Arbitration CAS 2019/A/6670 FC Istra 1961 v. Filipe Gabriel Goncalves Ferreira, award of 8 September 2020

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football
Termination of the employment contract by the player with just cause
Determination of the amount of compensation
Determination of the amount to deduct as damage mitigation

1. **Neither in the FIFA Regulations on the Status and Transfer of Players (RSTP) nor in any other rules is there a basis for concluding that the theoretical possibility that a player later on – and before the end of the original contract period under the employment contract – could potentially receive a different remuneration would be sufficient to justify either a stay of the procedure or a referral of the case back to the FIFA DRC or to otherwise postpone the determination of the amount of compensation payable to the player for the club's breach of contract. The circumstance that it is the actual contractual relationships at the time of the decision of the dispute that determine the calculation of any amount of compensation is now specifically reflected in the current version of Article 17 paragraph 1 RSTP, which reads as follows: *"In case the Player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining of the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early"*.**

2. **The circumstance that the player received a higher remuneration under the employment contract that has been terminated than under the new employment contract signed after the termination is not in itself sufficient to lead to an automatic and further deduction of the compensation payable to the player by an amount equal to the difference between the two salaries. The same goes with regard to the circumstance that the player never signed a further new contract after the expiry of the new employment contract, which is not in itself sufficient to lead to an automatic and further deduction of the compensation payable to the player from the club.**

I. PARTIES

1. FC Istra 1961 (the "Appellant" or the "Club") is a professional football club based in Istria, Croatia, and affiliated with the Croatian Football Federation (the "CFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Filipe Gabriel Goncalves Ferreira (the "Respondent" or the "Player") is a professional football player of Portuguese nationality.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the Judge of the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 3 July 2019 (the "Appealed Decision"), the written and oral submissions of the Parties 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, the Sole Arbitrator refers in his Award only to the submissions and evidence he considers necessary to explain its reasoning.

4. On 16 August 2017, the Club and the Player signed a Professional Playing Agreement (the "Contract"), valid as from the date of signature until 15 June 2021.

5. The Contract stated, *inter alia*, as follows:

"Article 4

In consideration for the services that the Player is obliged to provide to the Club, and which are the subject of this Agreement, and in compliance with the bylaws of the Club, the Parties hereby agree on a monthly fee in the net amount of 3.000,00 EUR, and which amount may not be changed without an annex to this Agreement.

[…]

The Club shall each season provide the Player with two return airplane tickets for relation Pula-Lisbon-Pula.

The Club shall provide the Player with accommodation agreed between the Player and the Club.

[…]

Upon signing of this Agreement by the Player and the Club the Club shall pay in advance one monthly net amount to the Player.

[…]

Article 12

[…] The Player has the right to terminate the Agreement in accordance with the Regulation on the Status of Players and Registrations of the CFF and other relevant regulation of FIFA or CFF".

6. By letter of 22 December 2017, the Player wrote to the Club as follows:

"According to the labor contract celebrated with NK Istra 1961 s.d.d, and after the contacts maintained with the board, I remind you about the following:

The Club is obliged to pay me the monthly salary of 3.000,00 € (three thousand euros).

However, since I started to work on the club, I only received one salary, ate 28th August 2017.

Furthermore, the club did not support the obligation to pay me the travel to Portugal, on Christmas holidays period, so I had to ask family members to help me get back to my country.

This situation has caused me serious damages, compromising the means of subsistence of my family.

At this point, I don't have financial capacity to return to Croatia, unless the Club pay me the wages in debt and comply with other contractual obligations.

For this reason, I invite the club to carry the payment of the amounts owed, in a maximum period of 10 (ten) days.

If there is no response within this period, I will have to start legal procedures for the termination of the contract, based on unpaid wages in a period over three months, and violation of other contractual obligations, resort to international sportive bodies to claim the amounts owned and requiring all legal and sportive consequences associated".

7. On 5 January 2018, and without having received any further payment from the Club, the Player wrote the Club again, stating, *inter alia*, as follows:

"[…] According to the mentioned labor contract, the club is obliged to pay me the net monthly salary of 3.000,00 (three thousand euros).

However, since the beginning of the labor relationship the club paid me only one salary, at 28th August 2017.

In the months of September, October, November and December 2017, I've worked and fulfilled my obligations without received any salary from the club.

The only responsible reason for this situation is the club, which intentionally and guiltily has not paid my salaries.

Without my salary, I can't afford to pay my basic expenses in a foreign country, putting me and my family in an unsustainable situation.

Besides the lack of payment of my salaries, the club has not paid the airplane ticket to Lisbon, on the winter break, which put me into a very difficult situation: one the one hand, had no means of subsistence in Croatia, on the other hand, had no conditions to support the travel to Lisbon, which I only managed with the help of some family members.

At this moment, without my salaries I don't have financial conditions to return to Croatia.

On 22th December 2017, after several contacts with the club management, I sent a letter requesting the payment, in ten days, of the salaries in debt and the fulfillment of remain obligations to return to Croatia and continue to work.

I had no answer from you or the payment of my salaries.

This situation is unsustainable, and I don't have conditions to maintain my labor contract with the club.

According to the FIFA Dispute Resolution Chamber jurisprudence and for the reasons above mentioned, I have the right to breach my contract with just cause.

So I'm informing you that I'm breaching my labor contract with just cause and all legal consequences associated.

In consequence, I will present a claim to the competent FIFA's decision body*".*

8. On 1 February 2018, the Player signed a Contract of Employment – Temporary Employment of a Professional Player – with the Norwegian football club Notodden Fotballklubb (the "New Contract"), valid as from the date of signature until 31 December 2019.

9. The New Contract stated, *inter alia*, as follows:

*"**4. Salary, bonus, other economic benefits, vacation, club other duties:***
The Player shall receive the following economic benefits:

4.1. Salary:
Gross salary NOK 25000 each calendar month.
The club will pay net monthly salary 15. (date) each month.

[…]

4.4. Other taxable benefits:
Sign-on-fee kr. 25.000, - will be paid on the 15th of June 2018.
Accommodation for apartment will be paid with kr. 5.000, - will be paid every month with the salary on the 15th. Bonus for top-6 placement in the table will be kr. 15.000, -. Bonus for promotion to Eliteserien will be kr. 25.000, - […]".

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 6 March 2018, the Player filed a claim with the FIFA DRC maintaining that the Club breached the Contract without just cause and requested to be awarded the following:

    a) EUR 12,000 as outstanding remuneration corresponding to the monthly instalments as from September until December 2017 in the amount of EUR 3,000 each;
    b) EUR 127,500 corresponding to the residual value of the Contract, i.e. as from 1 January 2018 until 15 June 2021; plus
    c) interest at a rate of 5%.

11. The Player maintained, *inter alia*, that he terminated the Contract with just cause since the Club had failed to pay him more than 3 monthly instalments.

12. On 16 May 2018, the Club paid to the Player the salary arrears in the amount of EUR 12,000 together with an additional amount of EUR 1,500.

13. In its reply, the Club stated that *"due to the change of majority ownership"* as well as to a *"difficult financial situation"*, the Club was in arrears with several payments to its players during the 2017/2018 season.

14. Moreover, the Club stressed having paid to the Player the total of Croatian Kuna 124,000, including its payment of Kuna 100,309 on 16 May 2018, which covered the outstanding amount due to the Player, i.e. EUR 12,000, and also included an additional amount of EUR 1,500.

15. By email of 7 September 2018 to the FIFA DRC, the Player reduced its claim against the Club to EUR 76,054.40 as compensation for breach of contract without just cause. The letter stated as follows:

    "Please take note of the following:
    1. *We confirm that on 16 May 2018, the Club paid to the Player the salaries arrears.*
    2. *This payment was made after the claim was lodged in front of the FIFA - Dispute Resolution Chamber.*
    3. *Therefore, we reduce the request made in the above-mentioned claim to the compensation due by the club as the later committed a unilateral breach of the contract without just cause.*
    4. *In order to find the amount due as compensation, attached please find the Employment contract signed on 1 February 2018 between the Player Filipe Ferreira and the Norwegian Club Notodden Fotballklub.*
    5. *As you can confirm, under such contract the Player will receive the total amount of 51,445.60 EUR, that is 2.572,28 EUR x 20 months.*
    6. *Therefore, the amount due as compensation shall be mitigated of such amount.*
    7. *In the light of the above, the Player respectfully ask the Dispute Resolution Chamber to order Club NK Istra 1961, to pay the Player the amount of 76,054.40 as compensation for the breach of the contract without just cause".*

16. In its duplica, the Club maintained that *"in addition to the monthly salary"* the Player was making with the new club, the latter undertook to pay to the Player apartment expenses of NOK 5,000

per month plus other benefits […], which means that the Player is making a higher salary with the new club than he was making with the Club during the same period.

17. Moreover, the Club stressed that, since the contract with the new club would expire on 31 December 2019, the FIFA DRC still lacked all the facts needed to pass a valid decision as it is up to the Player to try to mitigate the damages even more by signing a new employment contract after the expiry of the New Contract.

18. In this context, the Club requested FIFA to reject the claim and, subsidiarily, to suspend the proceedings until 15 February 2020 *"and then to reject"* the claim.

19. Finally, the Club stated that even if its huge financial difficulties did not constitute a valid reason for denying the Player his monthly remuneration, then surely it would have to be taken into consideration as mitigating circumstances when deciding on the possible imposition of sporting sanctions on the Club.

20. In accordance with the information contained in the TMS, on 1 February 2018, the Player signed the New Contract, under which the Player was in fact entitled to receive a monthly salary of NOK 25,000 as well as a sign-on fee, which also amounted to NOK 25,000.

21. The DRC Judge, after having confirmed his competence, concluded, *inter alia*, that the 2018 edition of the Regulations on the Status and Transfer of Players (the "Regulations") was applicable to the case.

22. In relation to the Contract, the DRC Judge observed, *inter alia*, that the Parties entered into an employment contract valid as from 16 August 2017 until 15 June 2021, according to which the Player was entitled to a monthly remuneration of EUR 3,000.

23. Subsequently, the DRC Judge took note that the Player argued that he had terminated the Contract with just cause after having sent a default notice on 22 December 2017 due to the fact that his salaries for the months of September, October, November and December 2017 had remained unpaid until the date on which he terminated the Contract.

24. On the other hand, the DRC Judge noted that the Club explained that it was struggling with financial difficulties during the 2017/2018 season and that it had provided documentation to prove that it made a payment to the Player on 16 May 2018, covering the claimed outstanding remuneration and an additional amount of EUR 1,500, which was undisputed by the Player.

25. With regard to the late payment, the DRC Judge noted that the amount of EUR 12,000, corresponding to the four months of salary initially claimed by the Player, had ultimately been paid to him by the Club on 16 May 2018, i.e. after the date on which the Player had terminated the Contract in writing.

26. This fact was never denied by the Club, and the Club had not indicated any valid reasons that possibly could have justified the non-payment of the Player's remuneration during such a considerable period of time.

27. On account of the considerations set out above, the DRC Judge decided to reject the arguments put forward by the Club in its defence and established that it had seriously failed to comply with its contractual obligations.

28. The DRC Judge further emphasised that the circumstance that these salaries were paid at a later stage by the Club, i.e. after the termination of the Contract by the Player, cannot in any way repair the Club's disrespect of its contractual obligations.

29. Consequently, the DRC Judge decided that the Player had a just cause to terminate the employment contract with effect as of 5 January 2018 and that the Club is to be held liable for the early termination of the Contract with just cause by the Player.

30. Having established that the Club was to be held liable for the early termination of the employment contract with just cause by the Player, the DRC Judge focused attention on the consequences of such termination and, taking into consideration article 17 paragraph 1 of the Regulations, the Judge decided that the Player was entitled to receive from the Club an amount of money as compensation for breach of contract.

31. Moreover, the DRC Judge focused attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the DRC Judge first summed up that, in accordance with article 17 paragraph 1 of the Regulations, the amount of compensation must be calculated, in particular and unless otherwise provided for in the contract at issue, with due consideration for the law of country concerned, the specificity of sport and any other objective criteria, including, 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, and depending on whether the contractual breach falls within a protected period.

32. Since the employment contract didn't contain a provision under which the Parties had beforehand agreed upon an amount of compensation payable by the Parties to the Contract in the event of breach of contract, the DRC Judge proceeded with the calculation of the monies payable to the Player under the terms of the employment contract until 15 June 2021 and concluded that the Player would have received in total EUR 124,500 as remuneration, had the contract been performed until its expiry date.

33. In this respect, the DRC Judge referred once again to the payment made by the Club on 16 May 2018 as well as to the Club's argument that such payment exceeded the outstanding remuneration owed to the Player by EUR 1,500. Considering that the Player did not contest the aforementioned payment, the DRC Judge decided to deduct the amount of EUR 1,500 from the residual value of the Contract, leading to the amount of EUR 123,000 as the basis for the calculation of the compensation for breach of contract.

34. Furthermore, the DRC Judge verified as to whether the Player had signed an employment contract with another club during the relevant period of time, which would have enabled him to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract must be taken into account in the calculation of the amount

of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.

35. In this respect, it was noted that, on 1 February 2018, the Player signed an employment contract with the Norwegian club, Nottoden Fotballklub, valid until 31 December 2019 and under which the Player was entitled to receive from the club an overall remuneration of approx. EUR 65,000.

36. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the Player's general obligation to mitigate his damages, the DRC Judge decided to partially accept the Player's claim and found that the Club must pay the amount of EUR 58,000 as compensation for breach of contract in the case at hand.

37. In addition, taking into account the Player's request as well as the constant practice of the DRC in this regard, the DRC Judge decided that the Club must pay to the Player interest of 5% p.a. on the amount of EUR 58,000 as of 6 March 2018 until the date of actual payment.

38. On 3 July 2019, the DRC Judge rendered the Appealed Decision and decided, *inter alia,* that:

> *"1. The claim of [the Player] is partially accepted.*
>
> *2.[The Club] has to pay to [the Player] within 30 days as from the date and notification of this decision compensation for breach of contract in the amount of EUR 58,000, plus 5% interest p.a. from 6 March 2018 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest due to [the Player] in accordance with the above-mentioned number 2. is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further claim lodged by [the Player] is rejected.*
>
> *5. […]".*

39. On 5 December 2019, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 24 December 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Respondent with respect to the Appealed Decision.

41. On 29 January 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

42. In its Appeal Brief, the Appellant requested the stay of the procedure at least until 5 September 2020, and/or to schedule the hearing not before 30 September 2021, in order for CAS to be in possession of all the elements to issue its Award.

43. Furthermore, the Appellant requested that the CAS order the Respondent to disclose, *inter alia*, any contracts signed and employment offers received after the termination of the Contract.

44. On 13 February 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

45. On 18 May 2019, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

46. By letter of 28 May 2020, the Respondent was granted a deadline to file his observations on the Appellant's procedural request as mentioned in paras. 42-43 above.

47. By letter of the same date, the Respondent replied, *inter alia*, that since the expiry of the New Contract on 31 December 2019, the Respondent never played football professionally again, is unlikely to receive any employment proposals and never signed any other contracts in relation to his football career.

48. Based on that, the Sole Arbitrator considered the request for production of such documents moot.

49. On 24 and, respectively, 25 June 2020, the Parties both signed and returned the Order of Procedure.

50. On 25 June 2019, a hearing was held by videoconference via Webex.

51. In addition to the Sole Arbitrator, Mr Fabien Cagneux, counsel to the CAS, and the following persons attended the hearing:

For the Appellant:

- Mr Bruno Skelin, legal counsel

For the Respondent:

- Mr José Duarte Reis, legal counsel

52. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Sole Arbitrator.

53. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

54. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final Award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence

and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

55. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

A. The Appellant

56. In its Appeal Brief, the Appellant requested CAS to rule as follows:

> *"I. The appeal filed by the Appellant is upheld:*
>
> *II. [The Appealed Decision] is set aside and the case re-submitted to FIFA Dispute Resolution Chamber for issuance of new decision;*
>
> *III. The Respondent is ordered to bear all the procedural costs of the present procedure;*
>
> *IV. The Respondent is ordered to reimburse the Appellant all the legal and other costs incurred in connection with this arbitration an amount to be determined at the discretion of the Sole Arbitrator, or*
>
> *alternatively,*
>
> *I. The appeal filed by the Appellant is upheld;*
>
> *II. [The Appealed Decision] is set aside and therefore the Appellant shall not have to pay any sums to the Respondent;*
>
> *III. The Respondent is ordered to bear all the procedural costs of the present procedure;*
>
> *IV. The Respondent is ordered to reimburse the Appellant all the legal and other costs incurred in connection with this arbitration an amount to be determined at the discretion of the Sole Arbitrator".*

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

- The Contract signed between the Parties was originally valid until 15 June 2021, while the New Contract was only valid until 31 December 2019.
- Based on that, the FIFA DRC, at the time of the Appealed Decision, lacked all the facts needed to pass a valid decision.
- The Player's future income in the reaming period until 15 June 2021 is to be taken into consideration when deciding on the amount of compensation payable to the Player, not least since the Player is a young player with a long career in front of him.
- As such, the procedure should be stayed at least until 5 September 2020 in order for CAS to have all the crucial facts and elements for calculation of the compensation to be awarded to the Player, if any.

- The Player is obligated to act in good faith after the breach of contract by the Club and seek other employment, showing diligence and seriousness.
- As such, it is up to the Player to try to mitigate the damages caused by the Club's breach of contract, for instance by signing a new employment contract following the expiry of the New Contract.
- Thus, the Player must prove that he attempted to find similar employment conditions and that, despite his efforts, he was forced to accept a reduced salary.
- As the Player never proved that, it must be concluded that the Player never fulfilled his obligation to mitigate his losses.

B. The Respondent

58. In its answer, the Respondent requested the Sole Arbitrator to issue a decision:

> *"a) Refusing to grant the appeal;*
>
> *b) Confirming [the Appealed Decision], that made a correct evaluation of the evidence and decided accordingly within the legal framework applicable to this case;*
>
> *c) Obliging the Appellant to pay the cost of the appeal;*
>
> *d) Given that the Respondent was assisted in the present procedure by a professional legal adviser, to order the Appellant to contribute towards its costs".*

59. The Respondent's submissions, in essence, may be summarised as follows:

- First of all, it must be stressed that the Appellant does not dispute that the Player terminated the Contract with just cause due to the Club's breach of contract.
- As a consequence, the Club must pay compensation for breach of contract to the Player.
- The Player always respected his duty to mitigate the damages caused by the Club's breach of contract.
- Due to the financial situation of the Player caused by the Club's breach of contract, the Player was forced to accept the employment proposal from the Norwegian club, Nottoden Footballklub, and, consequently, to accept worse financial conditions in comparison with his previous conditions.
- Due to the relegation of the Norwegian club, the Player never received an offer to renew the contract with the said club.
- Moreover, the Player never received any other offer from any new club after the expiry of the New Contract and remained unemployed.

- The Appealed Decision correctly deducted the salaries the Player made after the termination of the Contract, as far as it was known at the time when the Appealed Decision was rendered.

- In any case, it is not correct that any contract eventually signed by the Player after the issuance of the Appealed Decision must also be taken into consideration, since it is only a new contract in force at the time of the decision that needs to be taken into account for the purposes of mitigation.

- The amount of compensation and the time of its payment were decided upon in the Appealed Decision and do not depend on any future and uncertain event.

- Finally, the Appellant's request to have the proceedings stayed must be dismissed as it is inconsistent with the procedural law.

V. JURISDICTION

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

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

61. With respect to the Appealed Decision, and in accordance with the above-mentioned provision, the jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes as it provides 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".*

62. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS. Furthermore, the Parties confirmed the jurisdiction of the CAS when signing the Order of Procedure.

63. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

VI. ADMISSIBILITY

64. The grounds of the Appealed Decision were notified to the Appellant on 5 December 2019, and the Statement of Appeal was lodged on 24 December 2019, i.e. within the statutory time limit of 21 days set out in Article 58(1) of the FIFA Statutes, which is not disputed.

65. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

66. It follows that the appeal is admissible.

VII. APPLICABLE LAW

67. Article R58 of the CAS 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 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".*

68. The Sole Arbitrator notes that the Parties agree on the application of the FIFA Regulations, which implies, according to Article 57(2) of the FIFA Statutes, that *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

69. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law.

70. The Sole Arbitrator finally agrees with the DRC Judge that in particular the 2018 edition of the Regulations on the Status and Transfer of Player (the "Regulations") is applicable to this matter.

VIII. MERITS

71. Initially, the Sole Arbitrator notes that the factual circumstances of this case are undisputed by the Parties, including the fact that, on 5 January 2018, and due to the Club's breach of contract, the Player unilaterally terminated the Contract with just cause.

72. The Sole Arbitrator further notes that the Appellant does not dispute that any compensation to be paid to the Respondent must be calculated in accordance with Article 17 of the Regulations.

73. Based on that, and following the Respondent signing the New Contract valid as from 1 February 2018 until 31 December 2019, the DRC Judge decided, *inter alia*, as follows in the Appealed Decision:

> *"[The Club] has to pay to [the Player] within 30 days as from the date and notification of this decision compensation for breach of contract in the amount of EUR 58,000, plus 5% interest p.a. from 6 March 2018 until the date of effective payment".*

74. Finally, it is furthermore undisputed that from the expiry of the New Contract, i.e. from 1 January 2020, the Player has been unemployed.

75. However, the Appellant now submits that the Respondent failed to fulfil his obligation to mitigate the damages caused by the Appellant's breach of contract and that the amount of compensation is not yet to be decided on since the Contract was originally valid until 15 June 2021.

76. As such, the Appellant submits that the proceedings should be stayed at least until 5 September 2020 in order to be able to take into consideration any potential income the Respondent might receive until 15 June 2021.

77. Furthermore, the Appellant submits that the Respondent failed to prove that he was forced to accept a reduced salary under the New Contract and that he subsequently failed to sign a new contract after the expiry of the New Contract.

78. The Sole Arbitrator initially notes that the DRC Judge, in the Appealed Decision, applied Article 17 paragraph 1 of the Regulations in order to calculate the amount of compensation for breach of contract payable by the Appellant to the Respondent.

79. Pursuant to the said article, the compensation was to be calculated unless otherwise provided for in the contract, which was not the case in the dispute *"with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall 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"*.

80. In doing so, the DRC Judge took into consideration the Respondent's remaining remuneration under the Contract until 15 June 2021, the payment made by the Appellant on 16 May 2018 as well as the future overall remuneration of the Respondent under the New Contract valid until 31 December 2019.

81. Based on that, the DRC Judge found that the Appellant must pay the amount of EUR 58,000 to the Respondent for breach of contract.

82. The actual calculation of the amount of compensation for breach of contract is not disputed by the Appellant, and the Sole Arbitrator finds no grounds for not concurring with the DRC Judge's ruling in this regard.

83. Furthermore, the Sole Arbitrator notes that in accordance with the wording of Article 17 paragraph 1 of the Regulations, and in accordance with the Respondent's general obligation to mitigate his damages, which the Sole Arbitrator hereby confirms, the DRC Judge did in fact reduce the amount of compensation payable to the Respondent by the Respondent's future overall remuneration under the New Contract valid until 31 December 2019, i.e. EUR 65,000.

84. The Sole Arbitrator notes that this is in line with the wording of the said article, which states that among the criteria for the calculation of compensation are *"in particular, the remuneration and other benefits due to the Player under the existing contract and/or the new contract"*.

85. As such, the DRC Judge used the remuneration from the *New Contract* in order to deduct the amount of compensation payable to the Respondent.

86. Neither in the Regulations nor in any other rules does the Sole Arbitrator find a basis for concluding that the theoretical possibility that the Respondent later on – and before the end of

the original contract period under the Contract – could potentially receive a different remuneration would be sufficient to justify either a stay of the procedure or a referral of the case back to the FIFA DRC or to otherwise postpone the determination of the amount of compensation payable to the Respondent for the Appellant's breach of contract.

87. The circumstance that it is the actual contractual relationships at the time of the decision of the dispute that determine the calculation of any amount of compensation is now specifically reflected in the current edition of the FIFA Regulations on the Status and Transfer of Players, Article 17 paragraph 1, which reads as follows: *"In case the Player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining of the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early"*.

88. The Sole Arbitrator finds that, in accordance with the Regulations, the DRC Judge also took into account the conditions at the time of the Appealed Decision in determining the amount of compensation.

89. The Sole Arbitrator further notes that the Respondent, according to the available information, has not received remuneration after the expiry of the New Contract and that the Respondent has not entered into any other contracts either.

90. The Sole Arbitrator further notes that the circumstance that the Respondent received a higher remuneration under the Contract than under the New Contract is not in itself sufficient to lead to an automatic and further deduction of the compensation payable to the Respondent from the Club by an amount equal to the difference between the two salaries.

91. The same goes with regard to the circumstance that the Respondent never signed a new contract after the expiry of the New Contract, which is not in itself sufficient to lead to an automatic and further deduction of the compensation payable to the Respondent from the Club.

92. Based on the facts of the case, the Sole Arbitrator finds that it is up to the Appellant to prove that the Respondent thus allegedly failed to respect his obligation to try to mitigate his damages caused by the Appellant's breach of contract.

93. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46; and CAS 2009/A/1975, paras. 71ff).

94. The Sole Arbitrator finds that the Appellant failed to discharge this burden of proof.

95. Based on that, the Sole Arbitrator finds no grounds for setting aside or amending the amount of compensation payable to the Respondent as decided by the DRC Judge.

96. Furthermore, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the interest rate and therefore confirms that the Respondent is entitled to receive interest rate of 5% *p.a.* on the amount of EUR 58,000 as from 6 March 2018 until the date of actual payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Istra 1961 on 24 December 2019 against the decision rendered by the Judge of the FIFA Dispute Resolution Chamber is dismissed.

2. The decision rendered by the Judge of the FIFA Dispute Resolution Chamber on 24 December 2019 confirmed.

3. (…).

4. (…).

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