.

81. The Sole Arbitrator recalls that *"Article R58 of the Code indicates how the Sole Arbitrator must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the "applicable regulations" to the "rules of law chosen by the parties", which are only applicable "subsidiarily". Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Sole Arbitrator the obligation to resolve the matter pursuant to the regulations of*

the relevant "federation, association or sports-related body". Should this body of norms leave a lacuna, it would be filled by the "rules of law chosen by the parties"[7].

82. The Sole Arbitrator notes that the Appeal is directed against a decision of the FUR DRC adopted under the FUR Statutes and Regulations. Accordingly, consistent with Article R58 of the Code and CAS jurisprudence, the Sole Arbitrator concludes that the FUR Statutes and Regulations should apply as the primarily applicable law to the present case, notably the FUR Regulations and the FUR RSTP.

83. The Sole Arbitrator further notes that the preamble of the Contract stipulates that: *"the rights and the obligations of the Parties are regulated by the present contract of employment, foundation and other documents of the Club, governing documents of FIFA, UEFA and the RFU as well as by the rules of applicable laws of the Russian Federation"*. Moreover, clause 14.3 of the Contract provides that in disputes stemming from the Contract *"the laws of the Russian Federation and, if applicable, the documents of the FUR, RFPL, FIFA and UEFA shall be the only applicable laws in relation to any dispute"*.

84. Accordingly, on a subsidiary basis, the Sole Arbitrator shall resort to Russian legislation (in particular the Russian labour law) as well as the relevant regulations of FIFA and UEFA (in particular FIFA Regulations on the Status and Transfer or Players ("FIFA RSTP")) to fill in any gaps or lacuna stemming from the primary applicable law.

VIII. MERITS

85. As preliminary remarks, the Sole Arbitrator first provides further explanations on why an oral hearing was not deemed necessary in this case in accordance with Article R57 of the Code.

- First, the written submissions of the Parties contain all the necessary facts and arguments to consider the relevant issues at hand, which centre around the validity of the provisions of the Contract and related rights and obligations.

- Second, the evidence submitted by the Parties is comprehensive and unambiguous, and its assessment does not require oral explanations of the Parties or examination of witnesses at an oral hearing.

- Third, the Sole Arbitrator takes due account of the fact that the Appellant himself indicated that the resolution of this dispute required the review of the text of the Russian legislation and other applicable norms of law and regulations, as well as documents, and that a hearing was not necessary as the case could be considered only on the basis of the written submissions of the parties, with the possibility of any additional questions of the Sole Arbitrator to be answered in written submissions in accordance with Articles R44.2 and R57 of the Code. The Sole Arbitrator agrees with the Appellant in this regard.

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7 CAS 2015/A/4350, para. 48.

86. The Sole Arbitrator further notes that the First Respondent pointed out in the Answer that the Appellant omitted a paragraph in the English translation of the Appealed Decision. For the avoidance of any doubt, the Sole Arbitrator refers in this Award to the version provided by the Appellant as corrected by the First Respondent in the Answer. The Sole Arbitrator notes, however, that the inconsistency pointed out by the First Respondent had no relevance for the decision in this case.

87. The present case essentially raises two principal issues disputed between the Parties:

- Is clause 12.3 (*i.e.*, the "buyout clause") of the Contract valid? If clause 12.3 is valid, did the Club comply with its obligations therein?

- Does the Club have any outstanding monetary obligations *vis-à-vis* the Player?

A. Validity of the buyout clause

88. The Appellant argues that clause 12.3 of the Contract is null and void because it worsens the Player's position *vis-à-vis* the Club.

89. According to the Appellant, Articles 77 and 78 of the Labour Code do not list a buyout clause as a ground for termination of an employment contract. A buyout clause cannot be regarded as an *"agreement of the parties to terminate a contract of employment"* as per Article 78 because clause 12.3 of the Contract does not take the form of a separate document and does not contain the period of termination. In addition, the Appellant claims, Article 81 of the Labour Code does not list a buyout clause as a valid basis for termination of the contract at the initiative of the employer.

90. Moreover, the Appellant claims, the amount of compensation pursuant to clause 12.3 of the Contract excludes consideration of the unexpired term of the Contract and other objective criteria, which should otherwise determine the appropriate compensation pursuant to Article 9 of the FUR RSTP. Similarly, compensation under clause 12.3 of the Contract does not reflect the principles set out in Article 17 of the FIFA RSTP.

91. Further, the Appellant claims that clause 12.3 of the Contract worsens the position of the Appellant in comparison with the established labour legislation of the Russian Federation and the FUR Regulations, since it releases the Club from the adverse consequences of an early termination of the Contract and deprives the Appellant of the opportunity to receive full compensation for the damage caused to the Appellant. In addition, clause 12.6 of the Contract (which is meant to be the Player's buyout clause) is worded in such a way that it does not enable the Player to terminate the Contract. This contravenes contractual stability and leads to excessive commitment of the Player.

92. Moreover, the respective termination clauses (12.3 and 12.6) are unbalanced and disproportionate as they provide for different consequences between the Parties as a result of the same conduct, which is contrary to the CAS jurisprudence. In particular, the amount of

compensation payable to the Club is disproportionate compared to that payable to the Player, which leads to excessive commitment of the Player.

93. The Appellant further submits that the FUR RSTP and the FIFA RSTP are silent on how to determine the amount of compensation due to the player in case of an early termination of the contract by the football club. The compensation should, therefore, be calculated in accordance with the Russian Labour Code (in particular Articles 234 and 394), which mandates payment for the unexpired term of the contract of employment in case of termination without just cause. Accordingly, clause 12.3 of the Contract, which limits the compensation to three average monthly salaries, is null and void.

94. The Appellant further asserts that the Club did not pay the required compensation on 4 July 2019, and as a result clause 12.3 of the Contract is not applicable. This is because clause 12.3 of the Contract does not establish a time limit for payment of compensation, whereas Article 140 of the Labour Code provides that upon termination of the contract of employment, all sums due to be paid to the employee from the employer are paid on the day the employee is dismissed.

95. Finally, the Appellant submits that the Club did not provide evidence of the payment of the disputed debts in the form prescribed by Article 136 of the Labour Code.

96. The First Respondent submits that clause 12.3 of the Contract is a valid buyout clause and therefore a valid ground for termination of the Contract, as it complies with the principles enshrined in Article 9 of the FUR RSTP, Article 17 of the FIFA RSTP, and the laws of the Russian Federation.

97. The compensation payable to the Player under clause 12.3 of the Contract is equivalent to the default compensation referenced in Article 9 of the FUR RSTP in cases where the parties did not agree a specific buyout clause. This compensation was duly paid to the Player on 5 July 2019 with the bank order requesting said payment sent on 4 July 2019.

98. The First Respondent submits that Article 9 of the FUR RSTP envisages that compensation for a unilateral termination of the contract of employment is set by a contract or absent a contractual stipulation by a decision of the FUR DRC. Similarly, Article 17 of the FIFA RSTP enables the parties to stipulate the amount of compensation for unilateral termination in the contract. The Parties were therefore free to agree on the amount of compensation provided in clause 12.3 of the Contract.

99. The First Respondent states that buyout clauses are available to both players and clubs as established in the CAS jurisprudence. Even if the financial compensation to the Player and to the Club is not equal, this does not invalidate the buyout clause *per se*, in line with the CAS jurisprudence and the practice of the FUR DRC. From an examination of the wording of clause 12.3 of the Contract, it is clear that the Club is entitled to terminate the Contract subject to the payment of compensation to the Player in the pre-agreed amount of three average monthly salaries, which, in the view of the First Respondent, makes clause 12.3 of the Contract a valid buyout clause.

100. As regards the compatibility of clause 12.3 of the Contract with Russian labour law, the First Respondent claims that Article 77 paragraph 1 of the Labour Code explicitly provides that the employment contract may be terminated by mutual consent of the parties at any time. The Parties agreed in advance that the Contract may be terminated by any of the Parties at any time during the validity of the Contract. Moreover, there is no need to conclude a separate agreement on termination, as such agreement was already contained in clause 12.3 of the Contract. This demonstrates the Parties' free will in this regard, absent any form of coercion, deception, violence or threat from the Club.

101. The severance pay provided for in Article 178 of the Labour Code is not applicable in this case, as the compensation for termination of the Contract was provided for in clause 12.3 of the Contract.

102. As regards the Appellant's claim regarding late and improper delivery of pay slips, the First Respondent submits that such occurrence did not vitiate the fact that the Club duly fulfilled all its financial obligations towards the Player.

103. The analysis and findings of the Sole Arbitrator are as follows.

104. The Sole Arbitrator notes that the Club terminated the Contract without just cause on 4 July 2019, as also upheld by the Appealed Decision.

105. The main question is, therefore, whether clause 12.3 of the Contract, the basis for the said termination, is valid.

106. Parties to a contract of employment are free to agree to an option to unilaterally terminate the said contract without any just cause[8]. This agreement is commonly referred to as a "buyout clause", as it essentially enables a party to unilaterally buy itself out of a contract to which it no longer wishes to be bound. The existence of buyout clauses is widespread in modern football and has repeatedly been recognized and upheld in the CAS jurisprudence[9].

107. The Sole Arbitrator acknowledges that, in professional football, where the situation of a club or a player can change dramatically from season to season (as the prevailing COVID-19 pandemic also illustrates), buyout clauses play an important role by setting out the parties' legitimate expectations upfront[10]. Indeed, once a buyout clause is agreed among the parties in advance and enables any party to terminate a contract without just cause subject to pre-agreed compensation, such buyout clause can hardly be an equivalent of *Schrödinger's cat*.

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8 CAS 2016/A/4826.

9 *See, e.g.*, CAS 2016/A/4550 & 4576, para. 109: *"the parties to the contract agree that one party (usually the club) shall grant the other party (usually the player) an option to prematurely terminate the contract, upon serving notice and payment of the agreed option price"*.

10 In particular, a buyout clause allows the clubs to make necessary changes to their roster when the situation so requires, while concurrently enabling the players to look for other outside options prior to the expiry of the fixed-term contract.

108. The Sole Arbitrator recalls previous CAS jurisprudence that captured the buyout clause's *raison d'être* as follows:

"Whether such clauses are called "buyout clauses", "indemnity" or "penalty clauses" or otherwise, is irrelevant. To meet the requirements of art. 17 para. 1 FIFA Regulations the parties shall have "provided otherwise", i.e. the parties shall have provided in the contract how compensation for breach or unjustified termination shall be calculated. Legally, such clauses correspond therefore to liquidated damages provisions, at least so far as the real will of the parties to foresee in such clause the amount to be paid by the breaching party in the event of a breach and/or of a unilateral, premature termination of the employment contract is established. Indeed, when FIFA and the relevant stakeholders were drafting the provision, it was recognized that such kind of penalties/liquidated damages may be validly agreed between the parties and, in such a case, it should not be up to the FIFA Regulations to deprive such a clause of its legal effect"[11].

109. Moreover, buyout clauses appear to be common in Russian football where they are regulated by, among others, Article 9 of the FUR RSTP, which forms part of the primary applicable law *in casu*:

"1. An employment contract with a professional football player / coach may be terminated at the initiative of a professional football club on the grounds provided for by the labour legislation of the Russian Federation.

2. In case of early termination of the employment contract at the initiative of a professional football club in the absence of guilty actions (inaction) of a professional football player / coach, a professional football player / coach has the right to receive compensation (payment) for such termination in the amount established by the employment contract.

In the event that the amount of compensation (payment) is not determined by the employment contract, it is determined by the Dispute Resolution Chamber and cannot be less than 3 (three) average monthly earnings of a professional football player / coach, unless the remaining term of the employment contract is less than 3 (three) months.

In this case, the following criteria are considered by the Dispute Resolution Chamber:

1) the remaining term of the employment contract with the former professional football club;

2) salaries and other payments due to a professional football player / coach under an employment contract with the old and new (if any) professional football clubs;

3) expenses incurred by a professional football player in transfer (movement) to the former and new (if any) professional football clubs;

4) whether there was a termination of the employment contract for a protected period (for a professional football player);

5) other objective criteria.

11 CAS 2008/A/1519–1520, para. 22.

3. Compensation (payment) for early termination of the employment contract at the initiative of a professional football club in the absence of guilty actions (inaction) of a professional football player / coach is paid by a professional football club within 2 (two) months from the date of termination of the employment contract, unless otherwise provided by the labour contract by agreement or other agreement of the parties, and if the dispute is resolved by the Dispute Resolution Chamber - after the decision of the Dispute Resolution Chamber comes into force, unless otherwise specified En [sic] *decision.*

A professional football club that has delayed the payment of the specified compensation, by decision of the Dispute Resolution Chamber, pays in favor of a professional football player / coach a penalty in the amount of one three-hundredth of the refinancing rate of the Central Bank of the Russian Federation, valid on the day the decision is made, of the amount of the late payment for each day delays, unless otherwise specified in the employment contract for such a violation.

4. In case of early termination of the employment contract during the protected period at the initiative of a professional football club in the absence of guilty actions (inaction) of a professional football player / coach, sports sanctions are imposed on a professional football club, taking into account the specific circumstances of the case".

110. Buyout clauses are also indirectly referenced in Article 17 of the FIFA RSTP, which explicitly states that the underlying buyout compensation amount may be set out in the contract. The Sole Arbitrator recalls that the FIFA Official Commentary to Article 17 of the FIFA RSTP provides as follows:

"The parties may, however, stipulate in the contract the amount that the player shall pay to the club as compensation in order to unilaterally terminate the contract (a so-called buyout clause). The advantage of this clause is that the parties mutually agree on the amount at the very beginning and fix this in the contract. By paying this amount to the club, the player is entitled to unilaterally terminate the employment contract. With this buyout clause, the parties agree to give the player the opportunity to cancel the contract at any moment and without a valid reason, i.e. also during the protected period, and as such, no sporting sanctions may be imposed on the player as a result of the premature termination".

111. The Sole Arbitrator takes due note of previous CAS jurisprudence establishing that the purpose of Article 17 of the FIFA RSTP, and buyout clauses more generally, is essentially to preserve the parties' contractual freedom and reinforce contractual stability[12]. As expressed by the Sole Arbitrator's esteemed colleagues in another matter, the principle of *pacta sunt servanda* is crucial for the well-functioning of international football and shall apply to all stakeholders, "small" and "big" clubs, unknown and top players, employees and employers, notwithstanding their importance, role or power[13].

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12 CAS 2008/A/1519–1520, para. 34, with further references to: CAS 2005/A/876, p. 17: *"[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: "[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"; confirmed in CAS 2008/A/1568, para. 6.37)".*

13 CAS 2008/A/1519–1520, para. 35.

112. However, the principle of contractual freedom and stability is not absolute. In order for a buyout clause to be valid, essentially three cumulative requirements shall be met:

- The clause shall be written in a clear and unequivocal manner.
- There shall be no evidence of coercion or duress in conclusion of the clause.
- The clause shall not demonstrate excessive commitment by one party that grants the other party undue control.

a) Clear and unequivocal

113. The principle of contractual stability dictates that in order to be valid, buyout clauses should be drafted in a clear and unequivocal manner, allowing the parties to the contract to clearly understand their rights and obligations associated with unilateral termination: *"[w]here such a clause exists, its wording should leave no room for interpretation and must clearly reflect the true intention of the parties"*[14].

114. The Sole Arbitrator notes that clause 12.3 of the Contract explicitly provides that the Club may unilaterally terminate the contract without just cause. The same clause clearly sets out the relevant legal obligation generally *i.e.*, a compensatory payment to the Player, and specifically *i.e.*, in the amount of three average monthly earnings of the Player. Moreover, clause 12.4 specifies that the compensation shall be paid by the Club within two months from the date of termination of the Contract[15].

115. Accordingly, the Sole Arbitrator finds that clause 12.3 (and 12.4) is drafted in a clear and unequivocal manner, without leaving room for interpretation.

b) No coercion or duress

116. The Sole Arbitrator notes that the Appellant did not allege coercion or duress in agreeing to clause 12.3 of the Contract. Absent credible evidence to the contrary, the Sole Arbitrator finds that the validity of the buyout clause remains unaffected in this regard.

c) No unilateral excessive commitment

117. The Sole Arbitrator recalls the CAS jurisprudence holding that a buyout clause *"may be incompatible with the general principles of contractual stability and considered null and void if the reciprocal*

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14 CAS 2014/A/3707.

15 The Appealed Decision (at p. 11) similarly considered that *"the provisions of clause 12.3, in the opinion of the Chamber, is a standard buyout clause, which gives the Club the right to terminate the contract with the payment in favor of the Football Player of a pre-agreed amount of "compensational payment", namely, three average earnings of the Football Player".*

obligations it sets forth actually disproportionately favour one of the parties and gives it an undue control over the other party" (emphasis added)[16].

118. At the outset, the Sole Arbitrator considers that intervening with the parties' free will enshrined in a buyout clause should be confined to exceptional cases. This would, in principle, apply in the case of *excessive disproportionality i.e.*, when one party makes an excessive commitment that disproportionately favours the other party of the buyout clause[17]. The Sole Arbitrator recalls that this was previously found to be the case where one party could terminate the employment contract without any consequences (*i.e.*, without any compensatory payment) while the other party could only do so upon paying a compensatory amount[18].

119. The Sole Arbitrator observes that both the Club's buyout clause (12.3) and the Player's buyout clause (12.6) provide that, in triggering the option to terminate the Contract without just cause, a compensatory payment ought to be made to the other party. Accordingly, the buyout arrangement in the Contract is not *prima facie* disproportionate between the Club and the Player.

120. That said, the Sole Arbitrator recognizes that the amount of compensation provided for in the Contract is not equal as between the Club and the Player:

clause 12.3 – Club buyout	clause 12.6 – Player buyout
"[…] the Club shall pay the Player compensation for the said early termination of this Contract in the amount equivalent to 3 (three) average monthly remunerations of the Player".	*"[…] the Football Player shall be obliged to pay the compensation in favor of the Club, consisting of the fixed payment in the amount of the sum which is equivalent to 3 (three) average monthly earnings of the Football Player and an additional payment consisting of the sums of all the expenses incurred by the Club for the preparation of the Football Player (including but not limited to the average earnings of the Football Player, taxes paid by the Football Player and insurance payments, the cost of the Football Player's medical insurance and the costs of his treatment for the period of work in the Club (but not more than five years), as well as expenses incurred by the Club for the transfer of a football player (transfer payment, compensation for preparation), with the exception of the agent's fee*

16 CAS 2016/A/4875, para. 112; CAS 2013/A/3091, 3092 & 3093, para. 259.

17 To that effect, *see, e.g.*, CAS 2015/A/3999 & 4000, para. 160.

18 See, *e.g.*, cases CAS 2016/A/4875 or CAS 2016/A/4852, where the CAS annulled contractual clauses which gave the club effectively a possibility to terminate the contract at the end of the season without having to pay any compensation; or CAS 2016/A/4605, where the CAS annulled a contractual clause according to which a club could terminate the contract upon payment of the players' remaining salaries of the same season, thus effectively giving it a possibility to terminate the contract at the end of season upon payment of very limited or even no compensation at all.

	within thirty (30) calendar days after the termination thereof".

121. However, the Sole Arbitrator finds that the validity of the buyout clause is not conditional on the *full reciprocity* of the contractual obligations under the buyout clause. Indeed, upon termination of the employment contract, the situation of the club and that of the player may be substantially different[19]. When a club terminates the contract, the player loses a source of income. In contrast, when a player terminates the contract, the club loses the value of the services of the said player, which is *"only partially reflected in the remuneration due to him, since a club has to make also certain expenditures to obtain such services"*[20]. Such expenditures commonly include costs incurred in the arrangement of a transfer, ongoing training costs and other expenses in relation to the player.

122. The Sole Arbitrator draws additional comfort in this regard from previous CAS jurisprudence:

- *"Article 17(1) of the FIFA Regulations does not require contractually agreed liquidated damages clauses to be reciprocal, nor is there any other source or legal doctrine, or at least no such source has been cited by any of the parties, based on which such test would have to be applied"*[21].

- *If, however, there is disparity between the amount of damages to which players and clubs are entitled from the very outset, then it is not clear why as a matter of principle a disparity between liquidated damage clauses in favour of the Club and the Player shall lead to their invalidity. This is all the more true, considering that the FIFA RSTP neither establish a principle of reciprocity nor a prohibition of disparity, but instead simply refer to the autonomy of the parties"*[22].

123. For completeness, the Sole Arbitrator observes that the compensation envisaged under the Contract is broadly consistent with the *default* monetary compensation under the FUR RSTP – which forms part of the primary applicable law *in casu* – in case of unilateral termination without just cause when the compensatory amount is not set out in a contract (which, for the avoidance of doubt, is not the case here, given that the compensation is set out in the Contract):

Article 9 of the FUR RSTP	Article 10 of the FUR RSTP
Amount is determined by the FUR DRC and cannot be lower than three average monthly earnings of the player, unless the remaining term of the employment contract is less than three months.	The amount of compensation should be determined by the FUR DRC by taking into account, among others, salaries of the player under an employment contract with the former and the new club, and the

19 *See, e.g.*, CAS 2015/A/3999 & 4000, para. 151: *"the consequences of breach of contract are generally different for players and clubs and that, in the view of this Panel, this difference shall be taken into account in the assessment as to whether the individual solution reached by the parties is balanced and proportionate".*

20 CAS 2008/A/1519–1520, para. 102.

21 CAS 2015/A/3999 & 4000, para. 158.

22 CAS 2016/A/4826, para. 105.

	expenses incurred by a former club in relation to the player.

124. Accordingly, the Sole Arbitrator finds that the buyout arrangement under the Contract (and in particular clauses 12.3 and 12.6) does not appear to disproportionately favour the Club so as to render the said arrangement null and void.

125. For completeness, the Sole Arbitrator is not convinced by the Appellant's claim that the buyout clause at issue is *per se* precluded by the Labour Code or requires a separate document. Articles 77(1) and 78 of the Labour Code explicitly recognize a mutual agreement of the parties as a relevant ground for termination, providing as follows:

"Article 77. General grounds for termination of a contract of employment. The grounds for termination of a contract of employment are:

1) agreement of the parties (Article 78 of this Code)".

"Article 78. Termination of a contract of employment by agreement of the parties. A contract of employment may be terminated at any time by agreement of the parties to the contract of employment".

126. The Club and the Player incorporated their mutual consensus to terminate the employment relationship into the Contract in a transparent manner, and in writing by way of an option that could be triggered without just cause by any party and at any time, provided that a pre-determined compensation is paid[23]. Given that the Parties' will is manifested in a clear and unequivocal manner and is in writing, there is no evidence of duress or coercion, the option to terminate without just cause is mutual, and there is no apparent excessive disproportionality, the Sole Arbitrator does not consider that the buyout clause at issue is incompatible with the Russian labour legislation.

127. Neither is the Sole Arbitrator convinced by the Appellant's claim that the wording of clause 12.6 of the Contract providing that *"[t]he Parties shall agree that, the provisions of this clause can't be interpreted in such a way that the Club gives its consent to the early termination of this Contract by the Football Player"*, renders the Player's termination right (which is anyway not at issues in this case) ineffective. The Sole Arbitrator notes that the essence of termination without just cause is that the consent of the non-terminating party is anyway not required.

128. In light of the foregoing, the Sole Arbitrator finds that clause 12.3 of the Contract is a valid buyout clause under the FUR statutes and regulations (in particular Article 9 of the FUR RSTP). For completeness, the Sole Arbitrator adds that he does not consider clause 12.3 of the Contract to be incompatible with the secondary law applicable in this case (most notably the Labour Code).

129. Turning then to the consequences of the above finding i.e., the validity of clause 12.3, the Sole Arbitrator notes that pursuant to the Contract, the compensation to the Player amounts to

[23] In contrast, in the case CAS 2014/A/3686, the club could terminate the contract without paying any compensation.

three average monthly earnings of the Player (clause 12.3) and shall be paid within two months from the date of the termination of the Contract which took place on 4 July 2019 (clause 12.4).

130. The Sole Arbitrator further understands that the Club calculated three average monthly earnings of the Player under the Contract to amount to RUB 4,991,623.56. The Appellant does not dispute this calculation *per se*.

131. The First Respondent adduced evidence that the amount of RUB 4,991,623.56 was paid to the Player. The Sole Arbitrator further notes that the Club sent the payment order to the bank for the payment of RUB 4,991,623.56 on 4 July 2019, *i.e.,* on the day of the Player's dismissal (which was then paid out by the bank on 5 July 2019), thus well ahead of the payment term provided in clause 12.4 of the Contract and even within the time limit provided for in Article 140 of the Labour Code (indeed, the Sole Arbitrator is convinced that the Club's payment order is the relevant action on the side of the Club and one cannot reasonably expect that the bank would execute it on the same day). In any event, the Sole Arbitrator rejects the Appellant's claim that any purported violation of the payment term leads to the inapplicability of clause 12.3 of the Contract. This could, at most, give rise to a claim for the payment of interest for any delayed payments. But, for the reasons stated, and in particular that the Club sent the payment order to the bank on the day of the Player's dismissal, the Sole Arbitrator finds that no interest payment is warranted.

132. For completeness, the Sole Arbitrator finds that the form and date of delivery of the payslips alleged by the Appellant to not be in conformity with the requirements of the Labour Code (which was anyway resolved between the Parties) has no bearing on the conclusion that the prescribed payments were made to the Player by the Club.

133. Accordingly, the Sole Arbitrator finds that the Club duly fulfilled its obligations towards the Player arising from the termination of the Contract pursuant to clause 12.3 of the Contract.

B. Other monetary claims of the Appellant

134. In addition, the Appellant raised three other monetary claims *vis-à-vis* the Club: (i) additional payment for leave allowance; (ii) payment for *per diem* travel allowance; and (iii) interest payment for indebted amounts.

(i) Leave allowance

135. The Appellant alleges that, contrary to Parts 1–4 of Article 139 of the Labour Code, the Club wrongly calculated payment for leave allowance by considering the average earnings of the Player under the Contract (*i.e.*, as of 1 July 2018) rather than taking into account the last 12 months of the employment relationship between the Club and the Player, which includes the 2016 Contract. This is because the labour relationship between the Club and the Player was uninterrupted by the conclusion of the Contract *i.e.*, the Player was an employee of the Club from 6 June 2016 to 4 July 2019. On this basis, the Appellant claims the Club owes the Player RUB 1,085,121.89.

136. The First Respondent submits that the 2016 Contract was validly terminated before conclusion of the Contract and all obligations towards the Player under the 2016 Contract were duly paid, which released the Club from any obligations towards the Player under the 2016 Contract.

137. The First Respondent further notes that the calculation of vacation payments for the periods from 10 December 2018 until 23 December 2018 and from 27 May 2019 until 6 June 2019 was carried out based on the Contract and in full accordance with the norms of Articles 139 of the Labour Code and the Regulation on the features of the procedure for calculating average salary, approved by Decree of the Government of the Russian Federation on 24 December 2007 No. 922.

138. The Player was employed by the Club under two separate fixed-term contracts of employment: (i) the 2016 Contract running from 6 June 2016 to 30 June 2018; and (ii) the Contract running from 1 July 2018 to 4 July 2019.

139. At the outset, the Sole Arbitrator notes that fixed-term employment contracts have been standard practice in professional football for decades, as the situation of players and clubs can change dramatically season-by-season. Fixed-term contracts benefit both clubs and players:

- When a professional football club hires a player, it faces uncertainties around the player's long-term fitness, performance, risk of injuries, *etc.* A fixed-term contract helps mitigate these risks.

- Conversely, when a player signs with a club, the remuneration terms usually reflect the player's expected value-add at the time of signing. A fixed-term contract enables a player to change clubs more easily or negotiate better terms.

140. Against this background, the Sole Arbitrator observes that, from a legal standpoint, the 2016 Contract was not legally extended by way of an amendment. Instead, it was validly terminated. The termination is a specific legal act with specific, and foreseeable, legal consequences — the 2016 Contract, and associated rights and obligations, ceased to exist (moreover, all outstanding debts under the 2016 Contract were duly paid by the Club, which is evidenced in the documents submitted by the First Respondent and not disputed by the Appellant). Absent credible evidence of duress or coercion in terminating the 2016 Contract and simultaneously concluding the Contract, interfering with the fixed-term contracts would be ill-conceived and would lead to legal uncertainty. Indeed, under the framework proposed by the Appellant, a player whose remuneration substantially increased under a new contract would obtain less leave allowance if the previously ceased contract would have to be taken into account.

141. Accordingly, the Sole Arbitrator finds no reason to disregard the *de jure* situation freely established by the Parties.

142. This conclusion remains unaffected by the Appellant's reference to the Russian labour legislation and precedent. The Sole Arbitrator notes that the Russian labour legislation referred to by the Appellant, in particular part 1 of Article 139 of the Labour Code and paragraph 2 of

the Regulations on the features of the procedure for calculating average salary, adopted by the Ruling of the Government of the Russian Federation No. 922 of 24 December 2007, do not explicitly provide that, in a situation where two fixed-term contracts are concluded with the same employer, the initial contract should be taken into account in calculating leave allowance under the new contract. The said rule only provides that *"[t]o calculate the average earnings, all types of payments envisaged by employee compensation plan applied at the corresponding employer are taken into account, regardless of the sources of these payments"*. In the present case, the *"compensation plan"* is only provided for under the Contract (as the 2016 Contract was validly terminated for the reasons set out above), and accordingly only earnings under the Contract should be taken into account when calculating leave allowance[24].

143. In light of the foregoing, the Sole Arbitrator finds that the leave allowance payments to the Player should be calculated under the Contract only, and should not be taken into account under the 2016 Contract.

144. The Sole Arbitrator recognizes that the Club properly calculated the leave allowance for the Player under the Contract for his leave from 10 December 2018 until 23 December 2018 and from 27 May 2019 until 6 June 2019 and, therefore, does not have any outstanding debts towards the Player in this regard. The Player's claim concerning the payment of leave allowance is thus dismissed.

(ii) Per diem travel allowance

145. The Appellant submits that in accordance with Article 166 and Part 1 of Article 168.1 of the Labour Code, the Club should have compensated the Player for performing his duties towards the Club outside his place of permanent residence (*e.g.*, while participating in away games or training camps) by paying a *per diem* travel allowance.

146. The Appellant claims that the basis for the payment of *per diem* travel allowance when sending an employee on a business trip is the fulfilment of a job assignment by an employee on orders of the employer. In the case of employment that involves travelling, such an order is not executed by the employer, but is derived from an employee's location outside the place of permanent residence. Moreover, in both cases, *per diem* travel allowance is a compensation of additional expenses of the employee related to living outside the place of permanent residence. According to the Appellant, the payment of the *per diem* travel allowance is therefore not dependent on whether an employee actually incurs expenses while working outside the place of permanent residence. The amount is fixed for each day of the trip.

147. Further, the Appellant submits that the First Respondent refused to provide the Appellant with a local normative act, which established the amount of *per diem* allowance for the

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[24] The Sole Arbitrator takes note of the precedent in the Court Ruling of the Supreme Court of the Russian Federation of 27 June 2014 N 41-KG14-10, stipulating that under Russian labour law, in certain cases, several consecutive fixed-term contracts with the same employer may be legally recognized as a contract concluded for indefinite duration. However, this precedent does not relate to the calculation of leave allowance; it concerns the recognition of the time of the labour relationship for the purposes of obtaining recovery of lost earnings, which is a distinct issue.

employees of the First Respondent and in this respect considers it necessary to determine a fixed amount of *per diem* allowance, which is normally applicable to calculation of such allowance for business trips under Russian legislation.

148. The First Respondent submits that it had no contractual obligation towards the Player to pay the *per diem* travel allowance for fulfilment of his labour duties outside his place of permanent residence. The First Respondent also claims that it had no obligation to pay the *per diem* travel allowance to the Player based on Russian labour law, as Article 166 of the Labour Code explicitly states that such allowance is not payable to an employee whose work is of a travelling nature.

149. The First Respondent further submits that it fully paid for travel, lodging, meals, and other household expenses whenever the Player travelled to away matches and training camps. Moreover, the Player did not claim, nor evidence, any such expenses during the term of the Contract.

150. Article 168 of the Labour Code provides as follows:

"In case of a business trip, the employer must compensate the employee: travel expenses; expenses for renting of accommodation facilities; additional expenses associated with living outside the place of permanent residence (per diem allowance); other expenses incurred by employees with the permission or knowledge of the employer".

151. Moreover, part 1 of Article 166 of the Labour Code provides as follows:

"A business trip is an employee's trip on orders of the employer for a certain period of time to carry out a job assignment outside the place of permanent work. Official trips of employees whose permanent work is carried out while travelling or has a travelling nature (involves travelling) are not recognized as business trips".

152. Clause 2.5 of the Contract stipulates as follows:

"The Football Player's work involve travelling, i.e. relates to travelling outside the Club's location either within the territory of the Russian Federation or outside the Russian Federation, in order to the Football Player's participation for the Team in official and friendly football matches, as well as in order to his participation in trainings, separate sports events, meetings of the Team, traineeships, press-conferences, match analyses and other events connected to the Club's sports activity".

153. The Sole Arbitrator notes that the Contract explicitly clarifies in clause 2.5 that the nature of the Player's work involves travelling and, therefore, precludes the classification of the Player's travelling as "business trip" *ex* Article 166 and 168 of the Labour Code.

154. In light of the foregoing, the Sole Arbitrator finds that the Player does not have the right to claim *per diem* travel allowance from the Club pursuant to Articles 166 and 168 of the Labour Code.

155. Article 168.1 of the Labour Code provides as follows:

"The employer shall compensate to employees whose regular work is carried out while travelling or involves travelling, as well as to employees working in the field environment or participating in expeditionary work, related to business trips: travel expenses; expenses for renting of accommodation facilities; additional expenses associated with living outside the place of permanent residence (per diem allowance, field allowance); other expenses incurred by employees with the permission or knowledge of the employer.

The amount and procedure for compensation of expenses related to business trips of employees referred to in the first part of this article, as well as the list of jobs, professions, and positions of these employees are established by a collective agreement, agreements, local normative acts. The amount and procedure for compensation of these expenses may also be established by a contract of employment".

156. The Sole Arbitrator finds the following:

- First, the Sole Arbitrator recognizes the specificity of sport and associated remuneration, which inherently reflects the specific nature of a player's work and duties.

- Second, the Contract fixes the remuneration of the Player (and includes a number of compensatory elements) and does not provide for payment of *per diem* travel allowance.

- Third, the Sole Arbitrator recognizes that Article 168.1 of the Labour Code has a compensatory nature while the Club paid for travel, lodging, meals, and other household expenses of the Player when travelling[25].

- Fourth, the Appealed Decision concluded that *"[t]he local normative acts of the Club do not provide for the payment of travelling allowance for employees that have work that involves travelling* […]*"*. The Sole Arbitrator notes that the Player did not provide any evidence to the contrary.

157. In light of the foregoing, the Sole Arbitrator finds that the Player does not have the right to claim *per diem* travel allowance from the Club pursuant to Article 168.1 of the Labour Code either. This claim is, therefore, dismissed.

(iii) Interest payments

158. The Sole Arbitrator notes that the Appellant's claims for monetary payments from the Club are dismissed in their entirety. Absent any outstanding debt *vis-à-vis* the Player, the Appellant's claim for interest payments is likewise dismissed.

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25 The Sole Arbitrator is also mindful of the fact that the Player did not evidence raising any demands for *per diem* travel allowance during the term of the Contract.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 7 October 2019 by Mr. Ivan Temnikov against Football Club Dynamo Moscow and the Football Union of Russia (FUR) with respect to the decision rendered on 2 August 2019 by the FUR Dispute Resolution Chamber is dismissed in its entirety.

2. The decision rendered on 2 August 2019 by the FUR Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

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