



Arbitration CAS 2016/A/4381 Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.Ş. v. Manuel Henrique Tavares Fernandes, award of 12 July 2016

Panel: Mr Jacopo Tognon (Italy), Sole Arbitrator

Football

Contract of employment between a club and a player

Verification of the identity of a person

Duty of the player to inform the club of his absence

Set-off of a fine against salary

- 1. The identity of a person signing a document can in principle also be verified by means of initials. A signature is no requirement *per se*.**
- 2. Regardless of whether a player has a good reason for his absence, this can only be taken into account as soon as the player informed his club thereof.**
- 3. In principle a restrictive approach is to be adopted in respect of setting-off fines against salary. However, if the set-off of a fine against salary is explicitly permitted in the club's Disciplinary Regulations and the player gives his clear permission, setting-off the fine against the player's salary is appropriate.**

I. PARTIES

1. Beşiktaş Futbol Yatirimlari Sanayi Ve Ticaret A.Ş. (hereinafter: the “Appellant” or the “Club”) is a football club with its registered office in Istanbul, Turkey. The Club is registered with the Turkish Football Federation (hereinafter: the “TFF”), which in turn is affiliated to the *Fédération Internationale de Football Association* (hereinafter: “FIFA”).
2. Mr Manuel Henrique Tavares Fernandes (hereinafter: the “Respondent” or the “Player”) is a professional football player of Portuguese nationality.

II. FACTUAL BACKGROUND

A. Background Facts

3. 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 appeal arbitration proceedings. This background is included 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.
4. On 6 July 2011, the Player and the Club concluded an employment contract (hereinafter: the "Employment Contract"), valid as from 22 July 2011 until 31 May 2014.
5. The Employment Contract determines, *inter alia*, the following:

“III – REMUNERATION AND PAYMENT METHOD

- a) [The Club] *shall pay to [the Player], as salaries, for 3 seasons, as follows:*
 - *First Season (2011-2012): net €2,000,000.00 (two million Euro), to be paid in 10 (ten) equal monthly instalments each net €200,000.00 (two hundred thousand Euro) starting from 30/08/2011.*
 - *Second Season (2012-2013): net €2,100,000.00 (two million one hundred thousand Euro), to be paid in 10 (ten) equal monthly instalments each net €210,000.00 (two hundred ten thousand Euro) starting from 30/08/2012.*
 - *Third Season (2013-2014): net €2,200,000.00 (two million two hundred thousand Euro), to be paid in 10 (ten) equal monthly instalments each net €220,000.00 (two hundred twenty thousand Euro) starting from 30/08/2013.*

[...]

VI – OBLIGATIONS OF THE PLAYER

[...]

- f) *The PLAYER shall sign the standard club seasonal Disciplinary Instructions and Regulations that is required by Turkish FA”.*
6. The “Regulation on Disciplinary Offences and Fines Beşiktaş Futbol Yatırımları Sanayi Ve Ticaret A.Ş”. (hereinafter: the “Club’s Disciplinary Regulations”) determine as follows:

“IV. ACTS WHICH REQUIRE IMPOSITION OF FINES

- a. *As of the date of commencement of his relationship with the Club, if a player commits an offence in breach of sportsmanship ethics or sports discipline in his private life, or during matches or training activities, or the player commits any act or delivers any statement which might impair the honor and dignity of the Club, its managers, technical staff, employees, or teammates or the whole society, or the player appears at press or visual media (including Internet, twitter, facebook, and other social sharing sites) in this manner;*

[...]

- b. *If the player treats others brutally whether verbally or physically, or commits quarrels during camps, exercises or games, or commits physical interventions (for example kicking other players deliberately) other than those required under nature of the game, or acts improperly towards rival players, referees, technical staff, teammates, audience or employees;*

[...]

- r. *If the player fails to comply with training, match, meeting, travel, camp or treatment times and schedules, and other meeting times or schedules as designated by the Club, or fails to attend, or delays in attending, or leaves any training or match event without prior consent;*

[...]

VI. PRINCIPLES OF DETERMINATION OF FINES

The fines to be imposed on a player shall be calculated in consideration of the cost of player for the Club.

Cost of the player: *The total transfer fee includes all kinds of rights (including all monetary benefits and other benefits measurable in terms of money, which are committed under a contract executed with player's himself or a third party for transfer of image rights) including other rights measurable in terms of money which are committed by the Club to player (the full amount of per-game salaries shall be included in calculations regardless of the number of games actually played by the player). Furthermore, if the player has been transferred from another club, then the transfer fee having been paid to that club shall be added to the total transfer fee committed by the Club to the player in proportional to the term of contract.*

- a. ***Daily Cost of the Player:*** *The daily cost of the player is calculated by dividing his annual cost into 300.*
- b. ***Per-game Cost of the Player:*** *The per-game cost of the player is calculated by dividing his aggregate seasonal cost into the number of games played during that season.*

VII. DETERMINATION OF FINES TO BE IMPOSED

Following fines shall be imposed if the player commits the offences listed in Article IV. ‘Acts which require Imposition of Fines’

- A. *If the player commits any of the offences specified in the Paragraphs “a”, [...], “b”, [...];*
- i. *A fine equal to an amount approved by the Management, but not less than the cost of the player for 10 days for the first time the said offence is committed;*
 - ii. *A fine equal to an amount approved by the Management, but not less than the cost of the player for 20 days for the second time the said offence is committed;*
 - iv. [sic] *A fine equal to an amount approved by the Management, but not less than the cost of the player for 30 days for the third time the said offence is committed;”*

[...]

- B. *If the player commits an offence specified in the Paragraph (r),*
- i. *A fine equal to an amount approved by the Management, but not less than the cost of the player for 5 days for the first time the said offence is committed;*
 - ii. *A fine equal to an amount approved by the Management, but not less than the cost of the player for 10 days for the second time the said offence is committed;*
 - iii. *A fine equal to an amount approved by the Management, but not less than the cost of the player for 30 days for the third time the said offence is committed;*

[...]

VIII. RESOLUTION AND ACCRUAL OF FINES

Offences requiring imposition of a fine shall be discussed and resolved at meetings of the board of directors. A notarized copy of a resolution shall be sent to player with another copy to the Association, and necessary entries shall be made in the Club’s accounting records.

IX. COLLECTION OF FINES

Fines shall be collected through deduction thereof starting from salaries due and immediately payable to players including bonuses”.

7. On 2 July 2012, the Club imposed a warning on the Player for having violated article IV(r), (g), (m) and (t) of the Club’s Disciplinary Regulations.

8. On 17 December 2013, but notified on 20 December 2013, the Club imposed on the Player a fine of EUR 96,000.03 (hereinafter: the “First Fine”), corresponding to the Player’s costs for 9 days, for a violation of article IV(r) of the Club’s Disciplinary Regulations.
9. On 23 December 2013, the Club imposed on the Player a fine of EUR 160,000.05 (hereinafter: the “Second Fine”), corresponding to the Player’s costs for 15 days, for a violation of article IV(h) of the Club’s Disciplinary Regulations.
10. On 27 December 2013, the Player informed the Club that he had no knowledge of the “*Professional Football Discipline Regulations*” and that the sanctions were imposed in violation of his right to be heard. The Player also challenged the veracity of the facts alleged by the Club in support of the sanctions.
11. On 25 March 2014, the Club requested the Player to provide his explanations regarding his absence from training as from 20 March until 24 March 2014.
12. On 26 March 2014, Mr Nuno Branquinho, apparently on behalf of the Player, sent an email to the Club informing it that the Player would undergo surgery and that the doctors of the Portuguese club SL Benfica (hereinafter: “Benfica”) had already informed the doctors of the Club accordingly.
13. On 29 March 2014, the Club replied to Mr Nuno Branquinho informing him that it did not give the Player permission to undergo surgery and obliged him to attend his treatment session scheduled on 31 March 2014 at 11:00 am, at the Club’s facilities.
14. On 31 March 2014, Mr Branquinho, apparently on behalf of the Player, answered the Club as follows:

“I do not understand why you are requesting me to go to the treatment session taken into account that the doctors are the unanimous opinion that I have to be operated. The treatment does not solve my knee problem and I have to urgently be operated. Do you think it is fair or human to postpone a urgent operation? Please let me know asap your final position because myself as a human being and a professional player cannot stay in this situation”.

15. Also on 31 March 2014, the Club informed the Player as follows:

“Initially, we would like to clarify one fact. Technically, you are required to attend the training sessions with the rest of the A team since there has not been any changes in your physical condition that will have a negative effect on your performance. However, since you have complained to the medical staff about having minor pains, we require you to attend your treatment for the pain described during the training period.

Furthermore, we would like to object to your description of your condition as the doctors’ “unanimous opinion”. First, the Club doctor has never instructed you to go under operation neither orally nor officially in writing. Second, our Club doctor has no power to instruct you to have an operation and that such decision should be given by an Orthopaedist doctor. Third, you have already undergone an examination by an orthopaedist in our Club’s official hospital and that an operation had been presented to you as a last option and that there were

treatment options before such operation and last, you have never provided us a written report from your “private” doctor, which we could have reviewed and objected, if necessary.

Regarding your operation and your physical condition, we would like to remind you that your physical condition has been and still is in same condition as it was when you were playing for Valencia or when you attended matches and training sessions of our Club. Our doctors and the doctors from the official hospital of our Club are in the same opinion as the condition in your Patellar Ligament has not gone worst or critical and that it does not obstruct your ability to play football. You are also aware of this situation since you had been attending official matches of [the Club] until today.

It is for this reason, you have been sent the A team training programme by our team manager. If you have pains and would like to attend treatment and not to training then your treatment sessions are as follows;

Tuesday 01/04/2014 – Free

Wednesday 02/04/2014 at 11:00 am and 17:00 pm.

Thursday 03/04/2014 at 11:00 am and 17:00 pm.

Friday 04/04/2014 at 11:00 am and 17:00 pm.

Saturday 05/04/2014 at 11:00 am and 17:00 pm”.

16. By letter dated 4 April 2014, apparently received on 7 April 2014, the Player informed the Club as follows:

“As you know, on 22nd February 2014, I was replaced in the match against Galatasaray due to a knee injury. Regretfully, since that date I am unable to play for the team, as well as to participate in the practice sessions. Also, as you know, I went to Portugal in order to be seen by a Doctor. It is unanimous opinion of the doctors that I cannot play nor train due to the knee injury (please see attached the clinical report). It is also unanimous opinion of the doctors that the only way to heal this injury is through a surgical operation. Thus, I have not committed any disciplinary offense because I did not attend the practice sessions due to a physical impossibility. Therefore, I respectfully ask [the Club] to close this file”.

17. The “Clinical Report” referred to by the Player in his letter dated 4 April 2014 determines the following:

“The [Player] had a medical visit with me two weeks ago.

He showed an tendinosis of the left patellar tendon, with slow evolution and without response to medical treatment.

Clinically, he had strong pain in the patellar insertion and there were also severe abnormalities in the MRI.

So, in conclusion, we think the surgery is mandatory.

At this moment, the Player cannot do any physical exercise”.

18. On 8 April 2014, the Player put the Club in default of paying his salaries for January, February and March 2014.

19. On 9 April 2014, the Club replied to the Player's default notice, informing the Player that it would transfer the amounts requested in due course.
20. By letter dated 7 April 2014, but notified on 16 April 2014, the Club imposed on the Player a fine of EUR 202,666.73 (hereinafter: the "Third Fine"), corresponding to the Player's costs for 19 days, for a violation of article IV(r) of the Club's Disciplinary Regulations, more particularly because the Player failed to attend training sessions of the Club on 20, 21, 22, 23, 24, 26 and 27 March 2014.
21. By letter dated 27 May 2014, but notified on 17 June 2014, the Club imposed on the Player a fine of EUR 22,000 (hereinafter: the "Fourth Fine"), corresponding to the Player's costs for 3 days, for a violation of article IV(a) of the Club's Disciplinary Regulations.

B. Proceedings before the Dispute Resolution Chamber of FIFA

22. On 13 October 2014, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (hereinafter: the "FIFA DRC") against the Club, requesting payment of an outstanding amount of EUR 480,666.81 (for the salaries of January, February and March 2014), plus 5% interest *p.a.* as from the date the instalments in debt fell due.
23. On 26 January 2015, the Club contested the allegations of the Player. The Club maintained that it had made several additional payments directly to the Player and to third parties on behalf of the Player and that the amount claimed should therefore be reduced. The Club argued that the fines were legitimately imposed on the Player in accordance with the Club's Disciplinary Regulations and could therefore be set-off against the Player's salary. As such, the Club concluded that it complied with all its financial obligations vis-à-vis the Player and that his claim should be rejected.
24. On 2 March 2015, the Player reduced his claim to EUR 172,820.08, accepting that the Club made certain payments directly to him and to third parties on his behalf.
25. On 3 September 2015, the FIFA DRC rendered its decision (hereinafter: the "Appealed Decision") with, *inter alia*, the following operative part:
 - “1. The claim of [the Player] is partially accepted.
 2. [The Club] has to pay to [the Player], **within 30 days** as from the date of notification of this decision, the amount of EUR 172,820.08, plus 5% interest *p.a.* on said amount as from 13 October 2014 until the date of effective payment.
 3. In the event that the amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4. *Any further claim lodged by [the Player] is rejected.*

[...].”

26. On 15 December 2015, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- “[...] [T]he DRC observed that the [Player] alleges that the [Club] had failed to pay him outstanding remuneration in the amount of EUR 172,820.08. Equally, the Dispute Resolution Chamber took note of the reply of the [Club], which considers that it does not owe any amount to the [Player]. In this respect, the members of Chamber first noted that [the Club] asserts that it was ordered by the Courts of Istanbul to pay EUR 32,772.96, corresponding to the [Player’s] monthly rents for the months of June, July and August 2014, on behalf of the [Player] whereas its obligation to pay for his rents ended in May 2014, i.e. at the end of the contract. Accordingly, the Chamber took note that the [Club] considers that it is entitled to deduct this amount from the [Player’s] dues. In addition, the Chamber observed that the [Club] sustains that the [Player’s] remuneration was reduced by means of several fines imposed on him in accordance with its internal Disciplinary Regulations and due to his misbehaviour.
- Having stated the above, the Chamber started by considering the first argument put forward by the [Club]. In doing so, the Chamber noted that the [Club] is actually trying to set off the monthly rents that it was ordered to pay on behalf of the [Player] against the [Player’s] outstanding remuneration. In this regard, the members of the Chamber deemed it important to outline that the [Club] was ordered to pay the referred amounts on the basis of a rent contract signed by the [Player], the [Club] and a third party. In view of the above, and bearing in mind art. 22 lit. b of the Regulations, which stipulates that the Dispute Resolution Chamber is competent to hear employment-related disputes, the Chamber had to conclude that it lacked competence to deal with such a dispute arising out of a rent contract, and which, as such, does not have any employment-related component. Consequently, and without prejudice to the [Club’s] right to claim said amounts before the competent body, the Chamber had no jurisdiction to analyse whether the [Club] had the right to deduct the rents allegedly paid on behalf of the [Player].
- In continuation, the Chamber turned its attention to the legal basis of the fines imposed on the [Player] and in particular, the DRC referred to clause VI lit. f of the contract which stipulated that “[the Player] shall sign the standard club seasonal Disciplinary Instructions and Regulations that is required by Turkish FA”. At this stage, and after recalling the content of art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof, the Chamber pointed out that the copy of the Disciplinary Regulations submitted by the [Club], in spite of containing a specific room for it, does not contain the [Player’s] signature. In view of the above, the members of the Chamber concurred that the [Club] failed to satisfactorily carry the burden of proof regarding the [Player’s] knowledge and acceptance of the Disciplinary Regulations on the basis of which the fines were imposed.
- In view of the above, and in particular considering that the relevant fines rest upon a legal instrument, i.e. the Disciplinary Regulations, which has never fallen within the scope of the contractual relationship,

the Chamber concluded that such fines imposed on the [Player] had to be considered invalid and therefore disregarded.

- *On account of the above-mentioned considerations, and in particular considering the ineffectiveness of the [Club's] arguments as to its alleged right to deduct amounts from the [Player's] remuneration, the Chamber concluded that the [Club] had failed to pay to the [Player] an amount of EUR 172,820.08.*
- *Consequently, the Chamber decided that, in accordance with the general legal principle of *pacta sunt servanda*, the [Club] is liable to pay to the [Player] outstanding remuneration in the total amount of EUR 172,820.08.*
- *In addition, taking into consideration the [Player's] claim and in accordance with its longstanding and well-established jurisprudence, the Chamber decided to award the [Player] interest at the rate of 5% p.a. on the amount of EUR 172,820.08 as of the date of the claim, i.e. 13 October 2014.*
- *Finally, the Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the [Player] is rejected”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 5 January 2016, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: “CAS”), in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (edition 2016) (hereinafter: the “CAS Code”), challenging the Appealed Decision. The Player requested the matter to be submitted to a sole arbitrator.
28. On 20 January 2016, the Player filed his Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the challenge of the Appealed Decision, submitting the following requests for relief:
 - a. *To accept the present appeal against the challenged decision.*
 - b. *To set aside the decision of FIFA Dispute Resolution Chamber dated 3 September 2015.*
 - c. *To establish that the Appellant shall not pay any amount to the Respondent.*
 - d. *To condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred.*
 - e. *To establish that the costs of the arbitration procedure shall be borne solely by the Respondent”.*
29. On 22 January 2016, the CAS Court Office informed the parties that, despite being granted a deadline until 16 January 2016 to inform the CAS Court Office whether he agreed with the appointment of a sole arbitrator, the Player did not answer and that, in accordance with Article R50 of the CAS Code, it would therefore be for the President of the CAS Appeals Arbitration Division, or her deputy, to decide on the number of arbitrators.

30. On 24 February 2016, the Player filed his Answer, in accordance with Article R55 of the CAS Code, submitting the following requests for relief:
- “- *Refusing to grant the appeal;*
 - *Confirming the appealed decision of FIFA’s Dispute Resolution Chamber, that made a correct evaluation of the evidence and decided accordingly within the legal framework applicable to this case;*
 - *Obliging the Appellant to pay the costs of the appeal;*
 - *Given that the Respondent was assisted in the present procedure by a professional legal adviser, to order the Appellant to contribute towards its costs”.*
31. On 8 March 2016, the CAS Court Office informed the parties that, pursuant to Article R54 of the CAS Code, the President of the CAS Appeals Arbitration Division decided that the arbitral tribunal appointed to decide the present matter was constituted by:
- Mr Jacopo Tognon, Attorney-at-Law in Padua, Italy, as Sole Arbitrator
32. On 7 and 15 March 2016 respectively, the Player and the Club informed the CAS Court Office that they had no objection to the Sole Arbitrator issuing an award on the basis of the parties’ written submissions only.
33. On 11 April 2016, further to a request of the Sole Arbitrator pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy its file related to the matter at hand.
34. On 27 May and 1 June 2016 respectively, the Club and the Player returned duly signed copies of the Order of Procedure, confirming that their right to be heard had been respected. By means of the Order of Procedure, the parties were informed that the Sole Arbitrator deemed himself sufficiently well-informed to decide this matter without the need to hold a hearing.
35. The Sole Arbitrator confirms 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 award.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

36. The Club’s submissions, in essence, may be summarised as follows.
- The Club maintains that the FIFA DRC was mistaken in deciding that the Club’s Disciplinary Regulations do not contain the Player’s signature. The Club refers to the Employment Contract and the Club’s Disciplinary Regulations and maintains that

both documents are signed by the Player with his initials on each separate page. Although the Player did not put his full signature on the last page of the Club's Disciplinary Regulations, this page is also signed by the Player with his initials. The Club considers it important that the Player was provided with a Portuguese version of the Club's Disciplinary Regulations rather than the original version in English.

- In respect of the Third Fine, the Club maintains that it had no other option but to impose a disciplinary fine on the Player since:
 - The Player was unable to prove that he was given permission by the Club's officials to travel abroad;
 - The Player was unable to prove that he provided a written notification of the Club about his departure;
 - There was no unanimity that he had to undergo surgery;
 - The clinical report he had provided to the Club in his defence did not contain a signature of a doctor or even the letter head of the doctor's office;
 - This violation was the second offence of the Player during the 2013/2014 season and the third overall during the course of his Employment Contract.
- The Club argues that these circumstances were discussed in the Board of Directors' decision and the Player raised no objections to this disciplinary fine after its notification.
- Although the Club maintains that the fine was calculated on the basis of the Club's Disciplinary Regulations, it voluntarily reduced the fine from EUR 202,666.73 to EUR 172,820.08.
- As such, the Club concludes that the Player has no pending guaranteed salary receivable from the Club, as the executed amount of disciplinary fine was not only just but also proportionate considering the actions committed by the Player.

B. The Respondent

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

- The Player maintains that because the Club's Disciplinary Regulations are not signed, there is no legal or contractual background for the imposition of fines by the Club on the Player. The Player maintains that he did not put his initials on the Club's Disciplinary Regulations and that he was not familiar with the Club's Disciplinary Regulations. In addition, the Player maintains that the initials from the Employment Contract and the Club's Disciplinary Regulations are obviously different.
- Assuming, but not admitting, the above the Player submits that the way the Club sanctioned him was unlawful, as the Club did not provide the Player an opportunity to defend himself since the communication of the accusation and the sanction were

made at the same time. The Club failed to prove any of the allegations made against him.

- The Player argues that the deduction of fines from the Player's salaries makes it clear that the fines imposed on him by the Club only had the purpose of justifying the non-payment of salaries arrears.
- With reference to Swiss law, the Player argues that the Club was not even in a position to request the Player to comply with his contractual obligations as it was already in breach itself by not having paid the Player's salary.

V. JURISDICTION

38. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes (2015 edition), as it determines that “[a]ppeals 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”, and from Article R47 of the CAS Code.
39. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
40. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

41. The appeal was filed within the twenty-one (21) days set by article 67(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
42. It follows that the appeal is admissible.

VII. APPLICABLE LAW

43. The Sole Arbitrator observes that neither of the parties advanced any position on the law to be applied to the merits of the dispute at hand. However, the Player referred to certain provisions of the Swiss Code of Obligations (hereinafter: the “SCO”).
44. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, 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”.

45. The Sole Arbitrator notes that 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”.

46. The Sole Arbitrator observes that article V and VI(c) of the Employment Contract determine, respectively, the following:

“To pay the agreed remuneration that the [Player] is entitled to besides all the corresponding legal fees, as stipulated by Turkish legislation.

To comply with all its duties – express or implied – pursuant to the Turkish FA contract, the Turkish FA and FIFA various rules and regulations in force and the mandatory provisions of law”.

“The [Player] agrees on following the rules set by [the Club] at all times, being subject to the Football Rules from the Turkish Association and to the Rules of the First Turkish League, [the Club] being responsible, however, for making the [Player] aware of the content of such rules”.

47. In the absence of any specific submissions of the parties in this respect, in view of Article R58 of the CAS Code, article 66(2) of the FIFA Statutes and in the absence of any objection to the Player’s reference to provisions of the SCO, the Sole Arbitrator finds that primarily the various regulations of FIFA are applicable. Swiss law, should the need arise, is applicable to fill a possible gap in the various FIFA regulations. Since neither of the parties effectively relied on the regulations of the Turkish FA or Turkish law and since such choice is subsidiary to the application of the FIFA Regulations, the Sole Arbitrator does not deem it necessary to apply the regulations of the Turkish FA or Turkish law.

VIII. MERITS

A. The Main Issues

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

- i. Was the Player subject to the Club’s Disciplinary Regulations?
- ii. If so, was the Third Fine legitimately imposed on the Player?
- iii. If so, was the Third Fine disproportionate?

i. Was the Player subject to the Club’s Disciplinary Regulations?

49. The Sole Arbitrator observes that whereas the Club maintains that the Player affixed his initials to each page of the Club’s Disciplinary Regulations and that it was therefore signed by the Player as required by article VI(f) of the Employment Contract, the Player argues that he did

not write his initials on the Club's Disciplinary Regulations and did not have knowledge thereof. Also, the Player argues that the initials on the Employment Contract and on the Club's Disciplinary Regulations are obviously different.

50. The Sole Arbitrator observes that each page of the Employment Contract as well as the Club's Disciplinary Regulations contain initials. However, contrary to the Employment Contract, the Club's Disciplinary Regulations does not contain a signature of the Player.
51. The Sole Arbitrator finds that a signature is no requirement *per se*, because the decisive element is that the identity of the person signing can be verified (WIEGAND/HURNI, in: HONSELL (Ed.), *Obligationenrecht*, 2014, p. 47) and this can in principle also be done by means of initials.
52. The Sole Arbitrator observes that whereas the Player in his letter to the Club dated 27 December 2013 maintained that he did not have knowledge of the Club's Disciplinary Regulations, in the proceedings before the FIFA DRC such an argument was not reiterated although the Club's Disciplinary Regulations were part of the file based on which the FIFA DRC adjudicated the case. Rather, in the proceedings before the FIFA DRC the Player maintained that the Club did not prove the disciplinary violations of the Player and that therefore no fine could be imposed on him.
53. The Sole Arbitrator finds that the Player insufficiently corroborated his "new" arguments that he did not have knowledge of the Club's Disciplinary Regulations and that he did not put his signature on the Club's Disciplinary Regulations, particularly in view of the fact that such arguments were not advanced in the proceedings before the FIFA DRC.
54. The Sole Arbitrator finds that a simple denial of the Player is not sufficient for such a serious accusation, as the Player's argument implies that the Player's initials were apparently affixed to the Club's Disciplinary Regulations in a fraudulent manner. The Sole Arbitrator finds that this unsubstantiated denial does not require the Club to provide additional evidence to prove that the initials on the Club's Disciplinary Regulations were affixed by the Player.
55. The Sole Arbitrator finds that the Player could and should have substantiated this argument in a more detailed fashion. The Player could for example have the initials analysed by an expert to corroborate his position that they were not affixed by his hand or, at least, a personal statement declaring the same.
56. Consequently, the Sole Arbitrator finds that the Player was subject to the Club's Disciplinary Regulations.

ii. If so, was the Third Fine legitimately imposed on the Player?

57. Having established that the Player was subject to the Club's Disciplinary Regulations, the Sole Arbitrator will examine whether the Club was entitled to impose the Third Fine on the Player for violating the Club's Disciplinary Regulations.

58. Since the Third Fine is the only fine imposed on the Player that was finally executed, the Sole Arbitrator does not deem it necessary to evaluate whether the First, Second and Fourth Fine were legitimately imposed on the Player, but will rather focus his attention on the circumstances relevant for the Third Fine.
59. In this respect, the Sole Arbitrator observes that the Player failed to report for duty between 20 and 27 March 2014 (which is evidenced by notary reports filed by the Club), without having informed the Club in advance or immediately upon his absence and that this remained undisputed by the Player.
60. The Sole Arbitrator observes that it is neither disputed that the Player, through Mr Nuno Branquinho, informed the Club of the reason for his absence on 26 March 2014, upon a letter from the Club asking the Player why he was absent. As such, the Player only provided an explanation for his absence 6 days after he was absent. The Player filed additional explanations on 7 April 2014.
61. The Sole Arbitrator finds that, regardless of whether the Player had a good reason for his absence, he should in any event have obtained permission from the Club to travel to Portugal or at least to have informed the Club beforehand, as his medical condition was not of such a nature that it prevented the Player from communicating with the Club. Although the Player's medical condition may have been a good reason to be absent, the Sole Arbitrator finds that this can only be taken into account as soon as the Player informed the Club thereof and can therefore not justify his absence prior to 26 March 2014. The question whether the reason invoked by the Player justified his absence can therefore be left open.
62. The Sole Arbitrator observes that, pursuant to article VI(r) of the Club's Disciplinary Regulations, the following is an act which requires the imposition of a fine: *"If the player fails to comply with training, match, meeting, travel, camp or treatment times and schedules, and other meeting times or schedules as designated by the Club, or fails to attend, or delays in attending, or leaves any training or match event without prior consent"*.
63. Although the Club was in default for not having paid his salary at the time of the Player's unpermitted absence, the Sole Arbitrator observes that the Player had not yet put the Club in default. The Sole Arbitrator finds that the Club's default is not a justification for the Player's behaviour and does not consider it to be inappropriate for a fine to be imposed on the Player by the Club.
64. In view of the undisputed unpermitted absence of the Player, considering the clear wording of article VI(r) of the Club's Disciplinary Regulations and because the Club respected the Player's right to be heard by providing him an opportunity to defend himself against the accusations of the Club before it proceeded with the imposition of the Third Fine on 7 April 2014, the Sole Arbitrator finds that the Club acted in accordance with its Disciplinary Regulations.

65. Consequently, the Sole Arbitrator finds that the Third Fine was legitimately imposed on the Player by the Club.

iii. *If so, was the Third Fine disproportionate and could it be set-off against the Player's salary?*

66. Having established that the Third Fine was legitimately imposed on the Player, the Sole Arbitrator observes that the final argument presented by the Player is that the fine was disproportionate.

67. The Sole Arbitrator observes that the Third Fine initially amounted to EUR 202,666.73, which allegedly corresponds to the Player's costs over a period of 19 days. However, the Club finally voluntarily reduced the fine to an amount of EUR 172,820.08.

68. The Club maintains that the Player's violation was severe since he was absent for 6 days and because it was already the second time in the season that the Player was sanctioned for a violation of article VI(r) of the Club's Disciplinary Regulations, the fine was aggravated.

69. The Sole Arbitrator observes that article VII(B) of the Club's Disciplinary Regulations determines as follows:

"B. If the player commits an offence specified in the Paragraph (r),

i. A fine equal to an amount approved by the Management, but not less than the cost of the player for 5 days for the first time the said offence is committed;

ii. A fine equal to an amount approved by the Management, but not less than the cost of the player for 10 days for the second time the said offence is committed;

iv. [sic] A fine equal to an amount approved by the Management, but not less than the cost of the player for 30 days for the third time the said offence is committed".

70. Contrary to the position of the Club, the Sole Arbitrator finds that the Player's violation cannot be considered to constitute a second violation of article VI(r) of the Club's Disciplinary Regulations in the 2013/2014 sporting season, as the Player was only given a warning on 2 July 2012 (hence in the previous sporting season) and, in any event, because no fine in accordance with article VII(B)(i) of the Club's Disciplinary Regulations was finally imposed, but only a warning was issued.

71. As such, the Sole Arbitrator finds that the fine is to be calculated in accordance with article VII(B)(i) as opposed to VII(B)(ii) of the Club's Disciplinary Regulations.

72. The Sole Arbitrator observes that article VII(B)(i) of the Club's Disciplinary Regulations only determines the minimum amount of a fine, but no maximum.

73. The Sole Arbitrator considers it reasonable to construe the provision in such a fashion that the maximum fine within this category is equal to the minimum fine in the subsequent category. As such, a fine imposed for a first violation of article VI(r) of the Club's Disciplinary Regulations can in principle be sanctioned with a fine equivalent to the costs of the Player for between 5 and 10 days.
74. The Sole Arbitrator considers the Player's violation to be severe because he remained absent for nearly a full week without having previously informed the Club and because he had already received a warning for an alleged violation of article VI(r) of the Club's Disciplinary Regulations on 2 July 2012.
75. Consequently, the Sole Arbitrator considers it appropriate that the maximum fine within this category is imposed, *i.e.* a fine equivalent to the costs of the Player for 10 days.
76. The Club's method of calculation of the daily costs of the Player is to divide the annual costs of the Player by 300. The Club maintains that the annual costs of the Player in the 2013/2014 sporting season consist of the guaranteed salary (EUR 2,200,000) and the unamortised transfer fee (EUR 1,000,000). As such, the daily costs of the Player are EUR 10,666.66 (3,200,000 / 300).
77. The Sole Arbitrator observes that the Club's method of calculation of the daily costs of the Player is disputed by the Player, particularly because the transfer fee paid by the Club to the Player's previous club is taken into account in this calculation.
78. The Sole Arbitrator does not consider this calculation to be disproportionate because article VI of the Club's Disciplinary Regulations specifically determines that the transfer fee paid by the Club should be taken into account in this calculation.
79. In view of the above conclusion that the fine should be limited to the costs of the Player for 10 days, the Sole Arbitrator finds that the fine imposed on the Player should be reduced to EUR 106,667 (10 x EUR 10,666.67).
80. As to the set-off of such fine against the Player's salary, the Sole Arbitrator observes that a set-off of a fine against salary is explicitly permitted in article IX of the Club's Disciplinary Regulations. Although the Sole Arbitrator finds that in principle a restrictive approach is to be adopted in respect of setting-off fines against salary, in view of the clear permission of the Player, the Sole Arbitrator deems that setting-off the fine against the Player's salary is appropriate in the matter at hand.
81. The Sole Arbitrator is therefore satisfied that the Club legitimately proceeded to deduct the fine from the Player's salary. However, in view of the conclusion that the fine must be reduced to EUR 106,667, only this amount can be set-off against the Player's salary and the remainder needs to be paid.

82. The Club therefore needs to pay the Player the amount of EUR 66,153.08 (EUR 172,820.08 – EUR 106,667).

B. Conclusion

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

- i. The Player was subject to the Club's Disciplinary Regulations.
- ii. The Third Fine was legitimately imposed on the Player by the Club.
- iii. The Third Fine was not proportionate and is reduced to EUR 106,667.
- iv. The Third Fine can be set-off against the Player's salary.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 January 2016 by Beşiktaş Futbol Yatırımları Sanayi Ve Ticaret A.Ş. against the decision issued on 3 September 2015 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The item 2 of the decision issued on 3 September 2015 by the FIFA DRC is amended as follows:

Beşiktaş Futbol Yatırımları Sanayi Ve Ticaret A.Ş. is ordered to pay to Mr Manuel Henrique Tavares Fernandes the amount of EUR 66,153,08 (sixty six thousand one hundred fifty three Euro and 8 cents), with interest at a rate of 5% (five per cent) *per annum* as from 13 October 2014 until the date of effective payment.

3. (...).

4. (...).

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