Arbitration CAS 2020/A/7523 Vladimir Leshonok v. Football Club Irtysh & Football Union of Russia (FUR), award of 16 May 2022

Panel: Mr Espen Auberg (Norway), Sole Arbitrator

Football
Contractual dispute
Assessment of the validity of a buyout clause from the angle of its conformity to applicable regulations or norms
Assessment of the validity of a buyout clause from the angle of its conformity to the FUR RSTP
Notion of excessive commitment of a party in the context of the contract at stake
Method of calculation of damages
Calculation of damages to be allocated to a player based on the parties' contract and the FUR RSTP

1. **A natural starting point in the consideration of the validity of a buyout clause is the principle of contractual freedom, *i.e.* that the parties are free to agree what they want. However, the principle of contractual freedom is not absolute. If conditions in the contract should be deemed void, such a decision must be based on restrictions in applicable regulations or norms with regards to the parties' autonomy.**

2. **In order for a buyout clause to be valid and to comply with the Football Union of Russia's Regulations on the Status and Transfer of Players (FUR RSTP), three cumulative requirements must be met: (i) the buyout clause shall be written in a clear and unequivocal manner, (ii) there shall be no evidence of coercion or duress in conclusion of the buyout clause (iii) the buyout clause shall not demonstrate excessive commitment by one party that grants the other party undue control.**

3. **Not any disparity between the amount of damages to which players and clubs are entitled according to the buyout clauses shall lead to the invalidity of the clauses. Excessive commitment must be considered on a case-to-case basis. Depending on the case, a club's damages in case of a player's unilateral termination of an employment contract could well be higher than the player's damages in case of a unilateral termination by the club. On the other hand, a pecuniary regime in favour of a club will appear (excessively) disproportionate and contrary to the general principles of contractual stability as well as of labour law if it gives the club undue control over the player, without rewarding him in exchange.**

4. **Damages should be calculated based on 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 fulfilled properly and to its end.**

5. **Article 9 para. 2 of the FUR RSTP states that compensation should be determined based on the following criteria: 1) the remaining term of the employment contract with the**

former professional football club; 2) salaries and other payments due to a professional football player / coach under an employment contract with the old and new (if any) professional football clubs; 3) expenses incurred by a professional football player in transfer (movement) to the former and new (if any) professional football clubs; 4) whether there was a termination of the employment contract for a protected period (for a professional football player); 5) other objective criteria.

I. PARTIES

1. Mr Vladimir Leshonok (the "Appellant" or the "Player") is a former professional football player of Russian nationality.

2. Football Club Irtysh (the "First Respondent" or "the Club") is a professional football club, registered with the Football Union of Russia (the "FUR"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. FUR (the "Second Respondent") is a nationwide governing football body in Russia, and is a FIFA member.

4. The Appellant and the Respondents are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a summary of the dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background facts

6. The Parties signed their first employment contract on 1 February 2019, when the Player was employed as a professional football player by the Club. At the time the first employment contract was signed, the Club played in the third level of the Russian league. No transfer fee was paid in connection with the transfer.

7. On 29 May 2020, the Parties signed a new, amended employment contract (hereinafter "the Employment Contract"). According to Clause 5.1, the Employment Contract was concluded for the term from 1 February 2019 until 31 May 2021. Clause 5.1 reads:

"This employment contract is a fixed-term employment contract, and based, on cl. 59 and p. 1 of cl. 348.2 of the Labour Code of the RF, it is made for a defined term, specifically: from February 1, 2019 up to and including May 31, 2021".

8. Further, the Employment Contract Clause 7 reads:

"Article 7. Salaries and fees.

7.1. The Employee shall be granted a salary, which consists of the following:

- *monthly official salary, excluding compensation, incentive and social payments in the amount of 75,000 (Seventy-five thousand) rubles;*

- *surcharge in the amount of 15% regional coefficient (calculate 1,15 of regional coefficient as well).*

7.2. In the event of the Club's transfer to a Football National League, the Employee shall be granted a salary, which consists of the following:

- *monthly official salary, excluding compensation, incentive and social payments in the amount of 125,000 (One hundred twenty-five thousand) rubles;*

- *surcharge in the amount of 15% regional coefficient (calculate 1,15 of regional coefficient as well). and will be in effect from 01.08.2020 up to and including 31.05.2021".*

9. Termination of the contract is regulated in the Employment Contract Clause 8, and the relevant provisions are 8.1 - 8.8 which read:

"8.1. The employment contract may be terminated or cancelled early on the basis provided for by the current laws of the RF on Labour (cl. 77-81 and cl. 348.11, cl. 348.12 of the Labour Code of the RF).

8.2. Termination of the employment contract shall be executed by the Employer's order. The Employee must be familiarized with the order for termination of the employment contract via his signature on the day of discharge.

8.3. Upon termination or early cancellation of the employment contract, all payments due for the Employee shall be granted by the Employer according to the requirements of the Labour Code of the RF and regulation norms of the FUR. On the day of discharge the Employee shall be given an employment book, or an employment history.

8.4. The Employee shall be entitled to terminate the employment contract on his own initiative (on his own volition), provided that the Employer was warned of this in writing no later than one month in advance.

8.5. In the event of terminating the employment contract on the Employee's initiative (on his own volition) without just cause, the Employee shall be obliged to pay the Employer compensation in the amount of 20,000,000 (Twenty million) rubles.

8.6. In the event of terminating the employment contract on the Employer's initiative based on disciplinary sanctions (par. 4 of Art. 77, Art. 81, par. 3 Art. 192 and Art. 348 .11 of the Labour Code of the Russian Federation), the Employer shall be entitled to receive monetary payment (compensation) for such cancellation in the amount of total revenue received by the Employee for the entire employment contract validity period, specifically from the date of commencing the work and up to the date of dismissal.

8.7. The Employer [the Club] *is entitled to terminate the present Employment Contract early at its own initiative, notifying the Employee* [the Player] *about this fact in writing no later than 15 calendar days, however, the Employer is also obliged to make a payment in the amount of two fixed official salaries in favour the Employee on the day of dismissal, according to subclause 7.1 of clause 7 of this contract.*

8.8. Just causes for termination of the employment contract are the causes stated in the Regulations of FUR on football players' status and transfer (Cl. 11 of the Regulations of FUR on football players' status and transfer)".

10. Following the conclusion of the 2019/2020 season, the Club was promoted to the Russian Football National League, which is the second level of the Russian professional league. As a consequence, Clause 7.2 of the Employment Contract was activated.

11. On 10 August 2020, the Club's president sent the Player a notification of early termination of the Employment Contract. The notification reads:

"With this termination notice of the employment contract, we inform You that the employment contract concluded with You dated February 1, 2019 No. 01/2019 will be terminated early within 15 calendar days from the date of signing this notice, based on the clause 8.7. of this employment contract.

We also inform You that payments in the amount of two salaries will be made on the day of dismissal".

12. On 11 August 2020, the Player sent a request to the Club where he informed the club that he considered the early unilateral termination of the Employment Contract to be unjustified and that it violated the Player's rights and legitimate interests as a professional athlete. In the same request, the Player asked for an explanation with regards to the reasons and grounds for the early termination of the Employment Contract and that the Club provide the Player information on the work schedule for the period from the moment of receiving the notification to the date of actual termination of the Employment Contract.

13. On 17 August 2020, the Player sent a new request where the Player again asked for an explanation with regards to the reasons and grounds for the early termination of the Employment Contract.

14. On 17 August 2020, the Club sent the Player a letter, in which it informed the Player that due to the COVID-19 pandemic, the Player was recommended to train at home prior to the termination date of the Employment Contract.

15. On 25 August 2020, fifteen days after the notification of the early termination of the Employment Contract, the Employment Contract was terminated. The same day, the Club paid the Player compensation in the amount of two fixed official monthly salaries, which amounted to RUB 250,000.

16. Paragraph 1 of part 1 of Article 77 of the Labour Code of the Russian Federation *"agreement of the parties"* is specified in the order of dismissal as the basis for termination of the Employment Contract. No agreement on early termination of the Employment Contract was signed on the part of the Player. The Player disputed the termination, and specified the following in the order of dismissal: *"I do not agree with the order, the dismissal was conducted unilaterally at the initiative of the employer, there is no agreement of the parties"*.

17. On 28 August 2020, the Player sent a letter to the Club where he upheld that the Employment Contract was terminated by the Club unilaterally without valid reasons and in the absence of the agreement between the parties. Further, the Player demanded the Club to pay him compensation for early termination of the Employment Contract in the amount of RUB 1,056,946.43 within 10 calendar days, and informed that if the Club did not comply, the Player would be forced to apply to the FUR Dispute Resolution Chamber with demand to pay compensation and apply sports sanctions to the Club.

B. Proceedings before the FUR Dispute Resolution Chamber

18. On 10 September 2020, the Player filed a claim against the Club before the FUR's Dispute Resolution Chamber (the "FUR DRC").

19. In his claim, the Player argued that Clause 8.7 of the Employment Contract is illegal and invalid as it significantly violates the legal rights of the Player provided for by the Labour Code of the Russian Federation, as well as the core principle of stability of employment contracts stated by FIFA.

20. On 15 September 2020, the Club replied. The Club asked the FUR DRC to dismiss the claim, and sustained that Clause 8.7 of the Employment Contract is a valid buyout clause, which is in accordance with FUR Regulations on the Status and Transfer of Players (the "FUR RSTP"), FIFA's Regulations on the Status and Transfer of Players (the "FIFA RSTP"), Russian law and established jurisprudence of the Court of Arbitration for Sport ("CAS").

21. On 16 September 2020 the FUR DRC rendered the operative part of the award, dismissing the Player's claim (the "Appealed Decision"). The operative part of the award reads:

"1. To dismiss the statement of the Professional Football player Leshonok Vladimir Olegovich in relation to the Alliance non-profit partnership 'Football Club 'Irtysh', Omsk on the recovery of compensation for early termination of the Employment Contract in full.

2. To oblige the Professional Football player Leshonok Vladimir Olegovich to pay a fee to the RFU for the consideration of the case by the Chamber in the amount of 15,000 (Fifteen thousand) rubles within 30 (Thirty) days from the date this decision enters into force in accordance with Article 36 of the RFU Regulations on Dispute Resolution".

22. The grounds of the decision were communicated to the Parties on 28 October 2020, determining, *inter alia*, the following:

"On August 25, 2020, the Club issued order No. 73 on the Football player's dismissal which was read, understood and acknowledged by signing by the Football player. Also, in accordance with Art. 140 of the Labor Code of the Russian Federation, the Club made a final settlement with the Football player, including paid compensation in the amount of 2 salaries in accordance with clause 8.7 of the Employment Contract. The amount of compensation was 250,000 rubles (according to clause 7.2 of the Employment Contract, since at the time of termination of the Employment Contract the Club was a member of the NFL).

The Chamber notes that neither on August 10 2020, when the Club sent a notification to the Football player, nor on August 25 2020, the Football player didn't contest the Club's actions, accepted the fact of dismissal in accordance with clause 8.7 of the Employment Contract. Thus, the Club followed both conditions of termination (notice of termination of the Employment Contract, sent within the period specified in the Employment Agreement, and payment of compensation).

In accordance with clause 2 of Art. 9 of the RFU Regulations on the status and transfers of football players in case of early termination of an Employment Contract on the initiative of a professional football club in the absence of wrongful acts (inaction) of a professional football player/coach, a professional football player/coach has the right to receive compensation (payment) for such termination in the amount established by the Employment Contract.

In accordance with clause 8.7 of the Employment Contract cited above, the amount of such compensation is an amount equivalent to 2 (two) salaries of the Football player. The inclusion of a buy-out clause in the Employment Contract is an increasingly prevalent practice in modern football. The meaning of this clause is to set the amount at the conclusion of the Employment Contract, upon payment of which either the Football player or the Club can terminate the contract without paying any additional compensation or imposing sports sanctions (…).

The possibility of establishing a buy-out clause in favor of both the player and the club is confirmed by the practice of FIFA and CAS. The analysis of the Employment Contract, namely the provisions of clause 8.7, according to the Chamber, is a standard buy-out clause, which gives the Club the right to terminate the Employment Contract with payment of a pre-agreed amount of a 'compensation payment', namely two Football player's salaries in the Football player's favor.

Considering the above, the Chamber cannot agree with the Football player to the extent that the specified provision hereof shall not comply with the regulations of FIFA, UEFA and RFU (…).

Thus, the termination of the Employment Contract on the basis of a buy-out clause was agreed by the parties when signing the Employment Contract, the clause did not contradict the interests of the Football player, since he received compensation for the termination of the Employment Contract (…).

Considering the above, the Chamber finds no grounds for recognizing clause 8.7 of the Employment Contract as invalid and inapplicable. Due to the fact that the Club duly fulfilled the conditions of clause 8.7 of the Employment Contract, which resulted in the fulfillment of the obligation to pay compensation to the Football player in the amount of two salaries, the Football player's claim to recover compensation for termination of the Employment Contract shall be rejected".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 18 November 2020, the Player filed a Statement of Appeal with CAS, pursuant to Article R47 of the Code of Sports-related Arbitration (2020 edition) (the "Code"), against the decision from the FUR DRC issued 16 September 2020. In his Statement of Appeal, the Appellant requested that the dispute be referred to a sole arbitrator.

24. On 20 November 2020, the CAS Court Office informed the Parties that the Player was granted a 10-day extension to file his Appeal Brief, pursuant to Article R32 (2) of the Code.

25. On 27 November 2020, the First Respondent indicated that it agreed that the dispute be referred to a sole arbitrator. The Second Respondent did not provide its position in this regard within the deadline provided for it to do so (and more broadly did not participate in this appeal proceeding).

26. On 3 December 2020, the Parties were informed that pursuant to Article R50 of the Code, the Deputy President of the CAS Appeals Arbitration Division had decided to submit this proceeding to a sole arbitrator, who would be appointed further to Article R54 of the Code.

27. On 7 December 2020, the Player filed an Appeal Brief in accordance with Article R51 of the Code.

28. On 11 December 2020, upon the Club's request, the Club's deadline to file the Answer was set aside by the CAS Court Office until the Player had paid the advance of costs, further to Article R55 of the Code.

29. On 23 December 2020, the CAS Court Office informed the Parties that it had received an application for Legal Aid by the Player and that the time limit to pay the advance of costs was suspended pending the outcome of his application for Legal Aid.

30. On 18 February 2021, the Parties were notified by the CAS Court Office that the Appellant's Legal Aid request had been resolved and thus re-set the Club's Answer deadline.

31. On 18 February 2021, the CAS Court Office, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Arbitral Tribunal appointed to decide the present case was constituted as follows:

    Sole Arbitrator: Mr Espen Auberg, Attorney-at-Law in Oslo, Norway.

32. On 22 March 2021, after having been granted an extension further to Article R32 of the Code, the Club filed its Answer, in accordance with Article R55 of the Code.

33. The FUR did not file an Answer.

34. On 29 April 2021, following consultation with the Parties, on behalf of the Sole Arbitrator, the CAS Court Office confirmed that a hearing would be held on 20 May 2021 by video-conference, pursuant to Articles R44.2 and R57 of the Code.

35. On 10 May 2021, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by the Player 14 May 2021 and by the Club 17 May 2021. The Second Respondent did not return the Order of Procedure, as it did not participate in the proceeding.

36. On 18 May 2021, after consultation with the Parties, the CAS Court Office sent the Parties a draft hearing schedule, proposed by the Sole Arbitrator.

37. On 20 May 2021, a hearing was held by video-conference. In addition to the Sole Arbitrator and CAS Counsel Mrs Kendra Magraw, the following persons attended the hearing:

    - For the Appellant: Mr Igor Merkulov, Counsel; Mr Sergei Sharonov, Counsel.
    - For the First Respondent: Mr Ilya Chicherov, Counsel; Mr Yuri Yakhno, Counsel.
    - The Second Respondent, the FUR, did not participate in the hearing.

38. No witnesses or experts were heard during the hearing.

39. The Parties were given full opportunity to present their cases, submit their arguments in closing statements and to answer the questions posed by the Sole Arbitrator.

40. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

41. This section of the Award does not contain an exhaustive list of the Parties' contentions. Its aim is to provide a summary of the substance of the Parties' main arguments. In considering

and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Player's submissions

42. The Player's submissions, in essence, may be summarized as follows:

- Firstly, the FUR DRC made an ungrounded conclusion that Clause 8.7 of the Employment Contract should be seen as a "buyout clause" that grants the Club the right to terminate the Employment Contract with the Player unilaterally without just cause.

- The Club unilaterally terminated the Employment Contract without just cause and without having concluded an agreement with the Player.

- In accordance with Article 17 of the FIFA RSTP the party in breach shall pay compensation. Subject to Article 20 and Annexe 4 of the FIFA RSTP in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to a player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club and whether the contractual breach falls within a protected period.

- In its official commentary on Article 17 of the FIFA RSTP, FIFA characterizes a buyout clause. This right, a buyout clause in favour of a player, is the amount of money that a player must pay to the club as compensation in case the contract is terminated unilaterally.

- According to paragraph 4 of Article 17 of the FIFA RSTP, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period.

- The specification by the FUR DRC of the fact that the Player had a similar right as the Club did to terminate the Employment Contract on the basis of Clause 8.5 is wrong. Compensation following termination of the Employment Contract at the Player's initiative without just cause is established in Clause 8.5, which fully complies with Article 348.12 of the Labour Code of the Russian Federation. Clause 8.5 of the Employment Contract cannot be interpreted as a buyout clause, but refers to sanctions or liquidated damages for termination of the contract without just cause, which gives

the club opportunities to additionally impose sports sanctions for violation of the principle of "*pacta sunt servanda*" on the player.

- Clause 8.1 of the Employment Contract establishes that *"The employment contract may be terminated or cancelled early on the basis provided for by the current labour laws of the RF (cl. 77-81 and cl. 348.11, cl. 348.12 of the Labour Code of the Russian Federation)"*.

- A so-called *"buyout clause"* in favour of the Club is not established in Russian labour legislation. The exhaustive list of grounds on the basis of which an employer is entitled to dismiss an employee at its own initiative is established in Article 81 of the Labour Code of the Russian Federation. Article 348.12 of the Labour Code of the Russian Federation, defining the particularities of termination of an employment contract with an athlete and with a coach, refers only the grounds that are related to disciplinary sanctions. All other grounds for dismissal at the initiative of the employer are unlawful. At the same time, this legal provision provides for the possibility of terminating the employment contract only at the initiative of the athlete without just cause, given that a monetary payment is made in favour of the employer.

- The fact that the Player was dismissed by the Club on the basis of the *"agreement of the parties"*, as regulated in Article 77 of the Labour Code of the Russian Federation, serves as evidence to the fact that the Club could not unilaterally use the so-called *"buyout clause"* in its favour. The termination clause respects only the interests of the Club, therefore, it cannot grant the Club the right to terminate the Employment Contract with payment of liquidated damages to the Player, namely two fixed official salaries, since the Player does not have a similar right.

- Paragraph 1 of part 1 of Article 77 of the Labour Code of the Russian Federation, *"agreement of the parties"*, is specified as the ground for termination of the Employment Contract in the order of dismissal. At the same time, the Player and the Club did not conclude any written agreement to terminate the Employment Contract.

- In the second part of Article 9 of the Labour Code of the Russian Federation, it is envisaged that employment contracts cannot contain conditions that restrict the rights or reduce the scope of guarantees for employees in comparison with those established by the labour legislation and other normative legal acts containing labour legislation norms.

- According to Article 5 of the Labour Code of the Russian Federation, labour legislation norms contained in other federal laws must comply with this Code. In case of conflicts between the Labour Code and other federal law containing labour legislation norms, this Labour Code shall be applied.

- The inclusion in the Employment Contract of any clause on termination of the contract only by the Club unilaterally worsens the position of the Player in comparison with the provision established by the national labour legislation, since it grants the

Employer the right to terminate the Employment Contract without considering the volition of the employee, which flagrantly violates the Labour Code of the Russian Federation and the regulatory norms of the FUR. The exhaustive list of grounds for terminating an employment contract is provided for in the Russian legislation.

- Thus, it is necessary to conclude that Clause 8.7 of the Employment Contract is unlawful and contrary to the labour legislation of the Russian Federation, as well as to the regulations of FIFA and the FUR, in particular, the principle of maintaining contractual stability (*pacta sunt servanda*).

- According to Article 9 of the FUR RSTP, an employment contract with a professional football player may be terminated at the initiative of a professional football club on the grounds provided for in the labour legislation of the Russian Federation. The Russian Federation Labour Code establishes general grounds for terminating an employment contract (Article 77 of the Labour Code of the Russian Federation), one of which is termination of an employment contract at the initiative of an employer (paragraph 4 of the first part of Article 77 of the Labour Code of the Russian Federation). Article 81 of the Labour Code of the Russian Federation establishes a list of grounds on the basis of which an employer can dismiss an employee at its own initiative. In this case, the Club dismissed the Player without any ground, using the clause of the Employment Contract imposed on him, which is null and void and cannot be applied, since it flagrantly violates the rights of the Player.

- The FUR DRC concluded that this norm in favour of the Club *"does not violate the rights of the Football Player and does not violate the principle of balance of interests of the parties to the employment contract"* together with the content of Clause 8.5 of the Employment Contract in favour of the Player: *"in case the employment contract is terminated at the Employee's initiative (on his own volition) without just cause, the Employee shall pay the Employer compensation in the amount of 20 000 000 (Twenty million) Russian rubles"*.

- Further, Clause 8.4 of the Employment Contract establishes that *"the Employee is entitled to terminate the employment contract at his own initiative (on his own volition), provided that the Employer was notified of this fact in the written form no later than one month prior"*, which complies with the requirements of Article 348.12 of the Labour Code of the Russian Federation. At the same time, the Club exercised its right by *"notifying the Employee about this fact in writing no later than 15 calendar days prior"*. This circumstance shows that the imposed right of the Club is in no way connected with the right of the Player and therefore its use with the aim to dismiss the Player violated the contractual stability and is unlawful.

- Against this background, Clause 8.7 of the Employment Contract does not meet the requirements of Russian legislation, in any case, its content in the aggregate of Clauses 8.4 and 8.5 of the Employment Contract does not meet the requirements of the *"buyout clause"*, and therefore, these clauses significantly violate the rights of the Player and should be declared invalid.

- Secondly, the FUR DRC did not examine and take into account the individual peculiarities of this dispute, such as the age and salary of the Player or the expenses incurred by the Club. Without having studied these circumstances, the FUR DRC made an ungrounded conclusion that there was no violation of the balance of interests of the parties to the Employment Contract, as well as that there was no disproportion in the conditions of early termination of the Employment Contract for the Club and the Player.

- At the time of termination of the Employment Contract, the Player had reached the age of 36. Realizing that there was a lack of job opportunities for him at this age, the Player decided to retire.

- The conditions in the Employment Contract on signed 29 May 2020 were not meant to be discussed, since similar conditions were imposed by the Club in contracts with most of the players. The Player did not have equal negotiation leverage, so he was forced not to resist the will of the management and sign the employment contract on the conditions that were certainly worse for him.

- Having paid the Player only two monthly fixed official salaries which amounted to RUB 250,000, the Club as well as the FUR DRC considered that this *"does not violate the rights of the Player and does not violate the principle of balance of interests of the parties to the employment contract"*, although this amount of money is 80 times less than the sum the Player would have had to pay under the condition that was imposed on him by the Club. At the same time, the expenses of the Club for the payment of salaries to the Player during the period from 1 February 2019 to 25 August 2020 did not exceed the amount of two million Rubles.

- Thus, this condition has been included by the Club in the Employment Contract with the sole purpose of restricting the Player's rights and giving the Club an opportunity to easily *"break the contract"* at any time at its own initiative, which cannot be considered conduct in good faith on the part of the Club, since the Player does not have the opportunity to use Clause 8.5 of the Employment Contract due to its *"unsustainable amount of money"*.

- A situation where football clubs get the opportunity to sign employment contracts containing enormous amounts of fines that do not allow football players to terminate such contracts financially, while the clubs have the opportunity to terminate employment relations at any time with minimal financial losses without considering the principles of proportionality, reciprocity and the specific circumstances of the case, radically overturns the principle of *pacta sunt servanta*, severely restricts the rights of football players, and this can lead to severe consequences because there is no balance of interests of the parties at all.

- The damage that is incurred by a club in case of termination of the contract by a football player without just cause differs and, as a rule, is higher than the one that is incurred by a football player. In this case, the imbalance between the amounts of liquidated damages is excessive and unreasonable. The total expenses for paying the Player's salary during the period 1 February 2019 to 25 August 2020 did not exceed the amount of two million Rubles. If the employment relations were continued, the residual part of the Player's salary until the end of the contract (until 31 May 2021) would amount to RUB 1,056,946.43 net. This is an indicator of inadequate groundlessness of establishing compensation for the Player in the amount of 20 million Rubles.

- Thirdly, due to the fact that between the Parties there is no effective agreement on the amount of compensation to be paid by a defaulting party in connection with the termination of the Employment Contract without just cause, such compensation must be calculated on the basis of the criteria established in part 1 of Article 17 of the FIFA RSTP.

- Due to the fact that the early dismissal of the Player was unlawful and was committed by the Club unilaterally, the defaulting party in all cases pays the other party compensation, which is calculated in the procedure prescribed in the FUR RSTP.

- In accordance with Article 9 of the FUR RSTP, in case an employment contract is early terminated at the initiative of a professional football club without just cause, a professional football player has the right to get compensation for such termination in the amount established in the employment contract. If the amount of compensation is not determined in the Employment Contract, it is determined by the FUR DRC and cannot be less than three average monthly earnings, unless the residual validity term of the employment contract is less than three months.

- With due consideration to the facts that (i) the Player had an employment contract that was valid until the end of the season and that (ii) he has not entered into any employment relations with a new club from the moment of dismissal and up to the present time, the amount of compensation for early termination of the employment contract without just cause should be calculated based on the amount of the Player's salary until the expiration date of the contract's validity term, that is, until 31 May 2021. Taking into consideration the compensation paid to the Player in the amount of two fixed official salaries (RUB 250,000 Rubles), the amount of compensation for early termination of the Employment Contract without just cause makes RUB 1,056,946.43.

43. On this basis, the Player made the following request for relief:

"1) To change the FUR's DRC Decision 100-20 of 16 September 2020 regarding the refusal to satisfy the demands of the Appellant and render an award, declaring that

a. The employment contract No. 01/2019 dated 01.02.2019 was terminated on the initiative of the First Respondent unilaterally without just cause;

b. Oblige the First Respondent to pay to the Appellant a compensation for early termination of the employment contract No. 01/2019 dated 01.02.2019 without just cause in the amount of 1 056 946 (one million fifty-six thousand nine hundred and forty-six) rubles 43 kopecks after deducting personal income tax;

c. Oblige the First Respondent to pay to the Appellant an interest established by Article 236 of the Labour Code of the Russian Federation for violation of the terms for payment of the compensation to the Appellant for the period from the date of expiration of the terms for payment to the date of payment of compensation (inclusively).

d. Oblige the First Respondent to compensate to the Appellant an expenses for services of a legal representative in the amount of 92 250 (ninety two thousand two hundred fifty) rubles.

2) To condemn Association – non-profit partnership «Football club «Irtysh» and the Football Union of Russia to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators, or, more generally, the final amount of the cost of arbitration as per Article R64.4 of the Code of Sports-related Arbitration.

3) To condemn Association – non-profit partnership «Football club «Irtysh» and the Football Union of Russia to pay wholly any expenses, connected to the arbitration proceedings, and to pay Mr. Vladimir Leshonok wholly all his expenses connected to this proceeding, including the costs of legal services and the costs of the services of the interpreters".

B. The Club's submissions

44. The Club's submissions, in essence, may be summarized as follows:

- FUR RSTP:

  - Firstly, the FUR RSTP are to be applied primarily, while the FIFA Statues and Regulations and Russian law apply only on a subsidiary basis to fill in any gaps or lacuna, when appropriate, in the FUR RSTP.

  - Therefore, in order to adjudicate on the matter at hand, Clause 8.7 of the Employment Contract and termination of the Employment Contract must firstly be analysed in accordance with the FUR RSTP and only should any lacuna or gaps arise, should it be analysed in accordance with the FIFA Regulations and Russian law.

  - The FUR RSTP clearly indicates only two means for calculating the amount of compensation. Either compensation is regulated in the contract or it should be calculated by the FUR DRC. Further, an employment contract, based on the

principle of freedom of contract, can set any amount of compensation. while the FUR DRC's discretion in determining the amount of compensation is limited to a minimum amount, *i.e.* three average monthly earnings of a football player.

- The Parties exercised their contractual freedom and agreed on the amount of compensation due to the Player, *i.e.* two monthly official salaries. Further, the Parties agreed on a notification period of 15 days prior to termination and the term of payment, which was on the day of dismissal.

- The Player does not dispute that the Club proceeded in that manner. Consequently, the only remaining question is whether Clause 8.7 of the Employment Contract is valid and binding.

- A comprehensive analysis of similar factual circumstances is given in CAS 2019/A/6514. In line with the comprehensive analysis in that case, the Club concludes as follows:

    1. The Club notified the Player and performed a payment on dismissal in full compliance with Clause 8.7 of the Employment Contract.

    2. Clause 8.7 of the Employment Contract is drafted in a clear and unequivocal manner, leaving no room for interpretation. The Player himself had a clear understanding of its meaning, while simply alleging that it is invalid.

    3. No evidence of coercion and duress exists in the case at hand, indeed, the Player agreed to the terms and conditions of the Employment Contract at his free will.

    4. The amount of compensation due to the Club and the Player is not equal; however, the following should be taken into account:

        i) The compensation due to the Club is paid by the Player in accordance with Clause 8.5 of the Employment Contract only when the termination is made without just cause; in turn, Clause 8.4 of the Employment Contract provides the general possibility for the Player to terminate the Employment Contract with prior notification.

        ii) The Club provided an aged player with a workplace in his native city and a possibility to compete in the second-tier Russian football league, which is a kind of non-financial remuneration in addition to the Player's salary and should be assessed accordingly.

        iii) Unless a general rule of Article 9 paragraph 3 of the FUR RSTP provides that the compensation may be paid two months after the

termination, the Club contractually agreed on such a payment be due at the very day of dismissal.

iv) The Club exercised its right to terminate the Employment Contract long before the end of the registration period in Russia.

- There is no lacuna in the FUR RSTP – the FUR RSTP anchor a full legal framework for the termination of the Employment Contract when a *"buyout"* clause is invoked. Consequently, Clause 8.7 of the Employment Contract complies with Article 9 of the FUR RSTP, and is valid and binding.

- A mere division of one amount (Clause 8.5 of the Employment Contract) by another (Clause 8.7) is an extremely simplified attitude to interpretation of contractual provisions, which should not be upheld.

- An undue control on the Club's side cannot be established. Therefore, the Player's claim to invalidate Clause 8.7 of the Employment Contract is ill-grounded. Accordingly, the Player's claims must be rejected.

- FIFA RSTP:

  - Primarily, the case should be solely regulated by the FUR RSTP. However, if the FIFA RSTP is applied, the Club is still in full compliance with the applicable norms and the buyout option is valid.

  - CAS has repeatedly confirmed that the *"buyout clause"* is available to both players and clubs.

  - An unequal amount of financial compensation in the event of termination of the Employment Contract by one of the parties is not a reason entailing the invalidity of such conditions *per se*.

  - In the cases CAS 2015/A/3999 & 4000, the panel concluded that, since the position of the parties, the club and the player, differed significantly due to the fact that the damage to the club from unilateral early termination of the contract is usually higher than that of the player, the consequences of such termination agreed to in the contract may differ significantly and do not have to be proportionate, which obviously calls into question the position of the Player in this regard.

  - CAS jurisprudence recognizes that the disproportionality of the amount of termination compensation set for the Club and the Player is not a basis for declaring them invalid.

- From the wording of Clause 8.7 of the Employment Contract it is clear that the Club is entitled to terminate the Employment Contract subject to the payment of compensation to the Player in the pre-agreed amount of two-months of official salary. Therefore, Clause 8.7 of the Employment Contract complies with all the requirements of the *"buyout"* clause described above and should be constructed as such.

- The provisions of Clause 8.7 of the Employment Contract represent a legitimate and valid *"buyout clause"*, and the termination of the Contract on the basis of the specified *"buyout clause"* was approved by the parties at the moment of signing of the Employment Contract. The clause did not contradict the interests of the Player, since he received compensation for the termination of the Employment Contract, which also indicates its validity.

- The present analysis leaves no doubt that in case of lacuna in the FUR RSTP, the relevant provisions of the FIFA RSTP confirm the Club is in full compliance with the applicable norms since it appears as a valid buyout option, and the Player's demands are unsubstantiated.

- Russian law:

- In the event that the FUR RSTP and even the FIFA RSTP contain a lacuna in the regulation of the present dispute, and Russian law as applicable, the Club observes that even Russian law lacks justification for acceptance of the Player's claims.

- Firstly, there is a mutual consent to terminate the Employment Contract. The general grounds for terminating the Employment Contract are given in Article 77 of the Labour Code of the Russian Federation. So, Article 77 part 1 paragraph 1 of the Labour Code of the Russian Federation provides that the basis for termination of the Employment Contract is the mutual consent of the Parties. By mutual consent of the Parties, the Employment Contract may be terminated by the Parties at any time.

- The Player alleges that the termination of the Employment Contract by mutual consent of the Parties on the basis of Article 77 part 1 paragraph 1 of the Labour Code of the Russian Federation is possible only after reaching an agreement between the Parties regarding a specific date and grounds for dismissal, but the Parties have not reached such an agreement.

- The Parties agreed in advance that the Employment Contract may be terminated by any of the Parties at any time during the validity of the Employment Contract, that constitutes a rule to determine a specific date of termination.

- The failure to conclude a separate written agreement on termination of the Employment Contract is irrelevant for the present case, since the Employment

Contract was terminated on the basis of the provisions of Clause 8.7 of the Employment Contract, which represents the Parties' consent to terminate the Employment Contract on predetermined conditions.

- An employee who has initiated a dispute over the legality of terminating an employment contract with him/her must justify his/her claims. In order to challenge the lawfulness of termination of an employment contract by agreement of the parties, it is necessary to establish a defect of will of the person who concluded such an arrangement. Such a defect has not been established in this case.

- Considering all the above, the Club and the Player certainly reached a mutual consent to terminate the Employment Contract in the form of Clause 8.7 of the Employment Contract.

- Secondly, Clause 12.3 of the Employment Contract is legal. According to the Player, the provision on the basis of which the Employment Contract was terminated contradicts the labour legislation of the Russian Federation, the practice of the courts of general jurisdiction, the FUR DRC and the FIFA Dispute Resolution Chamber, and is therefore invalid. The Club does not agree with the allegation of the illegality of such termination.

- Russian labour legislation recognizes clauses on compensation in favour of players upon dismissal only if they are included directly in the employment contract.

- The understanding of the law as prohibiting stipulation of a predetermined sum, which is paid to the employee upon dismissal, is in contravention with the consistent jurisprudence of courts of the Russian Federation.

- Consequently, under Russian law, the only mean for the Parties to establish the amount of compensation due to the Player upon mutual termination of the Employment Contract was to establish such compensation in the Employment Contract, as it was executed by the Parties in Clause 8.7 of the Employment Contract.

- Therefore, Clause 8.7 of the Employment Contract is in full compliance with Labour Code of the Russian Federation and is thus valid, as is the Player's dismissal.

45. On these grounds, the Club made the following requests for relief:

1. *"Dismiss the appeal filed by the Appellant against the decision passed on 16 September 2020 by the FUR Dispute Resolution Chamber in full.*

2. *Confirm the decision passed on 16 September 2020 by the FUR Dispute Resolution Chamber.*

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

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

C. The FUR's submissions

46. The FUR did not file any submissions in this proceeding and did not otherwise participate in the proceedings.

V. JURISDICTION

47. The jurisdiction of CAS derives from Article R47 of the Code which reads:

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

48. Further, Article 47 of the FUR Statutes reads:

> *"In accordance with the specific provisions of FIFA Statutes, UEFA Statutes and FUR Statutes any appeal against final and legally binding decision passed by FIFA, UEFA and FUR may be heard by the CAS".*

49. The jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the Appellant and First Respondent. The Second Respondent has not contested the jurisdiction of CAS.

50. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

51. The time limit for submitting a Statement of Appeal is 21 days from the receipt of the decision appealed against pursuant to Article R49 of the Code. The Statement of Appeal was filed by the Appellant on 18 November 2020, 21 days after the FUR DRC had notified the grounds of the Appealed Decision to the Parties on 28 October 2020, hence within the deadline of 21 days.

52. Therefore, the appeal is admissible.

VII. APPLICABLE LAW

53. Article R58 of the Code provides as follows:

> *"Law Applicable to the merits. The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

54. The Parties are based in Russia. The preamble to the Employment Contract states that the Parties, *"acknowledging that their rights and responsibilities are regulated by this employment contract, incorporating and other documents of the Club that correspond to documents of the Federation of International Football Associations (FIFA), Union of European Football Associations (UEFA), Football Union of Russia (FUR), Russian Premier League (RPL), National Football League (NFL), Professional Football League (PFL), as well as to current laws of the Russian Federation (RF), have made this contract on the following".*

55. The Appealed Decision was issued by the FUR DRC in accordance with the FUR Regulations on Dispute Resolution, Article 1 of which provides:

> *"When considering the disputes, the Chamber and the Committee apply the Constitution of the Russian Federation, federal constitutional laws, normative acts of the President of the Russian Federation and resolutions of the Government of the Russian Federation, regulatory legal acts of federal executive bodies, regulatory legal acts of constituent entities of the Russian Federation and other normative legal acts in force in the territory of the Russian Federation, the RFU Statutes, the rules adopted by the FIFA, UEFA and the FUR, decisions of the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) (hereinafter referred to as "CAS") in terms of court practice of applying these norms, usual and customary business practices, as well as contracts, agreements, if they are concluded in accordance with the legislation of the Russian Federation".*

56. The Sole Arbitrator points out that as the Appealed Decision was rendered by the FUR DRC, based on the FUR Statutes and Regulations. Thus, the FUR Statutes and Regulations should apply as the primarily applicable law to the case under scrutiny.

57. However, although the dispute primarily shall be governed by the FUR regulations, the FUR regulations only apply to the extent that they are compliant with mandatory FIFA and UEFA regulations. In particular the Sole Arbitrator points out that FUR's obligation to comply with FIFA regulations are set out in the FIFA Statutes Article 14 paragraph 1 litra a, which state that member associations are obliged to *"comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time as well as the decisions of the Court of Arbitration for Sport (CAS) passed on appeal on the basis of art. 57 par. 1 of the FIFA Statutes"*. The FUR, as a member association of FIFA, is, as such, obliged to have regulations that comply with FIFA regulations.

58. Furthermore, the Sole Arbitrator points out that the extent to which each national football association is obliged to comply with the FIFA RSTP in its own legislation is regulated in FIFA RSTP Article 1-3 litra a and b which read:

> *"a) The following provisions are binding at national level and must be included without modification in the association's regulations: articles 2-8, 10, 11, 12bis, 18, 18 paragraph 7 (unless more favourable conditions are available pursuant to national law), 18bis, 18ter, 18quater (unless more favourable conditions are available pursuant to national law), 19 and 19bis*
>
> *b) Each association shall include in its regulations appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements. In particular, the following principles must be considered:*
>
> - *article 13: the principle that contracts must be respected;*
> - *article 14: the principle that contracts may be terminated by either party without consequences where there is just cause;*
> - *article 15: the principle that contracts may be terminated by professionals with sporting just cause;*
> - *article 16: the principle that contracts cannot be terminated during the course of the season;*
> - *article 17 paragraphs 1 and 2: the principle that in the event of termination of contract without just cause, compensation shall be payable and that such compensation may be stipulated in the contract;*
> - *article 17 paragraphs 3-5: the principle that in the event of termination of contract without just cause, sporting sanctions shall be imposed on the party in breach".*

59. The Sole Arbitrator notes that the provisions listed in FIFA RSTP Article 1-3 litra a are not relevant for the case under scrutiny. However, the principles set out in FIFA RSTP Article 1-3 litra b imply that the FUR is obliged to implement rules that ensure stability in the contractual relationship between clubs and players. This obligation must be seen in light of how FIFA defines stability in that contractual relationship. Furthermore, the FUR is obliged to consider having in its regulations the principle that the contract can only be terminated by one of the parties where there is just cause. There is no direct obligation to include FIFA's wording or model in its own regulations. As long as the FUR has included in the regulations rules that ensure stability of the contractual relationship, there is thus a certain degree of freedom of choice with regards to how this is implemented.

60. Applying these principles to the present matter, the dispute shall primarily be decided according to the applicable regulations, *i.e.* the FUR Regulations, to the extent that the FUR Regulations are compliant with mandatory legal framework as set out in FIFA and UEFA regulations. FIFA and UEFA regulations, as well as Russian labour legislation and other

norms of labour law, are to be considered subsidiarily in case of lacuna in the FUR Regulations.

VIII. MERITS

A. The main issues

61. The main issues to be resolved by the Sole Arbitrator are:

1. Is the Club's termination of the Employment Contract, with reference to Clause 8.7 of the Employment Contract, valid?

2. If the Club's termination of the Employment Contract, with reference to Clause 8.7 of the Employment Contract, was not valid, what are the consequences?

1. Is the Club's termination of the Employment Contract, with reference to Clause 8.7 of the Employment Contract, valid?

62. The Parties agree that the Employment Contract was terminated at the initiative of the Club, that the termination was not connected with any wrongful acts of the Player and that the Club invoked Clause 8.7 of the Employment Contract exclusively as grounds for its termination. The Parties disagree on whether the termination was lawful.

63. The Employment Contract between the Club and the Player states that both parties are entitled to unilaterally terminate the contract, regardless of whether there is just cause for termination. In the event of such a unilateral termination of the Employment Contract on the Player's initiative, Clause 8.25 of the Employment Contract states that the Player shall be obliged to pay the Club a compensation in the amount of RUB 20,000,000. Similarly, if such a unilateral termination of the Employment Contract is initiated by the Club, Clause 8.7 of the Employment Contract states that the Club is obliged to pay the Player an amount corresponding to two fixed official monthly salaries, *i.e.* RUB 250,000.

64. It must be assumed that various termination clauses are frequently used in employment contracts between football clubs and football players. The termination clauses are often referred to as liquidated damages clauses, penalty clauses and buyout clauses. The Sole Arbitrator notes that Clause 8.7 of the Employment Contract is, in essence, a buyout clause which gives the Club the right to withdraw from the contract at any time subject to the payment of a predefined amount. The main issue to be resolved by the Sole Arbitrator is whether the Club's termination of the Employment Contract, with reference to the buyout clause in Clause 8.7 of the Employment Contract, is valid.

65. As the parties did agree on the conditions in the Employment Contract, the Sole Arbitrator notes that a natural starting point in the consideration of the validity of the buyout clause is the principle of contractual freedom, *i.e.* that the parties are free to agree what they want. If

conditions in the contract should be deemed void, such a decision must be based on restrictions in applicable regulations or norms with regards to the parties' autonomy.

66. FUR RSTP Article 8 paragraph 3 states that the employment contract between a club and a player *"may be terminated at the initiative of one of the parties without any consequences if there are grounds provided for in these Regulations. In the event of the employment contract termination without valid reasons, the defaulting party shall in all cases pay the other party compensation, which is calculated in the manner prescribed by these Regulations"*.

67. The prescription of how compensation to a player shall be calculated when a club unilaterally has terminated a contract is regulated in FUR RSTP Article 9 paragraph 2 which states:

> *"In case of early termination of the employment contract on the Professional Football Club's initiative without valid reasons, the Professional Football player/coach has the right to receive compensation (payment) for such termination in the amount established by the employment contract. If the amount of compensation (payment) is not determined by the employment contract, it is determined by the Dispute Resolution Chamber and cannot be less than 3 (three) average monthly earnings of the Professional Football player/coach"*.

68. In other words, the termination provisions in the FUR RSTP state that an employment contract can only be unilaterally terminated without consequences if the termination is based on grounds expressed in the FUR RSTP. If a unilateral termination initiated by the club is not based on valid grounds the club shall pay compensation to the player, and that compensation can be established in the employment contract.

69. The Sole Arbitrator notes that the abovementioned provisions in the FUR RSTP to a large degree correspond with FIFA RSTP Article 17 paragraph 1, which states:

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

70. The wording of the FUR RSTP and the FIFA RSTP suggest that the parties are free to agree on any amount of compensation in the employment contract. However, the principle of contractual freedom is not absolute. Validity of buyout clauses has been considered by CAS on numerous occasions, also in relation to the FUR RSTP. Based on the conclusions in the case CAS 2019/A/6514, it must be assumed that in order for a buyout clause to be valid and to comply with the FUR RSTP, three cumulative requirements must be met:

- The buyout clause shall be written in a clear and unequivocal manner.

- There shall be no evidence of coercion or duress in conclusion of the buyout clause.

- The buyout clause shall not demonstrate excessive commitment by one party that grants the other party undue control.

71. The Player does not claim that the relevant clause is not clear or [recte. equivocal], or that it was written under coercion or duress. However, the Player claims that the buyout clause demonstrates excessive commitment from the Player as there is a gross imbalance between the amounts to be paid by the parties when activating the buyout clauses that gives the Club undue control over the Player. Whilst the Club is obliged to pay the Player an amount corresponding to two fixed official monthly salaries, *i.e.* RUB 250,000, if the Club terminates the Contract, the Player is obliged to pay the Club RUB 20,000,000, *i.e.* 80 times more, if the Player terminates the contract.

72. Although excessive commitment must be considered on a case-to-case basis, CAS jurisprudence gives some guidance with regards to how excessive a commitment from one of the parties must be before it should lead to the invalidity of a buyout clause or a liquidated damages clause. Based on the conclusions in the cases CAS 2016/A/4826 and CAS 2015/A/3999 & 4000, it is clear that not any disparity between the amount of damages to which players and clubs are entitled according to the buyout clauses could lead to the invalidity of the clauses, and that a club's damages in case of a unilateral termination of an employment contract by a player is could well be higher than the damage of a player in case of a unilateral termination by a club.

73. In the case CAS 2014/A/3707, the panel concluded that a buyout clause was invalid. Although the primary applicable law in that case was the FIFA RSTP, the main principles are applicable also for cases based on the FUR RSTP. The contract at issue in CAS 2014/A/3707 entitled the club to terminate the contract subject to payment of remaining contractual amount for the season of termination, whilst the corresponding right for the player was subject to the player paying the club the remaining contract value in full. The CAS panel stated that such a regime *"leads to a system, which disproportionately favours the* [club]*, which, in practice, can establish a long-term employment relationship with the Player and rescind it after one year only. With this method, the* [club] *can therefore refuse to keep the Player if the latter does not progress as expected but may retain him, should he confirm his sporting qualities and value. Such a system is clearly contrary to the general principles of contractual stability as well as of labour law as it gives the* [club] *undue control over the Player, without rewarding him in exchange".*

74. In the case CAS 2019/A/6246, the sole arbitrator concluded that a liquidated damages clause was valid. In that case, the player was entitled to a compensation of RUB 225,000 and the corresponding compensation for the club in case of a termination by the player was RUB 2,500,000, *i.e.* about 11 times higher. The sole arbitrator in that case concluded that the difference between the amounts was not of such a level that it should lead to the invalidity of liquidated damages clause.

75. In the abovementioned case CAS 2019/A/6514, the sole arbitrator stated that *"intervening with the parties' free will enshrined in a buyout clause should be confined to exceptional cases. This would, in principle, apply in the case of excessive disproportionality i.e., when one party makes an excessive commitment that disproportionately favours the other party of the buyout clause".* Applying this principle to the case, the sole arbitrator concluded that a buyout clause which obliged the club to pay

three monthly salaries was valid. The corresponding buyout clause for the player was three months salaries in addition to expenses.

76. The Sole Arbitrator thus notes that CAS jurisprudence with regards to buyout and liquidated damages clauses based on the FUR RSTP to a large degree correspond to CAS jurisprudence based on the FIFA RSTP and Swiss law. CAS jurisprudence based on the FUR RSTP seem to give the parties a large degree of autonomy and freedom to agree on the terms of buyout or liquidated damages clauses and acknowledge that there can be disparity with regards to the predetermined damages in these clauses. However, the clauses can be deemed void if they are, *inter alia*, excessively disproportionate.

77. Whether buyout clauses in a contract should be deemed void due to excessive disproportionality must be considered on a case to case basis. In the case at hand, with respect to the consideration of whether the buyout clause is excessively disproportionate, the Sole Arbitrator notes that the clause that entitles the Club to unilaterally terminate the contract in practice obliges the Club in such a case to pay RUB 250,000, whilst the corresponding amount in case the Player unilaterally terminates the contract is RUB 20,000,000, an amount that is 80 times higher.

78. The Sole Arbitrator agrees with the Club that the amount of damages incurred by players and clubs in case of unilateral breach of contract can differ and that, in general, the damages suffered by clubs following players' unilateral termination of contracts could well be higher than the damages suffered by players following clubs' unilateral termination of contracts. Damages should be calculated based on 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 fulfilled properly and to its end. A club's damages in such a case could include, *inter alia*, a transfer fee and an agent fee related to signing a replacement player, as well as medical insurance.

79. The Sole Arbitrator notes that the Player was 36 years old and that no transfer fee was paid when the Player first signed a contract with the Club. At the time the Employment Contract was signed, the Club played in the third level in the Russian league and was later promoted to the second level of the Russian league. The damages the Club would suffer in case of the Player's unilateral termination of the Employment Contract, based on the principle of positive interest, would be limited to transfer and agent fees, if any, of a player that has a similar quality and age of the Player, in addition to other feasible costs. It must be assumed that the potential damages the club would suffer in case of the Player's unilateral termination of the Employment Contract would be rather limited, and in any case nowhere near the amount stipulated in the buyout clause, *i.e.* RUB 20,000,000.

80. Furthermore, the Sole Arbitrator notes that whilst the buyout clause that allows the Club to unilaterally terminate the Employment Contract requires the Club to pay a relatively small fee, the buyout clause that allows the Player to unilaterally terminate the contract requires the Player to pay a fee that is so high compared to his wages that it would be practically impossible for the Player to unilaterally terminate the Employment Contract himself. Taken

into consideration the Player's age, the level he plays football at and that no transfer fee was paid when he signed a contract with the Club, it is also highly unlikely that a new club would agree to pay the fee in connection with a transfer.

81. In view of the above, the Sole Arbitrator concludes that the Club's right to terminate the contract according to Clause 8.7 of the Employment Contract, seen in relation with the Player's right to terminate the contract in accordance with the Clause 8.5 of the Employment Contract, is considered as excessively disproportionate as it demonstrates excessive commitment by the Player and grants the Club undue control. As a consequence, the Club's termination of the Employment Contract with reference to its Clause 8.7 is deemed void.

2. If the Club's termination of the Employment Contract, with reference to Clause 8.7 of the Employment Contract, was not valid, what are the consequences?

82. As the Club's unilateral termination in accordance with Clause 8.7 of the Employment Contract is deemed void, the consequences of the Club's unilateral termination shall be established in accordance with Clause 8.3 of the Employment Contract, with further reference to the FUR regulations. FUR RSTP Article 9 paragraph 2 states that compensation should be determined based on the following criteria:

> *"1) the remaining term of the employment contract with the former professional football club;*
>
> *2) salaries and other payments due to a professional football player / coach under an employment contract with the old and new (if any) professional football clubs;*
>
> *3) expenses incurred by a professional football player in transfer (movement) to the former and new (if any) professional football clubs;*
>
> *4) whether there was a termination of the employment contract for a protected period (for a professional football player);*
>
> *5) other objective criteria".*

83. As the Player has not signed a contract with a new club following the termination of the Employment Contract with the Club, the compensation shall be calculated based in the remaining term of the Employment Contract.

84. On the date of the termination, *i.e.* 25 August 2020, the remaining net value of the Player's Employment Contract was RUB 931,883, corresponding to monthly wages of RUB 143,750 (RUB 125,000 with added 15% regional coefficient surcharge) for nine months and four days, deducted of the RUB 250,000 already paid by the Club as well as 13% personal income tax of the remaining amount.

85. Against this background, the Sole Arbitrator finds that the Club shall pay compensation for breach of contract in the amount of RUB 931,883 to the Player.

86. As interest on outstanding payment is not regulated in FUR RSTP, calculation of interest should be based on Article 236 of the Labour Code of the Russian Federation.

B. Conclusion

87. Based on the foregoing, the Sole Arbitrator finds that:

- The Club's right to terminate the contract according to Clause 8.7 of the Employment Contract is deemed void.

- The Club shall pay compensation for breach of contract to the Player in the amount of RUB 931,883 plus interest as set out in Article 236 of the Labour Code of the Russian Federation.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 January 2020 by Vladimir Leshonok against the decision issued on 16 September 2020 by the Dispute Resolution Chamber of the Football Union of Russia is partially upheld.

2. The decision issued on 16 September 2020 by the Dispute Resolution Chamber of the Football Union of Russia is set aside.

3. Football Club Irtysh shall pay compensation for breach of contract to Vladimir Leshonok in the amount of RUB 931,883 (nine hundred and thirty one thousand eight hundred and eighty three Russian Rubles), with interest as set out in Article 236 of the Labour Code of the Russian Federation.

4. (…).

5. (…).

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