



Arbitration CAS 2016/A/4372 Alexander Lopyrev v. Football Union of Russia (RFU) & FC Krylya Sovetov, award of 6 July 2016

Panel: Mr Lars Hilliger (Denmark), Sole arbitrator

Football

Enforcement of a sanction against a club for non-compliance with a decision of a federation

Principle of non-retroactivity of the amendments to the regulations of a federation

Competence of the national federation judicial bodies to enforce a sanction

Referral of the question of a club sanctions to the previous instance

1. **According to CAS jurisprudence, amendments to the regulations of a federation do not, *per se*, imply any amendments to the regulations that were in force and applicable at the time when the appellant lodged his original claim and which, in compliance with current principles of law, are therefore generally applicable to the hearing of the entire case under review. This conforms to the general principle of “*tempus regit actum*”.**
2. **If an agent - party to an agency contract with a club - was entitled to institute execution proceedings before the judicial bodies of the federation in the event of non-compliance of the club with the decision rendered by the federation, the federation’s judicial bodies are wrong in deciding that the respective chamber (PSC and DRC) is not competent to consider the agent’s application, thus indirectly refusing to sanction the club in accordance with the federation regulations on Status and Transfer of Players.**
3. **If none of the federation’s judicial bodies, due to their incorrect assessment of the competence to deal with the dispute, has had a chance to consider and decide the question as to whether sanctions should be imposed on the club for non-compliance with the decision rendered by the federation, the question of sanctioning should be referred back to the federation for consideration and decision in connection with its renewed hearing of the appeal.**

1. THE PARTIES

- 1.1 Mr Alexander Lopyrev (the “Appellant” or the “Agent”) is a professional football agent of Russian nationality.
- 1.2 The Football Union of Russia (the “First Respondent” or “RFU”) is the national football association of Russia, which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).

- 1.3 FC Krylya Sovetov (the “Second Respondent” or the “Club”) is a Russian football club currently participating in the Russian Football Premier League. The Club is affiliated with the RFU.

2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the RFU Players’ Status Committee (the “RFU PSC”) on 28 December 2015 (the “Decision”), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 20 August 2012, the Agent and the Club entered into an agency contract, and in July 2014, the Agent and the Club entered into a Debt Repayment Procedure Agreement, under which the Agent and the Club established the debt repayment procedure under the agency contract. The Agent and the Club agreed, inter alia, that “*all disputed arising from this Agreement shall be settled in Dispute Resolution Chamber, Players’ Status Committee and CAS in sequence set in Regulations on dispute resolution of RFU*”.
- 2.3 On 31 March 2015, the Agent lodged a claim with the RFU Dispute Resolution Chamber (the “RFU DRC”) against the Club regarding unpaid agency remuneration in the amount of USD 322,155.52. The Club never disputed the outstanding payment of the said amount.
- 2.4 The RFU DRC, in its Decision No. 060-15 of 14 July 2015 (“the First 060-15 Decision”), first of all analysed whether or not it was competent to decide the case as follows:

“Chamber Competence”

As of the date of consideration of the case on the merits (June 14, 2015) RFS Regulation for Agent Activities approved by Resolution of the Executive Committee of RFS dated December 18, 2008 No. 131 (as amended and supplemented) has become invalid due to the entry into force of RFS Regulations for Working with Intermediaries, approved by Resolution of the Executive Committee of RFS No. 164/4 dated March 30, 2015 (hereinafter Regulations for Working with Intermediaries).

According to par. 1 of Art. 13 of Regulations for Working with Intermediaries, the above regulations shall enter into force as of April 1, 2015 and applies to contracts with intermediaries concluded not earlier than April 1, 2015. Agency contracts concluded before April 1, 2015 in accordance with the Regulations of RFS for Agent Activities, approved by Resolution of the Executive Committee of RFS dated December 18, 2008 No. 131 (as amended and supplemented), remain in force until the expiration of the term for which they were concluded.

As of the date of submission of the application to the Chamber (March 31, 2015) Regulations of RFS for Agent Activities, approved by Resolution of the Executive Committee of RFS dated December 18, 2008 No. 131 was in force.

In accordance with Art. 25 of RFS Regulations for Agent Activities in the event of a dispute between the Agent and the Club including the case of failure by the Club to comply with terms and conditions of the Agency Contract,

if the Agent and the Club are registered in the RFS (national conflict), the proceedings and the decision shall be taken by the Chamber, in accordance with RFS Dispute Resolution Regulations.

According to subpar. "K" of par. 1 of Art. 13 of RFS Dispute Resolution Regulations the Chamber considers and resolves dispute on breach of terms and conditions of contracts concluded with licensed football agents;

Thus, the consideration of this case is within the competence of the Chamber".

2.5 Thus, having confirmed its competence, the RFU DRC decided, inter alia, as follows:

"1. Grant partially the application of [the Agent] against [the Club].

2. Oblige [the Club] to pay [the Agent] the debt under the agency contract [USD 322,135.52] within thirty (30) days from the decision effective date.

3. ...

4. This decision shall enter into force in the manner described in Article 50 of RFU Dispute Resolution Regulations.

5. In accordance with Article 41 of the Russian Football Union, All-Russian Organization and Article 53 of RFS Dispute Resolution Regulation this decision may be appealed to the Players' Status Committee within 5 working days from receipt of the decision in its entirety".

2.6 The First 060-15 Decision was never appealed.

2.7 On 19 October 2015, the Agent filed an application with the RFU DRC for execution proceedings on the First 060-15 Decision, requesting the RFU DRC to order the Club to execute said decision and to sanction the Club for its failure to execute the decision in time.

2.8 In analysing its competence, the RFU DRC, in its Decision No. 060-15 of 29 October 2015 ("the Second 060-15 Decision") drew, *inter alia*, the following conclusions:

"Agents application dated March 31, 2015 on payment of debt was considered by the Chamber on July 14, 2015 due to the fact that at the time of submission of the application by the Agent the consideration of applications of licensed agents of football players fell within the competence of the Chamber pursuant to Article 2 of RFS Dispute Resolution Regulations. Besides, in accordance with the version of RFS Regulations for the Status and Transfer of Players as amended at the time of submission of the application the licensed agent of football players were subjects of football (Article 1 of Regulations).

On March 25, 2015 the Resolution No. 134/2 of the Bureau of the Executive Committee of RFS introduced amendments to RFS Dispute Resolution Regulations, according to which the licensed agents of football players lost the right to apply to the Chamber as of April 1, 2015.

In addition, on March 30, 2015 the Resolution No. 164/3 of RFS Executive Committee introduced amendments to RFS Regulations for the Status and Transfer of Players, according to which the licensed agents of the football players are no longer the subjects of football as of April 1, 2015.

Agent's application of non-compliance with the Chamber decision dated July 14, 2015 was received by the Chamber on October 19, 2015, i.e. after April 1, 2015. Therefore, at the time of filing this application the Applicant was not the subject of football.

Thus, the Chamber has no competence to consider the Agent's application of non-compliance with the Chamber decision dated July 14, 2015.

The Chamber notes that the Applicant shall have the opportunity to apply for protection of its rights and legitimate interests to the court of general jurisdiction where the application will be considered in the manner prescribed by applicable laws of the Russian Federation, considering the Chamber decision dated July 14, 2015 (subject to submission to case materials)".

- 2.9 Based on the above, the RFU DRC dismissed without prejudice the Agent's application and terminated the procedure on payment of the debt under the agency contract.
- 2.10 On 15 December 2015, the Agent lodged a claim with the RFU PSC regarding the Second 060-15 Decision, claiming that the RFU DRC was wrong in denying that it was competent to deal with the execution proceedings.
- 2.11 By Ref no. 060-15 of 28 December 2015 ("the Decision"), the RFU PSC stated that consideration of disputes where one party is a licensed agent of the football players is beyond the competence of the RFU DRC, and the RFU PSC consequently did not take jurisdiction over the appeal, stating, inter alia, as follows:

"[RFU PSC] does not take jurisdiction over the appeal of [the Agent] [] on following grounds:

On March 2015 by the Decision of Office of the Executive Committee No. 134/2 amendments were made to the RFU Regulations on dispute resolution, according to which licensed agents of the football players lost their right to file a case in Dispute Resolution Chamber starting from 01 April 2015. Moreover starting from 01 April 2015 licensed agents of the football players were eliminated from the subjects of football (according to the decision of Office of the Executive Committee No. 164/3 from 30 March 2015 which amended RFU Regulations of status and transfers).

Agent's appeal on non-compliance with the Dispute Resolution Chamber (hereinafter referred to as DRC) decision No. 060-15 from 14 July 2015 was submitted on 19 October 2015, and appeal on DRC decision No. 060-15 from 29 October 2015 was submitted 15 December 2015, i.e. after 01 April 2015. Consequently, by the moment of submission of appeal in PSC, licensed agent of the football players Lopyrev A.V. was not a subject of football.

Moreover, 25 November 2015 Executive Committee of RFU adopted a new version of Regulations on Dispute resolution, which came into force (regarding the procedure of appeal of DRC decisions) on 26 November 2015.

In accordance with para 1 of article 53 of the RFU Regulations (edition 25 November 2015) DRC Decision which is rendered on the issues described in par. 1 art. 13 of the RFU Regulations, except for the issues described in subpars "b", "v", "g", "e", "z" of par. 1 art. 13 of the RFU Regulations can be appealed only to the PSC in 5 business days starting from the receipt of the grounded decision.

In accordance with article 13 of Regulations on dispute resolution, consideration of disputes where one party is licensed agent of the football players is beyond the competence of DRC.

Therefore, consideration of appeal of licensed agent of the football players Lopyrev on DRC decision from 14 July 2015 is beyond the PSC competence".

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 30 December 2015, the Appellant filed a Statement of Appeal against the Decision rendered by the RFU Players' Status Committee on 28 December 2015.

3.2 On 28 January 2016, in accordance with Article R51 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed his Appeal Brief.

3.3 By letter of 1 March 2016 from the CAS Court Office, the Parties were informed, *inter alia*, that with reference to the letter from the CAS Court Office of 29 January 2016, by which the Respondents were granted a deadline of 20 days from receipt of the Appeal Brief to file their respective answers, such deadline expired on 22 February 2016 without the CAS Court Office having received any answers or any other communication from the Respondents in this regard.

3.4 On 2 March 2016, the First Respondent informed the CAS Court Office by e-mail that the answer from the First Respondent, together with its exhibits, had been filed on 18 February 2016 by e-mail only.

3.5 On the same date, the Appellant objected to the answer of the First Respondent being added to the case file, since, *inter alia*, the answer was not filed in accordance with Article R31 of the CAS Code.

3.6 On the same date, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark, had been appointed as Sole Arbitrator in the case.

3.7 By letter of 3 March 2016, the First Respondent wrote to the CAS Court Office as follows:

"According to the article R31 CAS Code, filing of the above-mentioned submissions by electronic mail is permitted under the condition set out in the CAS guidelines on electronic filing.

The exhibits attached to any written submissions may be sent to the CAS Court Office by electronic mail, provided that they are listed and that each exhibit can be clearly identified; the CAS Court Office may then forward them by the same means.

According to the above, FUR is kindly asking CAS to attach answer and other exhibits to the case".

3.8 On 15 March 2016, the Parties were informed by the CAS Court Office that the Sole Arbitrator had decided to hold a hearing in this matter.

3.9 Furthermore, the Parties were informed, *inter alia*, as follows:

"Separately, the Parties are advised that the Sole Arbitrator has decided that the First Respondent's answer is not admissible as he considers that it was untimely filed, in accordance with Article R55 in connection with Article R31 of the CAS Code.

In any event, the Respondents are advised that they will have ample opportunity to provide their respective positions during the hearing".

- 3.10 The Second Respondent never filed any answer within the granted deadline.
- 3.11 Finally, on 4 April 2016, the Appellant signed and returned the Order of Procedure, which the Respondents never returned to the CAS Court Office. The Respondents did not sign the Order of Procedure despite having been invited by the CAS Court Office to do so.

4. HEARING

- 4.1 A hearing was held on 29 April 2016 in Lausanne, Switzerland.
- 4.2 The Appellant was represented at the hearing by its counsel, Ms Darina Nikitina.
- 4.3 The Respondents were not present at the hearing despite having been duly summoned by the CAS Court Office. In accordance with Article R57 of the Code, the Sole Arbitrator decided to proceed with the hearing and render this Award.
- 4.4 The Appellant confirmed that he did not have any objections to the appointment of the Sole Arbitrator.
- 4.5 The Appellant had ample opportunity to present his case, submit his arguments and answer the questions posed by the Sole Arbitrator. After the Appellant's final submission, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator heard carefully and took into account in his subsequent deliberation all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present Award. Upon closure, the Appellant expressly stated that he did not have any objections in respect of his right to be heard and to be treated equally in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

- 5.1 Article R47 of the CAS Code states as follows:
- “An appeal against the decision of a federation, association or sports-related body may be filed with the 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 the said sports-related body”.*
- 5.2 With respect to the Decision, the Appellant submits that the jurisdiction of the CAS derives from Article 47 of the RFU Statutes, which states as follows:
- “In accordance with the relevant provisions of the FIFA, UEFA and RFU Statutes any appeal against final and legally binding decisions of the FIFA, UEFA and RFU shall be heard by the CAS. The Court of Arbitration for Sport, however, does not hear appeals concerning the matters stipulated by the FIFA, UEFA and RFU, or appeals against the decisions of an independent and properly constituted Russian arbitration tribunal referred to in Article 45 thereof”.*

5.3 Furthermore, Article 25 of the RFU Agents Regulation – edition of 18 December 2013 (the “Agent Regulations”) – provides as follows:

“In case dispute rises between Agent and Player or between Agent and Club, considering non-compliance with obligations under agency contract by Player. Club or Agent, if the Agent, the Club or the Player are registered in RFU (national dispute), resolution and decision making is under RFU Dispute Resolution Chamber competence according to RFU Dispute Resolution Regulations”.

5.4 Furthermore, Article 53 of the RFU Regulations on Dispute Resolution – edition of 25 March 2015 – provides as follows:

“1. The decision of the DRC can only be appealed to PSC within 5 working days following the receipt of the decision in full.

2. The decision of PSC can be appealed to the Court of Arbitration for Sport in Lausanne (Switzerland) within 21 calendar days following the receipt of the decision”.

5.5 Article 53 of the RFU Regulations on Dispute Resolution was amended on 25 November 2015 to read as follows:

“1. DRC Decision which is rendered on the issues described in par. 1, art 13 of the RFU Regulations, except for the issues described in subpars “b”, “v”, “g”, “e”, “z” of par. 1 art. 13 of the RFU Regulations can be appealed only to the PSC in 5 business day starting from the receipt of the grounded decision.

2. The PC Decisions or DRC Decisions rendered under subpars “b”, “v”, “g”, “e”, “z” of par. 1 art. 13 of the RFU Regulations can be appealed to the Court of Arbitration for Sports in Lausanne (Switzerland) within 21 calendar days following the receipt of grounds of the decision”.

5.6 Based on the above, the Appellant submits that, in accordance with both editions of the RFU Regulations on Dispute Resolution, the Appellant was right in appealing the Second 060-15 Decision to the RFU PSC and that the Decision rendered by the RFU PSC can be appealed to the CAS.

5.7 The Sole Arbitrator initially notes (see para. 2.4 above) that the RFU DRC stated as follows in the First 060-15 Decision of 14 July 2015:

“As of the date of submission of the application to the Chamber (March 31, 2015) Regulations of RFS for Agent Activities, approved by Resolution of the Executive Committee of RFS dated December 18, 2008 No. 131 was in force.

In accordance with Art. 25 of RFS Regulations for Agent Activities in the event of a dispute between the Agent and the Club including the case of failure by the Club to comply with terms and conditions of the Agency Contract, if the Agent and the Club are registered in the RFS (national conflict), the proceedings and the decision shall be taken by the Chamber, in accordance with RFS Dispute Resolution Regulations.

According to subpar. “K” of par. 1 of Art. 13 of RFS Dispute Resolution Regulations the Chamber considers and resolves dispute on breach of terms and conditions of contracts concluded with licensed football agents;

Thus, the consideration of this case is within the competence of the Chamber”.

- 5.8 By making this statement, the RFU DRC confirmed its competence to hear and decide the dispute in accordance with the regulations applicable at the time of institution of proceedings (i.e. on 31 March 2015), notwithstanding the subsequent entry into force of new regulations under which the RFU DRC would formally not be competent.
- 5.9 It further appears explicitly, as set forth in the First 060-15 Decision, that
“In accordance with Article 41 of the Russian Football Union, All-Russian Organization and Article 53 of RFS Dispute Resolution Regulation this decision may be appealed to the Players’ Status Committee within 5 working days from receipt of the decision in its entirety”., from which a second appeal under the said article may be filed with the CAS.
- 5.10 The Sole Arbitrator notes in this connection that the Decision deals with the same dispute as the one considered in the First 060-15 Decision, which is reflected, *inter alia*, by the fact that all decisions have been administered under case number 060-15.
- 5.11 Given these circumstances, the Sole Arbitrator concludes that the above-mentioned rule of Article 53 of the RFU Regulations on Dispute Resolution – edition of 25 March 2015 – applies to the issues of right of appeal and jurisdiction, from which it follows that *“The decision of PSC can be appealed to the Court of Arbitration for Sport in Lausanne (Switzerland) within 21 calendar days following the receipt of the decision”*.
- 5.12 The Sole Arbitrator also notes, as a matter of form, see Article R47 of the CAS Code, that there are insufficient grounds for assuming that the Appellant has not exhausted the legal remedies available to him prior to the appeal, in relation to which the Sole Arbitrator points out that the wording of this provision may not be construed, by implication, to impose an obligation that would require the Appellant, if possible, also to have pursued his claim before the civil courts of law.
- 5.13 The Decision was notified to the Appellant on 30 December 2015, and the Appeal was lodged on the same date, i.e. within the statutory time limit set forth in Article 53 of the RFU Regulations on Dispute Resolution, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Article R48 and R51 of the CAS Code.
- 5.14 It follows that the CAS has jurisdiction to decide on this appeal and that the appeal is admissible.
- 5.15 Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

6. APPLICABLE LAW

- 6.1 Article R58 of the CAS Code states as follows:

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

- 6.2 As mentioned under para. 5.8 above, the RFU DRC confirmed its competence to hear and decide the dispute in accordance with the regulations applicable at the time of institution of proceedings (i.e. on 31 March 2015), notwithstanding the subsequent entry into force of new regulations under which the RFU DRC would formally not be competent.
- 6.3 With reference to the foregoing, and in view of the fact that this appeal arises out of the same dispute (060-15), the Sole Arbitrator finds that, in accordance with Article R58 of the Code, the applicable law in this matter must be the regulations of RFU, which were applicable at the time of the initial claim of the Appellant, i.e. on 31 March 2015, and, additionally, Russian law.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

- 7.1 The following outline of the Appellant's requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

A. The Appellant:

- 7.2 In his Appeal Brief of 28 January 2016, as modified at the hearing before the Sole Arbitrator, the Appellant requested the following from the CAS:

- “1) The appeal filed by the Appellant is upheld;*
- 2) The Decision issued by the RFU Players' Status Committee on 28 December 2015 is annulled and set aside;*
- 3) The Football Club “Kryla Sovetov” shall execute the RFU Dispute Resolution Chamber [] dated 14 July 2015 and pay to the Appellant the amount of 322 135,52 USD as agency remuneration and 5% of the interest per year starting from 25 August 2015;*
- 4) The Russian Football Union shall sanction the Football Club “Kryla Sovetov” with a ban on registration of football players during one transfer window;*
- 5) The Russian Football Union and Football Club “Kryla Sovetov” shall bear all the costs incurred with the present procedure;*
- 6) The Russian Football Union and Football Club “Kryla Sovetov” shall pay to the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel”.*

7.3 In support of his requests for relief, the Appellant submitted as follows:

- a) First of all, it is undisputed that the Second Respondent is obliged to pay to the Appellant the amount of USD 322,135.52 as unpaid agency fee and the Respondents never disputed this fact.
- b) The dispute between the Appellant and the Second Respondent was brought before the RFU DRC on 31 March 2015, on which date the RFU Agents Regulations of 18 December 2008 were still in force, which was confirmed by the RFU DRC in the First 060-15 Decision.
- c) The RFU DRC applied the RFU Agents Regulations dated 18 December 2008 when deciding the case with regard to liability and the obligation of the Second Respondent to pay the unpaid agency remuneration.
- d) For further execution of the First 060-15 Decision, the RFU DRC refused to apply the RFU Agents Regulations dated 18 December 2008 and rendered the Second 060-15 Decision based on the RFU Regulations on Dispute Resolution in force from 1 April 2015, while the RFU PSC based the Decision on the RFU Regulations on Dispute Resolution in force from 25 November 2015.
- e) However, even if the RFU Agents Regulations dated 18 December 2008 were cancelled from the date of lodging the claim with the RFU DRC until the dates of the Second 060-15 Decision and the Decision, the regulations applicable to the case must be determined on the basis of the regulations applicable on the date of the lodging of the claim, i.e. 31 March 2015.
- f) Since the jurisdiction of the RFU DRC and the accompanying right of appeal to the RFU PSC were explicitly provided in the RFU Agents Regulations dated 18 December 2008, which were applicable on the date of the lodging of the original claim, both the RFU DRC and the RFU PSC were wrong in deciding that the RFU had no jurisdiction to enforce the First 060-15 Decision.
- g) That the conclusion is wrong is supported, inter alia, by the fact that the three cases were all administered under no. 060-15, which leads to the obvious conclusion that the disputes on liability and execution are two elements of the same case.
- h) Furthermore, the RFU DRC had already established its competence in the First 060-15 Decision, and the Appellant has a legal interest as a part of the “football family” – at least at the time of lodging the claim – to bring the First 060-15 Decision to execution via the RFU.
- i) Considering the fact that the RFU Agents Regulations dated 18 December 2008 were applicable on the date of the lodging of the claim, the principle of *tempus regit actum* requires that the said regulations be applied throughout the entire proceedings, including the stages of enforcement and execution.
- j) Even if the RFU Agents Regulations dated 18 December 2008 were not applicable, it follows from the RFU Regulations on Dispute Resolution in force from 25 November 2015 that the appeal of the Second 060-15 Decision to the RFU PSC should have been

allowed and that an appeal of the Decision to the CAS is also in compliance with the said regulations.

- k) With regard to the execution of the First 060-15 Decision, it is undisputed that the Second Respondent should have complied with this decision on or before 23 September 2015, which never happened.
- l) Even if the Appellant would have the possibility to apply for protection of his rights and legitimate interests by the national civil courts, it follows from the RFU Statutes that the obligatoriness and enforceability of the RFU jurisdictional bodies' decisions are some of the main goals of the FRU.
- m) Thus, when denying compliance with the First 060-15 Decision, the RDU DRC and the RFU PSC breached the statutory principles of the RFU along with the Debt Repayment Procedure Agreement of July 2014.
- n) The Second Respondent is a member of the RFU and is obliged to adhere to and perform the decisions of the RFU's judicial bodies. Any non-performance of the obligatory First 060-15 Decision results in the imposition of sporting sanctions within the RFU Regulations on Status and Transfer of Players.
- o) Thus, and in accordance with the RFU Regulations on Status and Transfer of Players, the Second Respondent should be sanctioned with a ban on registration of new players for one registration period.

B. The Respondents

7.4 As already mentioned under paras 3.9 – 3.10, the Respondents never filed any answer within the prescribed deadline.

8. DISCUSSION ON THE MERITS

8.1 Initially, the Sole Arbitrator notes that it is undisputed by the Parties that in accordance with the First 060-15 Decision issued by the RFU DRC on 14 July 2015, the Second Respondent is obliged to pay to the Appellant the debt under the agency contract in the amount of USD 322,155.52 and that this payment fell due for payment on or before 23 September 2015. The amount still remains unpaid by the Second Respondent.

8.2 Furthermore, it is undisputed by the Parties that on the date when the Appellant lodged his original claim against the Second Respondent, i.e. on 31 March 2015, the RFU Agents Regulations dated 18 December 2008 were still in force and applicable, and the RFU DRC therefore applied these regulations when issuing the First 060-15 Decision on 14 July 2015.

8.3 However, following the formal cancellation of the RFU Agents Regulations dated 18 December 2008 by 31 March 2015, the RFU DRC rendered the Second 060-15 Decision applying the RFU

Regulations on Dispute Resolution in force from 1 April 2015, while the RFU PSC based the Decision on the RFU Regulations on Dispute Resolution in force from 25 November 2015.

- 8.4 Both the RFU DRC rendering the Second 060-15 Decision and the RFU PSC rendering the Decision, came to the conclusion that the respective chamber was not competent to consider the Appellant's application regarding the Second Respondent's non-compliance with its obligation according to the First 060-15 Decision, thus indirectly refusing to sanction the Second Respondent in accordance with the RFU Regulations on Status and Transfer of Players.
- 8.5 However, the Parties are not in agreement about the alleged lack of competence of the RFU DRC and the RFU PSC, which is why the Appellant requests the CAS to set aside the Decision and to sanction the Second Respondent in accordance with RFU Regulations on Status and Transfer of Players. The Sole Arbitrator notes that the Parties do not dispute that the Decision is to be considered as a decision in the legal term.

Thus, the main issues to be resolved by the Sole Arbitrator are:

- a) Was the RFU PSC competent to deal with the appeal of the Second 060-15 Decision rendered by the RFU DRC?
- b) And, in the affirmative, should the Second Respondent be sanctioned by the CAS in accordance with the RFU Regulations on Status and Transfer of Players for not fulfilling its obligation in accordance with the First 060-15 Decision?

A. Was the RFU PSC competent to deal with the appeal of the Second 060-15 Decision rendered by the RFU DRC?

- 8.6 Initially, the Sole Arbitrator notes that on the date when the Appellant lodged his original claim against the Second Respondent, i.e. on 31 March 2015, the RFU Agents Regulations dated 18 December 2008 were still in force and applicable and that the RFU DRC applied these regulations when issuing the First 060-15 Decision on 14 July 2015.
- 8.7 The Sole Arbitrator further notes that it is explicitly stated in the said decision that, in accordance with the provision of the RFU Dispute Resolution Chamber, *"this decision may be appealed to the Players' Status Committee within 5 working days from receipt of the decision in its entirety"*.
- 8.8 Thus, the RFU DRC confirmed in July 2015 that the RFU PSC must be deemed to be competent to hear and decide such a potential appeal of the First 060-15 Decision, notwithstanding the fact that the formal cancellation of the RFU Agents Regulations dated 18 December 2008 had already occurred on 31 March 2015.
- 8.9 The Sole Arbitrator further notes that it must be considered undisputed by the Parties that the applicable provisions and regulations of the RFU, at the time when the Appellant lodged his original claim against the Second Respondent, i.e. on 31 March 2015, allowed the Appellant to institute execution proceedings before the RFU's judicial bodies in the event of any failure to comply with a decision rendered by a judicial body of the RFU.

- 8.10 Finally, the Sole Arbitrator notes that the RFU Regulations on Dispute Resolution were amended twice during the period from the 31 March 2015 until the Decision was rendered on 28 December 2015, which amendments indisputably involved, *inter alia*, changes to the jurisdictions of the RFU DRC and the RFU PSC.
- 8.11 However, these amendments to the regulations do not, per se, imply any amendments to the regulations that were in force and applicable at the time when the Appellant lodged his original claim and which, in compliance with current principles of law, are therefore generally applicable to the hearing of the entire case under review.
- 8.12 The Sole Arbitrator emphasises in this connection that it can be assumed that the substantive aspects of the case are the same, although the dispute in question has resulted from an attempt to have the RFU assist in enforcing the original decision, which is also accentuated by the fact that all three disputes have been administered under the same case number: 060-15.
- 8.13 In the light of these circumstances, the Sole Arbitrator finds that both the RFU DRC and the RFU PSC, when hearing and deciding the dispute, should rightly have applied the provision and regulations in force on 31 March 2015 prior to the issuing of the Second 060-15 Decision and the Decision, respectively.
- 8.14 This conforms to the general principle of “*tempus regit actum*”, according to which – as a general rule – the substantive aspects of a contract keep being governed by the law in force at the time when the contract was signed, while any claim should be brought and any dispute should be settled in accordance with the procedural rules in force at the time of the claim (see CAS 2004/A/635).
- 8.15 Since it must be considered undisputed, as mentioned in para. 8.9 above, that the Appellant was entitled to institute execution proceedings before the judicial bodies of the RFU in the event of non-compliance with the decision rendered by a judicial body of the RFU, the RFU PSC, and probably also the RFU DRC, were wrong in deciding that the respective chamber was not competent to consider the Appellant’s application regarding the Second Respondent’s non-compliance with its obligation according to the First 060-15 Decision, thus indirectly refusing to sanction the Second Respondent in accordance with the RFU Regulations on Status and Transfer of Players.

B. Should the Second Respondent be sanctioned by the CAS in accordance with the RFU Regulations on Status and Transfer of Players for not fulfilling its obligation in accordance with the First 060-15 Decision?

- 8.16 In his request for relief, the Appellant requests the CAS to sanction the Second Respondent in accordance with the RFU Regulations on Status and Transfer of Players for not fulfilling its obligation in accordance with the First 060-15 Decision.
- 8.17 However, in the situation at hand and, *inter alia*, considering the circumstance that neither the RFU DRC nor the RFU PSC, due to these chambers' incorrect assessment of the competence to deal with the dispute, has had a chance to consider and decide the question as to whether sanctions should be imposed on the Second Respondent, the Sole Arbitrator finds in the present case that the question of sanctioning should be considered and decided by the RFU PSC in connection with its renewed hearing of the Appellant's appeal of the Second 060-15 Decision.
- 8.18 The Sole Arbitrator thus refers the question of execution and sanctioning to the RFU PSC as the body of previous instance in the present case.

9. SUMMARY

- 9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the RFU PSC, and formally also the RFU DRC, were wrong in deciding that the respective chamber was not competent to consider the Appellant's application regarding the Second Respondent's non-compliance with its obligation according to the First 060-15 Decision, thus indirectly refusing to sanction the Second Respondent in accordance with the RFU Regulations on Status and Transfer of Players. Based on that, the Decision issued by the RFU Players' Status Committee on 28 December 2015 is annulled and set aside and the case is remitted to the RFU Players' Status Committee for consideration.
- 9.2 The Appeal filed against the Decision is therefore partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 30 December 2015 by Mr Alexander Lopyrev against the Decision rendered by the RFU Players' Status Committee on 28 December 2015 is partially upheld.
2. The Decision rendered by the RFU Players' Status Committee on 28 December 2015 is set aside and the case is remitted to the RFU Players' Status Committee for consideration.

(...)

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