Arbitration CAS 2020/A/7373 Dinamo 1948 S.A. (Dinamo) v. Jordan David Mustoe, award of 20 October 2021

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Probative value and proof of the authenticity of a written document
Duty of a party to sufficiently substantiate its submissions
Principles of calculation of the compensation for damages

1. **According to Article 178 of the Swiss Civil Procedure Code (CPC), a physical record in order to have probative value must be authentic, which means that the provisions contained in the relevant document must be attributed in its entirety to the (presumed) author. The authenticity of the physical record must be proven by the party that invokes the physical record. However, the party invoking the physical record bears the burden of proof in relation to the authenticity of the document only in the event that the other party contests the authenticity of such document in a substantiated manner. Therefore, a mere and vague objection is insufficient to trigger the burden of proof of the other party. The objecting party, must submit facts that raise serious doubts with respect to the authenticity of the physical record.**

2. **The duty of a party to sufficiently substantiate its submissions is intrinsically linked to the principle of party presentation and, thus, it is clearly a procedural issue. Submissions are sufficiently substantiated, if: (i) they are detailed enough to determine and assess the legal position claimed; (ii) they are detailed enough for the counterparty to be able to defend itself.**

3. **If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall be made with due consideration of the various criteria contained in Article 17 of the FIFA Regulations on the Status and Transfer of Players. The objective calculation shall be made based on the principle of the so-called "positive interest", meaning that the tribunal shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly. Other criteria can be considered in order to determine a fair compensation, such as the so-called "specificity of sport". The remuneration under a new employment contract shall be taken into account in the calculation of the compensation in accordance with the general obligation to mitigate damages.**

I. PARTIES

1. Dinamo 1948 S.A. (the "Appellant" or the "Club" or "Dinamo") is a Romanian football club, affiliated to the Romanian Football Federation, which in turn is affiliated to the *Féderation Internationale de Football Association* ("FIFA").

2. Mr Jordan David Mustoe (the "Respondent" or the "Player") is football player of British nationality.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. 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 this Award only to the submissions and evidence he considers necessary to his reasoning.

4. On 15 January 2019, the Appellant and the Respondent signed an employment contract (the "Employment Contract") valid from the date of its signature until 30 June 2020.

5. According to Article 3 of the Employment Contract, the Player was entitled to receive the following amounts:

> *"- For the period 15.01.2019 – 30.06.2019 the monthly amount of 5.000 EUR net;*
>
> *- For the period 01.07.2019 – 30.06.2020 the monthly amount of 6.500 EUR net.*
>
> *If Dinamo will be qualified in League I's play-out of the season 2019-2020 the salary will be in amount of 6.000 EUR net".*

6. On 19 March 2019, the coach of the Club spoke to the media and informed the Player that he was no longer needed in the team and, thus, invited him to negotiate the termination of his employment relationship with the Appellant.

7. On 25 and 26 March 2019, the Appellant and the Respondent had several meetings in which the Player stated that for terminating the employment relationship with the Club he would have received his salaries until 30 June 2019.

8. However, the Appellant stated that there was no need to further negotiate since the Player already signed a termination agreement.

9. On 26 March 2019, the Player handed to the Club some equipment and the car provided to him by the Club itself.

10. In turn, on the same date, the Club paid the Respondent the amount of Lei 1200 (corresponding to EUR 250) in cash.

11. On 27 March 2019, the Club handed to the Player a copy of the termination agreement of the Employment Contract dated 25 March 2019 ("Termination Agreement").

12. However, the Player stated that he never signed such Termination Agreement.

13. On 27 March 2019, the Appellant paid the Respondent the amount of EUR 4,032.00 as financial rights due to the Player for the activity rendered until 25 March 2019.

III. PROCEEDINGS BEFORE FIFA DISPUTE RESOLUTION CHAMBER

14. On 4 April 2019, the Player lodged a claim before FIFA (the "Claim"), against the Club for breach of the Employment Contract without just cause, requesting the payment of a total amount of EUR 98,000.00 as compensation, plus 5% interest *p.a.* as from 25 March 2019 until the date of payment.

15. In its reply – which was not produced within the deadline of 2 June 2019 but on 17 June 2019 – the Club rejected the Player's claim and affirmed that the Parties signed a settlement agreement according to which the Player was not entitled to receive any compensation for the early termination of the Employment Contract.

16. In this regard, the Player denied having signed the Termination Agreement and stressed that it would have been unrealistic to sign a termination agreement without any sort of compensation, also considering the damage – in terms of reputation – that he would have suffered.

17. The Club failed to provide its reply within the prescribed time limit of 2 June 2019 and filed the document on 17 June 2019 instead.

18. According to the information contained in TMS, the Player, on 1 September 2019, executed an employment contract with the Omani club, Al Nasr, valid from the date of signature until 30 April 2020.

19. On 29 July 2020, FIFA Dispute Resolution Chamber ("FIFA DRC") rendered a decision whereby it decided that the Claim was partially accepted according to the following reasoning:

    a) *"the Judge observed that the club failed to provide its reply within the granted deadline, i.e. 2 June 2019, whereas the club's reply was received on 17 June 2019 (…) As a result, the Judge understood that he shall take a decision on the basis of the documentation on file".*

    b) *"considering that the player denied having signed any mutual termination agreement, the Judge understood that it could only establish that indeed the player did not sign said document".*

c) *"by providing on 26 March 2019 the player with an alleged termination agreement, the club de facto terminated the contract unilaterally (…) the club did not provide any valid reason for said termination and thus terminated the contract without just cause"*.

Consequently, the FIFA DRC determined that the Club terminated the Employment Contract without just cause.

20. The FIFA DRC, thus, acknowledging that there was no evidence that the salary of March 2019 was paid, condemned the Club to pay in favour of the Player the amount of EUR 5,000.00 as Player's salary for the month of March 2019.

21. Furthermore, the FIFA DRC, in compliance with the provisions set forth in Article 17 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), determined the compensation to be paid by the Club in favour of the Player for having terminated the Employment Contract without just cause in the amount of EUR 47,500.

22. The grounds of the FIFA DRC Decision were notified to the Player and the Club on 10 August 2020 (the "Appealed Decision").

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

23. On 31 August 2020, the Club filed an appeal against the Player before the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Club requested the case to be submitted to a Panel of three arbitrators and appointed for its part Mr Bernhard Welten, attorney-at-law in Bern, Switzerland.

24. On 7 September 2020, the CAS Court Office notified the Statement of Appeal to the Respondent and invited him to nominate an arbitrator andand reminded the Appellant of its delay to file its Appeal Brief pursuant to article R51 of the CAS Code. The CAS Court Office requested the Respondent to nominate an arbitrator.

25. On the same date, the CAS Court Office informed FIFA of the appeal and informed FIFA that pursuant to R41.3 of the CAS Code, if it intended to participate in the proceedings it had to file an application before CAS within 7 days.

26. On 11 September 2020, the CAS Court Office informed the Parties that the Appellant's request for an extension to file its Appeal Brief until 17 September 2020 was granted.

27. By letter dated 16 September 2020, FIFA informed the CAS that it renounced its right to request an intervention in the proceedings.

28. On 16 September 2020, the CAS Court Office informed the Parties that the Appellant requested a further extension to file its Appeal Brief by 21 September 2020 and asked the Respondent to submit his objections, if any, on or before 18 September 2020.

29. On 21 September 2020, the Appellant, submitted its Appeal Brief pursuant to Article R51 of the CAS Code.

30. On 22 September 2020, the CAS Court Office invited the Respondent to file his Answer pursuant to Article R55 of the CAS Code.

31. On the same date, the CAS Court Office, further to its letter dated 7 September 2020, informed the Respondent that, in the absence of a nomination of an arbitrator within the prescribed deadline, the President of the CAS Appeals Arbitration Division would appoint an arbitrator *in lieu* of the Respondent.

32. On 16 October 2020, the CAS Court Office informed the Parties that the Respondent requested that the deadline for filing his Answer be set aside and that a new deadline be set after the payment of the advance of costs by the Appellant.

33. On the same date, the CAS Court Office acknowledged receipt of Appellant's email requesting the appointment of a Sole Arbitrator and invited the Respondent to advise the CAS on or before 21 October 2020 whether he agreed to such a request.

34. On 26 October 2020, the Parties were informed that the Respondent had not advised the CAS Court Office of his position on the appointment of a Sole Arbitrator.

35. On 29 October 2020, CAS Court Office informed the Parties that the time limit for the payment of the advance costs was suspended until the President of the CAS Appeals Arbitration Division rendered a decision on the number of arbitrators.

36. On 2 November 2020, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided to refer the case to a Sole Arbitrator.

37. On 26 November 2020, the CAS Court Office acknowledged receipt of the Appellant's payment of the totality of the advance costs and ordered the Respondent to file its Answer within 20 days as from receipt of the CAS letter by courier.

38. On the same date, the Parties were informed that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, had decided to refer the case to Mr Jacopo Tognon, attorney-at-law in Padova, Italy.

39. On 17 December 2020, the CAS Court Office stated that the Respondent had requested an extension to file his Answer until 8 January 2021 and invited the Appellant to inform the CAS Court Office whether it agreed with such an extension on or before 21 December 2020.

40. On 21 December 2020, the CAS Court Office informed the Parties that the Appellant consented to the request of extension and, thus, the Respondent's deadline to file his Answer was extended to 8 January 2021.

41. On 8 January 2021, the CAS Court Office acknowledged the Respondent's request for a further extension to file his Answer until 12 January 2021 and invited the Appellant to inform the CAS Court Office whether it agreed with such extension on or before 11 January 2021.

42. On 11 January 2021, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

43. On 12 January 2021, the Parties were invited to inform the CAS Court Office by 19 January 2021 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

44. On 14 January 2021, the CAS Court Office acknowledged receipt of Mr Fraser Griffiths' email according to which he was confirmed as the UK appointed lawyer by the Respondent and invited the Respondent to clarify which lawyer represented him in the proceedings by 18 January 2021.

45. On 18 January 2021, the CAS Court Office acknowledged receipt of Mr Spiridon's letter who stated that the Respondent appointed both Mr Spiridon and Mr Griffiths to represent him in the case at hand.

46. On 20 January 2021, the CAS Court Office noted that the Respondent retained both Mr Spiridon and Mr Griffiths as counsel.

47. On the same date, the CAS Court Office further acknowledged that the Appellant did not request a hearing to be held, whilst the Respondent did not advise the CAS about his preference. Thus, the CAS Court Office invited the Respondent to reply by 25 January 2021.

48. On 21 January 2021, the CAS Court Office took note that Respondent preferred that a hearing be held in the present matter.

49. On 25 January 2021, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator decided to hold a hearing in this matter, which would be held via videoconference.

50. On 2 February 2021, the CAS Court Office informed the Parties that the hearing would be held on 5 March 2021 via videoconference and invited the Parties to provide the CAS Court Office with a list of their respective hearing attendees.

51. On 8 February 2021, the Appellant provided the CAS Court Office with the names of its hearing attendees.

52. On 11 February 2021, the CAS Court Office acknowledged receipt of the Respondent's Order of Procedure signed on 10 February 2021.

53. On 12 February 2021, the CAS Court Office noted that, according to the Respondent, Mr Balanescu Adrian was no longer the president and legal representative of the Club and that the president of the Club was now Mr Fernandez Cortacero Pablo Manuel, while the general director was Mr Couto Lago Alejandro.

54. On 15 February 2021, the CAS Court Office acknowledged receipt of the Appellant's letter informing the CAS Court Office that president of the Club was Mr Constantin Eftimescu.

55. On the same date, the CAS Court Office acknowledged receipt of the Appellant's Order of Procedure signed on 15 February 2021.

56. On 18 February 2021, the Respondent provided the CAS Court Office with the names of its hearing attendees.

57. On 4 March 2021, the CAS Court Office acknowledged receipt of Respondent's letter enclosing a power of attorney in favour of Ms Anca Alina Iordanescu, replacing Mr Spiridon at the hearing.

58. On 11 March 2021, the CAS Court Office acknowledged receipt of the Appellant's request to add a document communicated to it by the Romanian Football Federation to the file and invited the Respondent to comment on such a request by 16 March 2021.

59. On 16 March 2021, the CAS Court Office acknowledged receipt of Respondent's letter according to which the Player left to the Sole Arbitrator the decision whether to admit such document or not.

60. On 18 March 2021, the CAS Court Office informed the Parties that the Sole Arbitrator decided not to admit the Appellant's additional document sent on 10 March 2021, which was therefore considered inadmissible.

B. The Hearing

61. On 5 March 2021, in addition to the Sole Arbitrator and Ms Sophie Roud, Counsel to the CAS, the following persons attended the hearing:

- On behalf of the Appellant:
  - Ms Anca Mituică, legal counsel;
  - Ms Ruxandra Grigorescu, interpreter.
- On behalf of the Respondent:
  - Mr Jordan David Mustoe, the Respondent;
  - Mr Fraser Griffiths, counsel;
  - Mr Ion Eugen Spiridon, counsel;

- Ms Loredana Nogu, witness;
- Mr Salif Nogu, witness.

62. At the opening of the hearing, the Parties confirmed that they had no objections to the appointed Sole Arbitrator. During the hearing, the Parties made submissions in support of their respective cases.

63. The Sole Arbitrator heard the testimony of the Respondent and from Ms Loredana Nogu and Mr Salif Nogu, agents of the Player.

64. In particular, Ms Loredana Nogu confirmed that she was never approached by the Club to discuss the termination of the Employment Contract. Indeed, she became aware of such circumstance from the media. She further stated that the Player would not have signed anything without talking to her prior. Moreover, Ms Loredana Nogu confirmed that she did not attend the meeting held on 25 March 2019 at the Club's premises. However, she stated that the president of the Club was not present either. In any case, the Player's signature was not on the Termination Agreement at that time. With respect to the payments made by the Club in favour of the Player, she confirmed that the Appellant paid all the amounts due to the Player until the date of termination.

65. Mr Salif Nogu also confirmed that the Club never contacted him to discuss the termination of the Employment Contract. He further stated that he was not present at the meeting held on 25 March 2019.

66. Finally, the Respondent, during his testimony, confirmed that he received the payment for the month of March 2019 on 27 March 2019. He further stressed that he never signed any document concerning the termination of the Employment Contract. He became aware of the agreement termination on 25 March 2019 from the media. Nevertheless, he received a copy of the Termination Agreement only on 27 March 2019. Moreover, the Player confirmed that the president of the Club was not present at the meetings held at the Club's premises. Furthermore, the Respondent emphasised that he would have had no interest in terminating the Employment Contract at such an early stage without receiving any compensation, considering the reputational damage he would have suffered.

67. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

V. SUBMISSIONS OF THE PARTIES

68. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every argument advanced by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and claims made by the Parties, even if no explicit reference is made in what immediately follows:

A. Appellant's Submissions

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

- On 25 and 26 March 2019, the Player was at the Club and discussed with the Club's legal representatives the termination of the Employment Contract. On the same date, the Appellant gave the Respondent a copy of the Termination Agreement dated 25 March 2019 signed by both the Club and the Player. On 26 March 2019, the Player handed over the equipment and the car used by himself.

- After the signing of the Termination Agreement, on 27 March 2019, the Appellant paid to the Respondent the financial rights due to the Player for the activity rendered until 25 March 2019.

- On 26 March 2019, the Club paid in cash the Respondent the amount of Lei 1200 (corresponding to EUR 250).

- The Player did not request the payment of his salaries for his work after the date of 25 March 2019 and, indeed, he did not render any services for the Club after such date.

- In September 2019, the Respondent was registered as a free player with the Omani club, Al Nasr.

70. The Appellant's requests for relief contained in the Appeal Brief were formulated as follows:

1. *"To set aside and cancel the entire decision passed on July 29, 2020 by FIFA Dispute Resolution Chamber;*

2. *And, as a consequence, to reject as inadmissible the claim filed on April 4, 2019 against Dinamo 1948 S.A. as a consequence of the provisions of article 13 from FIFA R.S.T.P. and, subsidiarily, to reject the Player's claim as groundless;*

3. *To order the Respondent to pay the Appellant a contribution on account of his legal and other costs generated by this case".*

B. Respondent's Submissions

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

- The case hereof is not the first one in which a player addressed that the Club counterfeited his signature to terminate the employment relationship. Indeed, in December 2018, a former player of the Appellant accused the Club to have forged his signature on a termination agreement.

- The Respondent never agreed to terminate the Employment Contract and never signed the Termination Agreement.

- After the Player attended the training session on 25 March 2019, he was informed by the coach that he was no longer needed in the team. The Respondent, thus, requested to receive the agreed salaries until 30 June 2019 in order to mutually terminate the relationship with the Appellant.

- The Respondent contests the validity of the document filed as annexe 3 by the Appellant because it does not represent a valid attestation of the payments allegedly made.

- The Respondent stresses that the Appellant did not provide any good reason for the Player to agree to a termination without receiving any sort of compensation. To this end, he emphasises that any party wishing to prevail in a dispute shall discharge its burden of proof and substantiate the relevant allegations made.

- The Appellant had no intention to comply with its obligations pursuant to the Employment Contract. Furthermore, the non-admission of the Player to the team could have affected his career development.

- According to Article 17 para. 1 of the FIFA RSTP, the main consequence of terminating an employment relationship without just cause is that the party in breach shall pay all the outstanding amounts due to the party not in breach.

72. The Respondent's requests for relief are the following:

> *1. "To set aside in full the appeal lodged by the Appellant before the CAS;*
>
> *2. To confirm in full the Appealed Decision; and*
>
> *3. To order the Appellant to pay the Respondent any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel".*

VI. JURISDICTION

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

74. Article 58 para. 1 of the FIFA Statutes provides as follows:

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

75. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. The Sole Arbitrator further notes that the Parties have signed the respective Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

76. Article R49 of the CAS Code provides as follows: *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]".*

77. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

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

78. The motivated part of the Appealed Decision was notified to the Appellant on 10 August 2020 and the Appellant filed its Statement of Appeal on 31 August 2020. Therefore, the 21-day deadline to file the appeal was met.

79. The Sole Arbitrator, therefore, finds the appeal admissible.

VIII. APPLICABLE LAW

80. 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

81. Article 57 para. 2 of the FIFA Statutes provides as follows:

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

82. Accordingly, the Sole Arbitrator shall decide the present matter pursuant to the relevant FIFA regulations, and more specifically the FIFA RSTP and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), as in force at the relevant time of the dispute, namely the 2018 edition with respect to the RSTP and the 2020 edition with respect to the FIFA Procedural Rules. Finally, Swiss law shall be applied subsidiarily.

IX. MERITS

83. The Sole Arbitrator has identified the following main issues, which will be addressed by answering to the following questions:

(a) Did the Respondent sign the Termination Agreement submitted by the Appellant?

(b) Should the Player not have signed the Termination Agreement what are the consequences thereof?

(a) Did the Respondent sign the Termination Agreement submitted by the Appellant?

84. Firstly, it should be determined which probative value shall be accorded to the Termination Agreement submitted by the Appellant.

85. In this respect, the Appellant filed such Termination Agreement underlining that it was signed by the Respondent who, therefore, agreed on the content set forth therein.

86. On the contrary, the Respondent stated that he never agreed on the content of the Termination Agreement and that he did not sign such document.

87. The Sole Arbitrator notes that the probative value of a written document is a matter of procedural nature. As a consequence, the Sole Arbitrator reverts to Article 182 of the Swiss Private International Law Act ("PILA").

88. Article 182, para. 1, of the PILA refers to the rules of procedure agreed upon by the Parties, and, in particular, the CAS Code. The CAS Code, however, does not regulate the issue at stake. Consequently, in case the Parties have not regulated the procedural issue, Article 182, para. 2, of the PILA empowers the arbitrator to apply the provisions that he deems fit (either directly or by reference). The Sole Arbitrator, thus, refers to the rules of the Swiss Civil Procedure Code ("CPC"), and, specifically, to Articles 177 *et seq.* CPC, since the Termination Agreement is a private document, and it shall be qualified as a physical record within the meaning of these articles.

89. Article 178 CPC reads as follows:

> *"The party invoking a physical record must prove its authenticity if this is disputed by the opposing party; the opposing party must give adequate grounds for disputing authenticity".*

90. Therefore, according to such article, a physical record in order to have probative value must be authentic, which means that the provisions contained in the relevant document must be attributed in its entirety to the (presumed) author.

91. Furthermore, such provision clarifies that the authenticity of the physical record must be proven by the party that invokes the physical record (GROLIMUND P., in

STAEHELIN/STAEHELIN/GROLIMUND, Zivilprozessrecht, 3rd ed., 2019, § 18 note 99; CP CPC-VOUILLOZ, 2020, Art. 178 note 6).

92. However, the party invoking the physical record bears the burden of proof in relation to the authenticity of the document only in the event that the other party contests the authenticity of such document in a substantiated manner. Therefore, a mere and vague objection is insufficient to trigger the burden of proof of the other party. The objecting party, must submit facts that raise serious doubts with respect to the authenticity of the physical record.

93. The duty of a party to sufficiently substantiate its submissions is intrinsically linked to the principle of party presentation and, thus, it is clearly a procedural issue (KuKo-ZPO/OBERHAMMER, 2nd ed. 2014, Art. 55 no 12). Consequently, Article 182 of the PILA applies with respect to the applicable law. In view of the fact that the CAS Code is silent on the perquisites necessary to qualify an objection and/or a submission as sufficiently substantiated, the Sole Arbitrator refers to the CPC. To this end, according to the jurisprudence of the Swiss Federal Tribunal ("SFT"), submissions are sufficiently substantiated, if:

- they are detailed enough to determine and assess the legal position claimed (SFT 4A_42/2011, 4A_68/2011, E. 8.1); and

- detailed enough for the counterparty to be able to defend itself (SFT 4A_501/2014, E. 3.1).

94. It follows from the above that in case the authenticity of the physical record is contested in a substantiated manner, the party invoking such document may adduce any evidence available to it (including witness testimony, expert evidence, etc.) to discharge its burden of proof with respect to the authenticity of the physical record submitted (CP CPC-VOUILLOZ, 2020, Art. 178 note 8).

95. With respect to the case at stake, the Sole Arbitrator finds that the Respondent has contested the authenticity of the Termination Agreement in a substantiated manner. In the Sole Arbitrator's opinion, the facts below and evidence submitted by the Player raise serious doubts as to the authenticity of the Termination Agreement.

96. Specifically, the witnesses Ms Loredana Nogu and Mr Salif Nogu, the Player's agents, confirmed that they were never approached by the Club to discuss the termination of the Employment Contract. They learned about such termination in the media.

97. Furthermore, Ms Loredana Nogu and Mr Salif Nogu confirmed that they were not physically present at the meeting held on 25 March 2019 at the Club's premises nor was the president of the Club. They both only attended the meeting by phone. The two agents also confirmed that the Termination Agreement was not signed at such date.

98. The Respondent at the hearing testified that he did not sign the Termination Agreement, or any other document concerning a potential termination of the Employment Contract. The

Player further clarified that he did not want to sign a termination agreement at such an early stage of the Employment Contract without any sort of compensation, also considering the damages in terms of reputation that he would have suffered. He confirmed that he became aware of such termination from the media on 19 March 2019 and the Club sent a copy of the Termination Agreement to him only on 27 March 2019.

99. In light of the above, the Sole Arbitrator deems that the Respondent has sufficiently substantiated his objections as to the authenticity of the Termination Agreement. Indeed, the facts submitted raise serious doubts with respect to the authenticity of the Termination Agreement.

100. Therefore, the Appellant shall bear the burden of proof with reference to whether the document submitted was actually agreed between the Club and the Player and actually signed by the latter.

101. The Sole Arbitrator, however, notes that the Appellant decided not to invite any witness to be heard at the hearing nor to render a testimony in order to substantiate the assertions made in the Appeal Brief and contest the objections brought forward by the Player. It follows that it did not produce any evidence substantiating its allegations on the authenticity of the Termination Agreement.

102. The Sole Arbitrator further notes that it does not appear realistic to mutually terminate a long-term contract after only two months without asking for any sort of compensation.

103. Thus, the Sole Arbitrator finds that the Appellant has not discharged its burden of proof to the applicable standard of proof that the Termination Agreement is authentic and actually signed by the Player.

(b) Should the Player have not signed the termination agreement what are the consequences thereof?

104. All the above considered and also taking into consideration the relevant statements rendered by the witnesses during the hearing as well as the submissions of the Parties, the Sole Arbitrator is of the opinion that the Appellant did not discharge its burden of proof that the Termination Agreement is authentic and actually signed by the Player and thus, the Club unilaterally and prematurely terminated the Employment Contract without just cause.

105. In view of the foregoing, the Sole Arbitrator, however, firstly notes that the Player's salary for the month of March 2019, amounting to EUR 5,000.00, has been partially paid by the Appellant. Indeed, it has been proved by the relevant document filed by the Appellant (annex 3 to the Appeal Brief) and previously not admitted in the proceedings before the FIFA DRC that the Appellant paid EUR 4,032.00 towards the Player for the month of March 2019. Such circumstance has been also confirmed by the Player during the hearing. Therefore, the decision of the FIFA DRC shall be amended accordingly, and the Player be entitled to receive as compensation for the month of March in the amount of EUR 968.00.

106. With respect to the amount of Lei 1200, corresponding approximately to EUR 250.00, paid in cash by the Appellant to the Respondent upon return of the car, the Sole Arbitrator is of the opinion that such sum shall not be deducted from the amount due in favour of the Player. Indeed, the Appellant failed to demonstrate that the amount of EUR 250.00 was paid to the Player as part of his salary. Besides, it appears that such sum was the deposit for using the car.

107. After having ascertained that the Club terminated the Employment Contract without just cause, the amount of compensation payable by the Appellant to the Respondent shall now be determined.

108. Indeed, Article 17 of the FIFA RSTP reads as follows:

> *"1. In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria 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".*

109. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

110. Indeed, both parties to the contract should be aware that in the case of a breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth in Article 17 of the FIFA RSTP.

111. This being considered, two basic principles have been recognised in the jurisprudence of CAS and FIFA DRC:

- If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 of the FIFA RSTP;

- The objective calculation shall be made by the Tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (editors), "Sport Governance, Football Disputes, Doping and CAS arbitration", Colloquium, 2009, p. 249).

112. Moreover, it is important to underline that other criteria could be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

113. CAS jurisprudence stated that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

114. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, para. 233-240)

115. To sum up, the Sole Arbitrator might negatively consider when a party engages in a conduct which is blatantly in bad faith, or terminates a contract for its own interests. Equally, he might positively consider the case of a party that has displayed exemplary behaviour throughout the duration of a contract.

116. As a consequence of the above, it has firstly to be clarified whether the Employment Contract contained a provision according to which the Parties agreed on a certain amount to be paid as compensation in case of a breach of contract. To this end, the Sole Arbitrator finds that the Employment Contract contains no compensation clause.

117. Therefore, the compensation to be awarded in favour of the Respondent shall be determined in compliance with the parameters set forth under Article 17 of the FIFA RSTP.

118. The Sole Arbitrator deems it essential to pay attention to both the existing and the new contract. In fact, the remuneration under a new employment contract shall be taken into account in the calculation of the amount due as compensation in accordance with the general obligation of the Player to mitigate his damages.

119. The original end date of the Employment Contract between the Appellant and the Respondent was 30 June 2020 and, thus, all the amounts received by the Player deriving from the new contract with the new club until the date of 30 June 2020 shall be considered for the purpose of the calculation hereof.

120. On 1 September 2019, the Player concluded an employment contract with the Omani club Al Nasr valid from the date of signature until 30 April 2020 according to which the Respondent

would have received the total amount of USD 50,000.00, corresponding approximately to EUR 45,500.00.

121. FIFA DRC, in order to determine the basis of the amount of compensation to be granted in favour of the Respondent, correctly referred to the remaining value of the Employment Contract up to the original date of termination (*i.e.* 30 June 2020) with respect to the money that the Player failed to receive due to the early termination of his relationship with the Club, amounting to EUR 93,000.00, and the value of the new employment contract.

122. The remaining salaries of the Respondent amount, therefore, to Euro 47,500.00 (namely EUR 93,000.00 – EUR 45,500.00).

123. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, the Sole Arbitrator considers that the appeal is rejected and the Appellant must pay the total amount of EUR 47,500.00, as compensation for breach of contract.

X. CONCLUSIONS

124. The Sole Arbitrator concludes that in light of the above findings:

a. The Appellant did not discharge its burden of proof to substantiate the authenticity of the Termination Agreement;

b. The Appellant, therefore, terminated the Employment Contract without just cause;

c. The Appellant already paid in favour of the Respondent part of the amount due with respect to the month of March 2019 and, thus, it has to pay in favour of the Player the residual part amounting to EUR 968.00, plus 5% interest *p.a.* as from 4 April 2019 until the date of effective payment;

d. The Respondent is entitled to receive as compensation the amount of EUR 47,500.00, plus 5% interest *p.a.* as from 4 April 2019 until the date of effective payment.

125. According to the Sole Arbitrator the appeal is rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Dinamo 1948 S.A. on 31 August 2020 against the decision of the FIFA Dispute Resolution Chamber rendered on 29 July 2020 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber dated 29 July 2020 is confirmed with the exception of point III.2 which is amended as follows:

   "2. The Respondent, SC Dinamo 1948, has to pay to the Claimant, the following amounts:

   - *EUR 968.00 as outstanding remuneration plus 5% interest p.a. as from 4 April 2019 until the date of effective payment;*

   - *EUR 47,500.00 as compensation for breach of contract without just cause plus 5% interest p.a. as from 4 April 2019 until the date of effective payment".*

3. (…).

4. (…).

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