Arbitration CAS 2014/A/3864 AFC Astra v. Laionel da Silva Ramalho & Fédération Internationale de Football Association (FIFA), award of 31 July 2015

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football
Contract of employment between a club and a player
Competence of the FIFA DRC Judge to deal with employment-related disputes
Requirements related to the imposition of a fine on a player
Validity of the deduction of a fine against a player's outstanding remuneration

1. **Pursuant to article 22 lit. b) in conjunction with article 24(1) of the FIFA Regulations, the FIFA DRC Judge is, under certain circumstances, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level and has been explicitly chosen by the parties by means of a respective agreement on jurisdiction.**

2. **It must, in principle, be possible for a football club to impose a fine on a player in case of contractual violations. However, even if the club has complied with the applicable regulatory requirements for the imposition of a fine on a player, it also has to prove that the procedure followed was compliant with basic procedural rights including the respect of the player's right to be heard. Furthermore, to become final and biding in the meaning of *res iudicata*, the notification to the player of the ratification of the fine by the competent national football disciplinary organ should also be established.**

3. **To be valid, the deduction of a fine for alleged contractual misbehaviour of a player from his salary must be contractually provided.**

I. THE PARTIES

1. Asociatia Fotbal Club Astra (hereinafter: the "Club" or the "Appellant"), is a professional football club with its registered office in Giurgui, Romania, currently competing in the Romanian Lega 1. The Club is registered with the Romanian Football Federation (*Federatia Romana de Fotbal* – hereinafter: the "FRF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. Mr Laionel da Silva Ramalho (hereinafter: the "Player" or the "First Respondent"), is a professional football player of Portuguese nationality.

3. The Fédération Internationale de Football Association (hereinafter: "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings. This background is made 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 discussion.

5. On an unspecified date, the Player and the Club concluded a *"Sporting Services Agreement"* (hereinafter the "Agreement") valid for a period of four months, as from 1 February 2012 until 31 May 2012.

6. The Agreement contains, *inter alia*, the following relevant terms:

"V. PRICE OF AGREEMENT:

The price of the agreement is:

For the period 01.02.2012 – 31.05.2012, the player shall receive 32,000,00 EUR net, divided into 4 equal monthly rates.

(…)

VI. AMENDMENT/TERMINATION OF THE AGREEMENT:

1) The amendment of any provision of the present agreement can be made by an addendum signed by both parties.

VII. LITIGATIONS:

(…)

2) The parties undertake not to refer to any law court for the settlement of the litigations until after finishing all the methods of the court of jurisdiction of FRF, LPF and / or AJF.

3) The litigation 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, AJF, FIFA and TAS, as the case may be.

VIII. FINAL DISPOSITIONS:

1) The parties understand that this agreement shall be filled in according to the stipulations of the regulations of FRF, LPF and AJF".

7. On an unspecified date, the Player and the Club allegedly concluded a *"Contract of Employment"* (hereinafter the "Contract") valid for a period of three months, as from 1 March 2012 until 31 May 2012.

8. The Contract contains, *inter alia*, the following relevant terms:

"J. CONTRACT PRICE

-For the period 01.03.2012-31.05.2012, the player shall receive 24,000Eurso [sic] net, divided into 3 monthly rates.

N. LITIGATIONS:

The parties agree not to submit any litigation to the courts of justice before exhausting all the means of the jurisdiction courts of the Romanian Football Federation, Professional Football League, AJF, FIFA and UEFA.

O. FINAL TERMS:

The provisions of this individual contract of employment are completed by the provisions of the Act. No. 53/ 2003 – Labor Law and of the applicable collective contract of employment signed by the Employer/ employers' group/ branch/ national level.

(…)

The parties understand that this contract is completed properly with the regulations FRF and LPF AJF".

9. On 21 May 2012, the Board of Directors of the Club sanctioned the Player by ordering him to pay a fine in the amount of EUR 6,000, which corresponds to 25% of the value of the Contract.

10. On 20 June 2012, this fine was ratified by the Disciplinary Committee of the Romanian Professional Football League (hereinafter: the "DCRPFL").

B. Proceedings before the FIFA Dispute Resolution Chamber Judge

11. On 10 September 2012, the Player filed a claim against the Club before the FIFA Dispute Resolution Chamber (hereinafter: "FIFA DRC") indicating that the Club had only paid him EUR 8,000 out of the salary of EUR 32,000. In summary, the Player requested to be awarded with the following amounts:

- EUR 24,000 as outstanding salaries from March to May 2012;
- EUR 403,28 as *"default interests at the rate of 5% p.a., calculated over those outstanding remuneration from the perspective due date until 31 August 2012";*

- EUR 3,287 *"per each day of delay also as default interests at the rate of 5% p.a., from 1st September until effective and integral payment of the referred EUR 24,000"*.

12. In its reply, the Club, first of all, contested the jurisdiction of FIFA to deal with the matter, referring to a jurisdiction clause in the Agreement allegedly giving only competence to the *"jurisdictional committees"* of the Romanian Professional Football League (hereinafter: "RPFL") and/or the *"commissions with jurisdictional attributions"* of the FRF, which bodies *"comply with the requirements provided for in article 22 lit. b) of FIFA Regulations"* and asserting that the "*Regulations on the Status and Transfer of Football Players"* (hereinafter: The "FRF Regulations") of the FRF are applicable.

13. Furthermore, the Club stated that only the amount of EUR 24,000 stipulated in the Contract can be taken into account, from which amount the Club already paid EUR 5,880. Finally, the Club argued that a fine amounting to EUR 6,000 had been imposed on the Player and that this fine had to be set off against the remuneration the Player was entitled to. As such, the Club maintained that it only owed the Player the remaining amount of EUR 12,120.

14. On 27 August 2014, the FIFA DRC Judge rendered its decision (hereinafter: the "Appealed Decision"), with, *inter alia*, the following operative part:

"1. The claim of the [Player] is admissible.

2. The claim of the [Player] is partially accepted.

3. [The Club] has to pay to the [Player], within 30 days as from the date of notification of this decision, the amount of EUR 24,000 plus 5% interest until the date of effective payment as follows:

(i) 5% p.a. as of 1 April 2012 on the amount of EUR 8,000;

(ii) 5% p.a. as of 1 May 2012 on the amount of EUR 8,000;

(iii) 5% p.a. as of 1 June 2012 on the amount of EUR 8,000.

(…)

6. Any further claim lodged by the [Player] is rejected".

15. On 24 November 2014, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia,* the following:

- The FIFA DRC Judge established his competence to consider the present matter as to the substance on the basis of article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations"), considering that *"while analysing whether he was competent to hear the present matter, the DRC judge considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute actually contained an arbitration clause"*.
- In this respect, the FIFA DRC Judge found that *"art. VII of the* [Agreement] *does not make clear reference to one specific national dispute resolution chamber in the sense of art. 22 lit. b) of the aforementioned Regulations and does not even provides for the possibility of lodging a contractual dispute in front of FIFA. Therefore, the members of the Chamber* [sic] *deem that said clause can by no means*

be considered as a clear arbitration clause in favour either of the national deciding bodies, i.e. of the RFF or the RPFL, and, therefore, cannot be applicable. In this regard, the Chamber pointed out that this lack of clarity is also reflected in the [Club's] *argumentation since it refers to the alleged competence of the "jurisdictional committees" of the RPFL and also to "the commissions with jurisdictional attributions of the RFF" without further precision.*

- *Having established that the first criterion for the recognition of the competence of a national decision-making body is not fulfilled in the present matter, the DRC judge deemed unnecessary to examine any further points which would need to be assessed before concluding to the competence of a national deciding body".*

- As to the outstanding salary of the Player, the FIFA DRC Judge took note of the documentation presented by the Club and the Player and determined that *"the remuneration provided in the* [Agreement] *coincides with the remuneration set forth in the* [Contract] *and does not affect the financial claim of the* [Player]. *Consequently, the DRC judge concluded that the* [Player] *is to receive EUR 8,000 as monthly salary pursuant to the* [Agreement / Contract] *and, in particular, EUR 24,000 for the period from March to May 2012.*

- *The Chamber* [sic] *duly noted that the* [Club]*, on the other hand, admitted that it owed the* [Player] *outstanding salaries but disagreed with the total amount due. In this respect, the* [Club] *wishes that the fine of EUR 6,000, which was imposed upon the* [Player] *on 21 May 2012, be deducted from the outstanding amount, along with the amount of EUR 5,880 allegedly paid by the* [Club] *after the signature of the contract. Consequently, the* [Club] *submits that it only owes the amount of EUR 12,120 to the* [Player]*".*

- As to the fine imposed on the Player, the FIFA DRC Judge *"highlighted that said fine of EUR 6,000 was imposed on the* [Player] *by the* [Club] *by means of a decision of the Board of Directors of the* [Club] *rendered on 21 May 2012. In continuation, the DRC concurred that, as opposed to the issue relating to the outstanding payments on the basis of the* [Agreement / Contract]*, the execution of the disciplinary decision passed by the* [Club] *does not fall within the competence of the DRC Judge. Indeed, the execution of the internal decision relating to this fine is to be dealt with by the competent national authorities. Consequently, the DRC Judge agreed that the* [Club's] *debt towards the* [Player] *on the basis of the* [Agreement / Contract] *cannot be compensated with the aforementioned fine of EUR 6,000. As a result, the DRC Judge rejected the respective argument of the* [Club]*".*

- With regard to the payment of EUR 5,880, the FIFA DRC Judge *"recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Similarly, the DRC judge referred to art. 9 par. 1 lit. e) of the Procedural Rules which stipulates that all documents of relevance to the dispute shall be submitted in the original version as well as translated into one of the official FIFA languages.*

- *In this context, the DRC judge observed that the* [Club] *listed the payments made to the* [Player] *by means of a document elaborated by the* [Club] *itself. The DRC judge further noted that, although having been asked to do so, the* [Club] *did not provide a translated version of the said documentation enclosed to its submission in Romanian language only. Therefore, the DRC judge decided that said documentation could not be considered as a legitimate basis to justify any deductions from the amount claimed by the* [Player].

- *On account of the above and bearing in mind the general principle of pacta sunt servanda, the DRC judge decided that the* [Club] *is liable to pay to the* [Player] *outstanding remuneration in the total amount of USD* [sic] *24,000".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 8 December 2014, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration Rules (2013 edition) (hereinafter: the "CAS Code"). Furthermore, the Club requested that the appeal be decided by a Sole Arbitrator.

17. On 29 December 2014, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

"- The Decision issued on August 27, 2014, by the FIFA Dispute Resolution Chamber is set aside;

- *The claim lodged by the Player Laionel Silva Ramalho is dismissed;*
- *AFC Astra does not owe any amount to Laionel Silva Ramalho;*
- *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".*

18. On 7 January 2015, FIFA informed the CAS Court Office that it does not consider itself as a respondent and requested to be excluded from the procedure at stake. FIFA argues that the FIFA DRC Judge acted in his role as the competent deciding body of the first instance and was not a party to the dispute. Moreover, FIFA argued that the Appealed Decision is not of a disciplinary nature and that the appeal does not contain any substantial request against FIFA.

19. On 8 January 2015, the Player informed the CAS Court Office that he agreed with the appointment of a Sole Arbitrator.

20. On 12 January 2015, the Club informed the CAS Court Office that it maintains FIFA as respondent in the present proceedings.

21. On 14 January 2015, FIFA informed the CAS Court Office that it did not agree with the appointment of a Sole Arbitrator. Further, FIFA requested the CAS Court Office to consider the present appeal to have been withdrawn, arguing that the Club failed to meet the time limit to file its Appeal Brief.

22. On 20 January 2015, the Club informed the CAS Court Office that it fully complied with Article R32 of the CAS Code and that the Appeal Brief was therefore filed in time.

23. On 3 February 2015, the CAS Court Office informed the parties on behalf of the President of the CAS Appeals Arbitration Division that she found it premature, at that stage of the

proceedings, to terminate the present matter and left the final decision on the issue of admissibility to the Panel/Sole Arbitrator, once constituted.

24. On 17 March 2015, the CAS Court Office informed the parties that pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to hear the appeal was constituted as follows:

- Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Arnhem, the Netherlands

25. On 1 April 2015, the Player filed his Answer in accordance with Article R55 of the CAS Code. The Player submitted the following requests for relief:

"The Appeal filled [sic] by the Club and its requests should be dismissed and the decision from the FIFA Dispute Resolution Chamber, now appealed, should be partially confirmed, condemning the Appellant to pay to the Respondent the total amount of € 12.000,00 (twelve thousand Euros), plus default interests as follow:

. 5% p.a. as of 1 April 2012 on the amount of €8.000,00 until 28 March 2013;

. 5% p.a. as of 1 May 2012 on the amount of €4.000,00 until 31 March 2014;

. 5% p.a. as of 1 May 2012 on the amount of €4.000,00 until effective and integral payment;

. 5% p.a. as of 1 June 2012 on the amount of €8.000,00 until effective and integral payment;

The Appellant should be condemned to support the totality of arbitration and administrative costs inherent to the current appeal and also a contribution towards the Respondent's legal fees and other expenses incurred in connection with the proceeding, as provided in article R.64.5 of the Code".

26. On 10 April 2015, FIFA filed its Answer in accordance with Article R55 of the CAS Code, providing a copy of the underlying case file and requesting the following:

"1. To reject the present appeal against the decision of the DRC judge dated 27 August 2014 and to confirm the relevant decision in its entirety.

2. To order the Appellant to cover all the costs incurred with the present procedure.

3. To order the Appellant to bear all legal expenses of the second Respondent related to the procedure at hand".

27. Also on 10 April 2015, upon request of the Sole Arbitrator pursuant to Article R57 in connection with Article R44.3 of the CAS Code, FIFA provided the CAS Court Office with a copy of the case file in the matter at hand.

28. On 21, 24 and 24 April 2015 respectively, the Player, FIFA and the Club informed the CAS Court Office that they did not consider it necessary for a hearing to be held.

29. On 20 and 25 May 2015 respectively, the Player, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming – *inter alia* – that the Sole Arbitrator would decide this matter solely based on the parties' written submissions and that their right to be heard has been respected.

30. On 26 May 2015, the Club filed a new submission.

31. On 3 and 4 June 2015 respectively, the Player and FIFA objected to the admissibility of the Club's new submission.

32. On 15 June 2015, the CAS Court Office advised the parties that the Sole Arbitrator, pursuant to Article R56 of the CAS Code, had decided that the Club's new submission dated 26 May 2015 was inadmissible and would be disregarded since i) such new submissions had never been requested by the Sole Arbitrator; ii) both Respondents objected to the new submission; and iii) there are no exceptional circumstances allowing the filing of new briefs.

33. The Sole Arbitrator confirms that he considered himself to be sufficiently informed without need of an oral hearing and that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

34. The Club's submissions, in essence, may be summarised as follows:

- As to the jurisdiction of the FIFA DRC, the Club maintains that the FIFA DRC lacked competence because within the FRF and the RPFL there are *"independent jurisdictional commissions"* guaranteeing fair proceedings and complying with the principle of equal representation of players and clubs, which are exclusively competent *"to hear any dispute or litigation arising between the clubs in Romania and the players under contract with them"*. The Club refers to *"art. 26.8 of the Romanian RSTJF"* and *"art. 58.1 of the FRF Statute"*.
- The Club further submits that pursuant to *"article 13.3 of the Romanian RSTP"*, the Agreement has to be ignored and only the Contract is relevant to the matter in dispute.
- As to the alleged outstanding remuneration, the Club refers to payments made in April and May 2012, March 2013 and March 2014, and purports that the Player received the entire amount of remuneration he was entitled to.
- The Club maintains that a fine of 25% of the contractual rights for the season 2011/2012 was imposed on the Player, amounting to EUR 6,000. This decision was ratified by the DCRPFL and therefore irrevocable and fully enforceable.
- Finally, the Club submits that 5% interest is illegal as it is based on Swiss law, whereas the contractual relationship shall be governed by Romanian law.

35. The Player's submissions, in essence, may be summarised as follows:

- The Player finds that the FIFA DRC Judge rightly accepted competence as there is no arbitration clause in favour of the national Romanian bodies and because the Club did not establish that the jurisdictional bodies of the FRF and the RPFL fulfilled the parameters of article 22 lit. b) of the FIFA Regulations.

- As to the outstanding remuneration, the Player asserts that the payments made by the Club prior to 10 September 2012 (*i.e.* the payments dated 13, 19, 27 April and 31 May 2012) exclusively concern the salary of February 2012, that the Player always admitted having received.
- The Player however confirms to have received two additional payments totalling to an amount of Romanian Lei (hereinafter: "RON") 53,749, corresponding to approximately EUR 12,000 from the Club on 28 March 2013 and 31 March 2014 and requests the Panel to modify point 3 of the operative part of the Appealed Decision accordingly, explaining that at the date he filed his claim with the FIFA DRC the Club owed him EUR 24,000, corresponding to his unpaid salaries for the months March, April and May 2012, but that based on the *"transfer proofs"* dated 28 March 2013 and 31 March 2014 provided by the Club with its Appeal Brief, the outstanding amount is to be reduced with EUR 12,000.
- As to the fine imposed on him, the Player purports that this fine and the set-off are illegal and void, emphasising that he never violated his contractual obligations. Further, the Player submits that he was never notified of any disciplinary procedure or any disciplinary decision.

36. FIFA's submissions, in essence, may be summarised as follows:

- As to the jurisdiction of the FIFA DRC Judge, FIFA maintains that the FIFA DRC Judge was competent as this case involves an employment-related dispute between a club and a player of an international dimension and the parties have not clearly and exclusively elected a national forum. FIFA refers to article 22 lit. b) in conjunction with article 24(1) and (2) of the FIFA Regulations in this respect. In addition, FIFA argues that the Club did not prove that the national forum is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.
- As to the ratification by the DCRPFL of the fine imposed by the Club on the Player, FIFA purports that *"it is the established and consistent jurisprudence of the DRC that the* [DCRPFL] *does not have jurisdiction to ratify any decision made by a club itself in relation to matters concerning the respect of contractual obligations, since this concerns a purely contractual aspect between a player and a club which should be adjudicated within the framework of the pertinent resolution system. In other words, sanctions imposed by a club itself on a player on the basis of an alleged violation of the employment contract cannot be considered as a disciplinary matter".*
- FIFA agrees that a club can in principle fine a player for a contractual violation, be it proportionally, be it contingent upon the validity of the contract itself and be it well-documented as well as justified, it is, in general, not for a disciplinary organ of a league or federation to confirm such decision. The only body on a national level in Romania that, within the framework of organised football, could potentially confirm the decision of the Club to deduct the fine imposed for alleged contractual misbehaviour of the Player from his salary, would be a national dispute resolution chamber in Romania, if it would comply with the minimum standards.

- In continuation, FIFA argues that the Club did not submit any documentary evidence proving that the Player had been duly notified of the "proceedings" started against him in front of the Club's Board, nor that the Player was invited to present his position during the "proceedings" in front of the DCRPFL, nor that the Player has been duly notified of the decision of the DCRPFL.
- As to the substance of the dispute, FIFA states that the Club did not submit any evidence of alleged misbehaviour of the Player and adds that a fine corresponding to 25% of a player's annual salary – not stipulated in the employment contract – can, in general, not be upheld since it is manifestly disproportional and excessive.

V. JURISDICTION

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

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

38. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2014 edition) which reads:

"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".

39. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

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

VI. ADMISSIBILITY

41. 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".

42. The Sole Arbitrator notes that pursuant to article 67(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of notification of the Appealed Decision.

42. The Sole Arbitrator notes that the grounds of the Appealed Decision were notified to the Club on 24 November 2014. As the Statement of Appeal was filed on 8 December 2014, which is within the 21 days deadline, the appeal was timely submitted and is admissible.

43. In continuation, the Sole Arbitrator observes that the Club filed its Appeal Brief on 29 December 2014, but that pursuant to Article R51 of the CAS Code the time limit to file the Appeal Brief expired on 25 December 2014. However and pursuant to Article R32 of the CAS Code, if the last day of the time limit is an official holiday or a non-business day in the country where the notification is to be made, the time limit shall expire at the end of the first subsequent business day.

44. In view of the fact that the Club provided evidence that 25 and 26 December 2014 were official holidays in Romania (first and second Christmas day) and because 27 and 28 December were non-business days (weekend), the first subsequent business day was 29 December 2014.

45. As such, the Sole Arbitrator finds that the Appeal Brief was filed in time and is admissible.

VII. APPLICABLE LAW

46. The Sole Arbitrator observes that the Club maintains that although *"the contract does not contain any provision in relation to the applicable law, apparently the Swiss law, which is the country where FIFA resides, may seem applicable to the substance of the contractual relationship between the parties. Such point of view, however, is not to be embraced by CAS, since the contract was signed in Romania, under the Romanian laws and regulations, and neither of the parties were aware, at the signing of the contracts and afterwards, of the Swiss law. It is unjust that a party conduct to be analysed though the provisions of a foreign law. Therefore in this case the Romanian Regulations apply"*.

47. The Club refers to *"art. 8.2 of the Regulation (EC) no.593/2008 no. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)"*, pursuant to which *"the contract shall be governed by the law of the country in which or* [sic]*, failing that, from which the employee habitually carries out his work in performance of the contract"*. Since the Contract was to be carried out in Romania.

48. The Club also refers to *"art. 3 of the Preamble of the Romanian RSTP",* pursuant to which *"[…] litigations shall be settled in according [sic] to these regulations"*.

49. The Player argues that the *"contract under analysis does not contain any provision regarding the applicable law, therefore according to the art. R58 of the CAS Code, the present case should analysed and decided in accordance with the FIFA Regulations and with the Swiss Law"*.

50. FIFA submits that the Club failed to provide the relevant documentation regarding the alleged applicable Romanian law and regulations, *"reason for which this argument can per se not be taken into account"*. In continuation, FIFA disputes the applicability of Romanian law and regulations *"since the employment contract at the basis of the contractual dispute does not contain an explicit agreement on the applicability of Romanian law"*. Further, FIFA points out that FIFA's regulations prevail over any national law chosen by the parties and adds that both the Agreement and the Contract even refer to the FIFA regulations.

51. Article R58 of the 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

52. Article 66(2) of the FIFA Statutes stipulates 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".

53. The Sole Arbitrator finds that Article R58 of the CAS Code is clear in determining that a dispute shall primarily be settled in accordance with the applicable regulations. As such, national laws, even if specifically chosen by the parties, are in any event only subsidiarily applicable, *i.e.* in case the need arises to fill a possible gap in the applicable regulations.

54. As to the applicable regulations, the Sole Arbitrator finds that the FIFA Regulations are primarily applicable since the present dispute is an international dispute between a Romanian club and a Portuguese player.

55. Should the parties have agreed on the application of Romanian law, such law might have been taken into account, however, in view of the clear wording of Article R58 of the CAS Code, the Sole Arbitrator observes that in the absence of such choice, the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled is to be applied subsidiarily.

56. Pursuant to Article R58 of the CAS Code, in conjunction with article 66(2) of the FIFA Statutes, and considering (i) the confirmation of the parties that both the Agreement and the Contract do not make any clear reference to the applicable regulations or a specific national law that should govern the proceedings of the case; (ii) the challenged decision was issued by a judicial body of FIFA, whose corporate seat is in Zurich, Switzerland; (iii) the Club is a member of the FRF which is a member of FIFA; and given that (iv) the dispute is of an international nature, the Sole Arbitrator finds that the various regulations of FIFA are primarily applicable and, subsidiarily, Swiss law, should the need arise to fill a possible gap in the regulations of FIFA.

57. The Sole Arbitrator will however consider the relevance of arguments made by the Club based on national FRF regulations and Romanian law if such argument is specifically brought forward.

VIII. MERITS

A. The Main Issues

58. As a result of the above, the main issues to be resolved by the Sole Arbitrator are:

a. Was the FIFA DRC Judge competent to deal with the matter at hand?

b. What amount of outstanding remuneration is the Club required to pay to the Player?

c. Does the Player owe the Club a fine in the amount of EUR 6,000?

d. What amount of interest is the Club required to pay to the Player?

a) Was the FIFA DRC Judge competent to deal with the matter at hand?

59. The Club argues that the FIFA DRC Judge did not have jurisdiction to hear the Player's claim for alleged outstanding payments given the *"existence, at national level, of competent bodies guaranteeing fair proceedings and complying with the principle of equal representation of Players and Clubs"*.

60. The Club maintains that *"within the FRF and the* [RPFL]*, there are independent jurisdictional commissions that, according to the regulations, have fully and exclusive competence to hear any dispute or litigation arising between the clubs in* Romania *and the players under contract with them"*.

61. The Club purports that the guarantee of a fair trail before the RPFL and the FRF is given by the FRF Regulations, which give the parties all the necessary means to be sure their procedural rights are respected. In addition, the Club submitted copies of article 1 of the Preamble of the FRF Regulations, article 13.3 of the FRF Regulations and article 58.1 of the Statute of the FRF.

62. The Player argues that the FIFA DRC Judge was competent and that the Club *"fails to prove the existence of any arbitration clause that could exclude the competence of FIFA DRC and also that the alleged jurisdictional bodies from RFF and LPF would fulfil with the parameters and principles of the art. 22, lit. b) of FIFA RSTP"*.

63. FIFA maintains that the FIFA DRC Judge was competent as this case involves an employment-related dispute between a club and a player of an international dimension and the parties have not clearly and exclusively elected a national forum. FIFA refers to article 22 lit. b) in conjunction with article 24(1) and (2) of the FIFA Regulations in this respect.

64. In addition, FIFA argues that the Club did not prove that the national forum is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. FIFA refers to the National Dispute Resolution Chamber Standard Regulations (hereinafter: the "FIFA NDRC Regulations") and to FIFA Circular no. 1010. FIFA argues that, most notably, none of the extracts provided by the Club clarify in detail the composition of the national arbitration bodies of the RPFL.

65. The Sole Arbitrator observes that article 22 lit. b) of the FIFA Regulations reads as follows:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: (…)

b) employment related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or collective bargaining agreement".

66. According to the FIFA Commentary on the 2005 edition of the FIFA Regulations (hereinafter: the "FIFA Commentary"), which has not lost its relevance with respect to article 22 lit. b) of the FIFA Regulations as this article has not been amended since then, *"the international dimension is represented by the fact that the player concerned is a foreigner in the country concerned (…) The jurisdiction of FIFA is automatically established (…). However, if the association where both the player and the club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes. These national arbitration tribunals may also be provided for within the framework of a collective bargaining agreement".*

67. Footnote no. 101 of the FIFA Commentary provides furthermore that *"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".*

68. In view of the above, the Sole Arbitrator considers that pursuant to article 22 lit. b) in conjunction with article 24(1) of the FIFA Regulations, the FIFA DRC Judge is, under certain circumstances, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exist at national level. This means that if an independent arbitration tribunal guaranteeing fair proceedings exist at national level, even if a dispute has an international dimension, may be referred to the national body, provided that the parties have explicitly chosen the national body by means of a respective agreement on jurisdiction.

69. As such, the Sole Arbitrator first has to examine whether the parties to the Agreement and/or the Contract have concluded an explicit arbitration clause in favour of a certain national judicial body which is competent to settle any dispute arising out from the contractual relationship.

70. The Sole Arbitrator observes that Chapter VIII (3) of the Agreement reads as follows:

"The litigation arising from the execution of the present agreement shall be settled following the procedural order:

(…)

b) By bringing the litigation before the court of jurisdiction of FRF, LPF, AJF, FIFA and TAS, as the case may be".

71. In continuation, the Sole Arbitrator notes that Chapter N of the Contract determines as follows:

"The parties agree not to submit any litigation to the courts of justice before exhausting all the means of the jurisdiction courts of the Romanian Football Federation, Professional Football League, AJF, FIFA and UEFA".

72. In view of these contractual clauses, the Sole Arbitrator considers that, regardless of whether the Agreement or the Contract is applicable, the parties did not explicitly determine that a certain national body was competent to examine any contractual disputes to the exclusion of the competence of all other bodies which might be invoked. To the contrary, the clauses merely mention multiple alternatives, including a specific reference to the competence of FIFA.

73. The Sole Arbitrator concurs with the FIFA DRC Judge that, considering that said clauses can by no means be considered as clear arbitration clauses in favour of either of the national deciding bodies, the FIFA DRC Judge rightly accepted competence on the basis of article 22 lit. b of the FIFA Regulations.

74. The Sole Arbitrator concurs with the FIFA DRC Judge that, in view of the above finding, there is no need to consider whether an independent arbitration tribunal exists guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

75. As a consequence, the Sole Arbitrator finds that the FIFA DRC Judge was competent to deal with the matter at hand.

b) What amount of outstanding remuneration is the Club required to pay to the Player?

76. The Club argues that it paid all outstanding remuneration to the Player, explaining that pursuant to *"the Romanian law (sporting regulations and common law)"* the Agreement is to be ignored. The Club purports that the Agreement was followed by the Contract which means that pursuant to article 13(3) of the FRF Regulations, the Player has no rights anymore arising from the Contract.

77. The Player maintains that he does not remember having signed the Contract, but that the Club still owes him EUR 12,000 and that the Club *"never showed any evidences of those supposed payments allegedly made"*. The Player further explicitly confirms that he now accepts that the Club paid him an amount of EUR 12,000 from his initial claim of EUR 24,000 before FIFA, so that only EUR 12,000 remains outstanding.

78. The Sole Arbitrator observes that the parties first entered into the Agreement for a period of four months, starting on 1 February 2012 until 31 May 2012, entitling the Player to a remuneration of EUR 32,000 divided in four equal monthly instalments of EUR 8,000.

79. In continuation, the Sole Arbitrator notes that the Agreement was apparently replaced by the Contract, entered into for a period of three months, starting on 1 March 2012 until 31 May

2012, entitling the Player to a remuneration of EUR 24,000 divided in three equal monthly instalments of EUR 8,000.

80. The Sole Arbitrator concurs with the FIFA DRC Judge that the remuneration provided in the Agreement coincides with the remuneration set forth in the Contract and does not affect the financial claim of the Player, as it is undisputed that the Player served four months with the Club.

81. The Sole Arbitrator observes that it is undisputed that on 10 September 2012, which is the date the Player filed his claim with FIFA, the first instalment of EUR 8,000, corresponding to the February salary, was paid by the Club to the Player.

82. The Sole Arbitrator observes that the FIFA DRC Judge awarded the amount of EUR 24,000, plus 5% interest *p.a.* until the date of effective payment as follows*:*

- 5% *p.a.* as of 1 April 2012 on the amount of EUR 8,000;
- 5% *p.a.* as of 1 May 2012 on the amount of EUR 8,000;
- 5% *p.a.* as of 1 June 2012 on the amount of EUR 8,000.

83. In its answer, the Player confirmed that the Club paid the Player the amount of RON 38,842 on 28 March 2013 and RON 14,907 on 31 March 2014, which corresponds to respectively EUR 8,792 and EUR 3,345, taking into account the undisputed currency rate provided by the Club. These two undisputed payments amount to a total of EUR 12,137, which amount has to be deducted from the amount awarded by the FIFA DRC Judge.

84. In continuation, the Sole Arbitrator observes that the Club argues that it paid EUR 5,580 to the Player and submitted the following evidence of payments to the Player, totalling up to EUR 4,522, taking into account the undisputed currency rate provided by the Club:

- 13 April 2012: RON 12,985, corresponding to EUR 2,969;
- 13 April 2012: RON 882, corresponding to EUR 201;
- 19 April 2012: RON 874, corresponding to EUR 200;
- 27 April 2012: RON 656, corresponding to EUR 150;
- 31 May 2012: RON 4,474, corresponding to EUR 1,002.

85. The Club argues that these payments relate to the salaries due under the Contract for the months of March, April and May 2012, but the Player purports that these payments relate to the February salary due under the Agreement and that the salaries for the months March, April and May remained unpaid.

86. The Sole Arbitrator observes that these payments were all made between 13 April and 31 May 2012, which is before 10 September 2012, which is the date the Player filed his claim with FIFA requesting the payment of the outstanding salaries for the months of March, April and May 2012.

87. The Sole Arbitrator is of the opinion that the Club could have easily filed evidence of all payments made to the Player regarding the entire four months of employment, but failed to provide evidence why the filed payment receipts and bank transfers relate to payments made by the Club to the Player for the months of March, April and May 2012, instead of February 2012. As a matter of fact, the documents do not refer to any month at all; the bank transfers refer to *"Description of money order: financial rights"* and the cash payment receipts refer to *"purpose of collection payment Financial rights"*.

88. The Sole Arbitrator, after carefully assessing the evidence provided by the Club as to the payments made to the Player, finds that this evidence indeed shows that certain payments were made. However, since the Player was entitled to four months salary, and in the absence of any clear reference being provided by the Club to explain the reason of payment for each transfer, the Sole Arbitrator is not convinced by the evidentiary value of these payment confirmations that these payments concerned the Player's salary of March, April or May 2012.

89. As such, the Sole Arbitrator concludes that only the payments made by the Club on 28 March 2013 and 31 March 2014, totalling up to EUR 12,137 are to be deducted from the amount awarded by the FIFA DRC Judge.

90. Consequently, the Sole Arbitrator finds that the Club is, in principle, required to pay the Player EUR 11,863 as outstanding remuneration.

c) Does the Player owe the Club a fine in the amount of EUR 6,000?

91. The next issue to be examined is whether the Club could impose a fine of EUR 6,000 on the Player and, if so, if this fine could be set off against the Player's entitlement to his outstanding salaries in the amount of EUR 11,863.

92. The Club argues that because the Player's *"effective participation to the team's matches has been sporadic, due to the player's conduct, as he manifested lack of interest in his preparation"* it sanctioned the Player with a fine corresponding to 25% of his annual salary, which sanction was ratified by the DCRPFL and that this decision has become irrevocable.

93. The Player purports that this fine and the set off are illegal and void, emphasising that he never violated his contractual obligations. Further, the Player submits that he was never notified of any disciplinary procedure or any disciplinary decision.

94. FIFA agrees that a club can in principle fine a player for a contractual violation, be it proportionally, be it contingent upon the validity of the contract itself and be it well-documented as well as justified, it is, in general, not for a disciplinary organ of a league or federation to confirm such decision. The only body on a national level in Romania that, within the framework of organised football, could potentially confirm the decision of the Club to deduct the fine imposed for alleged contractual misbehaviour of the Player from his salary, would be a national dispute resolution chamber in Romania, if it would comply with the minimum standards.

95. In continuation, FIFA argues that the Club did not submit any documentary evidence proving that the Player had been duly notified of the "proceedings" started against him in front of the Club's Board, nor that the Player was invited to present his position during the "proceedings" in front of the DCRPFL, nor that the Player has been duly notified of the decision of the DCRPFL.

96. As to the substance of the dispute, FIFA states that the Club did not submit any evidence of alleged misbehaviour of the Player and adds that a fine corresponding to 25% of a player's annual salary – not stipulated in the employment contract – can, in general, not be upheld since it is manifestly disproportional and excessive.

97. The Sole Arbitrator adheres with FIFA that it must, in principle, be possible for a club to impose a fine on a player in case of contractual violations.

98. Although the Sole Arbitrator has some doubts about the lawfulness of the regulatory system enabling to Clubs to have fines imposed on players by clubs ratified by a disciplinary committee rather that a national dispute resolution chamber, the Sole Arbitrator does not deem it necessary to address this issue in depth as no documentary evidence has been provided from which it derives that the Player was granted the opportunity to defend himself against the allegations of the Club, neither before the Club's Board of Directors, nor before the DCRPFL.

99. The Sole Arbitrator finds that even if the Club had complied with the applicable regulatory requirements for the imposition of a fine on a player, it also has to prove that this procedure was compliant with basic procedural rights including whether the Player's right to be heard has been respected.

100. Neither the decision of the Club's Board of Directors, nor the decision issued by the DCRPFL mention whether the Player was present during the hearings or was provided with other possibilities to defend himself. There is no evidence on file regarding the proper summoning of the Player and as such the Sole arbitrator is not convinced that the Player's right to be heard has been respected.

101. Furthermore, different from CAS 2013/A/3109, but as in CAS 2014/A/3483, no evidence has been provided that the ratification of the DCRPFL was effectively notified to the Player. For any decision to become final and binding in the meaning of *res iudicata* it is, however, essential that such decision is effectively notified to the parties or addressees of such decision (see CAS 2014/A/3483).

102. Furthermore, the Sole Arbitrator observes that neither the Agreement, nor the Contract, contains a clause determining that the Club may impose a fine on the Player and that such fine may be set off against the Player's salary.

103. In view of all the above, the Sole Arbitrator finds that there is insufficient basis to set off the fine against the Player's salary.

104. Consequently, the Sole Arbitrator finds that the ratification by the DCRPFL of the fine imposed on the Player by the Club had no *res iudicata* effect and that this fine cannot be set off against the Player's salary.

d) What amount of interest is the Club required to pay to the Player?

105. The Club argues that 5% interest is illegal as it is not based on the national law of Romania, but Swiss law.

106. The Player and FIFA did not make any comments regarding the law applicable to determine the interest payable.

107. The Sole Arbitrator observes that the Club did not substantiate its argument as to why Romanian law should be applied instead of Swiss law regarding the interest payable. The Club did not even inform the Sole Arbitrator of the applicable provisions on interest under Romanian law. As such, the Sole Arbitrator is left no other option but to apply Swiss law in respect of interest.

108. The Sole Arbitrator observes that article 104(1) of the SCO, determines the following:

"A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract".

109. Since the Contract and the Agreement do not specifically state on which date the Player's salary was to be paid every month, the Sole Arbitrator finds that it must be assumed that the salary was due by the end of each month.

110. Considering the interest awarded in the Appealed Decision and the payments made by the Club to the Player in the meantime, the Sole Arbitrator finds that the Club shall pay the amount of EUR 11,863 to the Player, plus interest as follows:

- Interest at a rate of 5% *per annum* over the amount of EUR 8,000 as from 1 April 2012 until 28 March 2013;
- Interest at a rate of 5% *per annum* over the amount of EUR 792 as from 1 May 2012 until 28 March 2013;
- Interest at a rate of 5% *per annum* over the amount of EUR 3,345 as from 1 May 2012 until 31 March 2014;
- Interest at a rate of 5% *per annum* over the amount of EUR 3,863 as from 1 May 2012 until the date of effective payment;
- Interest at a rate of 5% *per annum* over the amount of EUR 8,000 as from 1 June 2012 until the date of effective payment.

B. Conclusion

111. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

- The FIFA DRC Judge was competent to hear the claim of the Player.
- The fine imposed on the Player by the Club cannot be set off against the Player's outstanding remuneration.
- The Player is entitled to outstanding remuneration in the amount of EUR 11,863 plus interest at a rate of 5% *per annum* in accordance with the schedule set out above.

112. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Asociatia Fotbal Club Astra against the decision rendered by the Dispute Resolution Chamber Judge of the Fédération Internationale de Football Association on 27 August 2014 is partially upheld.

2. Asociatia Fotbal Club Astra shall pay to Mr Laionel da Silva Ramalho the amount of EUR 11,863 (eleven thousand, eight hundred and sixty three Euro) plus interest as follows:

   a) Interest at a rate of 5% *per annum* over the amount of EUR 8,000 as from 1 April 2012 until 28 March 2013;

   b) Interest at a rate of 5% *per annum* over the amount of EUR 792 as from 1 May 2012 until 28 March 2013;

   c) Interest at a rate of 5% *per annum* over the amount of EUR 3,345 as from 1 May 2012 until 31 March 2014;

   d) Interest at a rate of 5% *per annum* over the amount of EUR 3,863 as from 1 May 2012 until the date of effective payment;

   e) Interest at a rate of 5% *per annum* over the amount of EUR 8,000 as from 1 June 2012 until the date of effective payment.

3. (…).

4. (…).

5. All further and other prayers or requests for relief are dismissed.