Arbitration CAS 2020/A/7499 Nofitovici Fanel v. Clubul Sportiv Mioveni, award of 9 September 2021

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract without just cause by the coach
Applicable law
Consequences of the termination without just cause under the applicable romanian regulations

1. **By submitting their dispute to CAS, by signing the Order of Procedure and not filing any objections in this regard, parties implicitly and indirectly choose for the application of the conflict-of-law rule in Article R58 of the CAS Code. This conclusion is in line with the main purposes of Article R58 of the CAS Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.**

2. **It follows from Article 26 par. 4 of the Regulations on the Status of Coaches of the Romanian Football Federation that a coach is liable to pay his employer-club 50% of the contractual rights actually paid until the termination of the contract, as compensation for the termination of an employment contract without just cause.**

I. INTRODUCTION

1. This appeal is brought by Mr Nofitovici Fanel (the "Appellant" or "Assistant Coach") against the decisions nos. 21 and 80 notified by the Appeals Board of the Romanian Football Federation ("RFF") on 16 October 2020 and the decision no. 317.1/CL/2019 notified by the National Chamber for Dispute Resolution of the RFF (the "NDRC") on 10 October 2019, regarding a contractual related dispute between the Appellant and the Romanian professional football club Clubul Sportiv Mioveni (the "Club" or the "Respondent").

II. PARTIES

2. The Appellant is a Romanian professional football coach.

3. The Respondent is a Romanian professional football club affiliated to the RFF, which in turn is a member association of the Fédération Internationale de Football Association ("FIFA").

4. The Respondent and the Appellant are hereinafter jointly referred to as the "Parties", where applicable.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions, the virtual hearing, and the evidence examined in the course of the proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further 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 award only refers to the submissions and evidence he considers necessary to explain his reasoning.

A. Facts

6. On 3 January 2019, the Parties entered into an agreement named "Contract de Activitate Sportivă" (freely translated as: "Sports activity agreement") for the position of assistant coach, valid as from the date of signature until 30 June 2020 (the "Contract").

7. On that same day, the Club also entered into an agreement for the same period with the head coach Mr Daniel Oprita (the "Head Coach", and together with the Appellant, referred to as the "Coaches", where applicable).

8. Clause 4.2 of the Contract contains, *inter alia*, the following obligations for the Club:

> *"*[…]
>
> *d) the obligation to participate to the sports events of the sportive entity, with whom he have concluded this agreement;*
>
> *e) to pay the amounts own to* [the Appellant] *in the sports activity, according to this Agreement;*
>
> *f) to provide* [the Appellant] *in the sports activity with appropriate training conditions for achieving the proposed objectives, including, but not limited to: pitches and training facilities, coaches and other qualified specialists, the means necessary to participate in competitions, medical services for recovery;*
>
> *g) to use his entire physical and intellectual capacity, as well as the aptitudes and talent, in his interest as well as for the Club's interest, rendering the football activity according to the highest professional standards, respecting the conditions and requirements of the club as expressly agreed by this agreement;*
>
> *i) to participate to all trainings, training camps, official games, presentation events, demonstrative and publicity games or activities as organised by or at which the club participates, as well as to any other programme set by the club;*
>
> […]*".*

9. From Clause 5.1 of the Contract it follows that:

"In exchange for the provision by [the Appellant] *in the sports activity of the services that are the object of this Agreement, the Club will pay him for the period 03.01.2019 until 30.06.2019 a net salary of 4500 lei*[1] */ month payable until the 30th of each mentioned contractual month, for the previous month. For the period 01.07.2019 – 30.06.2020,* [the Appellant] *will receive a net salary of 6,000 lei per month".*

10. Clause 7 of the Contract reads, *inter alia*, as follows:

"7.1. This sport activity agreement terminates:

a. At the expiration of the term if the parties do not agree to extend it;

b. By agreement of the parties;

c. Force majeure, under the conditions of point VI of the Agreement;

d. In case [the Appellant] *in the sports activity was discovered positive / or refuses to take the anti-doping test;*

e. By unilateral rescission in case of dissolution or bankruptcy of the Club;

f. By unilateral rescission, if [the Appellant] *in the sports activity has been suspended for more than 45 days from the competition for non-sportive actions;*

g. By unilateral rescission in case of unmotivated absence from official or friendly competition, or from trainings.

h. by unilateral rescission by the Club, in case [the Appellant] *in the sports activity is guilty of violating Chap. IV, pt. 4.2, lit. n), in which case the contract terminates by right at the moment of discovering the deed.*

7.2. In all cases of termination of the contract by unilateral rescission, the payment of the contractual rights will be made until the moment of rescission".

11. Clause 8 of the Contract contains, *inter alia*, the following:

"8.1. Non-compliance with the contractual clauses by any of the parties entails the obligation of the guilty party to pay damages.

8.2. [The Appellant] *in the sports activity may not conclude / sign a similar agreement, respectively any commitment, contract, convention or other legal document, with a club, company or other sports entity in Romania, during this agreement, except with the written approval of the Club".*

[1] The Parties interchangeably use "lei", "LEI" or "RON". The Sole Arbitrator will use "RON". On the date of conclusion of the Contract, the amount of RON 4,500 amounted to approximately EUR 963 and RON 6,000 to EUR 1,284.

12. On 10 May 2019, after a meeting on that same day between the Coaches and the Club, the Club published on its website the following text:

"Communique

Following the latest unsatisfactory results of the football team, the Club's management took the following measures:

the players were sanctioned with a fine for the matches lost on home turf in this second half of the championship, and the salaries have been blocked for an undetermined period

with [the Coaches] *a verbal agreement has been reached for the termination of the contracts and in the following days the rescission will be signed.*

For the stages remained to be played, a coach within the club will take care of the preparedness of the team, which will be further announced".

13. On 16 May 2019, the Club issued notification no. 143 ("Notification no. 143") to the Coaches, signed by the Executive President of the Club, Mr Constantin Stancu ("Mr Stancu"), by means of which it was communicated that:

"[w]e hereby inform [the Head Coach] and [the Appellant]*, coaches within CS Mioveni, that until the signing of the act of rescission of the employment contract, they are free not to attend any action or training of CS Mioveni.*

[…]*".*

14. On 21 June 2019, the Club informed the Appellant by means of notification no. 172 ("Notification no. 172") that Notification no. 143 *"shall be devoid of its effects, starting from 21.06.2019. As such, we invite you to report on 26.06.2019 at 10.00 A.M. at the CS Mioveni headquarters in order to clarify your contractual status".*

15. On 23 June 2019, the Club stated on its website that it would start the season *"with the same technical bench from the end of the last one: Marius Stoica – main, Mihai Olteanu, Iulian Preda – assistants, Iulian Ilie – goalkeepers coach".* Furthermore, the Club stated on the website that *"[c]oach Marius Stoica will have, at the first training session, the same team with which he finished last season".*

16. On 14 May 2021, the Appellant submitted a sports activity agreement that was concluded with the Romanian club FC Steaua Bucharest ("Steaua"), which contract was signed on 20 December 2019, and valid as from 1 December 2019 until 31 July 2021.

B. Proceedings before the NDRC and the Appeals Board of the RFF

17. On 2 July 2019, the Appellant lodged a claim for breach of contract against the Club in front of NDRC, claiming, *inter alia*, that the Club unilaterally terminated the Contract with the Appellant without just cause and requested compensation of RON 81,000.

18. In particular, the Appellant submitted the following requests for relief before the NDRC (in a translation submitted by the Appellant and not contested by the Club):

"- to acknowledge the termination without just cause of the sports activity contract no. 109/17.01.2019, by [the Club],

- *to order* [the Club] *to pay the amount of 13,500 lei, as due/outstanding financial rights for March – May2019,*
- *to order* [the Club]*, pursuant to the provisions of art. 26 para. 2 of the RSA to pay the amount of 76,500 lei as financial rights for June 2019 – June 2020,*
- *to pay the amount of 1,527 lei, as court fees (procedural fee and lawyer's fee)".*

19. On 1 August 2019, the Club filed its statement of defense together with a counterclaim claiming that it was the Appellant who had terminated the Contract without just cause.

20. In particular, the Club submitted the following requests for relief (in a translation submitted by the Club and not contested by the Appellant):

"In what concerns the counterclaim:

1. *Pursuant to art. 26 para. 4 of the Regulation on the Coach Statute RSA corroborated with art. 7.1 letter g of* [the Contract] *to ascertain the termination by* [the Appellant]*, without just cause, of the* [the Contract] *as a result of his absence from the official training sessions of* [the Club] *starting 26 June 2019 up to now.*

2. *Subsidiarily to the first head of claim, having regard to the violation of the provisions of art. 8.2. in* [the Contract]*, to ascertain the termination, without just cause, of* [the Contract] *as a result of the fact that* [the Appellant] *concluded a new contract with another football club, affiliated member in the* [RFF]*, that is a third party against the background of the contractual relations between the parties involved in the present dispute.*

3. *If the first or the second head of the counterclaim are admitted, pursuant to art. 26 para. 4 of RSA, to order* [the Appellant] *to pay in favour of* [the Club] *an amount equal to 50% of the value of the financial rights paid to* [the Appellant] *starting 03.01.2019 until the filing of the present counterclaim.*

In what concerns the writ of summons:

A. We request you by way of exceptions to reject the writ of summons as inadmissible, given the non-existence of the unilateral act of will of [the Club] *that would have led to the termination of* [the Contract]*, and to reject the second head of the claim;*

B. On the merits, we request you to dismiss the writ of summons as devoid of merit.

In any of the situations above mentioned we request you to order [the Appellant][2] *to pay the procedural tax and arbitration expenses represented by lawyer's fee, as it shall be filed".*

21. By means of his reply (dated 21 August 2019) to the statement of defence and the counterclaim from the side of the Club, the Appellant requested the NDRC for the rejection of the counterclaim as unfounded because no evidence had been produced as well as the rejection of the exception of inadmissibility of the request for summons.

22. On 10 October 2019, the NDRC decided, in essence, that the Club was liable for the termination of the Contract (decision no. 317/10.10.2019; the "First Decision"). The First Decision contains the following operative part (in a translation submitted by the Appellant and not contested by the Club):

"Rejects the plea of inadmissibility of the writ of summons invoked by [the Club].

Admits in part the writ of summons filed by [the Appellant] *versus* [the Club] *as founded.*

Ascertains the termination of the contractual relations pursuant to art. 26.2 RSA as a result of [the Club]*'s will starting 16.05.2019.*

Orders [the Club] *to pay the net amount of 81,000 lei as financial rights for the period 01.05.2019-30.06.2020.*

Orders [the Club] *to pay the amount of 400 lei as procedural tax".*

23. Subsequently, the Club appealed against the First Decision before the Appeals Board of the RFF (the "Appeals Board"), in which appeal proceedings the Club communicated that it was in insolvency as from 2014.

24. On 18 February 2020, the Appeals Board passed a decision in which it set aside the First Decision without ruling on the main prayers for relief and decided to refer the case back to the NDRC in order to address the counterclaim (decision no. 80/06.02.2020; the "Second Decision"). The Second Decision contains the following operative part (in a translation submitted by the Appellant and not contested by the Club):

"Admits the appeal.

Sets aside the [First Decision].

Remands the case for retrial to [the NDRC] *in order to rule upon the counterclaim of* [the Club].

Final and enforceable internally.

[2] Incorrect reference is made here by the Club to "the respondent".

The [Second Decision] *can be appealed to the TAS, within 21 days of communication.*

Rendered today, 06.02.2020, in the non-public hearing, at the [RFF] *headquarters in Bucharest, 12 Vasile Serbanica Street, District 2".*

25. On 9 June 2020, after the Club submitted an amended counterclaim, the NDRC overturned the First Decision and issued a new decision (decision no. 317.1/09.06.2020; the "Third Decision"). By means of the Third Decision, the Appellant's claim was rejected as it was partially inadmissible due to the Club's insolvency and the Club's counterclaim was accepted. The Third Decision contains the following operative part (in a translation submitted by the Appellant and not contested by the Club):

"Based on art. 75.3 from Law 85/2014 admits the exemption of inadmissibility of counts 2, 3 and 4 from the main request.

Rejects as ungrounded the request of [the Appellant] *concerning the finding of ceased contractual relations due to the fault / will of* [the Appellant].

Admits the counterclaim formulated by [the Club]*, as grounded.*

Founds the termination of the contractual relations without just cause by will of [the Appellant]*, based on art. 26.1 let. c) from the RSA, beginning with June 26th, 2019.*

Orders [the Appellant]*, based on art. 26.1 let. c) from the RSA, to pay* [the Club] *the sum of RON 9,000, representing 50% of the contractual rights actually paid to* [the Appellant] *by* [the Club] *until the moment of quick termination of* [the Contract]*, to* [the Club].

Records that [the Club] *did not request courts expenses.*

Subject to appeal within 5 days from communication".

26. The Appellant appealed against the Third Decision before the Appeals Board.

27. On 16 October 2020, the Appeals Board issued its decision (decision no. 21/21.07.2020), *"Session dated July 21st, 2020"*, with the following operative part (the "Fourth Decision") (in a translation submitted by the Parties):

"Rejects the appeal formulated by [the Appellant]*, with chosen residence for the communication of procedural documents at Cabinete de Avocat Asociate – Iordanescu & Gaman [Associated Lawyers' Offices – Iordanescu & Gaman], in Bucharest, 12 Carol I Blvd., 1st floor, district 3, against the* [Third Decision]*, in contradiction with* [the Club] *– in reorganisation, with headquarters in Mioveni, Dacia Blvd., building G1, ground floor, Arges County, as ungrounded.*

Final and internally enforceable.

The [Fourth Decision] *can be brought before the TAS Court of Arbitration for Sports]* [sic[3]]*, within 21 days from communication.*

Pronounced today, July 21st 2020, in private session, at the headquarters of the [RFF] *in Bucharest, 12 Vasile Serbanica St., District 2".*

28. On 16 October 2020, the Appeals Board issued a decision completing the decision no. 80 (decision no. 80/06.02.2020), *"Sentence dated September 3rd, 2020"*, with the following operative part (the "Fifth Decision") (in a translation submitted by the Parties):

"Admits the request to correct clerical error slipped into the dispositive and recitals of Decision no. 80/2020, meaning that the denomination of CS Mioveni shall be replaced by the denomination "CS Mioveni, in reorganisation".

Admits the request for completion of the dispositive of Decision no. 80/2020 as follows:

Orders [the Appellant] *to pay to* [the Club] *the sum of RON 6,931 as court charges.*

Final and internally enforceable.

The [Fifth Decision] *can be brought before the TAS [Court of Arbitration for Sports]* [sic]*, within 21 days from communication.*

Pronounced today, September 3rd 2020, in private session, at the headquarters of the [RFF] *in Bucharest, 12 Vasile Serbanica St., District 2".*

29. Further to the initiation of a disciplinary procedure against the Appellant, because the Club sought enforcement of the Fifth Decision as the Appellant did not comply with such decision, the Appellant paid an amount of RON 15,931 to the Club on 29 January 2021 in order to avoid being sanctioned.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 6 November 2020, by email and by courier, and on 9 November 2020 via E-Filing, the Appellant filed a Statement of Appeal, dated 5 November 2021, with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"), challenging the First, Fourth and Fifth Decision.

31. On 6 January 2021, the CAS Court Office informed the Parties that the time-limit for the filing of the Appeal Brief, which was suspended from 16 November 2020, resumed as from receipt of the present letter by DHL by the Appellant. In the same letter, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of

[3] Part of the documents, including submissions, as referred to in this award contain various misspellings: the Sole Arbitrator, for sake of efficiency and to facilitate the reading, while quoting them, did not always identify them all with a "sic" or otherwise.

the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

- Sole Arbitrator: Mr Frans De Weger, Attorney-at-law in Haarlem, the Netherlands

32. On 26 January 2021, after extensions were granted, the Appellant filed his Appeal Brief, which was also uploaded on the E-Filing platform.

33. On 3 February 2021, the CAS Court Office informed the Parties that the Sole Arbitrator requested a copy of the RFF file and enclosed a copy of such request to the RFF per that same day.

34. On 16 February 2021, the Appellant, pursuant to Article R56 of the CAS Code, requested to amend his requests for relief set forth in the Appeal Brief in view of exceptional circumstances. In this respect, the Appellant maintained that the Club had sought enforcement of the Fifth Decision, following which a sanction would be imposed on the Appellant unless he would pay an amount of RON 15.931 to the Appellant, which he subsequently did. On this basis, the Appellant requested to add an additional request for relief to be reimbursed with the amount of RON 15,931.

35. On 27 February 2021, the Club, after a short extension that was granted, filed its Answer together with an exception of inadmissibility of the appeal, as far as it is directed against the Second Decision.

36. On 1 March 2021, the Club sent its position on the admissibility of the documents and amended requests for relief as submitted by the Appellant on 16 February 2021.

37. On 5 March 2021, the CAS Court Office, in view of the exception of inadmissibility raised by the Club and of Article R55 par. 5 of the CAS Code, invited the Appellant to express his observations strictly limited to this exception of inadmissibility and both Parties to express their position on the holding of a hearing.

38. On 15 March 2021, the Appellant provided the CAS Court Office with his observations regarding the exception of inadmissibility.

39. On 23 March 2021, the CAS Court Office informed the Parties that they were invited to submit by 6 April 2021, an English translation made by a professional interpreter of any extracts of the RFF file, which had been communicated on 16 March 2021, they intended to rely on.

40. On 1 April 2021, the CAS Court Office informed the Parties that the Appellant's request to amend his requests for relief set forth in the Appeal Brief as was requested on 16 February 2021 related to a decision of the RFF Disciplinary Committee communicated to the Appellant on 28 January 2021, which was issued after the submission of the Appeal Brief (26 January 2021). In that same letter, the Parties were informed that the Sole Arbitrator deemed that such circumstance justified the "late" filing of the Appellant's submission of 16 February 2021 and its relating exhibits and were thus accepted in the CAS file. Also in that same letter of 1 April

2021, the CAS Court Office informed the Parties that the Appellant, in view of Article R55 par. 4 of the CAS Code, was granted with the opportunity to submit observations strictly limited to the Club's objection to the admissibility of this new request for relief as well as to CAS' jurisdiction to review it and that these issues would be addressed in the final award and that the present letter was obviously without any prejudice neither on CAS' jurisdiction to review the Appellant's request relief number 7 nor to its admissibility. By the same letter, the Parties were also informed that the Sole Arbitrator had decided to grant the Respondent's request for the holding of a hearing on 10 March 2021 and thus to dismiss the Appellant's request of the same day to substitute the holding of a hearing by a second round of written submissions

41. On 5 April 2021, the Club provided the English translation of the documents from the RFF file.

42. On 13 April 2021, after a granted extension, the Appellant enclosed the extracts of the RFF file on which the Appellant intended to rely on, but informed the CAS Court Office that he was compelled to request a last and short extension of 7 days in order to ensure the translations made by a professional interpreter of the enclosed documents.

43. On 14 April 2021, the CAS Court Office informed the Parties that the Appellant did not submit any observations on the Club's objection to the admissibility of his new request for relief as well as to CAS' jurisdiction to review it. In that same letter, following consultation of the Parties, the Parties and their witnesses were called to appear at the hearing, which would be held on 11 May 2021.

44. On 20 April 2020, the Appellant submitted the English translation of the documents of from the RFF.

45. On 4 May and 6 May 2021, the Club and the Appellant respectively, returned duly signed copies of the Order of Procedure issued on 23 April 2021 to the CAS Court Office.

46. On 11 May 2021, a hearing by videoconference was held. At the outset of the hearing, the Parties confirmed not to have any objection to the appointment of the Sole Arbitrator.

47. In addition to the Sole Arbitrator and Ms Pauline Pellaux, CAS Counsel, the following persons attended the hearing by video-conference:

    a) For the Appellant

        1) Mr Nofitovici Fanel, the Assistent Coach, Party Witness;

        2) Ms Anca Alina Iordănescu, Counsel;

        3) Mr Mincu Paul Alexandru, Counsel; and

        4) Mr Flora, Interpreter

b) For the Respondent

1) Mr Constantin Stancu, President, Party Witness;

2) Ms Anca Mituică, Counsel; and

3) Ms Virginia Gogan, Interpreter

48. The Sole Arbitrator heard evidence from the Appellant and Mr Stancu.

49. The Parties had full opportunity to cross-examine the Appellant and Mr Stancu as witnesses, as well as to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

50. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard had been respected.

51. On 14 May 2021, as was requested by the Sole Arbitrator during the hearing, the Appellant submitted further documents, including the Romanian Labour Code, cited jurisprudence as well as, as referred to above, the sports activity agreement that was concluded between the Appellant and Steaua, valid from 1 December 2019 until 31 July 2021, which was resent per email of 17 May 2021, which receipt was further confirmed by the CAS Court Office on 18 May 2021.

52. Also on 18 May 2021, the CAS Court Office reminded the Club in relation to the mandate of Mr Stancu as special administrator (the "Mandate"), which was requested by the Sole Arbitrator during the hearing, and invited the Club again to provide the CAS Court Office with a copy of the Mandate as well as any Romanian Law provisions that it deemed relevant, together with their English translation.

53. On that same day, the Club provided the CAS Court Office with the Mandate of Mr Stancu as special administrator, together with a further explanation regarding pending settlement negotiations.

54. On 20 May 2021, the CAS Court Office referred to the invitation of the Sole Arbitrator, in application of Article R44.3 (applicable by reference of Article R57) of the CAS Code, to submit additional legal material that they would deem relevant, and therefore, had decided to accept the legal material attached to the Appellant's email of 17 May 2021, as this request was made on behalf of the Sole Arbitrator in the letter of the CAS Court Office of 18 May last. In that same letter, the Parties were informed that the legal material would be notified later on to the Club and the latter was invited to submit any provisions of Romanian Law (or regulations) that it deemed relevant, together with their English translation.

55. On 20 May 2021, following the request from the Sole Arbitrator at the end of the hearing to inform the CAS Court Office in relation to any settlement agreement, the Appellant informed

the CAS Court Office that the Parties failed to reach an agreement in order to amicably settle this dispute.

56. On 31 May 2021, the Club sent to the CAS Court Office the provisions of Romanian Law (or RFF regulations) that it *"appreciated as relevant"*, and underlined that the Romanian Labour Code is not applicable.

57. On 4 June 2021, the CAS Court Office provided the Parties with the attachments to the Appellant's email of 17 May 2021 as well as the Club's email of 18 May 2021, and invited both Parties to submit their observations, if any, strictly limited to the documents and the legal material submitted after the hearing by email on or before 11 June 2021.

58. On 15 June 2021, after a short extension that was granted, the Appellant submitted his observations with regard to the material that was submitted after the hearing. The Club did not submit any further observations, which was confirmed in the letter of the CAS Court Office of 25 June 2021.

V. SUBMISSIONS OF THE PARTIES

59. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has, for the purposes of the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant's position

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

1. Proceedings and submissions before the NDRC and the Appeals Board

- The Appellant stated that the terminology used by the Club in the documents is very clear as the word "reziliere" means *"cancellation, annulment; resilience, avoidance or rescission and is not equivalent with a normal termination"*.

- In addition, Notification no. 172 did not trigger any obligation on the Appellant, *"did not contained* [sic] *any request to resume activity, did not include a program and therefore should have been considered as lacking of purpose since the Club have* [sic] *been already started the new season on 24 July 2019, without needing* [the Appellant]*"*.

- No proof has been submitted regarding the alleged absence of the Appellant, the RFF Regulations on the Status of Coaches ("RSA") do not provide for the possibility for clubs to suspend a contract of a coach and *"the termination option of* [the Club] *was shown by its decision to hire two new coaches, respectively Mr. Preda Iulian and Mr Stoica Marius and to extend the contract with the third one, respectively Mr Olteanu Mihail"*.

- During the appeal procedures, based on the provisions of Article 36 par. 12 RFF Regulations on the Status and Transfer of Football Players ("RSTFP"), the Club could have pleaded procedural defects if any of his procedural rights were affected, but this was not the case.

- In a clear violation of Article 34 par. 5 RSTFP, the Club "produced" and filed as enclosures to its hearing notes the reports allegedly concluded to confirm the absence of the Appellant. These documents should have been concluded on the date when the alleged violation of the contractual provisions was committed.

- Also, on 28 November 2019, the Club modified its counterclaim and its appeal, pleading and requesting: *"[b]y way of exception, plea of absolute lack of jurisdiction of the arbitration committees within FRF to decide on the second and on the third head of claim of the writ of summons (file 317/CL/2019) and, as a consequence, modifying the appealed decision, to reject these heads of claim as not within the jurisdiction of the arbitration committees of FRF"*, which plea was, according to the Appellant, *"motivated by the fact that, on 4 November 2014, with more than four years before the conclusion of* [the Contract]*, by the Decision rendered by the Specialized Tribunal of Arges County, in case no. 597/1259/2014, it was ordered the opening of the general insolvency procedure of the Respondent, pursuant to art. 99 of Law no. 85/2014"*.

- The Second Decision *"flaws, procedurally speaking, as by the counterclaim* [the Club] *did not make two distinct heads of claim, but a main one and a secondary one, derived and connected with the solution that rendered on the main"*. In other words, *"the criticism according to which the chamber did not rule on the counterclaim in its entirely* [sic] *is not supported"*.

- During *"the retrial procedures, the Respondent again modified its counterclaim by the hearing notes filed for the hearing of 25 February 2020"*, requesting, *inter alia*, *"that the second head of claim of the writ of summons to be partially admitted, respectively to be acknowledged that the Appellant is dully* [sic] *entitled to receive the financial rights for 01.01.2019-15.05.2019"*.

- *"During the retrial procedure we extensively shown that, according to Art. 501 para. (3) Code of Civil Procedure, "After the cassation, the court of first instance will judge again, within the limits of cassation (…)" and that the limits of cassation according to the Second Decision are clear and the retrial has to be only with respect to the second head of the counterclaim"*. Also, the Appellant stated that *"the requests made by the hearing notes, with reference to the main request are inadmissible compared to the Second Decision"*.

- By means of the Third Decision, the NDRC raised *ex officio* the plea of inadmissibility of the initial heads of claim 2, 3 and 4 of the writ of summons in relation to the insolvency of the Club. Moreover, *"considered that starting with 26.06.2029* [sic[4]]*, the obligations assumed by* [the Appellant] *according to art. IV point 4.2 of* [the Contract] *were no longer observed, taking also into account as reason for the* [Appellant]*'s fault the fact that on 01.12.2019 the* [Appellant] *concluded a new contract"*.

[4] The Sole Arbitrator assumes that the date of 26 June 20**1**9 is meant here.

- Moreover, the Appellant argued that *"the NDRC invoked ex officio and eventually admitted the plea of lack of jurisdiction "disguised" in a plea of inadmissibility since, the plea of lack of jurisdiction could not have been invoked for the first time in the appeal, in view of the provisions of art. 159 par. 2 Code of Civil procedure and in accordance with the Decision no 113 of 21.01.2013 rendered by the Romanian Supreme Court"*.

- Furthermore, the Appellant stated that the Third Decision was *"profoundly incorrect, as it confirmed the possibility of the Respondent to unilaterally intervene on* [the Contract]*, meaning to alter it with concern of two of its essential characteristics, respectively the duration and the price, since the Club stopped making any payments in May 2019"*.

- In the Fourth Decision, the Appeals Board dismissed all the pleadings related to the procedural flaws and incorrectly affirmed that by Notification no. 143 the Club expressed its intention to end by the consent of the Parties the Contract, ignoring the used terminology of rescission and not suspension. In the Appeals Board's view, by means of Notification no. 143, the effects of the Contract were only suspended, a suspension that ended on 26.06.2019, failing of omitting (i) to assess the Appellant's argument that the Club did not in fact request him to return to work and not pay him since May, and (ii) to substantiate its position that the Club had the right to suspend the Appellant *"under the RSTP, Romanian law, and the standing jurisprudence of* [the RFF]*, FIFA and CAS, under the applicable law and related authorities"*.

2. Was the Contract terminated on 16 May 2019 or was the Appellant suspended on that day?

- Although the Club claimed that *"the Notification produced "suspensive effect" of the Agreement"*, the RSA do not provide the possibility of "suspension". Moreover, such a decision to suspend the Contract is practically equivalent to a suspension from activity and therefore to a disciplinary measure, it could not have been adopted unilaterally by the Club, in relation to the provisions of Article 26.3 and 26.4 RSTFP, as well as those provided by Article 27 and 28 RSA.

- Termination of the Contract may occur exclusively under the conditions regulated by Article 26 RSA.

- According to the principle of symmetry of concluding legal acts, the Contract could not be amended or suspended unilaterally, but only with the consent of both parties materialized by an addendum, as stipulated in Art. IX of the Contract.

- Conclusively, there were no provisions under the applicable regulations or the Contract giving the Club the ability or right to suspend the Appellant.

- Furthermore, the Club has stopped making any payments to the Appellant since May 2019, so it is obvious that a contractual party could not require the other party to accomplish the obligation unless it had performed its own obligations.

- Notification no. 172 does not show the intention of the Club to continue the contractual relations nor its request to be provided with activity.

- Moreover, although it is claimed that the intention of the Club was to resume the Contract, the claims are contradicted by the very official position of the Club, expressed many times.

- In addition, none of the issued documents are referring to a "suspension", are not limited by any time and there was no right to appeal this "suspension".

- In fact, the true construction was a "termination" and, accordingly, in view of the above, it should be determined that the Appellant was in fact dismissed on 16 May 2019.

3. Should the Respondent be held liable for the termination of the Contract?

- As to the question whether the Club is to be held liable for the termination of the Contract without just cause, the Appellant refers to Article 26 par. 1, 2 and 3 RSA, which regulates the termination of the agreement between the coach and the club. In relation to Art. 26 RSA, an agreement concluded with a coach can be terminated by the will of the club without other financial obligations from him, only in two cases, namely: for unsatisfactory results and failure to meet performance objectives. According to the long-established principles, each party can terminate the contract – without consequences of any kind – if there is "just cause".

- As the just cause is not defined in *"the RSTP or RSA"*, one must therefore fall back on long-standing jurisprudence of CAS. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there are *"valid reasons"* or if the parties reach a mutual agreement as to the end of the contract (see also AFT 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323; STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Teilband V 2c, Der Arbeitsvertrag, Zurich 1996, n. 17 ad Art. 334, p. 479).

- The Club repeatedly breached Article 4.3 (e) and (f) of the Contract over a considerable period, from 10 May 2019 to, at least 2 July 2019, when the Appellant and not the Club decided to pursue a right and to file a claim before the NDRC. In fact, the Club effectively barred the Appellant from performing his part of the Contract.

- *"The Appellant maintains that he had objective reasons to believe that* [the Club] *had no genuine intention to perform its side of the Contract. His non-admission on the team could have severely prejudiced his career development, as it ultimately deprived him of the chance to work. Bearing in mind* [the Club]*'s attitude towards the Appellant as well as the official statements made available to the public, he could not reasonably be expected to carry on the employment relationship".*

- *"For the same reasons, the Appellant did not see any more lenient measures which he could take to resolve the situation and to maintain the contractual relationship. The Appellant had no motive to believe that* [the Club]*'s decision not to execute the Contract was either not final or not permanent".*

- *"On these grounds, the Appellant concludes that* [the Club] *obviously was no longer interested in his services by failing, for a long period of time, to provide the Appellant with the work which he was hired for and for which he is qualified. Such conduct constitutes a summary dismissal, and thus, it forms a wrongful termination, without just cause, with effect from 16 May 2019".*

- *"Even if the Club stated that in fact the Appellant was liable for the wrongful termination of* [the Contract]*, this could not and cannot be uphold as, if the one of the Parties to* [the Contract] *fails to make contact with the other party for an extended period of time, in our case – more than two months, that party can, in good faith, assume that the position is no longer available".*

4. What are the legal consequences deriving thereof?

- The Appellant has the right to have his compensation in accordance with Article 26 par. 2 RSA which provides that the employer club will be obliged to comply with the contractual clauses until the expiration of his agreement, and in case the coach has a new offer, until the date of signing the new labor agreement.

- In line with the standing CAS jurisprudence, the injured party *"is entitled to a whole reparation of the damage suffered pursuant to the principle of "positive interest", under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry".*

- In the case at hand, the Contract originally had to last until 30 June 2020, but was terminated on 16 May 2019. Thereof, the remaining payments comprise of:

  - RON 4,500 net from May 2019 to June 2019 based on first part of Clause 5.1 of the Contract;

  - RON 30,000 net [i.e. 5 x RON 6,000] from July 2019 to November 2019 (December being the first month of the Appellant's new agreement) based on second part of Clause 5.1 of the Contract;

- Besides, the Appellant claims compensation for his legal expenses during the procedures before RFF, as follows:

  - RON 1,527 as legal expenses incurred during the first instance procedure – respectively lawyer's fee and procedural tax;

  - RON 1,500 as legal expenses incurred during the appeal procedure – respectively procedural tax;

- Therefore, on the grounds of Article 26 par. 2 RSA in conjunction with Clause 5.1 of the Contract, the Appellant hereby claims from the Club compensation of RON 34,500, and RON 3,027 as detailed above.

- *"The Appellant respectfully asks the Sole Arbitrator to take into account that, according to Clause 5.1 of the Contract, all salaries due by* [the Club] *to him were net amounts, i.e., free of any taxation. The Appellant, thus, claims that, in the application of the legal principle of "positive interest", the compensation for loss of earnings has to be paid to him on a net basis, free of any taxation,* [the Club] *being responsible for the filing and payment of all taxes relating to these payments to him".*

- Finally, as the default concerns a financial debt, the Appellant hereby claims payment of interest from the Club on the compensation. The RSA is silent as to the applicable interest rate. According to the well-established CAS jurisprudence, in case of a claim for compensation for termination of a contract, interests shall start to accrue immediately, i.e., as of the day of the dissolution of the Contract, without any reminder being necessary. Therefore, considering that the employment relationship between the Parties ended on 16 May 2019, the interest of 5% p.a. over the due compensation for damages starts running as of 16 May 2019.

61. In his prayers for relief, the Appellant requests as follows:

"The Appellant hereby respectfully requests that the CAS:

1. *Set aside and annul the decisions no. 21 and 80 of the APPEALS BOARD of the Romanian Football Federation passed on July, 21 2020, as well as the decision no. 317.1/CL/2019, rendered by NDRC of FRF;*

2. *Determine that the Respondent unilaterally terminated the employment contract with the Appellant without a just cause, on 16 May 2019.*

3. *Order the Respondent to pay the Appellant compensation for breach of contract of LEI 34.500 plus interest of 5% p.a. as of 16 May 2019 until the date of effective payment. This payment shall be made on a net basis, free of any taxation, the Respondent being responsible for the filing and payment of all taxes relating to this payment due to the Appellant.*

4. *Order the Respondent to pay the Appellant additional compensation for damages of LEI 3,027 plus interest of 5% p.a. as of 16 May 2019 until the date of effective payment.*

5. *Order the Respondent to bear any costs incurred with the present procedure.*

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

And added to the above requests on 16 February 2021, the following:

"7. Order the Respondent to reimburse the Appellant the amount of 15.931 lei plus interest of 5% p.a. of 29 January 2021".

B. The Respondent's position

62. The submissions of the Club, in essence, may be summarised as follows:

1. Notification no. 143

- Notification no. 143 was a result of the verbal discussion of the Parties regarding the termination of the Contract by mutual agreement, in accordance with the provisions of Article VII point 7.1 letter b of the Contract and Article 26.1 letter b RSA.

- From 16 May 2019 until 9 July 2019 the Appellant did not challenge or provide any notification in response to Notification no. 143, by which he may have expressed his disapproval of the Club's written confirmation that the Parties had reached an agreement regarding the end of the Contract. No unilateral act of will of the Appellant disapproves the termination agreement reached with the Club.

- On 31 May 2019, the last match was played of the season 2018 – 2019 for the Club and, considering the start of the season 2019 – 2020 on 1 July 2019, Mr Stancu called several times those days the Head Coach in order to sign the termination agreement. The Head Coach did not answer to his calls.

2. Notification no. 172

- The Respondent decided to have a firm position in relation with the Appellant informing him that Notification no. 143 would cease to be valid, starting with 21 June 2019, and that the Appellant had to return to the Club.

- After 2 years of litigations and in the presence of the confirmation, signed personally by the Appellant that he received Notification no. 172, in the Appeal Brief from the Appellant filed with CAS, *"it is based on a non-disclosure of a document which, under signature, the Appellant confirms that it has received"*.

- Even if it is clear that the Appellant received that Notification no. 172, he did not fulfil any of the Club's requests, addressed at a time when the Contract was still in force.

3. Claim filed by the Appellant before the NDRC

- Without any previous notification/letter, on 2 July 2019, the Head Coach[5] filed a claim against the Club in front of the NDRC. Contrary to the continued bad faith proved *"by the Claimant*, *the financial rights for March (paid on 19 March 2019) and April (paid on 24 May 2-10) where* [sic] *paid at the moment when the coach filled* [sic] *his claim"*. The financial rights for 1 - 15 May 2019 were paid in the course of the litigation.

[5] The Appellant is mentioned here, but the Sole Arbitrator assumes that the "Head Coach", i.e. Mr Daniel Ionel Oprita, was meant.

4. The contract concluded by the Appellant with Steaua

- Nine days after the Coaches filed their claims against the Club, on 11 July 2019, the official YouTube channel of Steaua published a video named *"Daniel Oprita is the new coach of the football team Steaua Bucharest"*. The video contains an interview with the Head Coach, wearing the official equipment of Steaua. In this interview the Appellant[6] is speaking about his choice to come to the Fourth League Club, about the supporters and his plans, as coach of Steaua. *"The same interview surprises the moment of signing the new contract, in the presence of* [the Head Coach]*, Bixi Mocanu, as President of Steaua, and Iulian Miu, as coach assistant. All the press articles from that moment confirm that the Appellant is one of the new assistance coaches of Steaua"*.

- The existence of the contractual relation between the Appellant and Steaua was clearly denied by the Appellant *"in case no. 317/CL/2019 and also in case no. 80/CR/2020 until March 2, 2020, as we will reveal below"*.

5. Counterclaim filed by the Club against the Appellant in case no. 317/CL/2019

- The Club argues that *"for the second term establish in case no. 317/CL/2010* [the Club] *filed its statement of defence against the claim of* [the Appellant] *and also a counterclaim against it"*.

- The Appellant consistently refused to admit that he had concluded a new agreement with Steaua. The mission of the Club to provide the existence of a contract in which it is a third party started at that moment.

- On 18 August 2019, the Club requested Steaua in writing to communicate the date when the contractual relation with the Appellant started, the date when the contract would end by reaching term, and, in case, until that moment, a written contract had not been concluded, to communicate if the Appellant was the coach of one of Steaua teams. The first letter remained unanswered. On 2 September 2019, a new request was sent to Steaua. On 4 September 2019, Steaua answered that between them and the Appellant was no contract.

6. The First Decision

- By means of the First Decision, the NDRC solved the claim of the Appellant and the counterclaim.

- By the dispositive of the First Decision the counterclaim of the Club remained unsolved and the claim of the Appellant was admitted.

[6] The Appellant is mentioned here, but the Sole Arbitrator assumes that the "Head Coach", i.e. Mr Daniel Ionel Oprita, was meant.

7. The Second Decision

- The Second Decision was communicated to the Parties on 16 February 2020. *"According to the those* [sic] *mentioned in last page of the decision: "The decision can be appealed to the TAS, within 21 days of communication""*.

- The Appeal against the Second Decision was filed before CAS nine months later, on 5 November 2021, *"the appeal being late and inadmissible"*.

- As follows from Article 36 point 12 RSTFP, the decision of the Appeals Board to send the case back to the NDRC can be realized *"even if one or other of the interested party did not requested* [sic] *that the case be sent back to the first instance, contrary to those suggested on point 40 from the Appeal Brief"*.

- Regarding the exception of lack of jurisdiction, invoked for the first time in front of the Appeals Board, *"we remind the provision of article 247 from Romanian Civil Procedure Code: "The absolute exceptions (as is the exception of lack of jurisdiction) can be invoked by the party or by the instance in any stage of the litigation, if the law does not establish otherwise""*.

- *"Concluding, the* [First Decision] *was annulled by the* [Second Decision] *that is final and enforceable, the Appealed filed by the* [Appellant] *being later"*.

8. The Third Decision and the Fourth Decision

- The Club underlines that *"in case no. 80/CR/2020 (closed, by the* [Second Decision] *or in case no. 317.1/CL/2020 the* [Appellant] *did not informed* [sic] *any of the commission with regard the fact* [sic] *that the contract concluded between him and Steaua was registered on Bucharest Municipal Football Association, affiliated member of R.F.F., organiser of Liga IV-a Football Championship, since December 2019"*.

- By means of the Third Decision, the claim filed by the Appellant was rejected and the claim of the Club was admitted. By means of the Fourth Decision, the appeal filed by the Appellant was rejected.

9. Legality of "the Decisions no. 21 passed on July 21, 2020 by Appeal Committee of RFF"

- As a result of a verbal agreement reached on 10 May 2019, which announcement was published on the official website of the Club, the latter handed to the Appellant Notification no. 143.

- *"Contrary to those suggested by the Appellant, by its representative, if the intention of the Respondent was to unilaterally end* [the Contract]*, why was the signature of* [the Appellant] *on the document confirming termination even necessary? #until the document confirming termination of their employment contract is signed#* [sic] *In the same time, why, did the Appellant decide not to contest* [Notification no. 143]*? Why did the Appellant not express his disagreement? Why did he decide*

to, only after two months, without a previous notification, claim the end of [the Contract] *without just cause? And seven days after this moment, when* [the Contract] *was still in force, why did he sign with a new football club? Why did the Appellant never notify* [the Club] *regarding his right to work or his right to lead the trainings of* [the Club]*? And the list of unanswered questions can continue".*

- *"We used the term "suspension" in the counterclaim filed in case no. 317/CL/2019 because, it is stated in* [Notification no. 143]*, as a consequence of the* [Club]*'s expression of its will that, starting with May 16* [the Appellant] *is not obliged to attend any of the activities or training sessions undertaken by* [the Club]*".*

- Contrary to what is mentioned in the Appeal Brief, the Appellant's Contract was not suspended as a consequence of a disciplinary proceeding, *"but only as a result of* [the Parties] *to end* [the Contract] *by mutual agreement".*

- The Club proved that the Appellant, contrary to his allegation before the RFF bodies, received Notification no. 172 on 21 June 2019.

- The Appellant's allegation that Notification no. 172 was only sent to him because the Appellant hired a lawyer to represent his interests, is contested.

- The real reasons of ending the Contract without just cause are represented by the uncontested absence of the Appellant from trainings and matches, starting on 26 June 2019 and the fact that the Appellant concluded a new contract with Steaua even though he was aware of the fact that the Contract was still in force on that moment.

- It is uncontested that on 11 July 2019 on a press conference a new contract was signed between the Head Coach and Steaua, represented by President Bixi Mocanu, being clear the intention of these parties to enter on a new contractual relation. On the same day, it was confirmed that the Appellant was the assistant of the Head Coach with Steaua.

- During this period, starting on 26 June 2019 until today, the Appellant was assisted by a lawyer and he was aware of the provision of Article 26 point 6 RSA. In this case, a final decision was adopted on 21 July 2020, but the intention of the Appellant to enter into a new contract was expressed on 11 July 2019, one year earlier.

- In January 2020, in front of the Appeals Board, the Appellant was asked if he was in a new contract. The attorney of the Appellant denied the fact that the Appellant was in a new contractual relationship. On 4 February 2020, on the YouTube channel Steaua TV, a new interview with the Head Coach of Steaua was published.

- On 2 March 2020, Bucharest Football County Association ("BFCA") as organiser of the Fourth League Football Championship communicated as a response to the multiple addresses communicated by the Club that on 20 December 2019, a contract was registered between the Appellant and Steaua.

- Even though the contract was registered with the BFCA, *"on December 2019 until March 12, 2020 when the file 80/CR/2020 were on the role of the* [Appeals Board]*, the* [Appellant] *did not considered* [sic] *that was necessary to inform the* [Appeals Board] *or to answer, through its lawyer, in January 2020, that indeed he signed a contract with Steaua, as the* [Club] *affirmed from August 2019"*. The Club has never seen the contract concluded by the Appellant and Steaua.

- The Appellant breached Article 26 RSA as he is *"not able to conclude a new employment contract until it provides proof of payment of the outstanding amounts to* [the Club] *which he was employed"*.

- Regarding the amounts requested by the Appellant as compensations, on a subsidiary base the Appellant refers to Clause 7.2 of the Contract, from which it follows that: *"in all cases of termination of the contract through unilateral termination the payment of the contractual rights shall be done until termination"*. *"*[The Third Decision] *states that* [the Contract] *ended on June 26, 2020* [sic[7]]*, reason for why the request of the Appellant regarding the payment of the compensation until November 2019, is completely unfounded"*.

63. In its prayers for relief, the Club requests the Sole Arbitrator to rule as follows:

> *"Based on art. R57 of the CAS Code we request the CAS to issue an arbitral award in which:*
>
> - *To reject the Appeal formulated against the Decision no. 80 from February 2, 2020* [sic[8]] *as late formulated, being filed after the 21-days term;*
>
> - *To dismiss as unfounded the appeal filed against the Decision no. 21 passed on July 21, 2020 by Appeal Committee of R.F.F. and confirm the Decision no. 317.1 passed on June 9, 2020 by N.D.R.C. of R.F.F.*
>
> - *Pursuant to art. R64.5 of the CAS Code we ask you to compel the Appellant to pay the costs generated to C.S. Mioveni, as Respondent in this case, representing attorney fee".*

VI. JURISDICTION

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

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or 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 the said sports-related body".*

[7] Correct date is 26 June 201**9**.
[8] The Sole Arbitrator understands this to be the date of 6 February 2020 (instead of 2 February 2020) as it concerns the "Second Decision" which was passed on 6 February 2020.

65. The jurisdiction of the CAS, which is not disputed, derives from Article 36 point 17 RSTFP which reads (in a translation submitted by the Appellant and not contested by the Club):

"The decisions of Appeal Committee of FRF are final and enforceable at national level starting with the date in which a decision has been issued and can be appealed at Tribunal Arbitral of Sport in 21 days from the communication".

66. From the Fourth and the Fifth Decision it further follows that (in a translation submitted by the Appellant and not contested by the Club):

"The decision can be brought before TAS [Court of Arbitration for Sports] [sic]*, within 21 days from communication".*

67. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

69. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

70. From Article 36 point 17 RSTFP, as cited above under the "Jurisdiction" Section, it also follows that decisions of the Appeals Board can be appealed before the CAS within 21 days as from the date of communication of the decision to the Parties, which also derives from the Fourth and Fifth Decision.

71. The Club argues that the appeal filed by the Appellant against the Second Decision, which was issued by the Appeals Board on 6 February 2020[9], is inadmissible as the appeal against this decision was filed after the 21 days deadline, as referred to above.

72. The Sole Arbitrator observes that, following the requests for relief as formulated in the Statement of Appeal as well as in the Appeal Brief, the Appellant filed an appeal against the Fourth and Fifth Decision, but also against the First Decision, at least reference is made in the requests for relief to the 'decision no. 317.1/CL/2019'.

[9] In its prayers for relief the Club erroneously mentioned the date of 2 February 2020.

73. More specifically, the Statement of Appeal (in relation to this part) reads:

> *"to set aside the challenged decisions as well as the decision no. 317.1/CL/2019, rendered by NDRC of FRF"*

74. In the Appeal Brief, the Appellant makes the following request in this respect:

> *"Set aside and annul the decisions no. 21 and 80 of the APPEALS BOARD of the Romanian Football Federation passed on July, 21 2020, as well as the decision no. 317.1/CL/2019, rendered by NDRC of FRF".*

75. The Sole Arbitrator notes that there seems to be some confusion as it is the Club that takes the position, as set out above, that the appeal filed by the Appellant against the decision no. 80 passed by the Appeals Board on 6 February 2020, i.e. the **Second** Decision (put in bold by the Sole Arbitrator), is inadmissible as this appeal was filed after the 21 days deadline. However, the Sole Arbitrator wishes to emphasise that the Appellant did not file an appeal against the Second Decision. In fact, as follows from the above cited part of the requests for relief, the Appellant appealed against the First Decision (which is 'decision no. 317.1/CL/2019' as referred to in the requests for relief) as well as the decisions nos. 21 and 80 rendered by the Appeals Board and communicated to the Parties on 16 October 2020, i.e. the Fourth and Fifth Decision. In this regard, the Sole Arbitrator observes that in the introduction of the Statement of Appeal, the Appellant only mentions that the appeal is filed against the Fourth and Fifth Decision, also defined as "the Challenged Decisions" by the Appellant, without making any reference to an appeal against the First Decision.

76. Be that as it may, and in view of the fact that the Club argues that the appeal is filed against the Second Decision, the Sole Arbitrator notes that he does not agree with the Club's position here. In fact, as mentioned before, the Appellant did not file an appeal against the Second Decision, but it filed an appeal against the First, Fourth and Fifth Decision, noting that only the Fourth and Fifth Decision are attached to the Statement of Appeal and described by the Appellant as "the Challenged Decisions" (and so notwithstanding the exact wording of the requests for relief, as cited above). In this regard, the Sole Arbitrator recalls that the Appellant filed the Statement of Appeal on 6 November 2020, by email and by courier. Considering the applicable 21 days deadline and recalling that the Fourth and Fifth Decision were also submitted to the CAS together with the Statement of Appeal in conformity with the requirements of Article R48 of the CAS Code, it is clear to the Sole Arbitrator that the Appellant filed his appeal against the Fourth and Fifth Decision in time.

77. As far as it concerns the Appellant's appeal against the First Decision (which is 'decision no. 317.1/CL/2019' as referred to in the requests for relief in the Statement of Appeal as well as the Appeal Brief, as set out above), the Sole Arbitrator remarks that the Appellant did not file a separate appeal against such decision before the Appeals Board whilst there was the legal possibility to do so, as opposed to the Club that did appeal against the First Decision. In other words, as to the appeal against the First Decision the legal remedies were not exhausted by the Appellant within the framework of Article R47 and so must lead to the inadmissibility of the appeal against such decision before CAS. At the same time, the Sole Arbitrator notes that

the First Decision is indirectly under review considering that the Fourth and Fifth Decision were a consequence of the appeal by the Club against the First Decision. As such, also in the context of the *de novo* power bestowed on it by Article R57 of the CAS Code, as will be further discussed below, the Sole Arbitrator will not be limited to the facts and legal arguments of the previous instances and will review the case under all its aspects.

78. In view of the above, the Sole Arbitrator concludes that, in accordance with Articles R47 and R48 CAS Code, the Appellant filed his Statement of Appeal on 6 November 2020, which is within the deadline, as set out above. The Statement of Appeal complied with the other conditions under Article R48 CAS Code. Therefore, whilst the appeal against the First Decision will not be declared admissible, the appeal against the Fourth and Fifth Decision was timely submitted and is admissible.

VIII. APPLICABLE LAW

79. Article R58 of the CAS Code provides the following:

"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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

80. Clause XI under c of the Contract provides as follows:

"This contract will be interpreted according to the Romanian Laws".

81. By submitting their dispute to CAS, by signing the Order of Procedure and not filing any objections in this regard, according to the Sole Arbitrator, the Parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of the RFF, in particular the RSTFP and the RSA.

82. This conclusion is in line with the main purposes of Article R58 of the CAS Code, which is to ensure that the rules and regulations by which all members are bound in equal measure are also applied to them in equal measure, which can only be ensured if a uniform standard is applied in relation to central issues.

83. The Sole Arbitrator also adheres to the so-called 'Haas-doctrine', from which it follows that Article R58 of the CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties.* […] *Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin 2015/2, p. 11-12).

84. The Sole Arbitrator is therefore satisfied to accept application of the various regulations of RFF, in particular the RSA and the RSTFP, and, subsidiarily, Romanian law.

IX. MERITS

A. Preliminary remarks

85. Before dealing with the substantive issues of the case at hand, the Sole Arbitrator wishes to make some preliminary remarks that are related to the merits of the case.

86. First, the Sole Arbitrator observes that the Appellant claims that several procedural irregularities took place during the lower instances' proceedings in Romania, i.e. before the NDRC and the Appeals Board. In this regard, the Sole Arbitrator notes that he has carefully considered all the arguments brought up by the Appellant in the CAS proceedings, but wishes to emphasise that the facts and the law are examined *de novo* by the Sole Arbitrator in the current proceedings following the power bestowed on him by Article R57 of the CAS Code, as also referred to above.

87. Against this background, the Sole Arbitrator therefore recalls that he is not limited to the facts and legal arguments of the previous instances. In relation to issues regarding the procedure at lower instances, it is well-established in CAS case law that procedural defects in lower instances can be cured through the *de novo* hearing before CAS (see, *inter alia*, CAS 2016/A/4704 paras. 77 et seq., CAS 2015/A/4162 paras. 70 et seq., CAS 2014/A/3848 paras. 53 et seq., CAS 2013/A/3256 paras. 261 et seq. each with further references). In view of the above, the Sole Arbitrator therefore holds that possible procedural flaws in the proceedings before the NDRC and the Appeals Board are cured in these *de novo* arbitration proceedings.

88. Although the Appellant did not explicitly request the Sole Arbitrator that his power under the *de novo* principle is limited to certain claimed procedural irregularities related to the lower instance proceedings (it merely seems to the Sole Arbitrator that the Appellant claims and sums up the existence of irregularities at national level), the Sole Arbitrator is, however, aware that the aforementioned conclusion has no unlimited application and certain issues must be distinguished from such discretion.

89. Be that as it may, the Sole Arbitrator observes that the Appellant argues that certain documents were submitted by the Club only for the first time before the Appeals Board in its appeal against the First Decision (in this case possibly Notification no. 172, the reports to confirm the absence of the Appellant between 1 July and 23 July 2019 and the so-called "hearing notes", whereby the Club modified its counterclaim in relation to the plea of lack of jurisdiction of *"the arbitration committees within* [RFF]*"* regarding the – at least in the eyes of the Appellant – unduly invoked insolvency state of the Club) (the "Documents") and thus appears to dispute their admissibility before CAS.

90. The Sole Arbitrator refers to the third paragraph of Article 57, which is indirectly relevant and reads as follows:

"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered (…)".

91. Regarding the discretion to exclude evidence on this basis, the Sole Arbitrator observes that legal scholars have expressed the opinion, to which approach the Sole Arbitrator fully adheres, that such discretion should be exercised with caution:

> *"The new provision raised some criticism, and it has been (rightly) supported that it should be used with restraint in order to preserve the fundamental de novo character of the review by the CAS"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 519).

> *"This provision appears to excessively limit the right to be heard (which includes the right to submit evidence (SFT 4A_600/2010, §4.1)) and to contradict the de novo character of CAS proceedings, by creating an unwarranted link between the evidence presented during the internal proceedings of a sports organization and the evidence presented before the CAS. Given that CAS arbitration is alternative to State jurisdiction, and has thus a legal nature which is very different from that of the intra-association proceedings held within sports organizations, it is submitted that CAS arbitrators should resort to this discretionary power to exclude evidence only in the most extreme cases, e.g. when it is utterly evident that a party is acting in bad faith and is ambushing the other party"* (COCCIA M., International Sports Justice: The Court of Arbitration for Sport, European Sports Law and Policy Bulletin, Issue I-2013, p. 58).

> *"[T]his new provision should be applied with caution, so as not to impinge upon the fundamental principle of de novo review by the CAS. The amendment may make sense in those cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another arbitral panel at the end of genuine arbitral proceedings. But in appeals proceedings against decisions rendered by the hearing bodies of sports governing organizations, where the curing effect of a full, de novo review by the CAS assumes all its importance, we believe Panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party"* (RIGOZZI/HASLER/QUINN, The 2011, 2012 and 2013 revisions of the Code of Sports-related Arbitration, Jusletter, 3 June 2013, p. 14).

92. In accordance with the foregoing, the Sole Arbitrator deems that Article R57 par. 3 CAS Code shall be applied with caution and only in case of bad faith or otherwise unacceptable procedural conduct (recalling that the Appellant did not make an explicit request during the present CAS proceedings to exclude any evidence). The Sole Arbitrator however finds that there is no such evidence submitted by the Club, at least not to the extent that is required to exclude the Documents presented in the present appeal arbitration proceedings, not to be left unmentioned that also the Appeals Board did not observe any bad faith or otherwise unacceptable procedural conduct on the part of the Club when analysing the case in appeal that finally led to the Fourth and Fifth Decision.

93. The Sole Arbitrator therefore finds that even if the Documents had been submitted for the first time before CAS, he would admit them in the CAS file and that since they were already submitted by the Club in its appeal against the First Decision, they are *a fortiori* admissible within the present CAS proceedings and this evidence will not be excluded in the present case.

94. Another issue that must be distinguished from the *de novo* principle to cure any possible procedural flaws at the lower instance proceedings, so the Sole Arbitrator finds, relates to the Appellant's claim that the plea of lack of jurisdiction could not have been invoked by the Club for the first time in appeal before the Appeals Board.

95. In this regard, the Sole Arbitrator brings in mind that Romanian law is applicable in the present case, and it follows from Article 247 of the Romanian Civil Procedure Code that the exception of lack of jurisdiction can be invoked at any stage of the litigation, as was also raised by the Club, which was also not disputed during the hearing by the Appellant. Further to this, and so the Sole Arbitrator agrees with the Appeals Board, which body was permitted to annul the First Decision and refer the case back to the NDRC following Article 36 point 12 RSTFP, that the First Decision was *"disbanded in full"* by the Appeals Board by means of the Second Decision. Put differently, the NDRC was entitled to analyse the case under all its aspects, without any cassation limits. As such, any violation of Article 501 par. 3 of the Romanian Civil Procedure Code was rightfully rejected by the Appeals Board.

96. Therefore, the Sole Arbitrator concludes that the Club was entitled to invoke for the first time in appeal in front of the Appeals Board the plea of lack of jurisdiction.

97. Another issue that might potentially limit the Sole Arbitrator's discretion, as set out above, and which is also an important matter to address under this Section, is related to the admissibility of the counterclaim. In fact, if an appeals body would have wrongfully admitted a claim brought before it, the Sole Arbitrator is aware that his *de novo* power does not entitle him to cure such mistake. Under such circumstances, the CAS should review if the national appeals body was right or not and if it was wrong in admitting the counterclaim then such claim would not be admissible in front of the previous instance and, as a consequence, cannot be reviewed any longer by CAS.

98. However, in the present case there is no need to further address this issue as the Sole Arbitrator finds that the Appeals Board by means of the Second Decision ruled, at least tacitly, that the counterclaim was admissible. In this regard, the Sole Arbitrator notes that the Appellant was entitled to appeal against the Second Decision before the CAS within 21 days, which the Appellant however failed to do. Consequently, the admissibility of the Club's counterclaim cannot be challenged anymore. Put differently, by absence of any appeal, there is no further need to review this issue.

99. A final preliminary issue that needs the specific attention of the Sole Arbitrator is the insolvency state of the Respondent. The Sole Arbitrator does not find this to have any impact on the present case, at least not as to the substantive issues that are at stake, all the more so and in particular considering the outcome of this case, i.e. that the Appellant terminated the Contract without just cause, which will be discussed in detail below. Whether the present award can finally be enforced despite the Club's state of insolvency is only of secondary importance for the present proceedings and has, in any event, not been established. In fact, the Appellant brought his appeal against the Club, i.e. Clubul Sportiv Mioveni. The Club, on the other hand, did not raise any defence as to the lack of standing to be sued in the present CAS proceedings. Further to this, there are also no issues as to the position of Mr Stancu and

his authority to legally represent the Club, all the more so noting that it also follows from the Mandate, as provided by the Club to the CAS Court Office on 18 May 2021, that he is legally appointed in his capacity of special administrator in the insolvency procedure for the Club. In other words, the Sole Arbitrator does not consider himself hindered to issue his verdict in the present case.

100. Now having considered the above preliminary issues, as for the substantive flaws that were raised by the Appellant in the present CAS proceedings (noting that the Parties both also addressed the below mentioned points in their submissions), the main issues to be resolved by the Sole Arbitrator are:

i. Was the Contract suspended or terminated?

ii. Did the Appellant have just cause to terminate the Contract?

iii. What should be the consequences?

101. The Sole Arbitrator will now turn to the above points, to be examined in sequence.

B. The Main Issues

i) Was the Contract suspended or terminated?

102. The first question the Sole Arbitrator will examine is whether the Contract was suspended or terminated. On the one hand, the Appellant claims that the Contract was terminated and not suspended as there are no provisions under the RSA or the Contract itself that provide for a possibility to suspend the Contract. The Appellant further claims that, in the absence of any of the limited cases for termination under Article 26 par. 3 RSA, the situation at hand comes down to a termination of the Contract at the initiative of the Club. On the other hand, the Club argues that the Contract was suspended and not terminated as a verbal agreement between the Parties was reached on 10 May 2019 and that the termination agreement would be signed in the following days (which did not happen), as was also confirmed by means of Notification no. 143 that was issued by the Club, which document also points in the direction of a suspension, as argued by the Club. It further refers to Notification no. 172 from which it follows that the Contract *"re-entered into force"* and that the Appellant had to return by 26 June 2019, which he clearly failed to do.

103. Considering the above positions and after having carefully analysed the submissions of the Parties, the Sole Arbitrator is not convinced that the Contract was terminated as there are too many indications that are pointing in the direction of a suspension.

104. In this regard, the Sole Arbitrator wishes to note that he does not find it relevant that the RSA or the Contract itself did not provide for the possibility to suspend a contract, which does not stand in the way for a contract having suspensive effects. As such, the absence of any such provision in the RSA or the Contract does not preclude it from having the Contract suspensive effects. This might have been different if any provision under the RSA or the Contract would

have existed explicitly ruling that a contract cannot be suspended. However, that is not the case, let alone that this is demonstrated.

105. What the Sole Arbitrator finds decisive for his decision that the Contract was suspended and that it was not terminated yet, is that, if one were to follow the view of the Appellant that the Contract was terminated by the Club without having any valid reason, the Appellant never raised any objection as to this claimed unilateral termination at that time. At least there is no such evidence on file, i.e. evidence that points in the direction that the Appellant at that time had a different view as to the facts presented by the Club and that the Contract was not suspended as from 10 May 2019 in expectation for the final settlement of the case. This does not speak in favour of the Appellant. What is more, it was only on 2 July 2019, almost two months later, that he expressed, for the first time, his view by lodging a claim for breach of contract in front of the NDRC.

106. Having a closer look at the sequence of events as from 10 May 2019, it is not in dispute that the Appellant did not raise any objection shortly after the meeting of 10 May. During this meeting, as was claimed by the Club, the Parties verbally and mutually agreed to end the Appellant's activities and that, in the following days, the termination would be signed, which was also published on the Club's official website: *"with* [the Coaches] *a verbal agreement has been reached for the termination of the contracts and in the following days the rescission will be signed".*

107. If the Appellant had a different view as to this public announcement, from which it clearly follows that the *"rescission"* would be signed in the following days, it would have made sense to the Sole Arbitrator, and it may also be expected from the Appellant (instead of remaining silent as to such an important decision with serious effects), so the Sole Arbitrator finds, that he had objected to such official statement.

108. Subsequently, on 16 May 2019, Notification no. 143 was issued by the Club, which is not in dispute between the Parties, following which notification the Appellant, together with the Head Coach, was informed that until the signing of the *"act of rescission of the employment contracts"*, the Coaches were free not to attend any action or training of the Club. Also this document points in the direction of a suspension, and also against Notification no. 143 the Appellant did not raise any objection, and, also here, so the Sole Arbitrator finds, it would have made sense that the Appellant had objected against the content of Notification no. 143. Put differently, by not objecting against such announcement, the Appellant implicitly acknowledged the content of Notification no. 143, also in view of the fact that with his conduct the Appellant induced legitimate expectations on the Club.

109. In addition to the above, the Sole Arbitrator notes that by means of Notification no. 172 the Club explicitly reported the Coaches to come back to the Club due to the fact that there was still no final settlement. This notification was sent on 21 June 2019, following which it followed that Notification no. 143 *"shall be devoid of its effects, starting from 21.06.2019",* and that the Coaches were invited *"to report on 26.06.2019 at 10.00 A.M. at the CS Mioveni headquarters"* in order to clarify their contractual status. The Sole Arbitrator wishes to emphasise that it follows from the First Decision, recalling that this decision was in favour of the Appellant, that the NDRC based its decision to a large extent on the fact that the Club did not prove

that Notification no. 172 was communicated to the Appellant. However, during the subsequent appeal proceedings as well in the present CAS proceedings, this was no longer an issue as in the appeal proceedings proof of communication of Notification no. 172 was submitted, which was also not contested anymore, also not during the present CAS proceedings. As such, the Sole Arbitrator has considered Notification no. 172 and attaches much value to the fact that such a notification has been sent.

110. In this regard, the Sole Arbitrator does not find it relevant whether or not the issuance of Notification no. 172 was only triggered by a telephone call that took place between Mr Stancu and the Head Coach somewhere between 16 and 30 June 2019, as was argued by the Appellant (and noting at the same time that part of what has been discussed between Mr Stancu and the Head Coach has also been disputed by the Club). The mere fact is that by means of Notification no. 172 the Appellant was ordered to return to the Club, which he failed to do. It is also not relevant in the eyes of the Sole Arbitrator that it does not directly follow from Notification no. 172 that there was no intention from the side of the Club to continue the relationship, because the Parties had already agreed to a termination of the Contract, however, subject to the condition precedent that a *"rescission"* would be signed, which was yet to be negotiated. The Appellant simply had to comply with the Club's request, not only because he was officially summoned thereto, but also because it would have made sense to do so as the case was still not officially settled yet and so to further discuss the contractual situation.

111. Be that as it may, it is clear that with Notification no. 172 the previous Notification no. 143 was ceased and, insofar as that was not yet the case until 21 June 2019, at least as from the latter date, the Appellant's obligations under the Contract revived. However, despite Notification no. 172, the Appellant did not report on 26 June 2019, as was requested by the Club.

112. The Sole Arbitrator recalls that it was only after almost two months that the Appellant filed a claim before the NDRC and took the position that the Contract was terminated by the Club, and so without having replied to any of the above communications from the side of the Club and without having sent a prior warning to the Club. In itself, it not necessary *per se* and under all circumstances required, so the Sole Arbitrator wishes to add, to send a warning in order to preserve any future rights and to be able to lodge a claim before the NDRC, but it is the absence of any reply from the side of the Appellant until at least he lodged his claim before the NDRC, as set out above, that makes the Sole Arbitrator conclude that the Contract was so only suspended and, consequently, that the presentation of facts by the Club does not have to be put into doubt. To the contrary, the Sole Arbitrator is comfortably satisfied that the Contract was not terminated by the Club, and that the Parties were both in agreement as to suspending the activities as from 10 May 2019 (otherwise, the Appellant would have objected thereto, as set out) and that further discussions would follow to finalise (the financial part of) the settlement, which did not happen.

113. In view of the above, and although there is no official mentioning of "suspension" in any of the documents on file, it can be derived, not only from the text of Notification no. 143 and Notification no. 172, but also, and in particular, from the stance of the Parties during the entire process, extensively explained above, that the Contract between the Parties was

suspended until 26 June 2019 and so not terminated by the Club. In this regard, the Sole Arbitrator notes that it only follows from the documents that the collaboration with the Coaches was ended, that a verbal agreement was reached, but that the termination still had to be signed by the Parties.

114. Consequently, the Sole Arbitrator concludes that the Contract was only suspended until 26 June 2019 and that the Contract was not unilaterally terminated by the Club as per that date.

ii) Did the Appellant have just cause to terminate the Contract?

115. Having decided that the Contract was only suspended, the next questions are whether the Appellant or the Club formally terminated the Contract and when this happened. Subsequently, it is to be established whether or not there was just cause to do so.

116. The Sole Arbitrator notes that there is no evidence on file suggesting that either the Appellant or the Club unequivocally terminated the Contract at any time, for example by issuing a termination letter.

117. In such scenario, the Sole Arbitrator finds that the communication that most closely resembles a termination letter is the Appellant's claim filed before the NDRC on 2 July 2019. From such claim it appeared that the Appellant considered the Contract as terminated and he claimed compensation for breach of Contract from the Club. The Sole Arbitrator therefore considers that the Appellant terminated the Contract on 2 July 2019.

118. It follows from such finding that the Appellant carries the burden of proof to establish that he had just cause to terminate the Contract.

119. The Appellant maintains that the Club failed to comply with its obligations under Article 4.3(e) and (f) of the Contract, i.e. the Club's duty to pay salary and to provide for appropriate training conditions.

120. As to the payment of salary, the Sole Arbitrator finds that the Appellant accepted the suspension of the Contract, as set out above, also considering Notification no. 143. Accordingly, and under the specific circumstances of the case, so the Sole Arbitrator finds, the Club was no longer required to pay salary for the period of suspension, just like the Appellant was not required to perform any services under the Contract, as explicitly confirmed by the Club.

121. As to the Club's alleged failure to provide for appropriate training conditions, the Sole Arbitrator finds that also this provision is not violated, because the Appellant was not required to provide any services to the Club pending the suspension of the Contract. This suspension was not unilaterally imposed on the Appellant, but he had agreed to it considering Notification no. 172 and by failing to object to the Club's public announcements in this respect. The Sole Arbitrator therefore does not find that the Appellant's personality rights were infringed by preventing him from exercising his profession.

122. It is true that the Appellant had reason to believe that the Club would not rely on his services anymore in the future, but this is a consequence of the suspension of the Contract that was accepted by the Appellant due to his failure to object.

123. Having considered that the Contract was suspended until at least 21 June 2019 and the Club, by means of Notification no. 172, notified the Appellant to report at the Club by 26 June 2019, which the Appellant failed to do, the Sole Arbitrator finds that the Appellant did not comply with his obligations under the Contract. To the contrary, by not reporting to the Club on 26 June 2019, although officially summoned thereto, the Appellant committed a serious breach of his obligations under the Contract as per the latter date.

124. Indeed, by orally agreeing to suspend the employment relationship and to endeavour to conclude a *"rescission of the employment contracts"* and by failing to object to the Club's public communication to this effect, the Appellant was required to in good faith negotiate with the Club to rescind the Contract, which he failed to do.

125. The Appellant maintains that he *"did not see any more lenient measures which he could take to resolve the situation and to maintain the contractual relationship"*. The Sole Arbitrator disagrees with this statement, because the Appellant could have entered into a dialogue with the Club to conclude a *"rescission"* and terminate the Contract, to which the Appellant had in principle already consented.

126. Accordingly, the arguments invoked by the Appellant to justify terminating the Contract prematurely do not hold and the Sole Arbitrator finds that the Appellant himself did not comply with his duties under the Contract, as a consequence of which it must be concluded that the Appellant terminated the Contract without just cause.

127. In view of the Sole Arbitrator's conclusion that the Appellant did not have just cause to terminate the Contract, it is not necessary to examine whether the Appellant indeed concluded a contract with Steaua only on 20 December 2019, or whether he was *de facto* already employed by Steaua prior to this date.

128. In light of the foregoing, the Sole Arbitrator concludes that the Appellant terminated the Contract without just cause and, in accordance with the RSA, is liable to pay to the Club compensation, as will be further discussed in the next paragraphs.

iii) What should be the consequences?

129. Having established that the Appellant did not have just cause to terminate the Contract, the Sole Arbitrator will now deal with the question what should be the consequences of such a termination by the Appellant.

130. In this regard, and having in mind that the RSA is primarily applicable to the case, as set out above, Article 25 RSA provides that disputes arising from the execution of contract between clubs and coaches will be resolved in accordance with the RSA.

131. In particular, Article 26 RSA regulates the termination of contracts between a coach and a club (translation submitted by the Appellant and not contested by the Club), which is also not in dispute between the Parties as they both refer to this provision:

> *"1 According to the law, the termination of the contract between the coach and the club occurs in the following situations:*
>
> *a) de jure;*
>
> *b) by agreement of the parties, on the date agreed by them;*
>
> *c) as a result of the unilateral will of one of the parties.*
>
> *2 In the event of terminating the contract signed with a football coach by the employer-club, then the coach shall be bound by the terms of the contract until the expiry of the contract, and in the event that the coach has a new offer, until the date when signing the new contract of employment.*
>
> *3 If the coach has been dismissed by the employer-club for unsatisfactory results/failure to meet the performance targets under the individual employment contract, the club shall no longer be financially or otherwise liable to the dismissed coach.*
>
> *4 If the contract is terminated without due cause by the football coach hired by a club, then the coach is liable to pay back the employer-club 50% of thecontractual rights actually paid to the coach until the contract is suddenly terminated.*
>
> *5 The coach in the situation referred to in Article 26 (4) could no longer sign a new employment contract until proving that the outstanding amounts have been paid to the club where he/she was employed.*
>
> *6 Whatever the method of terminating the contractual relations between the coach and the club, the employment contract between the parties will remain in force until on the date of final and irrevocable decision by the competent jurisdictional commission of FRF/AMFB/AJF.*
>
> *7 Where the competent jurisdictional commission has issued a final and irrevocable decision to terminate the contractual relations, the club is required to take the necessary steps in accordance with the laws in force, for the termination of the individual employment contract. Failure to meet such dispositions is punishable by a sports penalty of 10,000 RON for League I clubs, 5,000 RON for 2nd League clubs, and 2,500 RON for the clubs in other categories of competitions. The Disciplinary Board of FRF/LPF/AJF/AMFB, upon referral by the persons concerned, shall be responsible for applying disciplinary sanctions".*

132. Having established that the Contract is terminated without just cause by the Appellant, as set out above under the previous Section, it follows from Article 26 par. 4 RSA that a coach is liable to pay his employer-club 50% of the contractual rights actually paid until the termination of the contract. In other words, in view of this provision, the Appellant is liable to pay to the Club 50% of the contractual rights actually paid to the Appellant by the Club until the termination of the Contract, as compensation for the termination of the Contract without just cause.

133. As it is undisputed that the Appellant received an amount of RON 18,000 net under the Contract until the date of termination, the Appellant is obliged to pay the Club RON 9,000 net, representing 50% of the total amount that applies under Article 26 par. 4 RSA, as was also decided by the NDRC in the Third Decision which was later confirmed by the Appeals Board by means of the Fourth Decision.

134. The Appellant did not raise any specific arguments as to why the amount awarded to the Club would be illegal, unfair or disproportionately high.

135. Considering the Fourth Decision in which it was decided that the Appellant is also obliged to pay to the Club the amount of RON 6,931 as court charges, which has not been disputed by the Appellant, the Sole Arbitrator confirms this accordingly.

136. As a consequence, the Fourth and Fifth Decision are confirmed in full.

C. Conclusions

137. Based on the above, and after having taken into due consideration the applicable rules, the evidence produced and the arguments submitted, the Sole Arbitrator concludes that:

i) The Contract was suspended until 26 June 2019 and not terminated;

ii) The Appellant did not have just cause to terminate the Contract on 2 July 2019; and

iii) The Appellant is obliged to pay to the Club the net amount of RON 9,000 and as well as the amount of RON 6,931 as court charges.

138. The above conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider the Appellant's request, which was made on 16 February 2021, to amend his requests for relief set forth in the Appeal Brief, more specifically by means of the extra request number 7, to *"*[o]*rder the Respondent to reimburse the Appellant the amount of 15.931 lei plus interest of 5% p.a. as of 29 January 2021"*, as such request is in any event to be dismissed.

139. It is however to be noted that the Appellant's undisputed payment of RON 15,931 to the Club is obviously to be taken into account in determining whether the Appellant complied with the terms of the present arbitral award in any possible future enforcement proceedings.

140. Accordingly, all other and further motions or prayers for relief are dismissed insofar as they are admissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 January 2020 by Mr Nofitovici Fanel against Clubul Sportiv Mioveni with respect to the decision no. 317.1/CL/2019 rendered by the National Chamber for Dispute Resolution of the *Romanian Football Federation* on 10 October 2019 is inadmissible.

2. The appeal filed on 26 January 2020 by Mr Nofitovici Fanel against Clubul Sportiv Mioveni with respect to the decisions nos. 21 and 80 rendered by the Appeals Board of the *Romanian Football Federation* on 16 October 2020 is admissible and dismissed.

3. The decisions nos. 21 and 80 rendered by the Appeals Board of the *Romanian Football Federation* on 16 October 2020 are confirmed.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.