Arbitration CAS 2014/A/3854 AFC Astra v. Nikola Michellini & Fédération Internationale de Football Association (FIFA), award of 27 August 2015

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football
Termination of a contract of employment with just cause
Conditions for the jurisdiction of a national sports arbitration tribunal
Fine imposed on a player without establishing misconduct and without protecting the player's right of defense
Definition of "just cause" according to the interpretation given by FIFA
Serious breach of the employment relationship between a club and a player

1. **Article 22 of the FIFA Regulations for the Status and Transfer of Players (RSTP), in combination with Article 24 RSTP, establishes that, in principle, FIFA DRC is the competent body for employment-related disputes between a club and a player having an international dimension, unless the parties have elected a national arbitration tribunal, and provided that it complies with the relevant requirements ofindependency, fair proceedings and equal representation of players and club. According to FIFA interpretation *"A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. (…)"*. An arbitration clause that makes reference to three different arbitration bodies, without any criterion of selection, does not correspond to the standards of certainty and clarity required by FIFA for a valid and enforceable arbitration clause.**

2. **If a fine is imposed on a player by his club and the club fails to prove any alleged misconduct by the player and the protection of the player's right to defence in the relevant disciplinary proceedings, such fine must be considered arbitrary and shall be disregarded.**

3. **According to FIFA interpretation, *"the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case"* and where violation of the terms of an employment persists for a long time or in case many violations be cumulated over a certain period of time, it is most likely that the party suffering the breach is considered to be entitled to terminate the contract unilaterally.**

4. **A club's failure to pay a player's salaries for three months, together with the club's failure to reply to even one of the player's reminder letters is a clear indication that the breach had reached such a level of seriousness that the player cannot expect a continuation of the employment relationship with the club and is therefore entitled to unilaterally terminate the contract.**

I. INTRODUCTION

1. This appeal is brought by AFC Astra Ploiesti (the "Club" or the "Appellant"), against the decision rendered by FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") on 28 August 2014 ("Appealed Decision").

II. THE PARTIES

2. The Appellant is a professional football club based in Giurgiu, Giurgiu County, Romania, competing in the first division of the Romanian Football League – Liga I, affiliated with the Romanian Football Federation (the "FRF"), which, in turn, is member of the Fédération Internationale de Football Association.

3. Mr Nikola Michellini (the "Player" or the "First Respondent") is a professional football player, born on 27 March 1982, of Bosnian and Italian nationalities.

4. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the international federation of football worldwide based in Zurich, Switzerland, exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players affiliated to it.

III. THE CHALLENGED DECISION

5. The challenged decision is the decision rendered by the FIFA DRC on 28 August 2014, further to the claim filed by the Player against the Club regarding an employment-related dispute arisen between the parties.

IV. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, on the file of the proceedings before the FIFA DRC and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

7. On 15 July 2010, the Player and the Club signed an employment contract valid as from the date of signing until 31 December 2012 (the "Contract").

8. According to Clause V of the Contract, *"the player shall receive 4.000 euros netto monthly"*. The same Clause further establishes that *"for the entire period of the contract, the club takes the obligation to pay, up to 30.12.2010, the amount of 24.000 euros netto. If up to the above mentioned term, F.C. Astra Ploiesti does not pay the above mentioned amount, the player is free of contract, starting with 15.06.2011, the financial rights*

being paid to the player, up to 15.06.2011. The player shall not have financial or another nature claims to the F.C. Astra Ploiesti, and shall receive the green card, without other obligations".

9. Pursuant to Clause III of the Contract, the Club also undertook to provide the Player, *inter alia*, two (2) roundtrip flight tickets Bucharest-Sarajevo per year during the holiday periods and accommodation *"from the available houses of the Club"*.

10. With regard to the monthly net amount due to the Player, Clause III, lit. (i) of the Contract specifies that the Club *"has the obligation to pay only the income tax"*.

11. According to Clause VII of the Contract (par. 2), *"the Parties undertake not to refer to any law court for the settlement of the litigations until after all the methods of the court of jurisdiction of FRF, LPF (Romanian Professional Football League) and/or AJF (County Football Association)* and (par. 3), *"The litigations arising from the execution of the present agreement shall be settled following the procedural order:*

    a) Amiable way;
    b) By bringing the litigation before the court of jurisdiction of FRF, LPF and AJF, as the case may be".

12. By a document dated 22 September 2010, which was also notified to the First Respondent, the Club's Sport Manager reported to the Club's Board of Directors the alleged poor performance and lack of interest of the Player during trainings and official matches with the second team.

13. By a written communication dated 26 October 2010, with reference to the above mentioned report, the Club informed the Player that due to the alleged failure to comply with his contractual obligations, the Football Association Board of Directors of the Club had decided to impose him a fine amounting to 25% of the 2010/2011 season's salary.

14. On 27 October 2010, the Club requested the Discipline Committee of the Romanian Professional Football League (the "LPF") to ratify the decision taken by the Club's Board of Directors with regard to the imposition of a fine on the Player.

15. By the decision N. 371 rendered on 4 November 2010, the LPF Discipline Committee ratified the Resolution of the Club's Board of Directors to sanction the Player with a fine amounting to 25% of the financial rights due for the sporting season 2010/2011.

16. By letter dated 20 December 2010, on behalf of the First Respondent, Mr. Zoran Rasic, representing the latter's interests, contested the imposition of the relevant fine on the Player, as baseless, and also claimed payment of outstanding salaries of the Player for the months of November and December 2010, amounting to EUR 8,000.

17. On 10 January 2011, Mr. Zoran Rasic sent a reminder letter complaining that the Club neither had replied to his previous letter, nor had it provided payment of the outstanding salaries.

18. Further reminders were forwarded to the Club by fax letter dated 26 January 2011, 2 February 2011 (for the outstanding amount of EUR 12,000) and 9 February 2011.

19. In the absence of reply from the Club to the former reminders, by letter dated 14 February 2011, the Player informed the Appellant that, due to the Club's failure to pay his outstanding salaries for more than three (3) months, the Contract was to be considered unilaterally terminated with just cause according to Article 14 of the FIFA Regulations for the Status and Transfer of Players (the "Regulations"), with immediate effect.

20. It is undisputed between the Appellant and the First Respondent that the Club paid EUR 14,383 (EUR 14,245 according to the Player's account) for the Player's salaries from the beginning of the Contract until the date of termination.

21. Following the termination of the Contract, the Player signed a new contract with Atromitos Geroskipou (Cyprus) from 16 June 2011 until 31 March 2012, for EUR 22,400 net for the entire period, and with OFK Gradina Srebrenik (Bosnia and Herzegovina) from 6 July 2012 until 30 June 2013 for a monthly salary of 1,200 Bosnian Marks (BAM), plus 110,00 BAM for monthly rental costs and a lump sum of 1,000 BAM for the cost of supporting documentation and transfer to the OFK Gradina Srebrenik.

22. On 14 March 2011, the Player lodged a claim for breach of contract before the FIFA DRC against the Club, requesting the payment of the total amount of EUR 34,227, broken down as follows:

    - outstanding salaries in the amount of EUR 12,000, corresponding to the monthly remuneration of November and December 2010 and January 2011, plus interest of 5% *p.a.* as from 14 February 2011;

    - compensation in the amount of EUR 18,000, corresponding to the residual value of the Contract (*i.e.* four and a half months from February 2011 until 15 June 2011) plus interest of 5% *p.a.* as from 14 February 2011 and minus *"possible income during this period"*;

    - *"one (1) monthly salary in the amount of EUR 4,000, as additional indemnity, since the interest rate of 5% is not covering the damage of this case for legal costs"*;

    - hotel costs in the amount of RON 115 (approx. EUR 27);

    - EUR 200 for a one-way ticket Bucharest-Sarajevo.

23. In its position before the FIFA DRC, the Club firstly rejected FIFA's jurisdiction in favour of the deciding body of the LPF according to the Contract. As to the merits, it maintained that the Player's remunerations were paid in full, after the applicable deductions in accordance with Clause III.1 (i) of the Contract and that therefore the Player terminated the Contract without just cause; as a consequence, a counterclaim was lodged by the Club against the Player for breach of contract, requesting the payment of EUR 8,342.12 based on the (amortized) costs incurred by the Club for the Player.

24. On 28 August 2014, the FIFA DRC rendered the Appealed Decision by which: 1) FIFA's jurisdiction was established; 2) the Player's claim was partially upheld; 3) the Club was ordered

to pay the Player the following amounts: EUR 12,000 for outstanding remuneration plus interest of 5% *p.a.* as from 14 February until effective payment; EUR 18,000 as compensation for breach of contract plus interest of 5% *p.a.* as from 14 March 2011 until the date of effective payment; EUR 200 as reimbursement of a flight ticket, within the term of 30 days from the date of notification of the same decision.

V. SUMMARY OF THE APPEALED DECISION

25. The grounds of the Appealed Decision can be summarized as follows:

- With regard to the issue of the competence of FIFA to deal with the present case, which was contested by the Club, the DRC firstly established that it would in principle be competent in accordance with article 24 par. 1, in combination with article 22 lit. b of the FIFA Regulations.

- In this respect, and regarding the objection raised by the Club on the basis of Clause VII of the Contract, the Chamber outlined that the content of the relevant article is not clear and that such clause does not explicitly refer to the competent national dispute resolution chamber or similar arbitration body in the sense of article 22 lit. b) of the aforementioned Regulations; but it actually refers to three different entities. Therefore, the Player was not in a position to know at the moment of signing the Contract to which body the potential disputes related to his employment relationship were to be submitted.

- In consideration of the above, the Chamber concluded that, in line with its constant jurisprudence, the Club's objection to the competence of FIFA to deal with the present matter was to be rejected and that the FIFA DRC was competent on the basis of article 22 lit. b) of the FIFA Regulations.

- As to the substance of the matter, the main issue was to determine whether the Contract had been unilaterally terminated with or without just cause by the Player on 14 February 2011.

- In this respect, the Chamber noted that the Player had submitted some reminder letters (as already mentioned above) which had been forwarded to the Club requesting payment of his outstanding remuneration for the months of November and December 2010 and January 2011, while the Club failed to provide any evidence of the relevant payment.

- The Chamber further noted that, while the Player had received a total remuneration of EUR 14,383 from the Club, he maintained he would have been entitled to receive a total of EUR 26,000 net, *i.e.* the remuneration from July 2010 until termination of the Contract (EUR 4,000 x 6 and a half months). Therefore, the Club allegedly failed to comply with its financial obligation under the Contract.

- On the contrary, the Club argued that EUR 26,000 is not the correct amount since, in accordance with the Contract, the sum of EUR 10,662.53 was legitimately deducted from the Player's receivables, and namely EUR 3,392.55 for the player's health insurance,

unemployment and social security contributions, EUR 1,269.98 as guarantee for equipment's return and EUR 6,000 corresponding to the sanction imposed on the Player for alleged bad performance.

- In view of the parties' allegations and in consideration of the relevant facts of the case and the documentation in the file, the FIFA DRC concluded that: a) although in principle, pursuant to Clause III.1 (i) of the Contract, only the income tax was to be borne by the Club, in the absence of any proof other that internal spreadsheet prepared by the Club itself, the Club did not satisfactorily discharge the burden of proof that EUR 3,392.55 were actually deducted from the Player's salaries and paid; b) with regard to EUR 1,269.98 allegedly deducted by the Club in view of the guarantee for equipment's return, the Club was not entitled to such a deduction in consideration of its obligation to provide its players with adequate training and competition equipment; c) as to the fine imposed on the Player, it shall be disregarded since the Club did not prove any alleged unprofessional behaviour by the Player and moreover, the amount of EUR 6,000 corresponding to 25% of the financial rights due for the sporting season 2010/2011 must be considered as disproportionate. In addition, the Club did not demonstrate that the Player participated in these proceedings nor that he have been informed thereof. Finally, the Chamber stressed the fact that, irrespective of the foregoing, the imposition of a fine, or any other available financial sanction, shall not be used by clubs as a method to set off outstanding financial obligations towards players.

- In consideration of all the above, and also bearing in mind its longstanding jurisprudence, the FIFA DRC concluded that the Contract was terminated with just cause by the Player on 14 February 2011, based on the non-payment of three (3) monthly salaries and that the Club was to be held responsible for the early termination of the employment relationship.

- The Chamber then established that, in addition to the payment of its outstanding salaries in the amount of EUR 12,000, the Player was entitled to receive an amount of money from the Club as compensation for breach of contract, in addition to any outstanding salaries, according to Article 17 par. 1 of the FIFA Regulations.

- In this respect, in the absence of any stipulation in the Contract providing a certain amount of compensation in case of breach, and in accordance with the criteria set forth under Article 17, par. 1 of the FIFA Regulations, the Chamber concluded that the amount of EUR 18,000 (corresponding to the monthly salary as from February 2011 until 15 June 2011) was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

- The Player's claim for additional indemnity in the amount of EUR 4,000 was dismissed since Article 18 par. 4 of the Procedural Rules of the DRC as well its long-standing jurisprudence stipulates that no procedural compensation is awarded in proceedings in front of the FIFA DRC.

- Likewise, the Player's request for reimbursement of accommodation expenses was rejected since no obligation in this regard is established in the Contract.

- In view of the relevant obligation in the Contract and of the documentation produced by the Player in the proceedings, the Player's request for reimbursement of travel expenses was also upheld.

- The Appealed Decision was notified to the Appellant on 19 November 2014.

VI. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 9 December 2014, the Club filed an appeal before the Court of Arbitration for Sport ("CAS") against the Appealed Decision by submitting a Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (edition 2013) (the "CAS Code").

27. In its Statement of Appeal, the Appellant requested that a Sole Arbitrator be appointed by the CAS to decide the present proceedings.

28. By fax letter to the parties dated 16 December 2014, the Respondents were invited to inform the CAS Court Office whether they agreed to the appointment of a Sole Arbitrator to decide the present case.

29. On 22 December 2014, the Second Respondent informed the CAS Court Office of its preference that the present matter be referred to a panel composed of three (3) arbitrators in consideration of the complexity of the matter at hand, and particularly with regard to the contested competence of FIFA's deciding bodies.

30. Pursuant to Article R51, par. 1 of the CAS Code, the Appellant filed its Appeal Brief on 19 December 2014.

31. By fax letter dated 7 January 2015, following a request of FIFA of the same day, the Appellant was requested to inform the CAS Court Office whether it still considered FIFA to be a Respondent in the present proceedings, since its Appeal Brief only specified the Player as Respondent.

32. By fax letter dated 9 January 2015, the Appellant confirmed that FIFA should be maintained as the Second Respondent in the present proceedings.

33. By fax letter dated 13 January 2015, the First Respondent informed the CAS Court Office that he agrees with the Second Respondent that a panel of three arbitrators shall be appointed in the present procedure and further notified that he would not pay his share of advance of costs and requested the application of Article R55 para 3 of the CAS Code, *i.e.* that his time limit to file his answer shall be fixed after the Appellant's payment of its share of advance of costs in accordance with Article R64.2 of the CAS Code. Following the First Respondent's request, the

CAS Court Office informed the Parties that the First Respondent's deadline to file his Answer would be fixed after the payment by the Appellant of its share of the advance of costs.

34. On 27 January 2015, the CAS Court Office informed the Parties that, taking into consideration the low amount in dispute, the fact that the Appellant would have to pay the entire amount of the advance of costs in accordance with Article R64.2 of the CAS Code, and in order to reduce the costs of the arbitration, the President of the CAS Appeals Arbitration Division had decided that the present matter shall be submitted to a Sole Arbitrator.

35. By fax letter dated 3 March 2015, the CAS Court Office informed the Parties that the Appellant had provided evidence of payment of its advance of costs and therefore, the Respondents were granted deadline of 20 days to file their Answers, in accordance with Article R55 of the CAS Code. The Parties were also informed that Mr Fabio Iudica, Attorney-at-law in Milan, Italy, had been appointed as Sole Arbitrator in the present proceedings.

36. Upon request of the Respondents sent by fax letter to the CAS Court Office on 4 and, respectively, 9 March 2015, the Respondents' time limit to file their answer was extended of five (5) days.

37. On 24 March 2015, the Appellant requested the CAS Court Office to reduce the amount of the arbitration's costs or, in the alternative, to extend the time limit for the relevant payment; as a consequence, the CAS Court Office informed the Parties that the deadline for the Appellant to pay the additional advance of costs in accordance with Article R64.2, par. 3 of the CAS Code was suspended until upon decision of the CAS Finance Director.

38. By fax letter to the CAS Court Office dated 25 March 2015, the First Respondent objected to the Appellant's request for reduction and requested that the Appeal be deemed withdrawn in accordance with Article R64.2 of the CAS Code.

39. On 27 March 2015, the First Respondent requested the CAS Court Office that his deadline to file an answer be suspended until the payment of the second advance of costs by the Appellant. The Appellant and the Second Respondent were requested by the CAS Court Office to provide their respective comments on the relevant request for suspension.

40. Failing any communication from the Appellant and the Second Respondent with respect to the First Respondent's request for suspension, the CAS Court Office informed the Parties that the First Respondent's time limit to file his answer was suspended until further notice from the CAS Court Office.

41. By fax letter dated 9 April 2015, the CAS Finance Director granted the Appellant an ultimate time limit until 20 April 2015 to pay the share of the advance of costs on behalf of the First Respondent.

42. On 27 April 2015, the Parties were informed that the Appellant had provided receipt of payment of the entire amount of the advance of costs and that the First Respondent's time limit to file his Answer was resuming from that moment.

43. On 4 May 2015, the Parties informed the CAS Court Office that they did not deem a hearing necessary in the present matter.

44. By fax letter on 29 May 2015, the CAS Court Office forwarded the Order of Procedure to the Parties.

45. The Order of Procedure was returned duly signed by the Parties on 2, respectively, 4 and 5 June 2015. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS.

46. By fax letter dated 9 June 2015, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that the Appellant and the First Respondent were granted a time limit of ten (10) days to file their respective observations strictly limited to the interpretation of Clause V of the Contract, particularly in relation with the obligation of the Appellant to pay the amount of EUR 24,000 (net) and the consequences of non-payment. Secondly, FIFA was granted deadline of fifteen (15) days to provide the CAS Court Office with a copy of the file on which the FIFA DRC based the Appealed Decision.

47. On 17 June 2015 FIFA submitted copy of the relevant file.

48. On 19 June 2015, the First Respondent filed his submissions with regard to the Sole Arbitrator's request. The Appellant failed to file its submission within the time limit set out by the CAS Court Office.

VIII. SUBMISSIONS OF THE PARTIES

49. The following outline is a summary of the main positions of the Appellant and the Respondents and does not comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by Appellant and Respondents, even if no explicit reference has been made in what follows. The Parties' written submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

50. The Appellant made a number of submissions, in its Statement of Appeal and in its Appeal Brief. These can be summarized as follows.

51. As a preliminary issue, the Appellant argues that the FIFA DRC was not the competent body to decide the matter at stake.

52. With regard to the alleged uncertainty of Clause VII par. 2 and 3 of the Contract, establishing jurisdiction in case of litigations, the Club maintains that: a) the FIFA DRC was wrong in stating that the Player was not, at the signing of the Contract, in the position to know which was the competent body, since the only moment the said provision is producing effect is the moment

of lodging a claim and not the moment of the signing of the Contract; b) in any case, the clarity of the relevant clause was not disputed between the parties since the issue on jurisdiction concerns the Player's argument that the Romanian national body indicated in the said clause would not allegedly satisfy the requirements set forth under Article 22, lit. b of the FIFA Regulations (independency, fair proceedings, equal representation of players and clubs). Nevertheless, the Chamber did not make any reference in the Appealed Decision to the relevant provision in order to exclude the jurisdiction of the Romanian arbitration tribunal and established its own competence on different basis; c) in consideration of the fact that the Romanian arbitration bodies actually meet the conditions required by Article 22, lit. b of the FIFA Regulations, and since according to article 26.8 of the Romanian RSTJF, the jurisdictional bodies of the LPF are exclusively competent to adjudicate cases involving clubs playing in the first league, officials, players and coaches, the Player's claim was wrongfully submitted to the FIFA DRC.

53. As to the merits of the case, the Appellant maintains that even considering that the Club failed to pay the exact amount of salaries to the Player, the latter was not entitled to unilaterally terminate the Contract according to the Romanian Regulations which are primarily applicable to the present case. Even if the FIFA Regulations were applicable, the conditions for termination required under Article 13 are still not met.

54. Nor can the Player invoke the exception of just cause under the FIFA Regulations since the other party's breach must be of a certain gravity and there should also be an intentional misconduct, which is not the present case. In any event, in the absence of an agreement between the parties, a contract can be deemed terminated only when a decision by the competent jurisdictional body is pronounced accordingly.

55. With reference to the fine imposed on the Player, the FIFA DRC did not have any competence to review the decision taken by the Disciplinary Committee of the LPF which became irrevocable for not being appealed by the Player.

56. Furthermore, the Club did not have any burden of proof with regard to the violation committed by the Player, in view of the decision taken by the Disciplinary Committee of the LPF.

57. Regarding the deductions applied by the Appellant for contributions and health insurance, the FIFA DRC failed to consider the entire documentation submitted by the Club which allegedly proves the payment of the relevant fiscal charges. Moreover, these contributions are established by Romanian laws and therefore the Club was obliged to deduct the relevant amount from the Player's salaries.

58. With respect to the guarantee for equipment, the Club alleges that the relevant amount does not represent the price the Player has to pay for his equipment, as wrongly concluded by the FIFA DRC in the Appealed Decision, but rather a charge for the Player's failure to return it upon termination of the employment relationship.

59. Finally, the Appellant contests the application of 5% interest, since Swiss law would not be applicable to the present dispute.

60. In its Statement of Appeal and its Appeal Brief, the Appellant submitted the following prayers for relief:

"The Decision issued on August 28, 2014, by the FIFA Dispute Resolution Chamber is set aside;

The claim lodged by the Player Nikola Michellini is dismissed;

AFC Astra does not owe any amount to Nikola Michellini;

All the arbitration costs shall be borne by the respondent, who will be forced to reimburse AFC Astra with the entire amount paid as arbitration costs".

B. The First Respondent's Submissions and Requests for Relief

61. The position of the First Respondent is summarized in his Answer and in his further submissions dated 19 June 2015 on the issue of interpretation of Clause V of the Contract, and is the following.

62. Primarily, with reference to the issue of FIFA's jurisdiction which is contested by the Appellant, the First Respondent argues that the FIFA DRC was the competent body to adjudicate the present case according to Article 22, lit. b of the FIFA Regulations and the FIFA Circular N. 1010 due to the fact that the Romanian LPF does not fulfil the minimum procedural standards required by FIFA Regulations for arbitration proceedings and also because the Contract contains no clear reference to the competent body in case of dispute between the parties, according to FIFA Regulations.

63. With regard to the merits of the dispute, the Player maintains that since the Club failed to pay additional remuneration in the amount of EUR 24,000 as set forth under Clause V, the Contract was meant to expire on 15 June 2011 rather than 31 December 2012.

64. According to the First Respondent's interpretation, in fact, Clause V of the Contract provides an option in favour of the Club for the unilateral termination of the employment relationship in the event that the additional payment of EUR 24,000 would not be paid until 30 December 2010.

65. He asserts he received from the Club a total of 5 payments, amounting to EUR 14,245 corresponding to salaries for 3 and a half months and a bonus.

66. The Appellant failed to comply with its obligation to pay the Player's salary within the agreed term consecutively for more than three months, without valid reason. Therefore, the Contract was terminated unilaterally with just cause in accordance with Article 14 of the FIFA Regulations and Swiss Law, and he is entitled to receive a compensation according to the FIFA Regulations.

67. According to the First Respondent, there was no valid reason for unpaid salaries, but only the intention of the Club to get rid of the Player as it is also confirmed by the fact that he was

excluded from the first team as of 13 January 2011, as well as it results from the Report by the Club's Sport Manager, dated 22 September 2010. The Player's removal from the first team itself is a violation of the Contract, resulting in just cause for early termination. In addition, the Club cancelled the apartment of the Player a few days before the termination letter, which is a clear sign that the Appellant was already planning to dismiss the Player.

68. In any case, the Player did not commit any violation to the Contract nor was responsible for any disciplinary failure.

69. With regard to the Appellant's allegations that the amount claimed by the Player is unwarranted since the Club had to deduct fiscal charges from the Player's salary, the First Respondent argues that the parties had agreed that the monthly salary of EUR 4,000 was net and there were no further costs specifically agreed to be charged according to the Contract, neither has the Player been duly informed by the Club about the relevant deductions. Besides, the calculation of the alleged deductions is incorrect and arbitrary.

70. In addition, the fine imposed on the Player is unjustified since the latter was not warned beforehand, the decision rendered by the NDRC of the Romanian LPF was never communicated to the Player and, last but not least, the Player did not participate in the relevant proceedings nor has he ever authorized Mr Lazar Costel or any other person to represent him against the Club before the Romanian National DRC. In fact, he was not allowed to be present at the hearing because he was not assisted by a lawyer and was therefore not able to present his arguments. Finally, the fine is also unlawful because it is disproportionate and arbitrary.

71. As regards the guarantee for equipment's return, the First Respondent argues that the relevant deduction is unlawful since the Club failed to prove that the equipment was not given back, and the Club did not warned the Player beforehand.

72. With regard to compensation due by the Club for breach of contract, the First Respondent maintains that, in accordance with the CAS principle that *"the harmed party should be restored to the position in which the same party would have been, had the contract been properly fulfilled"* (CAS 2005/A801; CAS 2006/A1061; CAS 2006/A/1062), the amount which the Player would be entitled to should be calculated in relation to the end of the Contract, *i.e.* until 15 June 2011.

73. In its Answer, the Respondent submitted the following prayers for relief:

"a) To reject the appeal by the Appellant;

b) To uphold the challenged decision by FIFA;

c) To bear all costs by the Appellant relating to the arbitration proceedings, according to the CAS Code R64.5 and Swiss law CO, art. 106;

d) To consider an appropriate contribution to the legal and other costs in this arbitration of the First Respondent and to be borne by the Appellant, according to the CAS Code R64.5".

C. The Second Respondent's Submissions and Requests for Relief

74. The position of FIFA is summarized in its Answer, and is the following.

75. The grounds of the Appealed Decision are fully justified and shall be upheld by the CAS.

76. Essentially, FIFA addressed the issue relating the competence of the FIFA DRC to adjudicate the present dispute in the first instance, which fact is contested by the Appellant.

77. In this respect, FIFA maintains that, as a general rule, in case of an employment-related dispute between a player and a club of an international dimension, FIFA, specifically the DRC, is competent according to Article 24 par. 1 in conjunction with Article 22 lit. b of the FIFA Regulations. As an exception, provided that the parties have clearly elected a national forum, and the latter is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, only then, the national body may become competent.

78. As to the choice of forum in favour of the national body, the main condition is that the jurisdiction of the relevant arbitration tribunal derives from a clear reference in the employment contract.

79. On the contrary, Clause VII of the Contract, which the Appellant relies on in order to establish jurisdiction in favour of the Romanian arbitration court, does not constitute a valid and enforceable arbitration clause since it is ambiguous. In particular, it does not refer to a specific and clearly defined arbitration body that would be competent to decide on a possible dispute between the Appellant and the First Respondent in relation to the Contract.

80. Specifically, FIFA argues that *"in order for an arbitration clause to be valid and enforceable, it has to contain certain indispensable elements, amongst others, a clear and explicit reference to the specific arbitration body that will be the competent body to adjudicate on the pertinent matter, once a dispute has arisen"*.

81. As a conclusion, taking into consideration the absence in the Contract of a clear and exclusive clause in favour of a specific national arbitration body in Romania, the FIFA DRC was the competent body to decide the relevant employment-related dispute between the parties.

82. Irrespective of and in addition to the above, FIFA also stresses the fact that the Appellant, by omitting to provide the complete pertinent rules and regulations governing the proceedings before the arbitration bodies of the LPF and the RFF, has not discharged its burden of proof to establish that the FIFA DRC was not competent to adjudicate the present dispute and that the various national decision-making bodies indicated in the Contract comply with the minimum procedural standards required by FIFA.

83. In addition thereto, FIFA also refers to the decision passed by the Panel in the case CAS 2010/A/2289 in which it was established that the decision-making bodies of the LPF did not comply with the conditions mentioned in Article 22, lit. b of the FIFA Regulations.

84. With respect to the fine imposed by the Club on the Player, FIFA avers that the Romanian Disciplinary Committee of the LPF was not competent to ratify the decision of the Club since the relevant matter concerns a purely contractual aspect between a player and a club (an alleged contractual violation by the Player) and cannot be considered as a disciplinary matter (such as, for example, a breach of the "Laws of the Game").

85. As a further consideration, FIFA observes that numerous decisions rendered by the FIFA DRC similar to the Appealed Decision indicate that imposing disproportionate fines on players is an illegitimate method regularly used by Romanian Clubs, and by the Appellant in particular, to set off the amounts they owe to players.

86. Finally, the Club failed to produce any evidence of the alleged misbehaviour by the Player and, moreover, the fine imposed on the Player is manifestly disproportional and excessive, and this, even more if considering that the legal basis for imposing the relevant sanction is not stipulated in the Contract.

87. In conclusion, the Disciplinary Committee of the Romanian LPF was misused in order to try to retroactively justify an unwarranted sanction imposed by the Club on the Player on an employment-related matter and therefore the FIFA DRC was competent to review and disregard the relevant decision.

88. As to the merits of the controversy between the parties, the Appellant failed to pay three monthly salaries to the Player at the time when the First Respondent terminated the Contract. The Club was not entitled to deduct any amount from the salaries, since the Contract establishes that the Appellant would pay a net monthly salary of EUR 4,000, nor could the Club deduct any amount as guarantee for equipment since such a deduction was without any legal basis. In consideration thereof, the Player had just cause to terminate the Contract on 14 February 2011.

89. In its Answer, the Second Respondent submitted the following requests for relief:

"In the light of all of the above considerations, we request for the present appeal against the challenged decision of the Dispute Resolution Chamber dated 28 August 2014 to be rejected and the relevant decision to be confirmed in its entirety. All costs related to the present procedure as well as the legal expenses of the second Respondent shall be borne by the Appellant".

IX. CAS JURISDICTION

90. The admissibility of an appeal before CAS shall be examined in light of Article R47 of the CAS Code (Edition 2013), which reads as follows:

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

91. Both the Appellant and the First Respondent rely on Article 67, par 1 of the FIFA Statutes which reads as follows:

"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".

The Appellant further relies on Article 24 par. 3 of the FIFA Regulations which provides that:

"Decisions reached by the Dispute Resolution Chamber or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".

92. The signature of the Order of Procedure by the Parties confirmed that the jurisdiction of the CAS in the present case is not disputed. Accordingly, the Sole Arbitrator is satisfied that he has jurisdiction to hear this case.

93. Under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and/or refer the case back to the previous instance.

X. ADMISSIBILITY OF THE APPEAL

94. Article R49 of the CAS Code provides as follows:

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

95. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 28 August 2014, the grounds being notified to the Parties on 19 November 2014. Considering that the Appellant filed its Statement of Appeal on 9 December 2014, *i.e.* within the prescribed deadline of 21 days as from the notification of the Appealed Decision and that the Appeal Brief was filed on 19 December 2014, the Sole Arbitrator is satisfied that the Appellant's appeal was timely filed and is therefore admissible.

XI. APPLICABLE LAW

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

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

97. In its Appeal Brief, the Appellant maintains that, since the Contract does not contain any provision in relation to the applicable law and in consideration of the fact that the Contract was signed in Romania, Romanian Regulations should apply. According to the Appellant, such a conclusion is also confirmed by the Romanian Status on the Transfer of Football Players and by art. 8.2 of the Regulation (EC) n. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations which reads as follows:

"the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract".

98. The First Respondent contends that pursuant to Article R58 of the CAS Code, the FIFA Regulations (edition 2008) shall be applicable primarily, with Swiss law applying subsidiarily.

99. The Second Respondent argues that the Contract does not contain an explicit agreement on the applicability of Romanian law and that during the proceedings before the DRC, the Club has already acknowledged the applicability of FIFA Regulations; therefore, the employment relationship between the Appellant and the First Respondent shall be governed by FIFA Regulations.

100. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator considers that the Contract does not contain any clear choice of the parties with regard to the law governing their employment relationship and therefore, the Sole Arbitrator deems that FIFA Regulations (edition 2008) are primarily applicable, with Swiss law applying subsidiarily.

XII. MERITS OF THE APPEAL – LEGAL ANALYSIS

101. As a preliminary matter, the Sole Arbitrator notes that the Appellant objected to the jurisdiction of the FIFA DRC to adjudicate the present case, on the basis of Clause VII of the Contract, pursuant to which the Romanian arbitration tribunals would be exclusively competent in case of litigations arising from the employment relationship between the Club and the Player, as is the case at stake.

102. In this respect, the Sole Arbitrator shares the reasoning of the FIFA DRC in the Appealed Decision that the relevant clause does not meet the requirements of a valid and enforceable arbitration clause within the meaning of Article 22 of the FIFA Regulations. In fact, the provision of this rule, in combination with Article 24 of the same FIFA Regulations, establishes that, in principle, FIFA DRC is the competent body for employment-related disputes between a club and a player having an international dimension, unless the parties have elected a national arbitration tribunal, and provided that it complies with the relevant requirements of independency, fair proceedings and equal representation of players and club. As to the choice of the parties in order to establish jurisdiction in favour of a national arbitration tribunal instead of the DRC, the Sole Arbitrator observes that according to FIFA interpretation (see Commentary on the FIFA Regulations under Article 22), which is also confirmed by CAS jurisprudence (CAS 2014/A/3582 para. 145 – 153), *"A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at*

the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body".

103. On the contrary, the Sole Arbitrator is of the opinion that Clause VII of the Contract, by making reference to three different arbitration bodies (within the FRF, the LPF and the AJF), without any criterion of selection, does not correspond to the standards of certainty and clarity required by FIFA for a valid and enforceable arbitration clause. In light of the foregoing, any further consideration with regard to the minimum procedural standards for the arbitration tribunal to meet is therefore unnecessary.

104. Finally, the Sole Arbitrator has concluded that the Contract contains no clear reference to the competence of a specific national arbitration tribunal and therefore the FIFA DRC was the competent body to adjudicate the present dispute pursuant to Article 22, lit. b and Article 24 of the FIFA Regulations.

105. With regard to the merits of the case, the following circumstances are undisputed between the parties: a) the Club and the Player signed an employment contract on 15 July 2010, valid from the date of signing until 31 December 2012; b) the Player unilaterally terminated the Contract by letter to the Club dated 14 February 2011 due to the Club's alleged failure to pay his outstanding salaries for more than three months and c) the Club paid the total amount of EUR 14,383 (EUR 14,245 according to the Player's account) for the Player's salaries from the beginning of the Contract until the date of termination.

106. What is disputed is whether the Club failed to comply with its financial obligations towards the Player under the terms of the Contract, as alleged by the First Respondent, and whether the Player terminated the Contract with just cause and is therefore entitled to compensation pursuant to Article 17 of the FIFA Regulations.

107. In this regard, the Sole Arbitrator notes that the Player maintains that he would have been entitled to receive a total amount of EUR 26,000 net, corresponding to the remuneration from July 2010 until the date of termination of the Contract, while the Club only paid him the amount of EUR 14,245 (or EUR 14,383 according to the Club), thus failing to pay the corresponding amount of three-month salaries.

108. On the other side, according to the Appellant's arguments, the Club has paid all the amounts due to the Player under the terms of the Contract and committed no other violation that could entitle the Player to unilaterally terminate the contract with just cause. The amount claimed by the Player as supposed outstanding salaries (amounting to EUR 12,000 for the months of November 2010, December 2010 and January 2011) is allegedly incorrect and unwarranted in consideration of the fact that, in accordance with the Contract and also with Romanian law, the Club has legitimately deducted the total amount of EUR 10,662.53 from the Player's receivables, in relation to the Player's health insurance, unemployment and social security contributions, a guarantee for equipment's return and the amount of EUR 6,000 corresponding to the sanction imposed on the Player for bad performance.

109. With respect to the amount allegedly deducted by the Club for fiscal charges, the Sole Arbitrator observes that while, on the one hand, Clause II.1 (a) of the Contract establishes that only the income tax was to be borne by the Club, thus assuming the possibility that, in theory, the Player was meant to bear other additional charges, on the other hand the Appellant failed to prove that it was allowed to deduct those amounts from the Player's salaries. In addition, the wording in Clause V of the Contract (*"the player shall receive 4.000 euros netto monthly"*) quite contrasts with the alleged right of the Club to deduct any amount from the Player's remuneration. Moreover, it was not demonstrated that the amount of EUR 3,392.55 was actually deducted from the Player's salaries and paid by the Club, since the documentation already submitted during the FIFA proceedings does not constitute sufficient and valid evidence thereof, as correctly established by the Appealed Decision.

110. The same considerations apply with respect to the amount allegedly deducted as guarantee for equipment return, since there is no provision in the Contract allowing the Club to do so, nor has the Club demonstrated that the Player actually had an obligation to return the equipment (while the Club had the obligation to make available for the player *"an adequate training and competition equipment and other materials for the training"*), or even that the Player left the Club without returning anything, as alleged by the Appellant.

111. As a consequence, the Sole Arbitrator finds that the Club failed to demonstrate that it was entitled to deduct from the Player's salaries any amount for alleged health insurance, unemployment and social security contributions, nor for an alleged guarantee for equipment's return.

112. With regard to the fine of EUR 6,000, the Sole Arbitrator considers that the Club failed to prove any alleged misconduct by the Player which would have entitled the Club to impose such a sanction and also, the Club did not demonstrate that the Player's right to defence in the relevant disciplinary proceedings has been respected. As a conclusion, the relevant fine must be considered arbitrary and shall be disregarded.

113. With regard to the burden of proof, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that: *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

114. In consideration of the above, the Sole Arbitrator has reached the conclusion that the Club had no right to deduct the amount of EUR 10,662.53 from the Player's receivables and therefore, it did not comply with its financial obligations towards the Player with respect to the payment of the salaries for the months of November 2010, December 2010 and January 2011, amounting to EUR 12,000 net.

115. In addition, it also emerged from the file that the Club completely failed to reply to many as five Player's remainder letters claiming for his outstanding remuneration.

116. In consideration thereto, the Sole Arbitrator shares the opinion of the FIFA DRC in the Appealed Decision that the Player terminated the Contract with just cause on 14 February 2011, in accordance with Article 14 of the FIFA Regulations.

117. In this regard, according to FIFA interpretation, *"the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case"* and where violation of the terms of an employment persists for a long time or in case many violations be cumulated over a certain period of time, it is most likely that the party suffering the breach is considered to be entitled to terminate the contract unilaterally (see FIFA Commentary on FIFA Regulations).

118. According to the jurisprudence of FIFA and CAS (CAS 2014/A/3679 para. 85 et 86; CAS 2014/A/3584 para. 61-88; CAS 2013/A/3426 para. 142-158 and CAS 2006/A/1180, para. 8.3 - 8.4), the Sole Arbitrator shares the opinion of the FIFA DRC in the Appealed Decision that the Club's failure to pay the Player's salaries for three months, together with the Club's failure to reply to even one of the Player's reminder letters is a clear indication that the breach had reached such a level of seriousness that the Player could not expect a continuation of the employment relationship with the Club and was therefore entitled to unilaterally terminate the Contract.

119. With regard to compensation, in the absence of a specific provision in the Contract, the relevant amount shall be calculated in accordance with Article 17 of the FIFA Regulations. Taking into consideration the law of the country concerned, the specificity of sport and the other objective criteria, indicated in the relevant rule, and in particular with consideration of the remuneration and the time remaining of the existing contract (until 15 June 2011 according to Clause V of the Contract), the Sole Arbitrator agrees that the amount of EUR 18,000 (corresponding to the Player's salaries for 4 months and a half) established by the FIFA DRC is a reasonable compensation in the present case.

120. The amount of EUR 200 as reimbursement for travel expenses is also justified and further, was not disputed by the Appellant.

121. With respect to the interest, Article 102 par. 2 of the Swiss Code of Obligations ("SCO") provides that, *"where a deadline for performance of the obligation has been set by agreement of the parties, the obligor is automatically in default on expiry of the deadline"*. If no deadline has been agreed, the debtor is in default as soon as he receives a formal reminder from the creditor (Article 102.1 of the SCO). Therefore, the Sole Arbitrator finds that the Appealed Decision shall also be upheld with regard to the percentage and the *dies a quo* of the interest.

XIII. CONCLUSION

122. In view of the above, the Sole Arbitrator has reached the conclusion that the Club failed to pay the Player's salaries for three (3) consecutive months in the total amount of EUR 12,000, and

the Player was therefore entitled to unilaterally terminate the Contract with just cause according to Article 14 of the FIFA Regulations. The amount of compensation established by the FIFA DRC in the Appealed Decision in accordance with Article 17 of the FIFA Regulations is correct and shall be confirmed as well as the claim for reimbursement relating to travel expenses. As a result of the above, the appeal filed by the Club against the Appealed Decision is dismissed and the Appealed Decision shall be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by AFC Astra Ploiesti on 9 December 2014 against the decision issued by the FIFA Dispute Resolution Chamber on 28 August 2014 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 28 August 2014 is confirmed.

(…)

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