Tribunal Arbitral du Sport

Court of Arbitration for Sport

Arbitration CAS 2017/A/5341 CJSC Football Club Lokomotiv v. Slaven Bilic, award of 6 June 2018

Panel: Prof. Martin Schimke (Germany), President; Mr Frans de Weger (The Netherlands); Mr Jeffrey Benz (USA)

Football
Termination agreement to an employment contract
Determination of the law applicable to the dispute
Admissibility of the filing of publicly available documents outside the conditions of art. R56 of the CAS Code
Method of interpretation of contractual terms based on the Civil Code of the Russian Federation

1. **By submitting their dispute to CAS, parties implicitly and indirectly choose for the application of the conflict-of-law rule set forth in art. R58 of the CAS Code. Accordingly, the 'applicable regulations' take precedence over any legal framework chosen by the parties. If the relevant federation's regulations provide that Swiss law is to be applied subsidiarily, then this must be complied with by a CAS panel but such a reference only serves the purpose of making the federation's regulations more specific and to ensure their uniform interpretation. Under art. 57(2) of the FIFA Statutes, however, issues not governed by the FIFA regulations should not be subject to Swiss law. If the FIFA regulations are not applicable to a dispute and the parties agreed on a specific applicable national law, there is no room for a subsidiary application of Swiss law and the applicable national law takes precedence.**

2. **Art. R56 of the CAS Code *inter alia* establishes the principle that unless the parties agree otherwise or the President of the CAS panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to produce new exhibits after the submission of the appeal brief and of the answer. Notwithstanding the above, the filing after the submission of the appeal brief and of the answer of documents solely consisting of publicly available information is generally accepted.**

3. **According to art. 431 of the Civil Code of the Russian Federation, while interpreting the terms of the contract, the court shall take into account the literal meaning of words and expressions contained in it. The literal meaning of the terms of the contract in case of it being vague shall be identified by way of comparison with other terms and with the meaning of the contract as a whole. If the application of such principles does not make it possible to identify the content of the contract, the actual common will of the parties shall be found out with account for the purpose of the contract. All the corresponding circumstances, including negotiations and correspondence preceding the conclusion of the contract, habitual practices in relationships between the parties, customs and subsequent behaviour of the parties shall be taken into account.**

I. PARTIES

1. CJSC Football Club Lokomotiv (the "Appellant" or the "Club") is a football club with its registered office in Moscow, Russian Federation. The Club is registered with the Russian Football Union (the "RFU"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Mr Slaven Bilic (the "Respondent" or the "Coach") is a professional football coach of Croatian nationality.

II. FACTUAL BACKGROUND

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 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 analysis.

A. Background facts

4. On 15 May 2012, the Coach and the Club entered into an employment contract (the "Employment Contract"), valid from 1 July 2012 until 30 June 2015, according to which the Coach was hired by the Club as *"Head Coach"*.

5. On 17 June 2013, the Coach and the Club concluded a termination agreement (the "Termination Agreement") and an annex thereto (the "Annex"), whereby the parties agreed to mutually terminate the Employment Contract.

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

> *"4. The Club shall pay to the Coach the additional premium, stipulated by clause 6.3 of the* [Employment Contract]*, in the amount of 666600 (six hundred sixty six thousand and six hundred) Euros before deduction of the individuals' income tax (which is 579942 Euros net), which shall be paid no later than 15 July 2013.*
>
> *This additional premium shall be paid in Russian rubles at a currency rate of the Central Bank of Russia on the day of charge. The amount of the additional premium due to the Coach is specified in the present agreement according to the personal income tax in Russia – 13%. If this rate is changed in Russia for any reason the Club is obliged to pay the tax compensation that shall ensure the factual receipt of the amount of 579.942 (five hundred seventy nine thousand and nine hundred forty two) Euro net by the Coach.*
>
> *Such tax compensation that covers the difference in the tax rate in Russia should be paid, if required, to the Coach no later than on the date of the additional premium payment.*

5. *Due to premature termination of the* [Employment Contract] *the Club shall pay to the Coach a compensation amounting to 4042000 (four million forty two thousand) Euros before deduction of the individuals' income tax (which is guaranteed 3516540 Euros net). No other compensation, except for specified in this agreement, shall be paid to the Coach.*

   The amount of the compensation above is specified in the present agreement according to the personal income tax in Russia – 13%. If this rate is changed in Russia for any reason the Club is obliged to pay the tax compensation that shall ensure the factual receipt of the amount of 3516540 (three million five hundred sixteen thousand five hundred and forty) Euro net by the Coach.

   Such tax compensation that covers the difference in the tax rate in Russia should be paid, if required, to the Coach not later than on the date of payment of respective installments of the compensation.

6. *The compensation shall be paid in Russian rubles at a currency rate of the Central Bank of Russia on the day of charge as follows:*

   - *1 019 000 Euro including tax – no later than 30 June 2013;*
   - *1 000 000 Euro including tax – no later than 30 November 2013;*
   - *1 000 000 Euro including tax – no later than 31 January 2014;*
   - *1 023 000 Euro including tax – no later than 28 February 2014.*

   In the case of untimely payment of the additional premium, compensation for the premature termination or the tax compensation the Club shall pay the interest for every day of delay at a rate of 20% per annum".

B. Proceedings before the Single Judge of the FIFA Players' Status Committee

7. On 15 August 2014, the Coach lodged a claim against the Club before FIFA, claiming the equivalent in Russian Rouble ("RUB") of EUR 256,001.40, consisting of EUR 2,936.60 as additional premium pursuant to clause 4 of the Annex, and EUR 261,609.20 as compensation pursuant to clause 5 and 6 of the Annex, minus an amount of EUR 8,544.40 that had apparently already been paid by the Club during the proceedings.

8. The Club objected to the Coach's claim, arguing that it had paid all amounts due and contesting the competence of the FIFA Players' Status Committee (the "FIFA PSC") to adjudicate and decide on the Coach's claim.

9. On 28 September 2016, the Single Judge of the Players' Status Committee (the "FIFA PSC Single Judge") issued his decision (the "Appealed Decision"), with the following operative part:

   "1. *The claim of the* [Coach] *is admissible.*

   2. *The claim of the* [Coach] *is accepted.*

3. *The* [Club] *has to pay to the* [Coach] *the outstanding amount of* [RUB] *18,489,376, within 30 days as from the date of notification of the present decision.*

4. *In the event that the aforementioned amount is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

5. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the* [Club] *within 30 days as from the notification of the present decision as follows:*

   5.1 *The amount of CHF 15,000 has to be paid directly to FIFA to the following bank account (…).*

   5.2 *The amount of CHF 5,000 has to be paid directly to the* [Coach].

6. *The* [Coach] *is directed to inform the* [Club] *immediately and directly of the account number to which the remittances under points 3. and 5.2 above are to be made and to notify the* [FIFA PSC] *of every payment received".*

10. On 7 September 2017, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, as follows:

- *"[T]he Single Judge recalled that art. 7 of the annex did mention the non-exclusive competence of FIFA in case of a dispute arisen between the parties. Hence, the Single Judge concluded that the parties had not agreed upon the exclusive jurisdiction of the National Dispute Resolution Chamber of the* [RFU] *and had not excluded the competence of FIFA to take a decision on a dispute arising between the parties.*

- *As a result of the aforementioned, the Single Judge concluded that the* [Club's] *objection towards the competence of FIFA to deal with the present matter has to be rejected, and that the* [FIFA PSC Single Judge] *is competent, on the basis of art. 23 par. 1 and 3 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players* [the "FIFA RSTP"]*, to consider the present matter as to the substance.*

  (…)

- *[T]he Single Judge first noted that, on 17 June 2013, the* [Coach] *and the* [Club] *had concluded a termination agreement and an annex respectively, under the terms of which the parties concerned mutually agreed upon the termination of their contractual relationship.*

- *In continuation, the Single Judge remarked that in accordance with the annex concluded by the parties concerned, the* [Coach] *was entitled to receive from the* [Club] *his salary of June 2013 by no later than 30 June 2013, "additional premiums" totalling EUR 579,942 net (i.e. EUR 666,600 gross) as well as compensation for a total amount of EUR 3,515,540 net (i.e. EUR 4,042,000 gross) payable in four different instalments "including tax" of* [EUR] *1,019,000 on 30 June 2013, EUR*

1,000,000 on 30 November 2013 and on 31 January 2014 as well as EUR 1,023,000 on 28 February 2014, respectively.

- *Likewise, the Single Judge took note that the annex also stipulated that the "additional premium" as well as the compensation shall be paid in RUB "at a currency rate of the Central Bank of Russia on the day of charge" and "according to the personal income tax in Russia – 13%".*

- *The Single Judge also observed that in his claim to FIFA, the* [Coach] *had accused the* [Club] *of having "defectively and improperly performed its payment obligations due to application of the defective exchange rate of the Ruble versus the Euro set forth by the Central Bank of the Russian Federation" and thus received from the* [Club] *a total amount in RUB "which is less than the Euro equivalent of payments due to the* [Coach]*, which were guaranteed to the* [Coach]*". Furthermore and in the same context, the Single Judge remarked that, for its part, the* [Club] *had insisted to have paid all its debts towards the* [Coach] *as per the termination agreement and the annex "at a currency rate of the Central Bank of Russian on the day of charge".*

- *At this stage, the Single 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.*

- *According to this principle, the Single Judge noted that the* [Club] *did not submit any evidence corroborating its statement of defence and, therefore, decided to reject it.*

- *In continuation, the Single Judge observed that the* [Coach]*, for his part, substantiated his allegations by providing the applicable exchange rates published by the Central Bank of Russia on the dates of the respective payments from the* [Club] *to the* [Coach] *which were the following:*

  a) *on 28 June 2013, established at RUB 42.83 per EUR 1;*
  b) *on 15 July 2013, established at RUB 42.66 per EUR 1;*
  c) *on 29 November 2013, established at RUB 44.99 per EUR 1;*
  d) *on 30 January 2014, established at RUB 47.22 per EUR 1;*
  e) *on 28 February 2014, established at RUB 49.34 per EUR 1.*

- *Therefore, the Single Judge concluded that the* [Coach] *did satisfactorily carry the burden of proof and proved that the* [Club] *did not pay the respective amounts to the* [Coach] *in accordance with the applicable exchange rates.*

- *As a consequence, and in accordance with the principle of pacta sunt servanda, the Single Judge decided that the* [Club] *is liable to pay outstanding remuneration in the amount of RUB 18,489,376 to the* [Coach]. *In this regard, the Single Judge was eager to emphasise that, in accordance with its well-established jurisprudence in this respect, he cannot grant any outstanding amounts in EUR, as the parties had agreed upon payment of the* [Coach's] *remuneration in RUB".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 27 September 2017, the Club lodged a Statement of Appeal against the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2017) (the "CAS Code"), naming the Coach as Respondent.

12. On 12 October 2017, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. The Club challenged the Appealed Decision, submitting the following requests for relief:

"*1. To admit the present Appeal Brief.*

2. To dismiss in full the decision passed by the Single Judge of the FIFA Players' Status Committee Geoff Thompson (England) on 28 September 2016 upon the case Ref. Nr. 15-00009/lde.

3. To condemn the Coach to the payment of the legal expenses.

4. To condemn the Coach to the payment of administrative costs and Court Office fees in full".

13. On 25 October 2017, the arbitrator nominated by the Club decided not to accept his nomination.

14. On 31 October 2017, the Club nominated Mr Frans de Weger, Attorney-at-Law in Zeist, the Netherlands, as arbitrator.

15. On 7 November 2017, the arbitrator nominated by the Coach decided not to accept his nomination.

16. Also on 7 November 2017, the Coach nominated Mr Jeffrey Benz, Attorney-at-Law in Los Angeles, USA, as arbitrator.

17. On 24 November 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

- Prof. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as President;
- Mr Frans de Weger, Attorney-at-Law in Zeist, the Netherlands; and
- Mr Jeffrey Benz, Attorney-at-Law in Los Angeles, USA, as arbitrators

18. On 18 December 2017, the Coach filed his Answer, pursuant to Article R55 of the CAS Code. The Coach submitted the following requests for relief:

"*1.*

1.1 To dismiss the Appeal as inadmissible or, at least, without merits.

Alternatively, and only in the case the request for relief No 1.1 is dismissed:

1.2 To dismiss the Appeal and to remain the decision of the Single Judge of the FIFA Players' Status Committee dated 28 September 2016 (case ref. 15-00009/Ide) unchangeable, in full force and effect.

2. To condemn the Appellant to the payment of the final amount of the cost of arbitration as per Article R64.4 of the CAS Code in full, including the costs and fees of the arbitrators, and reasonable legal fees incurred by the Respondent".

19. On 27 December 2017, upon being invited to express their opinions in this respect, the Club informed the CAS Court Office that it preferred an award to be issued solely on the basis of the parties' written submissions, whereas the Coach indicated he preferred an in person hearing to be held.

20. On 9 January 2018, the CAS Court Office informed the parties that the Panel had decided to hold an in person hearing.

21. On 26 January 2018, FIFA informed the CAS Court Office that, pursuant to Article R41.3 of the CAS Code, it renounced its right to request intervention in the present arbitration proceedings.

22. On 7 February 2018, the Coach returned a duly signed copy of the Order of Procedure to the CAS Court Office.

23. On 1 March 2018, the Club submitted additional evidence, including an expert report of Mr Anton Zykov, an expert in tax and accounting. The Club argued that exceptional circumstances warranted the filing of such additional evidence on the basis of Article R44.1 of the CAS Code.

24. On 9 March 2018, the Coach objected to the admissibility of the additional evidence submitted by the Club.

25. Also on 9 March 2018, the CAS Court Office informed the parties that the Panel would decide on the admissibility of the Club's last submission at the in person hearing.

26. On 12 March 2018, an in person hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel. Furthermore, the Club signed and returned a copy of the Order of Procedure.

27. In addition to the Panel, Mr William Sternheimer, CAS Deputy Secretary General, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

   a) For the Club: Ms Daria Gorlova, Legal Counsel

b) For the Coach: Mr Nikolay Grammatikov, Counsel

28. At the start of the hearing, the Coach reiterated his objection against the admissibility of the new documents filed by the Club on 1 March 2018. The Panel clarified that it would address the admissibility of the documents in the arbitral award.

29. After the opening statements, the parties discussed the possibility of a settlement during a break.

30. Following these discussions, and in the light of an envisaged settlement agreement, the parties agreed to cancel the remainder of the hearing and informed the Panel that a signed version of the settlement agreement would be provided to the CAS Court Office in due course. For the hypothetical situation that they would finally not be able to conclude a settlement, the parties explicitly confirmed that the Panel would be authorised to issue an award on the basis of the parties' written submissions.

31. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

32. On 19 March 2018, the Club informed the CAS Court Office that the parties had not found a mutually beneficial solution and that they did not conclude a settlement agreement.

33. Also on 19 March 2018, the CAS Court Office informed the parties that the Panel would proceed with the matter and would render an award on the basis of the written submissions, as previously agreed.

34. Also on 19 March 2018, the Coach submitted certain comments regarding the negotiation process to the CAS Court Office. The Panel considers this submission inadmissible on the basis of Article R56 of the CAS Code.

35. Also on 19 March 2018, the Club filed a written submission to the CAS Court Office, which was also declared inadmissible on the basis of Article R56 of the CAS Code.

36. On 21 March 2018, the Club replied to the comments of the Coach regarding the negotiation process dated 19 March 2018, which letter was also declared inadmissible on the basis of Article R56 of the CAS Code.

37. On 6 and 17 April 2018 respectively, the Club and the Coach filed further unsolicited submissions to the CAS Court Office. The CAS Court Office informed the parties that no further submissions or correspondence from the parties would be taken into consideration and that the Panel made it clear at the hearing that it would render an award on the basis of the existing written submissions should the parties fail to reach a settlement agreement. These letters were therefore not taken into account by the Panel.

38. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations 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

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

- The Club maintains that it complied with its payment obligations towards the Coach in accordance with the Annex. More specifically, the Club argues that the "day of charge" in respect of all different instalments is 17 June 2013, *i.e.* the date the Termination Agreement and the Annex thereto were concluded, regardless of the dates the different instalments were paid.

- Pursuant to Russian law, remuneration for labour shall be performed exclusively in the currency of the Russian Federation (*i.e.* RUB). In case the payment obligation is settled in a foreign currency, the amount payable in RUB shall be determined at a currency exchange rate of the corresponding currency or agreed monetary unites on the day of payment, unless another exchange rates or another date is determined by the law or by the agreement of the parties. By means of the Annex the parties agreed to use the exchange rate on the "day of charge", and not on the "day of payment".

- Based on Russian law, the compensation paid by the Club to the Coach is to be regarded as salary and this compensation is to be settled on the day the employment contract is terminated.

- According to the Club, *"[o]n the day of dismissal, i.e. 17 June 2013, all the sums that were due to the Coach were charged. (…) However, as it was impossible to pay such a significant amount to the Coach on the day of dismissal, the Club and the Coach agreed on payment by installments of the remaining amount for the period of nine months"*.

- Russian law determines that in the event that the employment relationship is terminated before the end of a calendar month, the day of the actual receipt of income in the form of payment for labour by the taxpayer (*i.e.* the Coach) shall be considered the last day of employment for which the income was charged to him.

- The Club submits that it *"did not have the right to make several charges depending on the maturity date and on currency fluctuations, both upward and downward, since the charged amount cannot be oriented to fluctuations of the exchange rate"*.

- The Club submits that the Coach lodged his claim in bad faith, as he and his representative knew and understood the mentioned terms and corresponding financial transactions, taking into account that payments to the Coach were never made at the exchange rate on the day of salary payment.

- The Club argues that currency risks *"are not under the control of the Club and no one can unequivocally predict the exchange rate changes. If the exchange rate, on the contrary, grew, the Coach would have received more Euro than he expected. Such risks are classified as foreign exchange market risks and should not be covered by any of the parties to the contract unless otherwise provided by the parties in writing"*.

- The Club submits that the Coach was advised by Russian lawyers during the negotiations of the Termination Agreement and that the terminology "day of charge" was inserted upon the request of the Coach's legal representative. The Coach's allegation that "day of charge" and "day of payment" are synonyms is *"nothing but his bad faith"*.

- The Coach's past behaviour reflects his full satisfaction with the terms of the Employment Contract and the Termination Agreement. He never complained about the payments received. Should the Coach have had claims regarding the salary calculation and the applicable exchange rate during his work in the Club, he had the opportunity to file a claim, but he did not do so. Taking into consideration the behaviour of the Coach in the past, his current actions and statements contradict the principle of *venire contra factum proprium* and are therefore made in bad faith.

40. The Coach's submissions, in essence, may be summarised as follows:

- The Coach submits that, in accordance with clause 4 of the Annex, the Club was obliged to pay the Coach an amount of EUR 579,942 net and payable no later than 15 July 2013. In addition, in accordance with clause 5 of the Annex, the Club was obliged to pay the Coach a guaranteed amount of EUR 3,516,540 net, in the amounts and on the dates set in clause 6 of the Annex. However, the Coach claims that he did not receive such guaranteed amounts and therefore lodged a claim before the FIFA PSC.

- The Coach argues that the core of the dispute is the meaning of the definition of "day of charge" in the Annex. According to the Club, the "day of charge" shall be the last day of work, while the Coach believes that the "day of payment" and the "day of charge" coincide.

- The only reason why the Coach accepted the early termination of the employment relationship was the intention to be compensated in the net amounts stipulated in the Termination Agreement.

- The Coach submits that, according to the law, all debts towards employees must be paid on the last day of work, which was the day of termination. However, despite being entitled to do otherwise, the Coach agreed to a long term payment extension to the Club. In return, the Coach insisted that the payment be stipulated in EUR in order to guarantee receipt of the agreed amount, irrespectively of a currency exchange rate that might differ significantly in the long period of time.

- The Coach submits that the Club's position that the "day of charge" was the day of dismissal must be dismissed, because if this were true, why would the Coach agree to stipulate the amount to be received in EUR, while this amount would have to be paid in RUB at the exchange rate of the exact same date? A reasonable person would never agree to this. Instead, it would be essential to stipulate the amount in RUB. The reason why the amounts to be paid were stipulated in EUR is because all parties believed that they had to be paid using exchange rates that were applicable on the day of payment of the respective instalment.

- Moreover, clauses 4 and 5 of the Annex to the Termination Agreement refer to personal income tax at a rate of 13%, and that, if this rate would change for any reason, the Club would be obliged to pay the tax compensation that would ensure the actual receipt of the amounts of EUR 579,942 and EUR 3,516,540 net by the Coach. In case the parties would indeed believe that the amounts due to the Coach would be charged on 17 June 2013, there would be absolutely no need to envisage any kind of change of tax rates and such specification would not exist because it would not be relevant.

- From a letter sent by the Club to a former player, wherein the Club argues that the "day of charge" is to be defined by the employer (*i.e.* the Club) as established in its bylaws, the Coach draws the conclusion that this shows that the Club applies different methods of calculation of the exchange rate of foreign currencies on a case-by-case basis, depending on the circumstances.

- Finally, the Coach argues that the Club's second prayer for relief is inadmissible insofar it requests the Appealed Decision to be set aside, because, in accordance with Article R57 of the CAS Code, a CAS panel may only issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

V. JURISDICTION

41. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition), providing 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 Article R47 of the CAS Code.

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

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

VI. ADMISSIBILITY

44. The appeal was filed within the deadline of 21 days set by Article 58(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.

45. It follows that the appeal is admissible.

VII. APPLICABLE LAW

46. The Club maintains, with reference to Article R58 of the CAS Code and Article 10(10) of the Employment Contract, that the legislation of the Russian Federation shall be exclusively applicable.

47. The Coach does not make any specific submission on the law to be applied, but refers to different provisions of Russian law throughout his submissions.

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

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

49. Article 57(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"*.

50. The Panel observes that the Termination Agreement and the Annex thereto do not contain a choice-of-law clause, but that Article 10(10) of the Employment Contract determines as follows:

> *"The Parties hereby definitely agree that in the case of any disputes the Russian laws shall be only applicable"*.

51. The Panel finds that due to the fact that the Termination Agreement and the Annex thereto do not include any choice-of-law clause, the parties apparently had no intention to deviate from the choice-of-law made in the Employment Contract.

52. The Panel also notes that both parties have heavily relied upon and substantiated the application of Russian law to the matter at hand throughout their written submissions and that the Coach performed his services in the Russian Federation.

53. The Panel notes that determining the applicable law in football-related matters before CAS is an issue that is frequently debated.

54. The starting point to determine the applicable law is Article 187(1) of Switzerland's Private International Law Act ("PILA"): *"[the] arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected".*

55. By submitting their dispute to CAS, the parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, leading to the primary application of the regulations of FIFA. The second alternative referred to in Article 187(1) PILA is therefore not applicable.

56. In the matter at hand, the parties have, besides the above-mentioned implicit and indirect choice of law, however also made an explicit choice of law in Article 10(10) of the Employment Contract for the application of Russian law.

57. In accordance with the Haas-doctrine, Article R58 of the CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties. (…) Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12).

58. A further question arises as to the relation between the parties' explicit choice of law in the Employment Contract and the reference in Article 57(2) FIFA Statutes to the subsidiary application of Swiss law.

59. According to the Haas-doctrine, *"in appeal arbitration proceedings* [Article R58 of the CAS Code] *assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties (…). If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel. (…) Where* [Article 57(2) FIFA Statutes] *"additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. (…) Consequently the purpose of the reference to Swiss law in* [Article 57(2) FIFA Statutes] *is to ensure the uniform interpretation of the standards of the industry. Under* [Article 57(2) FIFA Statutes], *however, issues that are not governed by the RSTP should not be subject to Swiss law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 14-15). While the Haas-doctrine is not binding on the Panel, the Panel finds it persuasive in its approach.

60. The Panel however notes that the FIFA RSTP are not applicable to the matter at hand, because these regulations only govern employment relationship between clubs and players, whereas the dispute at hand involves an employment relationship between a club and a coach (*cf.* CAS 2008/A/1464 & 1467, para. 24 of the abstract published on the CAS website).

61. The Panel notes that no regulation of FIFA governs the material aspects of an employment-related dispute between a club and a coach.

62. In view of the fact that the FIFA RSTP are not applicable in the matter at hand and because the parties explicitly chose to *"agree that in the case of any disputes the Russian laws shall be only applicable"*, the Panel finds that there is no room for the subsidiary application of Swiss law. Accordingly, Russian law takes precedence over the application of Swiss law.

63. Even if the FIFA RSTP would have been applicable to the matter at hand, *quod non*, the Panel finds that the determination of the applicable exchange rate is not an issue that is governed by the FIFA RSTP or any other regulation of FIFA. Therefore, also from this angle, there is no room to justify the application of Swiss law and, also from this perspective, Russian law prevails over Swiss law.

64. In any event, due to the specific circumstances in the matter at hand, considering the multiple references to Russian law in the Employment Contract, acknowledging that the Coach was employed in the Russian Federation, and taking into account that both parties rely on Russian law in their written submissions, the Panel finds that Russian law has the closest connection to the dispute at hand.

65. Consequently, the Panel determines that Russian law is applicable to the substance of the dispute in the matter at hand.

VIII. PRELIMINARY ISSUE

66. During the hearing, the Panel clarified that it would address the admissibility of the documents submitted by the Club, in a letter dated 1 March 2018, in the arbitral award.

67. With this letter the Club submitted an expert report of Mr Anton Zykov, an expert in tax and accounting, and translations into English of certain provisions of the Russian Labour Code. The letter indicates that the answer to the Coach's claim in the proceedings before the FIFA PSC and two letters were also attached, but this was not the case.

68. The Club argues that such newly submitted evidence should be admitted to the case file on the basis of Article R44.1 of the CAS Code. The Club maintains that the exceptional circumstances consist of the fact that Mr Evgeny Krechetov, former Legal Director of the Club and witness called by the Coach, has friendly relations with counsel for the Coach for more than 10 years. Mr Krechetov and counsel for the Coach were involved in negotiating the Termination Agreement and the Annex, *i.e.* the former represented the Club, and the latter the Coach. The Club argues that this gives reason to doubt the independence and impartiality of the witness. In order to secure the equality of the parties, the Club submits that the Panel should examine the full and objective opinion of Mr Zykov.

69. The Coach objected to the admissibility of the newly submitted documents.

70. The Panel first of all notes that the Club mistakenly relies on Article R44.1 of the CAS Code in submitting these documents. Article R44.1 of the CAS Code governs the situation in ordinary arbitration proceedings. Since the present proceeding is an appeal arbitration proceeding, the issue is governed by Article R56 of the CAS Code. The Panel considers this to be a typographic mistake and notes that Article R44.1 and R56 of the CAS Code do not materially differ.

71. The Panel finds that the translations of certain provisions of the Russian Labour Code are to be admitted into evidence as these documents solely contain publicly available information.

72. The content of the letter dated 1 March 2018 is also admitted to the file insofar as the Club questions the credibility of Mr Krechetov as witness. The Panel will take this reasoning into account in assessing the significance of Mr Krechetov's witness statement.

73. The Panel however finds that no exceptional circumstances have been presented by the Club that justify the filing of Mr Zykov's expert report one and a half weeks before the hearing. The Panel finds that nothing prevented the Club from filing this expert report with its Appeal Brief. The mere fact that the Coach called Mr Krechetov as a witness in his Answer does not make this any different, because Mr Zykov's expert report does not relate to any factual circumstances surrounding the conclusion of the Termination Agreement and the Annex thereto and therefore does not relate to Mr Krechetov's witness statement. In any event, Mr Zykov's expert report is dated 31 January 2018, while the Club did not provide any reason for the fact that it only forwarded it to the CAS Court Office on 1 March 2018.

74. Consequently, in the absence of any exceptional circumstances being present, the Panel rules that Mr Zykov's expert report is not admitted to the case file.

IX. MERITS

A. The main issues

75. The main issues to be resolved by the Panel are:

    i. Is the exchange rate on the date of conclusion of the Termination Agreement and the Annex applicable or the exchange rates on the actual dates of payment?

    ii. Did the FIFA PSC Single Judge correctly calculate the amount to be paid by the Club to the Coach?

i. Is the exchange rate on the date of conclusion of the Termination Agreement and the Annex applicable or the exchange rates on the actual dates of payment?

76. The Panel notes that the main issue in dispute between the parties is on which date(s) the exchange rate between RUB and EUR had to be calculated. The Club argues that the date of conclusion of the Termination Agreement (*i.e.* 17 June 2013) is decisive, whereas the Coach maintains that the dates of payment of the individual instalments on later dates are decisive.

77. In accordance with Russian law, salaries in the Russian Federation are to be paid in RUB.

78. Article 317(2) of the Civil Code of the Russian Federation (the "CCRF") provides as follows (in translation):

"In the pecuniary obligation it may be stipulated that it shall be liable to the payment in roubles in the amount, equivalent to the definite amount in the foreign currency, or in the agreed monetary units (ECU, the "special borrowing rights", etc.). In this case, the amount liable to the payment in roubles shall be defined in conformity with the official exchange rate of the corresponding currency or of the conventional monetary units by the day of the payment, unless the other exchange rate or the other day of its formulation has been established by the law or by the parties' agreement".

79. Accordingly, in principle, the exchange rate on the date of payment applies, unless agreed or determined otherwise. The Panel finds that the burden of proof to establish that the parties agreed on a different arrangement lies with the Club.

80. Clause 6 of the Annex to the Termination Agreement provides as follows:

"The compensation shall be paid in Russian rubles at a currency rate of the Central Bank of Russia on the day of charge as follows:

- 1 019 000 Euro including tax – no later than 30 June 2013;
- 1 000 000 Euro including tax – no later than 30 November 2013;
- 1 000 000 Euro including tax – no later than 31 January 2014;
- 1 023 000 Euro including tax – no later than 28 February 2014".

81. Accordingly, the parties opted to apply the exchange rate on the "day of charge".

82. The Panel takes note of the fact and considers it important to stress that the parties did not define nor specify the term "day of charge", or any definition thereof, in the Termination Agreement or in the Annex.

83. Despite the absence of a definition or further specification of the term "day of charge", the Club submits that the "day of charge" coincides with the "day of dismissal" (*i.e.* 17 June 2013), whereas the Coach maintains that the "day of charge" coincides with the "days of payment".

84. Article 431 of the CCRF provides as follows:

"While interpreting the terms of the contract, the court shall take into account the literal meaning of words and expressions, contained in it. The literal meaning of the terms of the contract in case of it being vague shall be identified by way of comparison with other terms and with the meaning of the contract as a whole.

If the rules contained in the first part of the present Article, do not make it possible to identify the content of the contract, the actual common will of the parties shall be found out with account for the purpose of the contract. All the corresponding circumstances, including negotiations and correspondence preceding the

conclusion of the contract, habitual practices in relationships between the parties, customs and subsequent behaviour of the parties shall be taken into account".

85. The Panel finds that the terminology "day of charge" is not clear in and of itself and requires interpretation in accordance with Article 431 CCRF.

86. Applying the first paragraph of Article 431 CCRF, the Panel finds that in comparison with the other terms of the Annex and looking at the meaning of the Annex as a whole, it cannot be concluded that the parties deviated from the default rule that the exchange rates on the "days of payment" are applicable.

87. Indeed, the Annex indicates that the amounts to be paid by the Club to the Coach are specified in EUR. It appears that RUB were solely mentioned because this is required by Russian law. Should the reasoning of the Club be followed, there would be no reason whatsoever for the parties to refer to any amount in EUR, because at the moment of conclusion of the Annex it was clear to them what the exchange rate between RUB and EUR was. The Panel finds that common sense dictates that the stipulation of the amounts in EUR must be allocated a certain significance.

88. Because of the international nature of the employment relationship at hand, and because the Coach was not domiciled in the Russian Federation, the Panel finds that it is to be presumed that the Coach was only interested in the amount he would be paid in EUR, and not in the amount of RUB such amount in EUR would represent. This is exemplified by the fact that the Annex refers to a guaranteed net amount in EUR. Although this reference is made in respect of individual income tax, it indicates that the Coach wanted to have clarity about the exact net amount he would be paid in EUR, and was not concerned how much the Club would effectively have to pay in RUB in order to bring about such net payment in EUR.

89. The Panel also considers it important that if it had indeed been the intention of the parties to apply the exchange rate of the "day of dismissal", they could have easily specified the exact exchange rate in the Annex or could have referred explicitly to the date of 17 June 2013, but they did not do so.

90. As to the Club's argument that the Coach never complained about the fact that his salary was paid on the basis of the exchange rate on the day it fell due and not on the actual dates of payment, the Panel finds that this is not relevant for the matter at hand. Indeed, the actual dates of payment and the due dates do not materially differ. The question is whether the parties intended to determine that the exchange rate on the date of conclusion of the Termination Agreement and the Annex thereto would apply. If this analogy would be extended to the Employment Contract, this would mean that the exchange rate on the date of conclusion of the Employment Contract would apply and not the exchange rate of the monthly due dates. The Panel finds that such approach cannot reasonably be followed.

91. The Club also argues that, pursuant to Article 140 of the Labour Code of the Russian Federation (the "LCRF"), the amounts set out in the Annex fell due on the final day of employment, *i.e.* 17 June 2013.

92. Article 140 LCRF provides as follows:

"On termination of the labour contract all the sums, which are due to the employee by the employer are paid on the day of the employee's dismissal. If the employee did not work on the dismissal day, the corresponding sums must be paid not later than on the next day after submitting by the dismissed employee payment claim".

93. Indeed, the Panel finds that all the Coach's financial claims against the Club, in principle, fell due on 17 June 2013. However, the parties agreed on a payment schedule in the Annex, pursuant to which different due dates were agreed. The Club's argument in this respect is therefore to be dismissed. The Panel finds that the Club did not establish on what grounds in the Russian legislation the "day of charge" should not be "the day of payment". Hence, it was not proven by the Club that it was agreed that the exchange rate did not apply on the date of payment. The mere fact that the amounts due may have been considered paid on 17 June 2013 for tax purposes under Russian legislation is also of no avail to the Club, because the Club itself agreed to a new payment plan with different due dates. In the absence of a clear determination that the exchange rate of 17 June 2013 was applicable, the Panel finds that the consequences of the conclusion of the payment plan as set out in the Annex in respect of tax obligations is not something that concerns the Coach, because the Club agreed to pay him a guaranteed amount in EUR. The payment of tax obligations is irrelevant to the private agreement between the parties; payment of tax obligations is something that happens irrespective of payments under the parties' contract.

94. In view of the above, the Panel finds that the Club did not succeed in establishing that the parties intended to apply the exchange rate on the "day of dismissal" and therefore concludes that the exchange rates on the days of payment are applicable.

ii. Did the FIFA PSC Single Judge correctly calculate the amount to be paid by the Club to the Coach?

95. The Club also maintains that the FIFA PSC Single Judge did not properly calculate the amount to be paid by the Club to the Coach in the Appealed Decision.

96. In order to verify what amount in EUR the Coach is entitled to receive from the Club, the Panel observes that the FIFA PSC Single Judge determined that the following exchange rates between RUB and EUR were applicable on the following dates, which remained uncontested between the parties in the present arbitration:

- on 28 June 2013, established at RUB 42.83 per EUR 1;

- on 15 July 2013, established at RUB 42.66 per EUR 1;

- on 29 November 2013, established at RUB 44.99 per EUR 1;

- on 30 January 2014, established at RUB 47.22 per EUR 1;

- on 28 February 2014, established at RUB 49.34 per EUR 1.

97. It also remained uncontested that the Coach received the following amounts from the Club on the following dates:

- RUB 37,628,056.80 on 28 June 2013;

- RUB 24,615,049.70 on 15 July 2013;

- RUB 36,926,454 on 29 November 2013;

- RUB 36,926,554 on 30 January 2014;

- RUB 37,775,761.60 on 28 February 2014;

Total: RUB 173,871,876.10.

98. Applying the above-mentioned exchange rates to the amount in RUB received by the Coach, the Panel observes that the Coach was paid the following amounts in EUR on the following dates:

- EUR 878,544.40 on 28 June 2013;

- EUR 577,005.38 on 15 July 2013;

- EUR 820,770.26 on 29 November 2013;

- EUR 782,010.89 on 30 January 2014;

- EUR 765,621.43 on 28 February 2014;

Total: EUR 3,823,952.36.

99. The Panel observes that based on the Annex, the Coach was entitled to the following amounts in EUR:

- EUR 886,530 (EUR 1,019,000 -/- 13% personal income tax) by 30 June 2013;

- EUR 504,549.54 (EUR 579,942 -/- 13% personal income tax) by 15 July 2013;

- EUR 870,000 (EUR 1,000,000 -/- 13% personal income tax) by 30 November 2013;

- EUR 870,000 (EUR 1,000,000 -/- 13% personal income tax) by 31 January 2014;

- EUR 890,010 (EUR 1,023,000 -/- 13% personal income tax) by 28 February 2014;

Total: EUR 4,021,089.54 (EUR 4,621,942 -/- 13% personal income tax).

100. Accordingly, the Coach is still entitled to an amount of EUR 197,137.18 (EUR 4,021,089.54 -/- EUR 3,823,952.36).

101. The Panel therefore finds that the appeal shall be partially upheld as the Appealed Decision had initially granted the Coach's claim to be awarded the equivalent in RUB of the amount of EUR 256,001.40.

102. The Panel notes that the FIFA PSC Single Judge decided in the Appealed Decision that the Coach was entitled to an amount of RUB 18,489,376, *i.e.* the equivalent in RUB of EUR 256,001.40. Applying its discretion under the well-known legal principle of *jura novit curia*, or more appropriately *jura novit arbiter* for present purposes, pursuant to which the content and the application of the law is a matter for the arbitral tribunal, the Panel does not find it appropriate to award the outstanding amount in RUB, because, regardless of the value thereof in RUB, the Coach was entitled to a guaranteed amount in EUR. The Panel therefore finds that the Coach is entitled to receive an amount of EUR 197,137.18 from the Club, in the equivalent amount in RUB.

103. The Panel notes that the clear intent of the parties, when concluding the Termination Agreement and the Annex, was that the amount to be received by the Coach in EUR was guaranteed, even if the actual payments were to be made in RUB. Therefore, the Club should bear the consequences of changes of exchange rates.

104. However, because the Coach did not file an independent appeal against the Appealed Decision, and in order to prevent a ruling whereby the Coach is awarded more than he was entitled to on the basis of the Appealed Decision, in conformity with the principle of *non ultra petita*, the Panel finds that the amount to be paid by the Club to the Coach can in any event not exceed an amount of RUB 18,489,376.

105. Finally, since the FIFA PSC Single Judge only awarded interest to the Coach in case the Club would not pay the awarded amount within 30 days of notification of the Appealed Decision, and because the Coach did not lodge an independent appeal against the Appealed Decision, the Panel finds that the Coach is only entitled to interest at a rate of 5% *per annum* over the outstanding amount as from 30 days after the notification of the present arbitral award until the date of effective payment.

B. Conclusion

106. Based on the foregoing, the Panel holds that:

i. The exchange rates on the actual dates of payment are applicable.

ii. The Club has to pay to the Coach an outstanding amount of EUR 197,137.18 in the equivalent amount in RUB, but only insofar such amount does not exceed RUB 18,489,376, with interest at a rate of 5% *per annum* accruing as from 30 days following the date of notification of the present arbitral award.

107. Any other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 September 2017 by CJSC Football Club Lokomotiv against the decision issued on 28 September 2016 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 28 September 2016 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed, save for paragraph 3 thereof, which shall read as follows:

   CJSC Football Club Lokomotiv has to pay to Mr Slaven Bilic the outstanding amount of EUR 197,137.18 (one hundred ninety-seven thousand one hundred thirty-seven Euros and eighteen cents) in the equivalent amount in RUB, but only insofar such amount does not exceed RUB 18,489,376 (eighteen million four hundred eighty-nine thousand three hundred seventy-six Russian Roubles), with interest at a rate of 5% (five per cent) *per annum* accruing as from 30 days following the date of notification of the present arbitral award.

3. (…).

4. (…).

5. Any other and further motions or prayers for relief are dismissed.