Arbitration CAS 2021/A/7714 Nantong Zhiyun Football Club v. Anatole Bertrand Abang & CJSC SC Sheriff, award of 7 June 2022

Panel: Mrs Anna Bordiugova (Ukraine), President; Mr João Nogueira Da Rocha (Portugal); Mr Michele Bernasconi (Switzerland)

Football
Termination of the employment contract with just cause by the player
Right to train and to play
Just cause
Purpose of Article 17.1 FIFA RSTP
Mitigation of damages

1. **Among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow teammates in the team's official matches.**

2. **According to Article 14.1bis of the FIFA Regulations on the Status and Transfer of Players (RSTP), a player is deemed to have a just cause to terminate his contract in the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates.**

3. **The purpose of Article 17.1 FIFA RSTP is basically to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player.**

4. **Given the *de novo* power of review conferred on CAS panels by Article R57 of the CAS Code, a panel is able to take into account in mitigation any new playing contracts entered into after the first instance decision.**

I. PARTIES

1. Nantong Zhiyun Football Club (the "Appellant" or the "Club") is a professional football club with its registered office in Nantong, China. The Club is registered with the Chinese Football Association (the "CFA"), which in turn is affiliated to the *Fédération Internationale de Football Association* (the "FIFA").

2. Mr Anatole Bertrand Abang (the "First Respondent" or the "Player") is a professional football player of Cameroonian nationality.

3. CJSC SC Sheriff (the "Second Respondent" or "Sheriff") is a professional football club with its registered office in Tiraspol, Moldova. The Club is registered with the Moldovan Football Federation (the "MFF"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. 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 synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

5. On 18 February 2019, the Player and the Club concluded an employment contract (the "Employment Contract"), for a period of 1 February 2019 – 31 December 2021. The Employment Contract contains the following relevant terms:

> *"**Clause 3 Job description***
>
> *[…]*
>
> *3. The [Club] shall have the right to adjust the [Player's] work position between the first team and the reserve team according to its needs and the [Player's] ability, performance and status. If the [Player] is adjusted to the reserve team, the salary will be switched to the standard of reserve team.*
>
> ***Clause 5 Working Remuneration***
>
> *1. Giving the following terms and conditions are satisfied, [the Club] shall pay the basic salary to the [Player].*
>
> *(1) [The Player] passes a comprehensible physical examination arranged by the medical institution designated by the [Club].*
>
> *(2) [The Club] and [the Player] sign this contract.*
>
> *1. Basic salary*
>
> *(1) From February 1st to December 31st 2019, [Player's] annual salary is RMB 893,200 (Capitalized: eight hundred and ninety three thousand and two hundred, which is approximately equal to 100,000 US dollars) pre-tax, i.e., RMB 82,100 (Capitalized: eighty-two thousand and one hundred, which is approximately equal to 9,090 US dollars) pre-tax per month.*

(2) Under the condition that [the Player] fullfills the assessment task of [the Club] in 2019 season, from January 1st 2020 to December 31st 2020, [the Player's] annual salary is RMB 1.476,000 (Capitalized: one million four hundred and seventy-six thousand, which is approximately equal to 150,000 US dollars) pre-tax, i.e. RMB 123.000 (Capitalized: one hundred and twenty-three thousand, which is approximately equal to 12,500) US dollars pre-tax per month.

(3) Under the condition that [the Player] fullfills the assessment task of [the Club] in 2020 season, from January 1st 2021 to December 31st 2021, [the Player's] annual salary is RMB 82.100,00 (Capitalized: two million and one hundred thousand) which is approximately equal to 200,000 US dollars) pre-tax, i.e. RMB 175.000 (Capitalized: one hundred and seventy five thousand) which is approximately equal to 16,666 US dollars pre-tax per month.

(4) The [Club] will pay within China in local currency (RMB), and the monthly payment amount of RMB is calculated based on the exchange rate of the last working day of the previous month. If the [Player] attends full the training and competitions arranged by the [Club], the [Club] shall pay the [Player] the basic salary of the previous month on the 15th day of the next month.

2. Bonus

(1) The [Club] shall pay match bonus to the [Player] according to the bonus allocation regulations.

(2) Bonus of Wins/Draws

(a) In an official match that the [Player] plays in the Chinese Football Association China League (CFACL) or the Chinese FA Cup of 2019 season, the amount of the winning or draw bonus will be issued in accordance with the uniform standard of the [Club's] team, i.e., the winning bonus is RMB 20,400/per game (Capitalized: twenty thousand and four hundred, which is approximately equal to 3,000 US dollars), pre-tax, and the draw bonus is RMB 5440/per game (Capitalized" five thousand four hundred and forty, which is approximately equal to 800 US dollars), pre-tax.

[…]

(5) The above-mentioned prizes of the [Player] are only awarded for playing the full 90 minutes of each game. If the [Player] has not played for 90 minutes of each game, the prize amount shall be calculated based on the actual playing time of the [Player].

Clause 9 Modification, Renewal, Revocation and Termination of the Contract

[…] 4. If the [Club] has one of the following circumstances, the [Player] may notify the [Club] to terminate this contract:

[…] (2) Violating the provisions of this contract, the salary and bonus of the [Player] not paid for more than 2 month in succession, and the dispute which is determined by the arbitration commission of CFA arises; […].

Clause 10 Damage for breach of Contract

1. In case that the [Club] cancels the Contract as the [Club's] breach of the contract or agrees an invalid contract with the [Player] due to the [Club's] mistake, the [Club] shall compensate the [Player] for economic loss incurred to the [Player], based on damage.

2. In case that the [Player] cancels the Contract without justified reason, according to relate rules and regulations of FIFA, the [Player] shall compensate the [Club] for damage incurred to the [Club]. The compensation to damage is calculated as the total amount of EURO 5,000,000 (Five million EURO). The club engaging [the Player] shall also be liable for compensation. The [Club] has right to request for additional punishment given by CFA or FIFA Disciplinary Committee due to the [Player's] breach of the Contract".

6. On the next day, 19 February 2019, the Parties signed a Supplementary Agreement, which stipulated the following:

"In order to better meet the new season of Chinese football league, the club takes the following measures to ensure that the athletes can devote themselves to the training and competition. Our club promises that during the period of the player's contract signed by the player, our club will give the player a housing subsidy of USD 37500 after tax for the year 2019 and USD 50000 for the player's housing use in Nantong from 2020 to 2021. If the player terminates his contract with our club for any reason, the subsidy automatically [ceases]".

7. On 23 September 2019, the Player put the Club in default, requesting outstanding remuneration in an amount of USD 20,000, corresponding to the salaries of July and August 2019 and bonuses for one win and one draw in amount of USD 3.800.

8. On 10 October 2019, the Player unilaterally terminated the Employment Contract. The Player invoked the Club's failure to remunerate him for his services as the reason for the termination, despite written notification being sent to the Club. In his termination letter the Player requested to be paid his salaries for July, August, and September 2019 together with compensation for the breach of the Employment Contract amounting to the residual value of the latter, i.e. salaries for October – December 2019 (3 x USD 9.090); USD 150.000, as salaries for the year 2020 and USD 175.000 as salaries for the year 2021. All together the Player requested to be paid an amount of USD 383.340 within 26 October 2019. The Player informed the Club that in case no payment is made, a claim to FIFA bodies would be submitted.

9. On 15 October 2019, Player's agent, Mr. Nimombe, and the Club's president, Mr. Fan, tried to settle the dispute, with no success.

10. On 21 October 2019, the Club sent a letter to the Player, informing him that he *"has not participated in training according to the team's training plan since September 10, 2019, and he actively requested to give up participation in the visiting team competition on September 21, which has seriously violated the club's management regulations".*

11. On 25 October 2019, the Club paid the Player an amount of RMB 30.000, without indicating the reason of this payment.

12. On 1 February 2020, the Player and Sheriff signed an employment agreement, valid until 31 December 2021. In accordance with this agreement the Player was entitled to receive salary in amount of USD 7.500 net in the period 1 February - 31 December 2020.

13. On 1 September 2020, the Player and Sheriff signed a termination agreement, ending their relationship by mutual consent.

14. On 9 October 2020, the Player and Portuguese club Portimonense, signed an employment contract, valid from 9 October 2020 until 30 June 2022. According to this contract the salary of the Player amounted to EUR 7.000 net. However, in view of COVID-19 pandemic the Player was not able to travel to Portugal and on 28 November 2020 the Employment Contract was terminated, without having ever entered in force. The Player has never received any payments from Portimonense.

15. On 1 January 2021, the Player and the Azerbaijani football club Keshla signed an employment contract, valid from the same date until 31 December 2021. According to this contract the salary of the Player for the whole year 2021 amounted to USD 120.000 net.

B. Proceedings before the FIFA Dispute Resolution Chamber

16. On 5 November 2019, the Player lodged a claim against the Club for breach of the Employment Contract before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting: (i) USD 57.846,26 as outstanding salary plus 5% interest as of 27 October 2019, (ii) 3 salaries for October – December 2019 (USD 8.872,94 x 3= USD 26.618,82), (iii) USD 3.181,81 x 8 months of the year 2019 for housing in amount of USD 36.184,25), (iv) and, as compensation for the breach of Employment Contract, USD 150.000 as value of the Employment contract for 2020 and USD 200.000 as value of the Employment contract for 2021; USD 50.000 for housing in 2020 and USD 50.000 for housing in 2021.

17. The Club argued in its reply that the Player did not have just cause to terminate the Employment Contract and disputed that there were any outstanding amounts owed to the Player. The Club argued that on the date of termination the salary for September 2019 was not due yet and the bonuses were paid to the Player in part, because he did not participate in both matches full time. The Club filed a counterclaim stating that the Player was entitled all together (salary and bonuses) to receive USD 54.727,73 but had actually received more – USD 62.917,71.

18. The Club requested the FIFA DRC to hold that the Player had breached the contract without just cause and shall pay to the Club a compensation in amount of EUR 5.000.000 and that sporting sanctions are applied to him.

19. On 10 December 2020, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

"1. The claim of the [Player] is partially accepted.

2. The counterclaim of the [Club] is rejected.

3. The [Club] has to pay to the [Player] the following amounts:

- USD 30,270 gross as outstanding remuneration plus 5% interest p.a. as from 27 October 2019 until the date of effective payment;

- USD 5,295 net as outstanding remuneration plus 5% interest p.a. as from 27 October 2019 until the date of effective payment;

- USD 359,902 gross as compensation for breach of contract without just cause.

4. Any further claims of the [Player] are rejected.

5. The [Player] is directed to immediately and directly inform the [Club] of the relevant bank account to which the latter must pay the due amount.

6. The [Club] shall provide evidence of payment of the due amount in accordance with this decision to ***psdfifa@fifa.org****, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).*

7. In the event that the amount due, plus interest as established above is not paid by the [Club] ***within 45 days,*** *as from the notification by the [Player] of the relevant bank details to the [Club], the following consequences shall arise:*

1. The [Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid (cf. art. 24bis of the Regulations on the Status and Transfer of players).

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".

20. On 28 January 2020, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- *"[…] [T]he DRC concluded that the evidence presented by the club is not enough to discharge the club's burden of proof and hence determine that it had paid the player's salary; as to the receipts filed by the club (both the original documents and their corresponding PDFs) allegedly signed by the player, the DRC found that the signature contained therein does not seem to match the player's signature found in the contract and in the power of attorney provided with his statement of claim.*

➢ *[T]he DRC concluded on the grounds of art. 9 and 12 par. 3 of the Procedural Rules that the club failed to meet its burden of proof and thus could not establish that it had paid any amounts to the player. Therefore, the DRC concluded that the player terminated the contract with just cause on the grounds of art. 14bis of the Regulations. The club is therefore responsible for the consequences.*

➢ *[T]he Chamber decided that the club is liable to pay to the player the amounts which were outstanding under the contract and supplementary agreement at the moment of the termination, i.e. USD 30,270 gross [as salary] and USD 5,295.43 net [for housing expenses for July – September (USD 3.181,81 x 3 minus USD 4.250,00 received by the Player on 25 September 2019 – clarification added by the Panel] plus interest at the rate of 5% p.a. on the outstanding amounts as from 27 October 2019 until the date of effective payment.*

➢ *[T]he Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake. The Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.*

➢ *[T]he Chamber concluded that the amount of USD 109.545,43 net (i.e. housing allowances from October 2019 until the end of season 2021) plus USD 377.270,00 (i.e. salaries from October 2019 until the end of season 2021) serve as the basis for the determination of the amount of compensation for breach of contract.*

➢ *[T]he player found employment with Sheriff and Portimonense. In accordance with the pertinent employment contracts, the player was entitled to approximately USD 176.000,00. This amount corresponds to (a) 7 months (i.e. February to August 2020) of salaries with Sheriff of USD 7.500,00 each, arriving at USD 52.500,00 plus (b) 15 months of salaries (i.e. October 2020 to December 2021) at Portimonense of EUR 7.000,00 each, arriving at EUR 105.000,00 which is approximately USD 123.500,00. Therefore, the Chamber concluded that the player mitigated his damages in the total amount of USD 176.000,00.*

➢ *[T]he Chamber turned its attention to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an additional compensation of three monthly salaries, subject to the early termination of the contract being due to overdue payables. In case of egregious circumstances, the additional compensation may be increased up to a maximum of six-monthly salaries, whereby the overall compensation may never exceed the rest value of the prematurely terminated contract. On the basis of the information on file, the Chamber deemed that the threshold of egregious circumstances is met in the matter at hand and therefore decided to award the player additional compensation corresponding to four monthly salaries, i.e. USD 36.360,00 gross and USD 12.727,24 net, in accordance with the above-mentioned provision.*

➢ *Consequently, to arrive at the final compensation due to the player, the Chamber proceeded to deduct from the net amounts of the residual value of the contract and additional compensation the mitigation described below. The DRC emphasized that this approach was necessary in the case at hand since neither of the parties filed evidence regarding tax implications.*

➢ *Accordingly, the net residual value of the contract (i.e. USD 109,545.43) plus the net additional compensation (i.e. USD 12,727.24) totals USD 122,272.67. From this amount, the DRC deducted exactly USD 122,272.67 (of a total USD 176,000 corresponding to the mitigation), arriving at a total of 0 (nil) as net compensation for breach of contract.*

➢ *The Chamber turned then to the gross residual value of the contract and gross additional compensation. The gross residual value of the contract (i.e. 377,270) plus the gross additional compensation (i.e. USD 36,360) totals USD 413,630. From this amount, the DRC deducted USD 53,727.33 (the remaining part of the mitigation of USD 176,000), arriving at a total of USD 359,902.67 as gross compensation for breach of contract".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 18 February 2021, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the 2020 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Club named the Player, Sheriff and FIFA as the Respondents. Mr. João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal was nominated by the Appellant as arbitrator.

22. On 25 February 2021, the Respondents jointly nominated Mr. Michele A.R. Bernasconi, Attorney-at-law, Zurich, Switzerland, as arbitrator.

23. On 26 February 2021, upon being invited by the CAS Court Office to express its position in this regard, FIFA emphasized that the dispute did not concern FIFA, that FIFA acted in its role as the competent deciding body of the first instance and was not a party to the dispute. FIFA also pointed out that the Appellant did not put any substantial request against FIFA and on the basis of the above it requested to be excluded from the procedure.

24. On 1 March 2021, in accordance with Article R51 CAS Code, the Club filed its Appeal Brief.

25. On 2 March 2021, the Club informed the CAS Court Office that it withdrew its appeal against FIFA.

26. On 26 March 2021, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Ms Anna Bordiugova, Attorney-at-Law, Kyiv, Ukraine, as President;
- Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal; and
- Mr Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland, as arbitrators.

27. On 8 April 2021, in accordance with Article R55 CAS Code, the Player and on 12 April 2021, CJSC SC Sheriff, filed their Answers.

28. Upon being invited to express their opinion in this respect, the Respondents informed that they preferred the case to be resolved based solely on the parties' written submissions, whereas the Appellant indicated its preference for a hearing to be held.

29. On 21 April 2021, on the basis of Article R44.3 CAS Code, the Parties were requested by the Panel to provide the CAS Court Office with the following:

The Appellant:

1. Exhibits 1, 2 and 18 to the Appeal Brief in good quality;

2. Translation of Exhibit 18 to the Appeal Brief into English (entire document);

3. Witness statement of Mr. Fan and a copy of the page of Mr. Fan's s passport containing his name and photo;

4. Mr. Zhao's confirmation that the content of his witness statement dated 2 December 2019 remains the same as submitted to FIFA and to this Panel and a copy of the page of Mr. Zhao's passport containing his name and photo;

5. Mr. Weixin's confirmation that the content of his witness statement dated 2 December 2019 remains the same as submitted to FIFA and to this Panel and a copy of the page of Mr. Weixin's passport containing his name and photo;

6. Witness statement of Mr. Yassir as well as a copy of the page of Mr. Yassir's passport containing his name and photo;

7. Clarification of the procedural status of Mr. Dong and his written statement together with a copy of the page of Mr. Dong's passport containing his name and photo;

8. Monthly pay sheets with details of which amounts were due (gross and net) and which were to be paid (net) to the Respondent for whole duration of the Employment Contract (i. e., February – October 2019), mentioning the amounts deducted as taxes.

The First Respondent:

His witness, Mr. Nimombe's confirmation that the content of his witness statement dated 30 March 2020 remains the same as submitted to FIFA and to this Panel. Furthermore, a copy of the page of Mr. Nimombe's passport containing his name and photo.

30. On 22 April 2021, the First Respondent provided the requested documents.

31. On 23 April 2021, the Parties were informed that the Panel has decided to hold a hearing.

32. On 30 April 2021, further to a request from the Panel on the basis of Article R57 CAS Code, FIFA provided the CAS Court Office with a copy of the complete case file related to the proceedings that resulted in the Appealed Decision.

33. On 3 May 2021, the Appellant partially provided the documents requested by the Panel.

34. On 19 May 2021, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by the Respondents on 20 May 2021, and by the Appellant on 21 May 2021.

35. On 15 June 2021, the First Respondent requested the Panel to admit Mr. Yi Li, former Appellant's General Manager as witness. This request was not admitted by the Panel because it was filed late without proving (a) any exceptional circumstances as well as (b) its relevance for the case resolution.

36. On 30 September 2021, a hearing was held via videoconference. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution and composition of the arbitral tribunal.

37. In addition to the Panel and Mr Antonio De Quesada, Head of Arbitration, the following persons attended the hearing:

a) For the Appellant - Mr João Filipe Lobão, counsel;

b) For the Player - Dr Joachim Rain, counsel;

c) For CJSC SC Sheriff - Dmitriy Dimitrashko, Senior lawyer with the Second Respondent; Ms Fedorina Larisa and Ms Gaidarji Marina, interpreters.

38. At the hearing the Parties had the opportunity to present their case, to submit their arguments and to answer the questions posed by the Panel. After the Parties' opening statements, Mr. Xiaodong Zhao, Mr.Yu Dong, Mr. Fan Bing and Mr Balikou Nimombe were heard as witnesses. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses.

39. Afterwards, the Parties submitted their closing statements. At the end of the hearing, the Parties confirmed that they had no objections as to the way in which the arbitration proceedings had been conducted, confirming that their right to be heard had been fully respected.

40. The Panel confirms that it carefully heard and considered in its decision all the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

41. The Club submitted the following in its Appeal Brief:

- Until the date of breach the Player was entitled to a gross amount of USD 45.450 as monthly salaries of USD 9.090 and a net amount of USD 5.884,88 as bonus for matches, counted according to the time spent by the Player on the field of play; monthly payment after tax deduction equals to USD 7.198,10.

- The Player breached the Code of Principles of the Club by involving himself into a relationship with a woman which led to criminal consequences; this problem affected the Player's performance. The Player attended only 8 training sessions out of 20 during August and September 2019. The Club opened a disciplinary procedure against the Player. The Player, nevertheless, was assisted by the Club financially and legally;

- In his default notice dated 23 September 2019 and termination letter dated 10 October 2019, the Player's counsel did not request any housing allowance for 2019 as being due, nor the housing allowance for 2020 and 2021 – therefore the Player did not consider having the right to request any payment foreseen by the Supplementary Agreement and had no other reason to breach the contract other than the allegedly unpaid salaries;

- The Player has never come to the Club complaining about his health treatment, he did not mention this alleged issue in his termination letter either;

- In accordance with the Supplementary Agreement housing subsidy was due at the end of the season and it was paid by the Club to all other players;

- From February until October 2019 the Player was paid the following amounts:

  - On 2019-04-03 the Club transferred to the Player no less than RMB 61.690 which equals to 9.527,88 USD Dollars (exhibit 13);

  - On 2019-04-26 the Club transferred to the Player no less than RMB 61.690 which equals to 9.527,88 USD Dollars (exhibit 14);

  - On 2019-05-17 the Club transferred to the Player no less than RMB 61.690 which equals to 9.527,88 USD Dollars (exhibit 15);

  - On 2019-06-17 the Club transferred to the Player no less than RMB 61.690 which equals to 9.527,88 USD Dollars (exhibit 16);

  - On 2019-06-20 the Club deposited to the Player no less than RMB 22.820 which equals to 3.524,49 USD Dollars (exhibit 17);

- On 2019-07-19 the Club deposited to the Player no less than RMB 61.690 which equals to 9.527,88 USD Dollars (exhibit 18), which makes USD 51.163,89 net.

- On 2019-09-12 the Club deposited to the Player RMB 11.420.

- On 2019-10-25 the Club deposited to the Player RMB 30.000.

- When the Player faced problem with blackmailing, he received from the Club six instalments equaling to 105.600 RMB (USD 16.309,68);

- From the above it is clear that the Player was paid his salaries for February – August 2019 in the amount of USD 7.198,10 each and USD 5.884,88, with another USD 11.201 he received for no contractual reason; therefore, keeping in mind all the above, the Player had no reason to terminate his Employment contract;

- The Player denies his own signature he put to confirm receipt of cash from the Club on numerous occasions; therefore, it is the Player who, having received all amounts due to him (USD 67.473,57) and even more, terminated the contract without just cause and has to pay compensation to the Club;

- In case the Panel considers that the Club breached the Contract – Article 17 of the FIFA Regulation on Status and Transfer of Players (the "FIFA RSTP") shall be applied strictly and the Club shall be ordered to pay to the Player not more than USD 359.902; from this amount Player's salary with Sheriff and other clubs shall be deducted.

42. On this basis, the Club submits the following prayers for relief [verbatim]:

1. *To cancel the decision made on 28 December 2020 and to order new decision confirming the Appellant does not carry liability of compensation to the Respondent but otherwise the Player is to be found to unlawfully breach the sport employment contract with the Club.*

2. *To to order new decision declaring the Appellant does not need to pay compensation of USD 395.467 plus 5% interest until the date of effective payment to the Respondent. This is due to such amount is unreasonably high and without any evidences and legal grounds;*

3. *To order new decision declaring that the Player is to be found to unlawfully breach the sport employment contract with the Club and therefore the Player shall be ordered to pay compensation to Nantong in the amount no less than USD 359,902 regarding the due salaries until the end of the sport employment contract according to Art. 17 of FIFA Regulations.*

4. *CJSC SC Sheriff shall be ordered to be jointly and severally liable for payment of compensation to the Appellant in the amount no less than USD 359,902 regarding the due salaries until the end of the sport employment contract according to Art. 17 of FIFA Regulations as well as sporting sanctions shall be imposed on the Player and CJSC SC Sheriff for the unlawful breach of contract within the protected period (Art. 17 n.3 of the FIFA Regulations);.*

5. *To order that any further claim of the Player and CJSC SC Sheriff is rejected.*

6. *The decision shall be executed in accordance with Art. 24 bis FIFA RSTP and shall already include a decision about the consequence of the Player and the CJSC SC Sheriff failure to pay the amount according to the request of relief no 3 and 4.*

7. *To order the Respondents to bear any costs incurred with the present procedure as well as the costs incurred with the procedure before the FIFA's Dispute Resolution Chamber.*

8. *To order the Respondents to pay the Appellant a contribution towards its legal costs in an amount to be determined at the discretion of the Panel.*

9. *The decision shall be executed in accordance with Art. 24 bis FIFA RSTP and shall already include a decision about the consequence of the Player and the CJSC SC Sheriff failure to pay the amount according to the request of relief no 2.*

10. *Nantong FC shall deemed to be not responsible for the breach and the decision shall settle on a final basis that the Club acted accordingly to the contract and complied with all its duties towards the Player during its term, and therefore, all the accusations made by the Player in its claim shall be dismissed.*

B. The Respondents

43. The Player submitted the following in his Answer:

- The Appealed Decision is well founded and shall stand – FIFA rightly concluded that the Appellant failed to comply with its burden of proof of having duly settled all overdue claims of the Respondent and to contest any of the allegations as put forward by the Player (mistreatment of the Player and failure to pay the amounts due to him as per Contract);

- The Appellant's submissions are inconsistent and the amounts of money mentioned therein as those allegedly due to the Player after tax deduction or allegedly paid are wrong;

- The housing allowance was due after each month – this is what was agreed by the Appellant and the Player and his agent while signing the Employment Contract. The assertion of the Appellant that such payment was due at the end of the season is against common sense and the wording of the Supplementary Agreement; housing allowance was not requested in the warning notice and termination letter because the representative of the Player did not have copies of any documents providing for it but drafted those documents based on the information received orally from the Player's agent;

- The Player was paid his salaries until May, since June he was not paid. Therefore at the date of termination, salaries for June, July and August were due; the only payment received by the Player after the salary for May is the amount of RMB 30.000 (which approximately amounts to USD 4.250), paid after contract termination on 25 October 2019;

- The Contract was terminated by the Player with just cause and in accordance with Article 14 bis 1 of the FIFA RSTP because three salaries were not paid and a notice with 15 days deadline was given;

- The circumstances of the Payer's private life, which led to him being blackmailed, are of no relevance for this dispute resolution and the FIFA DRC was right in not taking them into account while adjudicating the case. The Player has never asked and has never been provided with any financial means in order to "solve" the problem; the "letter of apology" is forged by the Appellant – the Player has never drafted or signed this document; this whole situation started being mentioned and used against the Player only after the Contract was terminated;

- The allegation of the Appellant that performance of the Player was affected by the situation with the alleged affair of the young woman blackmailing him is unfounded because he played two matches on 14 and 20 July 2019 full time and even scored a goal in one match at the time when allegedly the situation *"reached its peak"*;

- It is also untrue that the Player was not attending training sessions in August and September. In August the Player was downgraded to the B-team, after being replaced in the A-team by a Portuguese striker. Thereafter he has been excluded even from the B-team and was instructed to train alone; on 12 September 2019 the Player was injured and was not taken care of by the Club; for two training sessions the Player arrived indeed late, however because the Club failed to provide him any transportation as it was obliged to under the Contract; the Player often used taxi Uber or motor taxi, which sometimes was difficult to get on time;

- The testimonies of the witnesses offered by the Appellant are of no relevance, because they are Club's employees and are not objective, their alleged statements were drafted for them by the Club – none of them possesses adequate knowledge of English language to express themselves in the manner as their statements are drafted;

- If the Club was not in default it should have answered the default notice of the Player and the termination letter, instead it silently paid USD 4.250 on 25 October 2019 and invited the Player's agent for settlement negotiations on 15 October 2019 (although without success); only after the unsuccessful meeting on 15 October the notice dated 21 October 2019 was sent by the Club - in bad faith; after this notice the Club's president tried to arrange another meeting with the Player's agent, however the latter refused this proposal in view of the absence of any actual will of the Appellant to solve the dispute amicably;

- In view of the above, the FIFA DRC was right to conclude that the Player was left in egregious circumstances and awarded him additional compensation in accordance with Article 17.1 (ii) FIFA RSTP; in view of these circumstances (abusive behaviour of the Appellant), the Player could have also terminated his contract with just cause in accordance with Article 14.2 FIFA RSTP;

- Only salaries until May 2019 were paid and (presumably) bonuses were paid partially. The Player admits having received payments on 28 March 2019 in amount of RMB 10.000; on 3 and on 26 April, on 17 May and on 17 June in amount of RMB 61.690 each; on 20 June 2019 in amount of RMB 22.820 and on 25 October 2019 in amount of RMB 30.000;

- Obviously, non-payment of the salaries started simultaneously with the abusive behavior of the Appellant as soon as the Player was replaced with the Portuguese striker;

- The FIFA DRC was correct in all its calculations based on the information regarding the Player's employment at that time. However, the Player did not earn anything with Portimonense (USD 123.500), instead the Player concluded an employment contract with FK Keshla (Azerbaijan), in accordance with which he will earn USD 120.000 net, which is approximately the same amount as he was supposed to earn with Portimonense;

- Any counterclaim of the Appellant is unfounded; the liquidated damages clause inserted into the Player's employment contract indicating amount of Euro 5.000.000 is excessive and highly unilateral;

- The First Respondent objected to hearing of the Appellant's witnesses in view of unclarity on which facts exactly they are going to testify and because for some witnesses no written statements were provided what does not allow to examine the relevance of their expected testimony and make sure that witnesses are not abused to precise or substantiate or even amend facts that the Appellant failed to sufficiently substantiate and prove both in the proceedings in FIFA and in its Appeal Brief.

44. On this basis, the Player submits the following prayers for relief:

"1. The Appeal is rejected.

2. The decision of the FIFA Dispute Resolution Chamber [passed] on December 10, 2020 (Ref.Nr.19-02091) is upheld.

3. The Appellant shall bear the costs of the procedure including a contribution to the Respondent's No.1 legal fees of at least CHF 15.000, -".

45. CJSC SC Sheriff, the Second Respondent, submitted the following in its Answer:

- Acting in good faith, Sheriff concluded an employment contract with the Player on 1 February 2020. Sheriff was aware of the ongoing proceedings before the FIFA bodies, but decided to nevertheless conclude the agreement in view of the non-submission of any objections to the claim of the Player by Nantong and in view of the Player's signing an additional agreement with Sheriff where the Player undertook to take all responsibility for his premature termination of the Employment Contract with Nantong and assumed all financial risks that may raise from the FIFA proceedings;

- The provisional registration of the Player with Sheriff was approved by the FIFA Players' Status Committee;
- The employment relationship between the Player and Sheriff has been terminated on 1 September 2020 by mutual agreement of the parties;
- During the FIFA proceedings, Nantong committed a number of procedural violations and failed to object to the arguments as presented by the Player;
- Sheriff concluded its employment contract with the Player without committing any violation;
- The Player indeed had a just cause to terminate his contract with Nantong prematurely and unilaterally in view of non-payment of the remuneration due to him;
- Nantong did not bring anything new in these appeal proceedings that was not analyzed by FIFA DRC. Moreover, the Appeal Brief is full of inaccuracies and inconsistencies;
- New claims advanced by Nantong in its appeal are inadmissible – CAS cannot go beyond the scope of the previous litigation but is limited to the issues arising from the challenged decision.

46. On this basis, CJSC SC Sheriff submits the following prayers for relief:

"I. Terminate the proceedings as obviously unfounded and/or reject the Appeal;

II. Confirm the decision of the Dispute Resolution Chamber;

III. To make decision solely on the dispute between the Appellant and the Player (Respondent 1), without involving FC Sheriff (Respondent 2) in the dispute, as a result,

IV. Not to apply and exclude the solidarity responsibility of FC Sheriff and as a result, exclude any sanctions against FC Sheriff, releasing FC Sheriff from the obligation to bear any costs for arbitration.

V. To establish that the Appellant must bear and pay all costs for the arbitration".

V. JURISDICTION

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

"An appeal against a 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 him prior to the appeal, in accordance with the Statutes or regulations of that body".

48. The jurisdiction of CAS derives from Article 58(1) FIFA Statutes, as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*.

49. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

51. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

52. The appeal was filed on 18 February 2021, i.e. within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

53. It follows that the appeal is admissible.

VII. APPLICABLE LAW

54. Article R58 CAS Code provides as follows:

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

55. Article 57(2) FIFA Statutes provides the following:

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

56. In view of the above provisions, the Appellant submits that primary the FIFA regulations are applicable and additionally, Swiss Law. The Player and CJSC SC Sheriff did not put forward any comments regarding applicable law.

57. In view of the above, the Panel is satisfied that the regulations of FIFA are primarily applicable and, if necessary, subsidiary, Swiss law.

VIII. MERITS

A. The Main Issues

58. The main issues to be resolved by the Panel in this dispute are:

i. Did the Player have just cause to terminate the Employment Contract?

ii. What are the consequences thereof?

i. Did the Player have just cause to terminate the Employment Contract?

59. As starting point, the Panel understands that the Player claims to have terminated his Employment Contract with just cause for non-payment of his remuneration for July, August and September 2019 as well as non-payment of house allowance for February – September 2019 and part of bonuses for the matches he played. The Player also claimed that because the Club acquired a new Portuguese player at end of July 2019, the Player was sent to reserve team in the beginning of August 2019 without any valid reason. These two claims will be analysed below.

a) Non-payment of the remuneration

60. The Panel notes that the Club claims it had paid to the Player the amount of USD 67.473,57 – more than the Club was supposed to pay as salaries and bonuses, whereas the Player has acknowledged having received the following amounts only: of RMB 10.000 on 28 March 2019, salary for February – May in amount of RMB 61.690 net each on 3 April 2019, 26 April 2019, 17 May 2019 and 17 June 2019, and, after his Employment Contract termination, RMB 30.000 on 25 October 2019. He disputes to have ever received an amount of RMB 61.690 on 19 July 2019 as salary for June 2019 and amounts of RMB 11.420 on 12 September 2019 and of RMB 22.280 on 20 June 2019.

61. The Club further claims that beside bank transfers it had made to the Player, also, on the Player's request, when he faced problem with being blackmailed by the Chinese woman who he started dating in March 2019, the following amounts were given to him in cash on 30 September 2019: RMB 10.000; RMB 20.000; RMB 46.100; RMB 24.000, which the Player strongly denies having ever received.

62. The Club, therefore, argues that the Player had no just cause to terminate his Employment Contract with the Club, because he had been paid his salaries in full for February – June 2019 and RMB 105.000 in cash what is even more than he was supposed to receive according to the Employment Contract. The Club further claims that due to the story with the young woman who started blackmailing the Player, his sporting and mental condition drastically fell

and this was the reason because the Club had to hire a new player to replace the Player and to transfer the Player to the reserve team in the beginning of August 2019. The aim was that the Player may so regain his sporting shape and get rid of his mental distress.

63. On a separate note, the Panel would like to emphasise, that both Parties were very inconsistent with their submissions and calculations of the amounts gross and/or net allegedly paid or not paid to the Player and how and when they were paid to him, which inconsistency was complicated by conversion of RMB to USD. The Panel, therefore, for convenience, decided to proceed with calculation of all respective amounts in RMB because this has been the currency of the Employment Contract in which all payments were made to the Player.

64. Thus, the Panel observes that in accordance with the Employment Contract for the year 2019, the monthly remuneration due to the Player was RMB 81.200 (the Panel notes that there is a mathematical mistake in the Employment Contract, the gross annual amount of RMB 893.200 is divided into 11 instalments to be paid from February until December 2019 and wrong monthly gross amount is inserted into the contract, namely RMB 82.100 instead of RMB 81.200).

65. The Panel further notes that the alleged non-payment of remuneration for July – September 2019 prompted the Player to send the Default Notice to the Club on 23 September 2019, where via his counsel he requested to be paid the amount of USD 23.800 (two monthly salaries and bonuses) within 8 October 2019. The Player alerted the Club that in case no payment was made he would have terminated the Employment Contract and applied to FIFA to claim compensation for termination of the Employment Contract without just cause. This Default Notice has never been answered by the Club.

66. On 10 October 2019, the Player, having received no remuneration and no response from the Club, terminated his Employment Contract.

67. On 21 October 2019, when the Contract was already terminated by the Player, the Club sent an official letter to the Player, requesting him to appear for the training sessions which he allegedly missed as of 10 September 2019. The Player, in his turn, claims that as of 12 September 2019 he was injured and provided screenshots with the messages and photos he has allegedly sent to the Club's doctor, Mr. Brad, informing him that he was injured. On those screenshots, beside pictures with an injured Player's leg, there are also logs of unanswered calls – it appears the Player was trying to contact the team doctor, however with no success. The Club did not rebut the allegation of the Player regarding his injury in any way.

68. On demand of the Panel the Club had provided the tax declaration for the amounts paid to the Player during his employment, from which the Panel understands that from the amount of RMB 81.200 gross the taxes in amount of RMB 19.510 were deducted, resulting in the amount of RMB 61.690 net being paid to the Player monthly via bank transfer. According to this tax declaration the amount of RMB 61.690 was paid to the Player four times, last tax return period was July 2019.

69. The Panel, however, further notes, that in this tax declaration an amount of RMB 37.490 is mentioned as tax return for the month of June 2019, when two bank transfers were, as the Panel understands, made to the Player – on 17 and 20 June, in amounts of RMB 61.690 and RMB 22.280 respectively. The Club and the tax expert, Mr. Dong, called by the Club to testify, did not explain why bigger tax amount was deducted in June and what were those original amounts paid to the Player based on which the tax was calculated and deducted. As the Panel understands, it is because two transfers were made to the Player, on 17 and 20 June 2019, leading to deduction of bigger amount as tax due to the application of progressive tax rate in China.

70. Further, the Panel notes, that the Club had submitted confirmations, containing bank details of the Player on what appears to be bank receipts, like the one dated 25 October 2019 for the amount of RMB 30.000, which the Player does not dispute to have received, namely bank confirmations for the amounts of RMB 11.420 transferred on 12 September 2019 and of RMB 22.280 transferred on 20 June 2019. The Panel cannot but accept these amounts as paid to the Player because beside just refusal of not having received them, the Player did not submit any proof thereof, like, for example, his bank account extract. Therefore, the Panel cannot accept mere denial of the Player whereas the Club had provided documents on the bank templates, showing these amounts as paid.

71. Further, with regard to the alleged payment of the salary for June 2019, the Panel is not satisfied that this amount has been paid because the Club failed to provide a valid confirmation thereof. In particular, the Panel does not consider to be reliable and satisfactory evidence the document submitted by the Club as exhibit 18 to its Appeal Brief, allegedly confirming this payment. This document is not translated, visibly differs from the same as submitted to FIFA and does not appear to be an official document – there is no letterhead, which would make it possible to clarify who is the author of this document and which round seals, beside the club's ones, are contained on it.

72. With regards to the disputed cash payments, the Panel is also not satisfied that the evidence produced confirms that such cash payments have been made. In the absence of any documentary evidence as well as of any other mean of proof that these amounts were indeed paid to the Player, the Panel cannot accept these amounts as having been made to the Player. Also the document submitted by the Club as exhibit 19 to the Appeal Brief does not convince the Panel that the alleged cash payments have been made: such document is handwritten, is neither translated into English, nor bears any sign of it being an official document, nor can be considered as a convincing proof of payment. This conclusion remains notwithstanding the fact that the document allegedly has been signed by the Player. Indeed, a simple comparison of the Player's signature on this document with the one contained on the Employment Contract, Supplementary Agreement and Power of Attorney shows that the signature on the document exhibit 19 differs from those signatures of the Player.

73. The Panel further wonders why the Club would have made these cash payments to the Player allegedly on his request because he was blackmailed and had to pay to the woman only on 30 September 2019, when such young woman, who allegedly blackmailed the Player, was already detained by the police as of 7 August 2019 and arrested on 11 September 2019. The Panel is

therefore not satisfied that the Club has met the burden of proving having executed all payments that the Club argues it has made to the Player.

74. Therefore, after due consideration of all evidence available and in view of all the mentioned above, the Panel accepts that during his employment in the Club, the Player has received the following amounts:

Date of payment	**Amount gross RMB**	**Tax deducted**	**Amounts paid (net RMB)**	**Amounts due (net RMB)**
28 March 2019			10.000	61.690 (for February on 15 March)
3 April 2019	81.200	19.510	61.690	61.690 (for March on 15 April)
26 April 2019	81.200	19.510	61.690	61.690 (for April on 15 March)
17 May 2019	81.200	19.510	61.690	61.690 (for May on 15 June)
17 June 2019	81.200	19.510	61.690	61.690 (for June on 15 July)
20 June 2019			22.820	61.690 (for July on 15 August)
12 September 2019			11.420	61.690 (for August on 15 September)
10 October 2019			291.000	431.830
25 October 2019			30.000	
		Total	**321.000**	**431.830**

75. Thus, the Panel concludes that on the day of the Employment Contract termination, i.e. on 10 October 2019, an amount of RMB 431.830 net was originally due to the Player, whereas the Club had actually paid RMB 291.000 net. The debt of the Club for salaries on the day of the Employment Contract termination amounted therefore to RMB 140.830 net, which equals to approx. 2,3 monthly salaries of the Player (RMB 61.690 x 2.2828). Therefore, in accordance with Article 9 para 4(2) of the Player's Employment Contract, he had just cause to terminate his employment relationship with the Club.

b) Non-payment of house allowance

76. With regards to the non-payment of the house allowance, the Panel observes that the Supplementary Agreement to the Employment Contract, quoted in para. 6, does not stipulate the date of the payment and that the Appellant claims the house allowance was due to be paid only at the end of the season.

77. Here the Panel refers to Article 75 of the Swiss Code of Obligations in accordance with which *"Where no time of performance is stated in the contract or evident from the nature of the legal*

relationship, the obligation may be discharged or called in immediately" - in the opinion of the Panel, it is evident from the nature of the legal relationship in this case that a respective payment shall be made on monthly basis – either in the beginning of the month or in the end of the month, because the rent payment was due from the Player each month. In view of the Panel, the evidence submitted by the Parties does not allow any other interpretation of the Supplementary Agreement.

78. Further, the Panel notes that the Appellant did not put forward any plausible argument with regards to its impossibility to pay to the Player house allowance on a monthly basis. The Appellant also did not offer any proof to demonstrate, as it claimed in its Appeal Brief and during the hearing, that it is its usual practice to pay house allowance to its players at the end of the season. The Club did not provide therefore any satisfactory evidence to support its claim, even though it could have done so.

79. Therefore, the Panel concludes that on the date of the Employment Contract termination, i.e. on 10 October 2019, house allowance in accordance with the Supplementary Agreement for eight months (February – September 2019) was also due to the Player.

c) Transfer to reserve team

80. The Panel further notes that it is not disputed between the Parties that sometime at the beginning of August 2019 the Player was transferred to the reserve team of the Club. In view of the absence of the Player at the hearing, the Panel was not in position to ask any questions to the Player in connection with such internal "transfer" of his. The Panel must therefore base its decision on the other evidence submitted by the Parties.

81. Regarding the transfer of the Player to the reserve team, the Panel observes that in accordance with Article 3 of the Employment Contract, the Club had the right to transfer the Player to the reserve team: *"The [Club] shall have the right to adjust the [Player's] work position between the first team and the reserve team according to its needs and the [Player's] ability, performance and status. If the [Player] is adjusted to the reserve team, the salary will be switched to the standard of reserve team".*

82. However, the Club did not provide the Panel with any document or witness statement which would have indicated when the Player was actually transferred to the reserve team, what were the real reasons for this and, consequently, from when his salary was allegedly reduced (if it was at all). Nevertheless, even under this scenario, the Club had no right not to pay the Player at all, as it did.

83. As to the reason for transferring the Player to the reserve team, the Panel is not satisfied that the Club has met the burden of proving that the transfer had been de facto caused by the alleged blackmailing matter of the Player with a young woman. In particular, the statements made by the witnesses offered by the Club do not convince the Panel that the transfer in the reserve team had been caused by the circumstances adduced by the Club.

84. In fact, as it is evident from the file, the Player got to know the woman in February 2019 and started dating her in early April 2019. In July 2019 their relationship was ended and on 6 August 2019 the Player reported the woman to the police and she was arrested.

85. Most importantly, the Panel notes that it is not disputed by the Parties, that the Player was fielded for A team matches on 14 and 20 July 2019, where he played for 90 minutes in each match and even scored one goal: these facts disprove any allegation regarding the lack of fitness and a poor mental condition of the Player, allegedly caused by the blackmailing through the above-mentioned young woman.

86. Based on the above, the Panel concludes that the Club had no valid reason to transfer the Player to reserve team, even if such possibility was directly foreseen by his Employment Contract.

87. With regard to the prohibition to train with the team, the Panel concurs with the panel in CAS 2013/A/3091, 3092 & 3093, who outlined that *"among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches"* (CAS 2013/A/3091, 3092 & 3093, para 228) [emphasis added by the Panel].

88. Accordingly, not only the total debt of the Club towards the Player on 10 October 2019 was RMB 140.830 net (more than two monthly salaries), at least half of the bonuses were due in amount of USD 3.800 gross, house allowance instalments were not paid for eight months at all, but the Player was also not allowed to perform his professional duty as a player – to participate into the training sessions and matches of A team, without any compelling reason.

89. At the hearing the Club and its witness, Mr. Zhao, the assistant coach, did not deny having hired a new Portuguese striker and confirmed that there is indeed a limit on foreign players in China. Therefore, it cannot be excluded that the Club, as a matter of own convenience, after having hired a new striker, because the Player was out of quota for foreign players to be registered with the Club (three maximum) and/or to be fielded (maximum two) decided to push the Player to terminate his contract by not paying him and by transferring him to reserve team as soon as it hired new striker (in accordance with publicly available information new player was transferred on 31 July 2019).

90. In any event, whether or not the hiring of the new Portuguese player had been the reason for the behaviour of the Club is an issue that can be left open by the Panel. Legally relevant for the purposes of the present appeal proceedings is that the Club had stopped paying to the Player any remuneration and other amounts due – bonuses and house allowance instalments. Additionally, the Club was not able to prove that the transfer of the Player in the reserve team had been made for valid reasons.

91. Therefore, the Panel concludes, based on all the above, that the Club did not prove that it had paid to the Player all the amounts which fall due before 23 September 2019 and that it

had any valid reason not to pay to the Player those amounts as foreseen by his Employment Contract.

d) Legal framework

92. The Panel notes that Article 14 FIFA RSTP determines as follows:

> *"1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
>
> *2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".*

93. Given the fact that the Player terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Player.

94. The Panel considers that the FIFA Commentary provides general guidance as to when an employment contract is terminated with just cause in the context of Article 14 FIFA RSTP:

> *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".*

95. In this regard, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following:

> *"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". 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 mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies*

> *termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)"* (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

96. The Panel fully adheres to such legal considerations, which have been followed also in recent CAS jurisprudence (cf. e.g. CAS 2016/A/4846, para. 175 of the abstract published on the CAS website). The question that need to be answered is therefore whether or not in good faith the Player could be reasonably expected to continue the employment relationship with the Club.

97. As argued by the Player in his Answer to the Appeal Brief, according to Article 14.1 bis of the FIFA RSTP, in the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, a player is deemed *"to have a just cause to terminate his contract"*. Article 14.1 bis of the FIFA RSTP provides as follows:

> *"In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered".*

98. The Panel finds that the Player's situation meets the requirements of Article 14.1 bis FIFA RSTP, taking also in consideration that the Player had sent a reminder to the Club. In addition, as determined above, there is room to consider the behaviour of the Club to be abusive in the meaning of Article 14.2 FIFA RSTP. The Club, by all its actions and in particular by not replying to the Default Notice, demonstrated its lack of interest in the Player and his services.

99. Under such circumstances, the Panel does not have any doubt that the Player had just cause to terminate the Employment Contract on 23 October 2019. The Player's confidence in the Club was legitimately lost to such an extent that he could no longer in good faith be expected to continue the employment relationship on 23 October 2019.

100. Consequently, the Panel finds that the Player had just cause to terminate the Employment Contract on 10 October 2019.

ii. What are the consequences thereof?

a) Overdue payables

101. As set out above, the total debt of the Club for salaries towards the Player at the moment of termination was RMB 110.830, which shall be paid to the Player by the Club. The Player in his termination notice requested the Club to be paid by 26 October 2019. Therefore, this amount in RMB shall be converted to USD with the rate applicable on 26 October 2019, i. e. 1 USD = 7,0656 RMB. It amounts to USD 15.685,85 net.

102. In his claim to FIFA, the Player requested to be awarded interest of 5% p.a. on this amount as of 27 October 2019 until the date of effective payment. Upon due consideration of the evidence submitted and considering also that the Appellant did not advance any valid objection regarding the award of interest by the Appealed Decision, the Panel is satisfied that interest is due as determined in the Appealed Decision.

b) Housing allowance

103. Regarding the housing allowance, the Panel notes that in accordance with the Supplementary Agreement to the Employment Contract the Player was supposed to be paid USD 37.500 net for the year 2019 (from February to December, 11 months). Therefore, the monthly net amount which should have been paid to the Player by the Club is USD 37.500/11 = USD 3.409,09 net.

104. By the Appealed Decision the Player was awarded the payment for housing for the months of July – September 2019 in amount of USD 9.545,43 net and further granted with additional amount equal to four monthly house allowance instalments namely USD 12.727,24 net in view of egregious circumstances, thus totalling to seven monthly instalments. However, the Panel understands, that the Player requested to be paid for eight months, i.e. February – September 2019.

105. The Panel further notes that because the respective calculation, offered by the Player, was based on wrong premise that the amount due for the season 2019 was USD 35.000 net and not USD 37.500 net, the respective awarded amount was lower, namely based on monthly instalment of USD 3.181,81 net per month.

106. Since the Player did not appeal the FIFA DRC decision, the Panel can only confirm the Appealed Decision in this part, awarding the Player remuneration for house allowance for seven months in amount of USD 3.181,81 net x 7 = USD 22.272,67 net.

107. The Panel, however, does not agree with the Appealed Decision in part of awarding the Player housing expenses for the years 2020 and 2021 in amount of USD 50.000 each. Those expenses would be due if the Contract would have not been terminated as a contractual benefit, which does not belong to the expected earnings of the Player. Further, it is clearly stated in the Supplementary Agreement that the allowance will not be due if the

Employment Contract is terminated for whatever reason. Therefore, in this part the Appealed Decision shall be set aside.

c) Bonuses

108. The Panel initially observes that in accordance with the Employment Contract of the Player:

"In an official match that the [Player] plays in the Chinese Football Association China League (CFACL) or the Chinese FA Cup of 2019 season, the amount of the winning or draw bonus will be issued in accordance with the uniform standard of the [Club's] team, i.e., the winning bonus is RMB 20,400/per game (Capitalized: twenty thousand and four hundred, which is approximately equal to 3,000 US dollars), pre-tax, and the draw bonus is RMB 5440/per game (Capitalized" five thousand four hundred and forty, which is approximately equal to 800 US dollars), pre-tax.

[…]

The above-mentioned prizes of the [Player] are only awarded for playing the full 90 minutes of each game. If the [Player] has not played for 90 minutes of each game, the prize amount shall be calculated based on the actual playing time of the [Player]".

109. In this regard, the Panel observes that it was not disputed by the Parties that the Player, during his employment with the Club, took part in the following 12 matches, listed below with the respective number of minutes spent on the field of play:

Date of the Match	**Time played**	**Amount due, gross, proportionally to the number of minutes played, RMB**
10 March 2019	90 min	20.400
16 March 2019	90 min	20.400
30 March 2019	90 min	20.400
6 April 2019	71 min	16.093
20 April 2019	90 min	20.400
4 May 2019	90 min	20.400
11 May 2019	90 min	20.400
18 May 2019	90 min	20.400
25 May 2019	76 min	17.226,66
1 June 2019	90 min	20.400
14 July 2019	90 min	20.400
20 July 2019	90 min	20.400

110. The Panel further notes that in his claim to FIFA the Player requested to be paid bonuses in amount of USD 3.000 gross for wins in two matches (he claimed to have been paid half of the bonus for each of these two matches); and USD 800 gross for two draws. Therefore, the Panel understands that all other bonuses were paid to the Player.

111. The Panel observes that the FIFA DRC in the Appealed Decision, which the Player did not appeal, did not award to the Player any of the requested amounts of bonuses. Therefore, in this part the Panel can only confirm the Appealed Decision and confirm that no payment of bonuses is due to the Player.

d) Compensation for breach of the Employment Contract

112. The remaining issue to be considered by the Panel is the Player's request for compensation of damages caused by the Club's breach of his Employment Contract.

113. Although it has been established that the Player had just cause to terminate the Employment Contract, Article 14 FIFA RSTP does not specifically determine that a player is entitled to any compensation for breach of contract by the club in such scenario.

114. The Panel, however, is satisfied that the Player is in principle entitled to compensation because of the Club's breach of its contractual obligations under the Employment Contract. In this respect, the Panel refers to the FIFA Commentary to RSTP. According to Article 14(5) and (6) FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*.

115. Hence, although it was the Player who terminated the Employment Contract, the Club behaviour was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the Player because of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2012/A/3033, para. 72 of the abstract published on the CAS website).

116. The Panel observes that Article 17.1 FIFA RSTP provides as follows:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. 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. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

117. The Parties to these proceedings did not deviate from the application of Article 17.1 FIFA RSTP. By means of the liquidated damages clause, namely Article 10 of the Employment Contract, the Parties agreed as follows:

> *In case that the [Club] cancels the Contract as the [Club's] breach of the contract or agrees an invalid contract with the [Player] due to the [Club's] due to the [Club's] mistake, the [Club] shall compensate*

the [Player] for economic loss incurred to the [Player], based on damage [emphasis added by the Panel].

118. Therefore, in principle, the Panel understands that the compensation for breach of the Employment Contract to be paid to the Player by the Club shall be determined in accordance with Article 17.1 FIFA RSTP.

119. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17.1 FIFA RSTP is basically to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519 - 1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in CAS 2008/A/1568, para. 6.37).

120. In respect of the calculation of compensation in accordance with Article 17.1 FIFA RSTP and the application of the principle of "positive interest", the Panel follows the framework set out by a previous CAS panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see STREIFF/VON KAENEL, Arbeitsvertrag, Art. 337d N 6, and STAEHELIN, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also WYLER, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third*

party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations" (CAS 2008/A/1519-1520, para. 85 *et seq.* of the abstract published on the CAS website).

121. The Panel finds that the legal framework set out above and the principle of positive interest, also reflected in the Article 10 of the Player's Employment Contract, are applicable to the present case. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

122. Thus, the Employment Contract was terminated on 10 October 2019 and set to expire on 31 December 2021. The Panel observes that the Player's Employment Contract with the Club refers to gross amounts, however both his subsequent contracts refer to net amounts. In this regard, the Panel decided to base its calculations on the net amounts as if they would have been received by the Player if the Employment Contract was not terminated.

123. In this regard at the hearing the Panel was informed by the tax specialist, called by the Appellant, Mr. Yu Dong, as follows: in 2019 the net amount received by the Player on monthly basis was RMB 61.690. The remaining salary would be RMB 61.690 x 3 = 185.070 net (salary for October – December 2019); for the year 2020 the net amount that would have been received by the Player on monthly basis would have amounted to RMB 83.037,30, amounting to annual net income of RMB 996.447,60 net; whereas for the year 2021 the net amount that would have been received by the Player on monthly basis would have amounted to RMB 113.662,50, amounting to annual net income of RMB 1.363.950 net.

124. Therefore, for the years 2019, 2020 and 2021 the Player would have been paid net amount of RMB 185.070 + 113.662,50 + RMB 1.363.950 = RMB 2.545.467,60 net.

125. Accordingly, this amount should in principle be awarded to the Player as compensation for breach of contract, as this is the salary he would have been entitled to should the Club not have breached the Employment Contract. Converted into USD according to the rate on 26 October 2019 (the date by which the Player requested to be paid this compensation), i.e. 7,0656, this amount in RMB would be equal to USD 360.262,058 net.

126. However, as argued by the Club, the Panel notes that it is not in dispute between the Parties that the Player found two new employments before the expiry of the Player's Employment Contract with the Club, namely with the Moldovan football club CJSC SC Sheriff and Azerbaijani FC Keshla. The Panel finds that the Player thereby mitigated his damages and that these earnings should be deducted from the amount of compensation mentioned above. The Appealed Decision deducted from the amount of remaining salaries the amount of the mitigated damages. However, the information and evidence before this Panel is not exactly the same as the one that was before the FIFA DRC.

127. Accordingly, the Panel wishes to add that it by no means finds that the FIFA DRC was mistaken in its assessment, because the FIFA DRC could simply not have known that the

Player would mitigate his damages more at the moment of issuing the Appealed Decision, when it was informed only about the Player's contract with Sheriff and FC Portimonense (which has never actually entered into force) – this is how things stood at that moment. However, the filing of new evidence in the present appeal arbitration proceedings before CAS and its consideration by the Panel, is in keeping with the *de novo* power of review of CAS as set out in Article R57 CAS Code. In addition, the Panel is satisfied that there are no reasons to exclude such evidence, in view of the timing of the events and the circumstances of this case.

128. Based on the information provided by the Player, the Panel is satisfied that the Player's income until 31 December 2021, i. e. until the end of the Employment Contract with the Appellant, would have amounted to USD 172.500 net. The Panel finds that USD 172.500 net is therefore to be deducted from the compensation otherwise due to the Player.

129. Consequently, the Panel finds that the Club shall in principle pay compensation for breach of contract to the Player in an amount of USD 187.762,05 net (USD 360.262,058 - USD 172.500).

e) Egregious circumstances

130. The Panel further observes that in accordance with the Appealed Decision the Player was awarded an additional compensation corresponding to four monthly salaries, i.e. USD 36.360 gross in accordance with Article 17 par.1(ii) of the FIFA RSTP. Awarding of this compensation was not specifically disputed by the Appellant in its Appeal Brief, and the Panel has no reasons not to award it, however, for the reasons explained in para 63 above, the Panel re-calculates this amount. Thus, this amount in RMB net would equal to RMB 61.690 x 4 = RMB 246.760. Being converted to USD in accordance with the rate on 26 October 2019, this amount would be equal to USD 34.924,14 net.

f) Total amount

131. Therefore, the amount to be paid to the Player as compensation for the premature termination of his Employment Contract without just cause is USD 187.762,05 net plus USD 34.924,14 net = USD 222.686,19 net.

132. The application of interest at a rate of 5% *p.a.* as from 27 October 2019 until the effective date of payment is confirmed by the Panel.

B. Conclusion

133. Based on the foregoing, the Panel finds that:

i) The Player had just cause to terminate the Employment Contract on 10 October 2019;

ii) The Club shall pay to the Player USD 37.958,52 net as outstanding remuneration and housing allowance for seven months of the season 2019 plus interest 5% p.a. as of 27 October 2019;

iii) The Club shall pay to the Player an amount of USD 222.686,19 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 27 October 2019 until the effective date of payment.

134. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other and further motions or prayers for relief of the Parties are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 18 February 2021 by Nantong Zhiyun Football Club against the decision issued on 10 December 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 10 December 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed, save for paragraph 3 of the operative part, which shall be amended as follows:

   "3. Nantong Zhiyun Football Club has to pay to Mr Anatole Bertrand Abang USD *260.644,71 net plus 5% interest p.a. as from 27 October 2019 until the date of effective payment".*

3. (…).

4. (…).

5. (…).

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