



Arbitration CAS 2012/A/2910 Club Eskisehirspor v. Kris Boyd, award of 23 April 2013

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Efraim Barak (Israel); Mr Alasdair Bell (United Kingdom)

Football

Termination of an employment contract with just cause by the player

Scope of Article 17 FIFA RSTP

Calculation of the compensation for damages according to Article 17 FIFA RSTP

1. **In cases of breach of contract, compensation is, as a general rule, always payable to the injured party by the party responsible for the breach. Article 17 para. 1. of the FIFA Regulations on the Status and Transfer of Players (RSTP) provides for general guidelines for the calculation of possible compensation in the case of termination of employment contracts. Therefore, despite the wording of its heading “*Consequences of terminating a contract without just cause*”, according to CAS jurisprudence and to legal literature, the guidelines of Article 17 may apply not only in cases of termination of a contract *without just cause* but more generally in the case of any termination of a contract where a *breach of contract* has occurred.**
2. **By its wording, Article 17 RSTP provides for the primacy of a contractual agreement regarding the calculation mode for compensation for breach of contract. Therefore, the various criteria listed in Article 17 para. 1 RSTP regarding calculation of compensation apply only subsidiarily. In this respect, where the contractual agreement provides for a determinable amount of compensation payable by the party responsible for the breach to the injured party, which corresponds to the remaining value of the contract, this amount must be applied. The contractual agreement may also provide the absence of deduction of any of the amounts that the injured party has earned, after termination of the contract, with his new employer.**

I. PARTIES

1. The Appellant, club Eskisehirspor (“Club”), is a professional football club located in Eskişehir, Turkey.
2. The Respondent, Kris Boyd (“Player”), is a professional football player and citizen of Scotland.

II. FACTUAL BACKGROUND

3. On July 8, 2011, the Player entered into an employment contract with the Club pursuant to which he undertook to render his professional services to the Club from July 8, 2011 until May 31, 2014 (“Contract”).
4. According to Article V. of the Contract, the Club undertook to pay the Player
 - EUR 1,25 Mio for the season 2011/12, payable in an advance annual payment of EUR 450,000 on July 8, 2011, and ten monthly instalments of EUR 80’000 due on the 30th of every month from August 2011 to May 2012, respectively on February 29, 2012;
 - EUR 1 Mio for the season 2012/13, payable in an advance annual payment of EUR 200,000 on August 1, 2012, and ten monthly instalments of EUR 80’000 due on the 30th of every month from August 2012 to May 2013, respectively on February 28, 2013;
 - EUR 1 Mio for the season 2013/14, payable in an advance annual payment of EUR 200,000 on August 1, 2013, and ten monthly instalments of EUR 80’000 due on the 30th of every month from August 2013 to May 2014, respectively on February 28, 2014;
 - Various performance related bonuses.
5. Article VI., para. i), of the Contract stipulates the following:

“In the event of non-payment of salaries and/or advance annual payments and/or any other monetary or beneficiary obligation of the club to the player exceeds the total amount of 3 (three) monthly salary amounts (i.e. total 240,000 Euros), the player shall have the exclusive right to unilaterally terminate the contract with just cause, within 15 days following the receipt of notification to be made by the player to the club through public notary, without the need of any court verdict prior to this termination.

In that case the club shall immediately pay the player all the monetary obligations, advance annual payments and/or salaries pending at the date of termination and until 31st of May 2014 as the compensation of causing player’s termination with just cause”.
6. Upon conclusion of the Contract, the Club paid to the Player the amount of EUR 450,000, i.e. the advance annual payment for 2011.
7. Thereafter, the Club omitted to pay the Player the monthly instalments of EUR 80,000 that had become due on August 30, September 30 and October 30, 2011.
8. On November 24, 2011, the Player notified the Club via public notary, requiring the payment of the three outstanding monthly instalments of EUR 240,000 in total within 15 days. Moreover, the notice stated that in the event of failure to comply with this request, the Player reserved his right to terminate the Contract and seek payment of all monetary obligations pending at the date of termination until the end of the Contract, i.e. May 31, 2014.

9. As the required payments were not made by the Club within the given deadline, the Player unilaterally terminated the Contract on December 16, 2011, by means of a letter by his legal representative.
10. On January 30, 2012, the Player signed a new employment contract with the Major League Soccer club Portland Timbers, starting retroactively as of January 1, 2012, until December 31, 2013.
11. According to the Player's employment contract with Portland Timbers, he earned the amount of USD 1,25 Mio. per year of contract plus several performance related bonuses, all gross of taxes.
12. In the beginning of 2013, the Player and Portland Timbers mutually agreed on the termination of their employment relationship. Thereafter, the player joined the Scottish club Kilmarnock FC.

III. PROCEDURAL BACKGROUND

13. The Player lodged a claim against the Club before FIFA's Dispute Resolution Chamber ("DRC") on January 12, 2012, recorded by FIFA on January 17, 2012, claiming, *inter alia*, for an amount of EUR 2,800,000 as compensation following his termination of the employment contract with just cause.
14. The Club did not submit a reply to the Player's claim before the DRC, in spite of having been invited by FIFA to do so.
15. On April 26, 2012, the DRC partially accepted the claim of the Player ("Decision") and ordered the Club to pay to the Player:
 - the amount of EUR 320'000 as outstanding remuneration as well as interest of 5% *per annum* on EUR 80'000 as of August 31, October 1, October 31 and December 1, 2011, and
 - EUR 2'480'000 as compensation for breach of contract as well as interest of 5% *per annum* as of 30 days from notification of the decision.
16. The grounds of the Decision were notified to the Parties on August 9, 2012.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. The Club appealed the Decision to the Court of Arbitration for Sport ("CAS") by a Statement of Appeal dated August 29, 2012, and filed its Appeal Brief on September 10, 2012.
18. On September 28, 2012, the Player received from the Club the amount of EUR 320'000 into his bank account.

19. Despite the Appellant's proposal, the Parties could not agree to a Panel composed by a Sole Arbitrator. Therefore, the Appellant appointed Mr. Efraim Barak as arbitrator, and the Respondent appointed Mr. Alasdair Bell as arbitrator. In a letter dated October 23, 2012, the CAS advised the Parties that the President of the CAS Appeals Arbitration Division had nominated Mr. Hendrik Willem Kesler as President of the Panel.
20. The Respondent filed his answer on October 29, 2012.
21. By letter of November 20, 2012, the CAS informed the Parties that a hearing would be held in Lausanne, on February 28, 2013.
22. At such hearing, the Appellant was represented by Mr. Koray Akalp, assisted by Mrs. Didem Sunna, and the Respondent was represented by Mr. Christopher Stoner QC.

V. JURISDICTION, APPLICABLE LAW AND ADMISSIBILITY

A. Jurisdiction

23. Article R47, para. 1, of the Code of Sports-related Arbitration ("Code") provides as follows:
"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the player has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".
24. Article 67, para. 1, of the FIFA Statutes provides that:
"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".
25. Moreover, Article 24 *in fine* of the FIFA Regulations on the Status and Transfer of Players ("RSTP") provides that:
"Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".
26. Neither of the Parties challenged the jurisdiction of the CAS, and both the Appellant and the Respondent signed the Order of Procedure, thereby recognizing that by *"signing the present order, the parties confirm that they agree that the CAS has jurisdiction to adjudicate the present case, including concerning its own jurisdiction"*.
27. Accordingly, the jurisdiction of the CAS over this Appeal is clear and undisputed.

B. Applicable law

28. In keeping with Article 176 of the Swiss Private International Law Act (“PILact”), Chapter 12 of the PILact governs this arbitration as the *lex arbitri*. With respect to the applicable law, Article 187, para. 1, of the PILact provides that:

“The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected”.

29. Furthermore, Article R58 of the Code, to which the Parties submitted by agreeing to arbitrate in front of the CAS, provides as follows:

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

30. Determining – in application of the above provisions – which regulations and law the parties chose to govern their dispute, the Panel first of all notes that the Parties have not, in the Contract, made any choice of applicable law.

31. In view of such lack of a contractual choice of law, reference is to be made to the arbitration clause in the FIFA Statutes, which does contain a choice of law clause in Article 66, para. 2, stipulating that when an appeal to CAS is made,

“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”.

32. In view of the foregoing, the Panel finds that the Parties chose that their dispute in front of the CAS would be governed by the FIFA Regulations and, to the extent the FIFA Regulations need interpreting or completing in any manner, by Swiss law.

C. Admissibility

33. 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”.

34. Moreover, Article 67, para. 1, of the FIFA Statutes provides that

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

35. The Decision is dated April 26, 2012, and its grounds were received by the Appellant on August 9, 2012. The Club filed its Statement of Appeal on August 29, 2012, which is within the deadline established under Article R49 of the Code. The appeal is therefore admissible.

VI. SUBMISSIONS OF THE PARTIES

36. The summary below refers to the substance of the Parties' allegations and arguments without listing them exhaustively in detail. In its discussion of the case and its findings under Section VII. of this Award, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments and evidence on record, regardless of whether they are referred to expressly or not.

A. The Club's Appeal

37. The Appellant submits the following requests for relief with the Statement of Appeal:

- i) to accept the present appeal against the challenged decision;*
- ii) to set aside the challenged decision;*
- iii) to establish that the remuneration received by the Respondent during his contractual term with the football club Portland Timbers should be deducted from the compensation due to the Respondent by the Appellant;*
- vi) to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
- v) to establish that the costs of the arbitration procedure shall be borne by the Respondent".*

38. By means of the Appeal Brief, the Appellant, in essence, accepts the factual background of the present matter such as presented in Section II. above.

39. Moreover, the Appellant acknowledges that the Player terminated the Contract with just cause, i.e. that the Club was responsible for breach of contract and, at the time of termination, i.e. on December 16, 2011, four monthly instalments totalling to EUR 320'000 were owed to the player.

40. With regard to the calculation of the compensation for breach of contract awarded to the Player, the Appellant further admits that this calculation should be based on Article VI., para. i) of the Contract and should start from the remaining value of the Contract at the time of its termination, which is EUR 2'480'000.

41. However, the Appellant disagrees with the DRC's finding that any remuneration of the Player earned from another employer between December 2011 and May 2014 is irrelevant – in other words, should not be deducted from the remaining value of the Contract in order to determine the compensation due to the Player.

42. In this respect, the Appellant alleged that under the constant practice of the DRC there is a general obligation on a damaged party to mitigate loss and therefore remuneration under a new employment contract should be taken into account when calculating compensation for breach of contract.
43. The Appellant submits that the Player mitigated his loss by signing an employment contract with Portland Timbers in January 2012, but that the DRC disregarded this fact completely.
44. The Appellant further makes reference to Article 17 of the RSTP and the interpretation of this provision in *CAS 2008/A/1519 & 1520*, according to which the calculation of compensation for breach of contract should be informed by the principle of positive interest (consid. 86).
45. The Appellant therefore submits that the remuneration obtained by the Player under his new employment contract with Portland Timbers must be deducted from the remaining value of the Contract with the Club, which provides a just, fair and comprehensible calculation of the compensation for breach of contract.
46. Moreover, the Appellant states that Article VI., para. i) of the Contract, according to its wording, must be considered as a compensation clause and not a penalty clause and so the remaining value of the Contract cannot be deemed as the exact and final amount but only as the possible maximum of compensation for breach of contract.
47. In addition, the Appellant submits that compensation of EUR 2'480'000 would be excessive for the Club, since the Player had been registered with the Club for five months and had participated in two league matches only.
48. Finally, the Appellant states that as the Player might earn more from Portland Timbers than what remains under his Contract with the Club, no compensation for breach of contract should be owed at all.
49. The Appellant concludes its Appeal Brief by requesting
 - i) to accept the present appeal against the challenged decision;*
 - ii) to set aside the challenged decision;*
 - iii) to establish that the Appellant has to pay the Respondent outstanding remuneration in the amount of EUR 320'000;*
 - iv) to establish that the Appellant does not have to pay the Respondent compensation for breach of contract signed on 8 July 2011;*
 - v) to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
 - vi) to establish that the costs of the arbitration procedure shall be borne by the Respondent.*

Only if the above request is rejected;

 - i) to accept the present appeal against the challenged decision;*

- ii) *to set aside the challenged decision;*
- iii) *to establish that the Appellant has to pay the Respondent outstanding remuneration in the amount of EUR 320'000;*
- iv) *to award the Respondent compensation against the Appellant in an amount to be decided by CAS after the deduction of the remuneration received by the Respondent from Portland Timbers;*
- v) *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
- vi) *to establish that the costs of the arbitration procedure shall be borne by the Respondent”.*

B. The Player's Response

50. In the Answer to the Appeal, the Respondent accepts the essential factual background of the present matter such as presented in Section II. above.
51. Moreover, the Respondent agrees that he terminated the Contract with just cause, i.e. that the Club is responsible for breach of contract and that at the time of termination, i.e. on December 16, 2011, four monthly instalments totalling to EUR 320'000 were owed to him. With respect to the owed monthly instalments, the Respondent confirms receipt of EUR 320'000 on September 28, 2012, though without any element of interest such as awarded in the Decision.
52. As regards the calculation of the compensation for breach of contract payable by the Club, the Respondent fundamentally disagrees with the Appellant, invoking first of all that Article 17 of the RSTP does not have direct application to the present case, as it applies only where a contract was terminated “*without just cause*”. In the present case, however, the Contract was undisputedly terminated by the Player *with* just cause.
53. In view of the inapplicability of Article 17 of the RSTP, the question of the amount of compensation for breach of contract shall be resolved on the basis of Article VI., para. i) of the Contract, which provides for the Parties' agreement regarding the calculation mode for compensation for breach of contract.
54. On a side note, the Respondent points out that even if Article 17 of the RSTP would be applicable to the case at hand, this provision would – by its wording “*Subject to (...) and unless otherwise provided for in the contract (...)*” – provide for the primacy of a contractual agreement regarding the calculation mode for compensation for breach of contract.
55. In support of his position, the Respondent particularly refers to *CAS 2009/A/1909*, consid. 47, *CAS 2009/A/1880 & 1881*, consid. 72. *et seq.* and *CAS 2008/A/1519 & 1520*, consid. 74.
56. Consequently, the Respondent insists that the compensation for breach of contract owed by the Appellant should be calculated based on Article VI., para. i), of the Contract.

57. In continuation, considering the wording of Article VI., para. i) of the Contract, the Respondent invokes that there is no reference to an obligation on the part of the Respondent to deduct any sums from the remaining value of the Contract, such as income from a new employment contract. The Respondent disputes that Article VI., para. i) of the Contract would only provide for a maximum cap of compensation that may be subject to reductions, because the word maximum is not contained in the specific clause of the Contract.
58. Therefore, the only viable construction of Article VI., para. i) of the Contract would be that once the provision was triggered according to its first sentence – which is undisputed – the Appellant was liable to immediately pay – according to its second sentence – all monetary obligations, advance payment and/or salaries from the date of termination until May 31, 2014.
59. In the alternative, should the Panel determine that the various criteria in Article 17 para. 1 of the RSTP and thus the employment contract between the Player and Portland Timbers be taken into consideration, the Respondent invokes, *inter alia*, that it should be construed *contra proferentem* since the Contract was drafted by the Appellant, and that the Appellant should therefore not be entitled to resile from the clear contractual terms it had presented to the Respondent.
60. Moreover, in the alternative, the Respondent should be entitled, as a minimum, to the difference between the sums to be received pursuant to the Contract and the net sums to be received pursuant to the contract with Portland Timbers, the latter being, according to the Respondent, USD 1,5 Mio, or EUR 1'144'164.76.
61. The Respondent therefore concludes his answer by submitting the following requests for relief:
- i) *To dismiss the Appellant's appeal and confirm the decision of the FIFA Dispute Resolution Chamber dated 26th April 2012;*
 - ii) *To confirm that the sum of EUR 2'480'000 referred to in the FIFA Dispute Resolution Chamber dated 26th April 2012 remains payable immediately plus all interest awarded on both the sums of EUR 320'000 (from the dates specified) and EUR 2'480'000 as of the expiry of the 30 days from the date of notification of the decision;*
 - iii) *To condemn the Appellant to payment of the costs incurred by the Respondent; and*
 - iv) *To establish that the costs of the arbitration procedure shall be borne by the Appellant;*
- Alternatively, if, but only if, the Respondent's primary arguments are rejected and the decision of the FIFA Dispute Resolution Chamber dated 26th April 2012 is set aside:*
- i) *To award the Respondent such sum as appropriate having regard to all the matters referred to in Article 17.1 RSTP (or otherwise), including having regard to the terms of the Respondent's contract with Portland Timbers in Major League Soccer (especially having regard to the fact the Employment Contract was advanced by the Appellant; the fact that a club should not be allowed, without just cause, to simply disregard the terms of the contract and also the different taxation treatment of the Respondent's contract in the United States with that of the Employment Contract);*

- ii) *To condemn the Appellant to payment of the costs incurred by the Respondent; and*
- iii) *To establish that the costs of the arbitration procedure shall be borne by the Appellant”.*

VII. LEGAL ANALYSIS

62. To begin with, it is to be noted that the facts of the present matter, as outlined above in Section II., as well as the fact that the Player terminated the Contract with just cause, remained undisputed by the Parties. The Panel therefore only has to assess whether the Decision regarding compensation payable by the Club to the Player for the breach of contract should be adjusted, as requested by the Appellant.

A. Applicability of Article 17 of the RSTP

63. It is first of all to be recalled that the FIFA Regulations apply primarily in the matter at stake, and that Swiss law applies secondarily, to the extent the FIFA Regulations need interpreting or completing in any manner.
64. Focusing on the question of the applicability of Article 17 of the RSTP, which is specifically headed “*Consequences of terminating a contract without just cause*”, it may be noted that a strictly literal interpretation of this provision under its heading would lead to the conclusion that it does not apply to the case at hand, as the Player undisputedly terminated the Contract *with* just cause.
65. Having said this, it must be considered that, in cases of breach of contract, compensation is, as a general rule, always payable to the injured party by the party responsible for the breach. Furthermore, Article 17, para. 1., of the RSTP provides for general guidelines for the calculation of possible compensation in the case of termination of employment contracts.
66. In this respect, the Panel considers that the guidelines in Article 17, para. 1., of the RSTP may apply not only in cases of termination of a contract *without just cause* but more generally in the case of any termination of a contract where a *breach of contract* has occurred.
67. This interpretation is also supported by the wording of the first sentence of Article 17, para. 1, of the RSTP, according to which “*In all cases, the party in breach shall pay compensation*”.
68. Similar conclusions were drawn in *CAS 2010/A/2202*, consideration 54. and *CAS 2012/A/2775*, consideration 126. And the Panel’s understanding is also supported by pertinent legal literature, according to which the “*addressee of the obligation to compensate in Art. 17(1) RSTP is therefore both a party who terminates unlawfully as well as whoever provided the “just cause” for lawful termination of the contract*” (HAAS U., *Football Disputes between Players and Clubs before the CAS*, in: BERNASCONI/RIGOZZI (Editors): *Sport Governance, Football Disputes, Doping and CAS Arbitration*, Berne 2009).
69. In addition to these considerations, the Panel notes that the Decision does not address the question discussed above but simply assumes the applicability of Article 17 of the RSTP (para.

18 et seq. of the Decision). The Panel takes this as a further indication that the above-mentioned interpretation of Article 17 of the RSTP is correct (despite the wording of its heading). The Panel notes, in passing, however, that the scope of applicability of Article 17 of the RSTP might be understood more easily if it had, for example, a heading such as “*Consequences in case of breach of contract*”.

70. In conclusion, the Panel considers it legitimate to refer to the provisions of Article 17 (and to CAS jurisprudence thereunder) even in the present case where the contract has been terminated *with* just cause. Furthermore, with regard to such jurisprudence, the Panel refers, in particular, to CAS 2012/A/2775 where similar factual circumstances were considered and where the Panel determined (consideration 132) as follows:

“This provision [as per the contract] thus applies in this case, given that the Club is liable for the early termination of the Contract with just cause by the Player. Due to the agreement of the Parties on the sum to be paid, and how such sum was to be determined, the majority of the Panel sees no reason to deduct any of the amounts that the Player has earned, after termination of the Contract, with his new employer FC Luzern”.

71. The Panel will follow a similar approach in the present case.

B. Concrete Application of Article 17 of the RSTP

72. Having determined that Article 17 of the RSTP is relevant to the case at hand, it must be emphasised that according to the wording of para. 1 of that provision, “*unless otherwise provided for in the contract, compensation for the breach shall be calculated*” according to the various criteria that is listed in the said provision.

73. In view thereof, the Panel agrees with the Respondent that by its wording, Article 17 of the RSTP provides for the primacy of a contractual agreement regarding the calculation mode for compensation for breach of contract, and that the various criteria listed in Article 17, para. 1., of the RSTP regarding calculation of compensation apply only subsidiarily, i.e. only in the absence of a specific contractual agreement on the matter (cf. CAS 2009/A/1880 & 1881, consideration 73. *et seq.*, and CAS 2008/A/1519 & 1520, consideration 66. *et seq.*).

74. In the present case, the Parties’ agreement regarding the calculation of compensation for breach of contract is clearly provided for in Article VI., para. i), 2nd sentence, of the Contract, which stipulates that:

“the club shall immediately pay the player all the monetary obligations, advance annual payments and/or salaries pending at the date of termination and until 31st of May 2014 as the compensation of causing player’s termination with just cause”.

75. Such contractual agreement must therefore be applied in the present case and there is no need to refer to the further criteria listed in Article 17 para. 1 of the RSTP. Moreover, in view of the clear agreement at hand, the arguments of the Club concerning the issue of “positive interest” may also be dismissed.

76. The Panel considers that the cited clause provides for a determinable amount of compensation payable by the Club in breach of contract to the Player, which corresponds to the remaining value of the Contract. According to the documentation at disposal, and in agreement with the Decision, the remaining value of the Player's employment contract with the Club can be calculated as EUR 2'480'000.
77. Furthermore, due to the explicit agreement of the Parties on the sum to be paid, and how such sum was to be determined, the Panel does not see a need to deduct any of the amounts that the Player has earned, after termination of the Contract, with his new employer Portland Timbers (cf. *CAS 2012/A/2775*, consideration 132).
78. In any case, the Panel notes that the Club considers Article VI., para. i), of the Contract to be a compensation clause, or a liquidated damage clause, and not a penalty clause. Having said this, the Club argues that the remaining value of the employment contract should only be considered as a possible maximum amount, subject to deductions.
79. The Panel does not follow this line of argument. The term "maximum" – or any term with a similar significance – is not provided for in Article VI., para. i), of the Contract. To the contrary, the agreement is clear and does not leave space for an interpretation that requires monies earned from a new contract to be deducted from the amount of compensation that is expressly provided for under the Contract.
80. Moreover, regardless of whether Article VI., para. i), of the Contract is considered as a liquidated damage clause or as a penalty clause, the Panel does not consider the compensation of EUR 2'480'000 to be excessive and/or repressive for the Club.
81. The fact that the Player had been registered with the Club for five months and had participated in two league matches only is not reproachable towards the Player. It was the Club's decision not to field the Player and not to pay his remuneration nearly from the beginning of the Contract, and by so doing, to breach the Contract.
82. The Panel also refers to Article VI., para. iv), of the Contract, which stipulates a buy-out-clause entitling the Player to terminate the Contract at any time for the sum of EUR 2'000'000 which may not be subject to any reduction. In view of this buy-out-sum, the Panel concludes that a compensation payment of EUR 2'480'000, being only EUR 480'000 higher than the buy-out-sum, is acceptable and not excessive. And here again the Panel points to the fact that the reason the amount of compensation owed to the Player is higher than the buy-out-sum is only due to the Club's decision to breach the Contract nearly at its outset.
83. It follows that the Decision, as well as the conclusion of this Panel, is actually, just an acknowledgment of the validity and enforceability of the agreement that was reached between the Parties on their free will, in an environment and circumstances that gives to the Panel no grounds to interfere in such agreement.

VIII. CONCLUSION

84. The Panel is therefore satisfied, for all reasons exposed above, and taking into due consideration all the elements of this dispute, that it was appropriate to fix the compensation for breach of contract to be paid by the Club to the Player as EUR 2'480'000 plus 5% interest *per annum* as of 30 days after the date of the Decision.
85. Moreover, considering that based on para. 2 of the holding of the Decision, an amount of EUR 320'000 was paid by the Club to the Player on 28 September 2012 as outstanding salaries, but that the respective interest for late payment of 5% *per annum* remained unpaid, the Club shall pay to the player 5% interest *per annum* on EUR 80'000 as of August 31, October 1, October 31 and December 1, 2011, each until 28 September 2012.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on April 11, 2012 by Eskisehirspor against the Decision handed down on April 26, 2012 by the FIFA Dispute Resolution Chamber is dismissed.
- (...)
4. All other requests for relief are denied.