Arbitration CAS 2018/A/5565 SK Slavia Praha v. Damien Mohand Boudjemaa & AFC Astra & CAS 2018/A/5582 Damien Mohand Boudjemaa v. SK Slavia Praha & CAS 2018/A/5589 AFC Astra v. SK Slavia Praha & Damien Mohand Boudjemaa, award of 19 December 2018

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Football
Termination of contract with just cause
De novo ruling
Determination of the law(s) applicable to a dispute
Non-substitution of respondent
Rectification of a respondent's designation
Existence of "just cause" to terminate an employment contract
Principle of the positive interest
Criterion of specificity of sport

1. **According to art. R57 para. 1 of the CAS Code, CAS' arbitrators have full power to review the facts and the law of cases submitted to them. Arbitrators hear cases *de novo* and are not limited to the examination of the submissions or of the evidence that were adduced by the parties before the first instance body. As a result, parties are not restricted before CAS by any principle of *estoppel* or of non-contradiction of their prior submissions.**

2. **Under art. R58 of the CAS Code, the applicable regulations always primarily apply, regardless of the will of the parties. Consequently, the parties are entitled to freedom of choice of law solely within the limits set by said article. Where the applicable regulations contain a reference to a national law (Swiss law) and the law chosen by the parties in a contract refers to another national law, Swiss law does not prevail over the choice of law made by the parties. Rather, this gives rise to a co-existence of applicable regulations, *i.e.* Swiss law and the law chosen by the parties. In this context, the application of Swiss law is confined to ensuring uniform application of the FIFA Regulations on the Status and Transfer of Players (RSTP), and art. 57(2) of the FIFA Statutes merely clarifies that the RSTP are based on concepts borrowed from Swiss law. If questions of interpretation arise about the application of the FIFA regulations, recourse must be made to Swiss law. Conversely, any other issues regarding interpretation and application that are not addressed in the FIFA regulations, *i.e.* for which FIFA has not set any uniform standards, are subject to the law that has been chosen by the parties.**

3. **A claimant must specify the parties to the proceedings in her/his statement of claim. Once a claimant has identified a respondent, s/he is not allowed to substitute the original respondent by another respondent.**

4. A rectification in a respondent's denomination in a statement of claim is possible if the real respondent could be identified on the basis of the elements of the file or if the claim could not refer to any subject other than the real respondent, and not to the respondent mentioned by mistake.

5. The only relevant criteria in order to determine whether a party had "just cause" for terminating a contract is whether the breach of the obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as an employer's obligation to pay an employee. The latter applies only subject to two conditions. Firstly, the amount paid late by an employer may not be "insubstantial" or completely secondary. Secondly, an employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.

6. According to the principle of the *"positive interest"*, the application of the criteria of art. 17(1) of the FIFA RSTP should aim at determining an amount which shall basically put the injured party in the position it would have had should the contract have been performed properly.

7. Panels shall use the criterion of specificity of sport to *inter alia* verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world). The specificity of sport is not an additional head of compensation, nor a criteria allowing to decide in *ex aequo et bono*, but a correcting factor which allows panels to take into consideration other objective elements which are not envisaged under the other criteria of Article 17.

I. PARTIES

1. SK Slavia Praha ("Slavia") is a Czech football club and a member of the Football Association of the Czech Republic ("FACR"), which is affiliated with the Federation Internationale de Football Association ("FIFA"). Slavia currently competes in the Czech First League, the highest football division in the Czech Republic.

2. Mr Damien Mohand Boudjemaa (the "Player") is a professional football player and a citizen of France, born on 7 June 1985.

3. AFC Astra ("Astra") is a Romanian football club and a member of the Romanian Football Federation, which is affiliated with FIFA. Astra currently competes in Liga I, the highest

football division in Romania.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions and evidence produced in connection with these proceedings. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion below. While the Sole Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the parties in the present proceedings, he refers in his award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Slavia Contract and the Disciplinary Regulations

5. On 30 January 2014, the Player concluded an employment contract with Slavia valid as from 1 February 2014 until 30 June 2016, including a club extension option until 30 June 2017 (the "Slavia Contract"). The Slavia Contract contained, *inter alia*, the following provisions:

i. under Article II [*"Undertakings of the Player"*]:

> *"8. To observe all the instructions and internal regulations of the company, in particular the directives and regulations concerning sports clothing and the Communication Manual. To submit to the decisions of the bodies and management of the Club, to accept guest appearances, providing the Player is not in the A-team, and also the disciplinary competence of the Club arising from its statutes and the rules of the FACR (Football Association of Czech Republic).*
>
> *(…).*
>
> *12. To make out invoice for the provision of his services for financial fulfilments provide to the Club for the appropriate calendar year; invoices for services provided in the calendar year must be made out monthly".*

ii. under Article IV [*"Undertakings of the Club"*] para. 1:

> *"a) To provide the Player with monthly remuneration as follows:*
>
> *- from 01.02.2014 to 30.06.2016, 17.647,- EUR (15.000, - EUR netto to the Player's account).*
>
> *In the case the club will execute his right to extend the contract:*
> *- from 01.07.2016 to 30.06.2017, 17.647,- EUR (15.000, - EUR netto to the*

Player's account).

(…).

c) To pay the Player a signing fee bonus 58.824,- EUR (50.000, - EUR netto to the Player's account) before or ultimately on 15th of February 2014".

iii. under Article V [*"Consequences of Infringement of Obligations"*]:

"In the case of infringement of the responsibilities according to this Contract on the part of the Player the company is entitled to impose on the Player a fine to the amount of a one month's salary for each infringement of a contractual obligation. Before imposing a contractual fine the company is obliged to call upon the Player to observe contractual obligations, or to eliminate the faulty situation. In the case that the Player does not do this, in spite of a written appeal, the company is entitled to impose a contractual fine according to this article".

iv. under Article VI [*"Termination of the Agreement"*] para. 3:

"a) The Club may withdraw from the Contract if the Player has repeatedly failed to fulfil any of the obligations arising from this Contract, even though he has disciplinary punishment from the Club for similar behaviour in the course of the Contract and the Player was informed in writing of this punishment. The period of notice in this case is 30 calendar days and it begins to run on the day following the delivery of written notice to the Player.

(…).

d) The Player may withdraw from the Contract if the Club does not fulfil its undertaking given in Article IV point 1, or any other undertaking to pay remuneration, a bonus or any other payment due to the Player according to this Contract, and does not do so even in the replacement deadline of 30 days, which begins to run on the day of the delivery of the appeal from the Player addressed to the Club for payment of the due liabilities according to this Contract. The period of notice for this case is 60 calendar days and begins to run on the day following delivery of the written appeal to the Club; the Player is entitled to give notice to the Club at the earliest on the first day following the replacement deadline agreed between him and the Club".

6. Separately, Slavia had internal disciplinary regulations (the "Disciplinary Regulations"), which provided in relevant part as follows:

i. as *"Types of Disciplinary Offences"*:

- at Article 4.2.5, *"Any failure to attend the training process, training camps, matches or official*

events without proper excuse, or failure to attend training session without an acceptable excuse that has been communicated immediately before or during the training session to the Club Secretariat, or Sports Secretary, as well as late arrival for the training session or repeated late arrival to the training session".

- at Article 4.2.15: *"Any violation of obligations arising from the Professional Contract or Similar Agreement".*

ii. at Article 5.1, as additional disciplinary offences *"arising from the Breach of Contractual Obligations established by Professional Contract or Similar Agreement"* the violation by the Player of the obligations:

"a) to attend the training process, training camps and matches and while doing so to make every effort, to know and observe the laws of the game and regulations.

b) to adhere to the prescribed regime arising from the preparation for the matches and attendance at the matches".

iii. at Article 11, governing the *"fine"*:

"1. The fine up to the amount specified in (…) the Annex hereto may be imposed to Offenders (…).

2. The imposed fine may be unilaterally set-off against the legitimate receivables of the Offender against the Club (basic monthly salary, bonus pay for sport results, bonuses, appearance money and so on)".

B. The payment of the Player's remuneration and the unilateral termination of the Slavia Contract by the Player

7. In the course of 2014, Slavia paid to the Player a portion of the signing fee due by 15 February 2014, as well as monthly salaries as follows:

- on 13 March 2014, Slavia paid the salary for February 2014;
- on 24 April 2014, Slavia paid the salary for March 2014;
- on 9 July 2014, Slavia paid the salary for April and May 2014;
- on 29 July 2014, Slavia paid the salary for June 2014;
- on 18 August 2014, Slavia paid the salary for July 2014;

- on 18 September 2014, Slavia paid the salary for August 2014;
- on 21 October 2014, Slavia paid the salary for September 2014;
- on 20 November 2014, Slavia paid the salary for October 2014.

8. On 20 January 2015, then, Slavia paid the Player's salary for November 2014.

9. On 21 January 2015, the Player sent Slavia a reminder to pay by 29 January 2015 the remaining portion (corresponding to EUR 25,000 net) of the signing fee which was due by 15 February 2014, but had remained unpaid.

10. On 5 February 2015, the Player filed a claim with the arbitral panel of the FACR seeking the payment of such unpaid portion of the signing fee.

11. On 4 March 2015, Slavia paid the Player's salary for January 2015. The monthly salary of December 2014 remained unpaid.

12. On 9 April 2015, Slavia paid the Player's salary for February 2015.

13. On 13 April 2015, in a letter to the Player regarding to the non-payment of the monthly salary of December 2014, Slavia indicated that:

> *"We hereby confirm that the salary payment related to the month of December 2014 of amount € 15.000 will be paid no later than 31.05.2015. In the event that SK Slavia Praha do not make the payment on the date indicated, said club will pay a penalty of € 5.000".*

14. On 20 April 2015, Slavia paid the portion of the signing bonus fee that had remained unpaid that far. As a result, on 22 April 2015, the Player withdrew the claim filed with the arbitration panel of the FACR.

15. On 5 May 2015, Slavia paid the Player's salary for March 2015.

16. On 4 June 2015, the Player invited Slavia to pay the monthly salary of December 2014, plus the penalty mentioned in Slavia's letter of 13 April 2015, as by 31 May 2015 Slavia had not paid the amount due.

17. On 24 June 2015, the Player filed a claim before the FIFA Dispute Resolution Chamber (the "DRC") relating to the non-payment of the monthly salary of December 2014. On 29 June 2015, however, the Player withdrew his claim after receiving the payment.

18. On 30 June 2015, the Player sent a default notice to Slavia requesting payment of outstanding remuneration in the amount of EUR 30,000 corresponding to the salaries of April and May 2015.

19. On 10 July 2015, the Player sent another default notice to Slavia requesting payment of outstanding remuneration in the amount of EUR 45,000, corresponding to the salaries of April, May and June 2015. In the default notice, the player warned Slavia that he would terminate the Slavia Contract if the outstanding amount would not be remitted within 10 days.

20. On 15 July 2015, the Player received from Slavia the salary payment of April 2015.

21. On 28 July 2015, the Player sent to Slavia a written *"Notice of termination"* of the Slavia Contract (the "Termination Letter"), on the basis that Slavia had failed to fulfil its financial duties, and more specifically to pay the salaries for May and June 2015. Slavia allegedly received the Termination letter on 30 July 2015.

22. On 5 August 2015, the Player received from Slavia the salary payment of May 2015.

23. On 10 January 2016, the Player signed an employment contract with Astra (the "Astra Contract"), valid as from 10 January 2016 until 30 June 2016. According to the Astra Contract, the Player was entitled to a monthly salary of EUR 6,500 net, plus a single payment in the amount of EUR 10,000 due on 20 January 2016. The Player and Astra also agreed that the Astra Contract could be extended, starting on 1 July 2016 until 15 June 2018.

C. Disciplinary Fines issued by Slavia

24. On 28 and 29 July 2015, Slavia's disciplinary committee issued decisions imposing fines on the Player in the amounts of CZK 1,000,000 and CZK 650,000, respectively.

25. The first fine concerned the Player's failure to resume his training on 17 June 2015, having only returned from summer holidays on 22 June 2015.

26. The second fine concerned the Player's failure to attend trainings on 28 and 29 July 2015.

27. The fines were imposed pursuant to Articles 4.25, 4.2.15, and 5.1 of the Disciplinary Regulations. Both fines were notified to the Player on 30 July 2015.

D. Proceedings before the DRC

28. On 6 August 2015, Slavia filed with the DRC a claim against the Player (the claim was extended

against Astra in a second moment, by submitting that Astra had to be held jointly and severally liable with the Player) for breach of contract without "just cause". Generally speaking, the basis of Slavia's claim was that the Player had terminated the Slavia Contract without "just cause" on 30 June 2015, since only one salary remained outstanding (*i.e.*, the salary for May 2015). Consequently, Slavia sought the payment of:

- CZK 1,244,550, as fines imposed by Slavia on the Player;

- EUR 865,298, as compensation for breach of contract, plus 5% interest *p.a.*; and

- legal expenses of Slavia.

29. The requested compensation consisted of EUR 1,356,417 (transfer fee in the amount of EUR 190,000, signing bonus, total remuneration including extension of the Contract, lost profit of expected transfer fee, *"training, marketing and advertising costs"*) less saved salaries in the amount of EUR 491,119.

30. On 23 September 2015, the Player filed with the DRC a claim (supplemented on 24 September 2015) against Slavia for breach of contract with "just cause". Generally speaking, the basis of the Player's claim was that Slavia had failed to pay him salaries for April, May and June 2015 at the moment of the termination and therefore he had "just cause" to terminate the Slavia Contract. Consequently, the Player sought the following payments:

- EUR 15,000, as outstanding remuneration corresponding to the June 2015 salary (the Player acknowledged receipt of the salary payments for April 2015 and May 2015, respectively on 15 July 2015 and 5 August 2015);

- EUR 180,000, as compensation for breach of contract (corresponding to the residual value of the Contract); and

- 5% interest, as of the effective date of payment.

31. On 21 September 2017, the DRC issued the following decision (the "Decision") on the claims brought by the Player and Slavia:

> *"1. The claim of* [Slavia] *is partially accepted.*
>
> *2. The* [Player] *is ordered to pay to* [Slavia]*, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of* EUR *194,903.50 plus 5% interest p.a. as of 6 August 2015 until the date of effective payment.*

3. [Astra] *is jointly and severally liable for the payment of the aforementioned compensation.*

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

5. [Slavia] *is directed to inform both the* [Player] *and* [Astra] *immediately and directly, of the account number to which the respective remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*

6. *The claim of the* [Player] *is partially accepted.*

7. [Slavia] *is ordered to pay the* [Player] *within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 30,000 plus 5% interest p.a. as of 31 July 2015 until the date of effective payment.*

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

9. *The* [Player] *is directed to inform* [Slavia] *immediately and directly, of the account number to which the respective remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*

10. *In the event that any of the above-mentioned amounts and interests due to the respective salaries are not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision".*

32. On 25 January 2018, the grounds of the Decision were notified to the Parties. The relevant points of the *"Considerations"* developed by the DRC in the Decision, after the indication of the applicability to the case of the 2015 edition of the Regulations on the Status and Transfer of Players (the "RSTP"), read as follows:

"14. In this context, the DRC established that it was essential to the outcome of the present matter to determine when the salaries of the player were actually due. In this regard, and due to the lack of a contractual provision defining the due dates of the monthly salary payments, the Chamber analysed the club's argument that the monthly remuneration fell due at the end of the following month due to the constant practice during the contractual relationship. Said allegation was confirmed by the player. In this context, the members of the Chamber considered, thus that the monthly salary payments fell due at the end of the respective following month.

15. Consequently, the DRC was of the opinion that at the time of the termination, i.e. 28 July 2015, only the salary of May was due. Indeed, the salary of June 2015 would have fallen due on 1 August 2015. In this respect, the Chamber concluded that at the moment of the termination, i.e. on 28 July 2015, the salary of June 2015 had not yet fallen due.

16. *As to the alleged "permanent delays" invoked by the player, the members of the Chamber rejected said argument, since neither the default notices nor the termination notice refer to such constant delays.*

17. *On account of the above and the documentation on file, the Chamber established that, contrary to the termination notice, only the salary for May 2015 was outstanding on the date of termination of the employment contract by the player, i.e. 28 July 2015.*

18. *(…).*

19. *In light of the above, the Chamber came to the unanimous conclusion that the non-payment of one monthly salary for a relatively short period of time can under the given circumstances of this particular matter not be considered a persistent and material non-fulfilment of the club's contractual obligations, justifying the early termination of the contract by the player. Therefore, the DRC concluded that the player had no "just cause" to terminate the employment contract.*

20. *(…).*

21. *In this regard, the members of the Chamber recalled that at the date of the termination of the contract, the salary for May 2015 remained unpaid, but was subsequently remitted to the player on 15 August 2015.*

22. *Furthermore, the DRC took note, that the club imposed disciplinary fines and set off said fines with the player's remuneration for June 2015.*

23. *In this context, the Chamber concurred that the fines imposed on the player by the club shall be disregarded, since the player's right to be heard appears to have been violated during the internal disciplinary proceedings due to the fact that he was neither able to submit his position as to the substance nor attend the relevant hearings.*

24. *(…).*

25. *Consequently, on account of the above and in accordance with the general legal principle of pacta sunt servanda, the Chamber decided that the club is liable to pay to the player the amount of EUR 30,000 with regard to the remuneration due to him for June and July 2015 until its early termination.*

26. *In addition, taking into consideration the player's claim, the Chamber decided to award the player interest at the rate of 5% p.a. as of 31 July 2015, until the date of effective payment.*

27. *(…).*

28. *The Chamber decided that, in accordance with Article 17 par. 1 of the* Regulations, *the player is liable to pay compensation to the club. Furthermore, in accordance with the unambiguous content of article 17 par. 2 of the* Regulations, *the Chamber established that the player's new club, i.e.* [Astra]*, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber was eager to point out that the joint liability of the player's new club is independent from the question as to whether the new club has induced the contractual breach. This conclusion is in line with the well-established jurisprudence of the Chamber and has been repeatedly confirmed by the CAS.*

29. *(…) the members of the Chamber firstly reiterated that, in accordance with Article 17 par. 1 of the* Regulations, *the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the* [Player] *under the existing contract and/or the new contract(s), the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

30. *(…) the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.*

31. *As a consequence, the members of the Chamber determined that the amount of compensation payable in the present matter had to be assessed in application of the other parameters set out in Article 17 par. 1 of the* Regulations. *The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be considered when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body. In this regard, the Dispute Resolution Chamber emphasised beforehand that each request for compensation for contractual breach has to be assessed by the Chamber on a case-by-case basis taking into account all specific circumstances of the respective matter.*

32. *(…).*

33. *In this regard, the DRC established, on the one hand, that the employment contract between the club and the player had been set to run as from 30 January 2014 until 30 June 2016. Since the breach occurred on 28 July 2015, i.e. the contract's termination date, the total value of his employment agreement with the club for the remaining contractual period amounts to EUR 165,000 composed of eleven monthly salaries of EUR 15,000. On the other hand, the members of the Chamber established that the value of the employment contract concluded between the player and* [Astra] *amounts to a total of EUR 80,663 for the period starting from the unilateral termination of the contract by the player*

until its contractual expiry, i.e. from 28 July 2015 until 30 June 2016. On the basis of the aforementioned financial contractual elements, the Chamber concluded that the average of remuneration between the contracts concluded by the Player respectively with the club and [Astra] *over the relevant period amounted to EUR 122,831.50.*

34. *The members of the Chamber then turned the further essential criterion relating to the fees and expenses paid by the club for the acquisition of the player's services insofar as these have not been amortised over the term of the relevant contract. The Chamber recalled that a transfer compensation of EUR 190,000 had been paid by the club to SC Petrolul Ploiesti for the player's transfer in 2014. According to article 17 par.1 of the Regulations, this amount shall be amortised over the term of the relevant employment contract. As stated above, the player would have been bound to the club for another eleven months when he terminated the contract, which was originally concluded for a total period of two seasons. As a result of the player's breach of contract on 28 July 2015, the club has thus been prevented from amortising the amount of EUR 72,072, relating to the transfer compensation that it paid in order to acquire the player's services.*

35. *As to the alleged non-amortised part of the signing fee, the Chamber wished to point out that such payment was due to the player on a specific date and should therefore not be taken into account as compensation.*

36. *In this context, due to the lack of evidence provided, any further request of the club for compensation, such as lost profit of an expected transfer fee and loss of "training, marketing and advertising costs" could not be considered.*

37. *Thus, the Chamber deemed that the amount of EUR 194,903.50 represents a fair and justified final amount of compensation for breach of contract, which the player has to pay to the club.*

38. *In addition, taking into consideration the club's claim, the Chamber decided to award the club interest at the rate of 5% p.a. as of the date of claim, 6 August 2015, until the date of effective payment.*

39. *Furthermore, the Chamber decided that, in accordance with Article 17 par. 2 of the Regulations,* [Astra] *shall be jointly and severally liable for the payment of the aforementioned amount of compensation".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. CAS 2018/A/5565 SK Slavia Praha v. Damien Mohand Boudjemaa & AFC Astra

33. On 14 February 2018, Slavia filed an appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") against the Decision, naming the Player and Astra as respondents. The arbitration procedure

started by Slavia was registered by the CAS Court Office under the reference CAS 2018/A/5565 SK Slavia Praha v. Damien Mohand Boudjemaa & AFC Astra. In its Statement of Appeal, Slavia requested that a Sole Arbitrator be appointed.

34. On 23 February 2018, Slavia filed its Appeal Brief in accordance with Article R51 of the Code.

35. On 27 February 2018, Slavia submitted to the CAS Court Office a document entitled *"Correction of obvious clerical and administrative errors"*, seeking the permission from the CAS Court Office to rectify its Appeal Brief and exhibits.

36. On 3 March 2018, the CAS Court Office advised the Parties to CAS 2018/A/5565 *inter alia* that an appeal had been filed by the Player against FIFA and Slavia concerning the Decision, and had been registered as CAS 2018/A/5582 Damien Mohand Boudjemaa v. SK Slavia Praha. Therefore, the parties were invited to inform the CAS Court Office whether they agreed to consolidate the proceedings in CAS 2018/A/5565 with the case CAS 2018/A/5582, pursuant to Article R52 of the Code.

37. On 5 March 2018, the Player agreed to consolidate the procedures CAS 2018/A/5565 and CAS 2018/A/5582.

38. On 6 March 2018, Slavia agreed to consolidate the procedures CAS 2018/A/5565 and CAS 2018/A/5582 and also agreed on the further consolidation also with the CAS proceedings started by Astra against the Decision and registered under reference CAS 2018/A/5589 AFC Astra v. SK Slavia Praha & Damien Mohand Boudjemaa.

39. Astra did not provide its position on the issue of consolidation.

B. CAS 2018/A/5582 Damien Mohand Boudjemaa v. FIFA & SK Slavia Praha

40. On 15 February 2018, the Player filed with the CAS a Statement of Appeal against Slavia and FIFA to challenge the Decision in accordance with Articles R47 and R48 of the Code. The arbitration procedure started by the Player was registered by the CAS Court Office under the reference CAS 2018/A/5582 Damien Mohand Boudjemaa v. FIFA & SK Slavia Praha. In his Statement of Appeal, the Player sought to refer his appeal to a three-member Panel.

41. On 2 March 2018, the CAS Court Office advised the parties that an appeal had been filed by Slavia against and the Player and Astra with respect to the Decision. In accordance with Article R52 of the Code, the parties were invited to inform the CAS Court Office whether they agreed on the consolidation of the procedures.

42. On 5 March 2018, the Player agreed to consolidate the proceedings in CAS 2018/A/5565 and

in CAS 2018/A/5582.

43. On 5 March 2018, the CAS Court Office noted the filing by Astra of an appeal against the Decision, registered under CAS 2018/A/5589 AFC Astra v. SK Slavia Praha & Damien Mohand Boudjemaa. It therefore requested the parties to state their position as to the consolidation also of these proceedings.

44. On 5 March 2015, also Slavia agreed on the consolidation of the proceedings. On the other hand, Astra did not provide its position on consolidation.

45. Moreover, on 5 March 2018, FIFA requested to be excluded from the procedure started by Astra [*recte*: the Player] on the basis that this appeal relates solely to a dispute between Slavia and the Player, involving Astra, in connection with the Slavia Contract and does not concern FIFA.

46. On 13 March 2018, the Player, following an extension of time granted in accordance with Article R32 of the Code, filed his Appeal Brief in accordance with Article R51 of the Code.

47. On 14 March 2018, the Player confirmed his agreement to withdraw any claims against FIFA and to exclude it from this procedure.

48. By letter the same dated, 14 March 2018, the CAS Court Office confirmed the exclusion of FIFA from this procedure.

C. CAS 2018/A/5589 AFC Astra v. SK Slavia Praha & Damien Mohand Boudjemaa

49. On 19 February 2018, Astra filed a Statement of Appeal against Slavia and the Player with the CAS against the Decision in accordance with Articles R47 and R48 of the Code. The arbitration procedure started by Astra was registered by the CAS Court Office under the reference CAS 2018/A/5589 AFC Astra v. SK Slavia Praha & Damien Mohand Boudjemaa. In its Statement of Appeal, Astra requested that its appeal be referred to a Sole Arbitrator.

50. On 1 March 2018, Astra filed its Appeal Brief in accordance with Article R51 of the Code.

51. On 5 March 2018, the parties were invited *inter alia* to inform the CAS Court Office, in accordance with Article R52 of the Code, whether they agreed to consolidate the proceeding started by Astra with cases CAS 2018/A/5565 and CAS 2018/A/5582.

52. On 6 and 7 March 2018, Slavia and the Player agreed to consolidate this proceeding with cases CAS 2018/A/5565 and CAS 2018/A/5582.

53. On 14 March 2018, Astra agreed to consolidate the proceedings it had started with the cases

CAS 2018/A/5565 and CAS 2018/A/5582.

D. The consolidated proceedings CAS 2018/A/5565, CAS 2018/A/5582 and CAS 2018/A/5589

54. On 23 March 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the consolidation of procedures CAS 2018/A/5565, CAS 2018/A/5582 and CAS 2018/A/5589. At the same time, the CAS Court Office circulated copies of the parties' respective Appeal Briefs and set the appropriate deadlines for the parties to file their Answers in accordance with Article R55 of the Code. In addition, the Player was invited to consider whether he would agree to refer this consolidated procedure to a Sole Arbitrator, as requested by Slavia and Astra.

55. On 29 March 2018, the Player objected to the appointment of a Sole Arbitrator.

56. On 13 April 2018, Slavia filed its Answer to the appeals filed by the Player (CAS 2018/A/5582) and by Astra (CAS 2018/A/5589) in accordance with Article R55 of the Code.

57. On 16 April 2018, the Player filed his Answer to the appeals filed by Slavia (CAS 2018/A/5565) and by Astra (CAS 2018/A/5589) in accordance with Article R55 of the Code.

58. On 16 April 2018, Slavia filed an additional answer to the appeal filed by the Player (CAS 2018/A/5582), objecting to its admissibility.

59. On 27 April 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the President of the CAS Appeals Arbitration Division had decided to refer the consolidated procedures to a Sole Arbitrator in accordance with Article R50 of the Code.

60. On 9 May 2018, the CAS Court Office acknowledged that Astra did not send its Answer and therefore, invited Astra to provide a proof of filing of its Answer by 14 May 2018.

61. On 16 May 2018, the CAS Court Office acknowledged that Astra did not provide a proof of filing its Answer.

62. On 17 and 23 May 2018, the Player, Slavia, and Astra requested that a hearing be held in the consolidated procedures.

63. On 8 June 2018, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties of the appointment of Prof. Luigi Fumagalli, Attorney-at-law and Professor of Law in Milan, Italy, as Sole Arbitrator.

64. On 2 July 2018, Slavia requested the CAS to render a preliminary decision regarding its objection to the admissibility of the Player's appeal, raised in the additional answer of 16 April 2018.

65. On 17 July 2018, the CAS Court Office informed the parties of the appointment of Mrs Marianne Saroli, Attorney-at-Law in Montreal, Canada, as *ad hoc* clerk.

66. On 19 July 2018, the Player filed with the CAS Court Office copy of an unsolicited submission, filed in another case, regarding the identification of Slavia as a proper respondent with respect to the dispute the object of the consolidated procedures. At the same time, the Player indicated Mr Nicolas Franco and Mr Dame Diop as witnesses.

67. On 23 July 2018, the CAS Court Office invited Slavia and Astra to comment on the Player's unsolicited submission of 19 July 2018.

68. On 30 July 2018, Slavia and Astra responded to the Player's submission. In addition, Slavia objected to the hearing of the witnesses indicated by the Player.

69. On 7 August 2018, the Parties were advised by the CAS Court Office that the Sole Arbitrator would decide on the admissibility of the Player's submissions during the hearing.

70. On 9 August 2018, the Parties were advised by the CAS Court Office that the Sole Arbitrator decided to admit the Player's witnesses, without prejudice to any decision on the relevance of their testimony.

71. On 30 August 2018, the CAS Court Office issued, on behalf of the Sole Arbitrator, an order of procedure (the "Order of Procedure"), which was signed by the Player on 2 September 2018, and by Slavia and Astra on 3 September 2018.

72. On 12 September 2018, a hearing was held in the consolidated appeals. The Sole Arbitrator was assisted at the hearing by Mr Brent Nowicki, Legal Counsel at CAS, and by Mrs Marianne Saroli, *ad hoc* clerk. At the hearing, the Sole Arbitrator was joined by the following:

For Slavia: Mrs Kateřina Radostová and Mrs Anna Vejmelkova, counsel, Mr Karol Kisel, trainee lawyer, and Mrs Michaela Miliskova, interpreter and translator;

For the Player: the Player in person, and Mr Santiago San Torcuato, counsel;

For Astra: Mr Claudiu Popa and Mr Bogdan Lucan, counsel.

73. At the outset of the hearing, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator. Then, Slavia requested that Mr Karol Kisel, former board member of Slavia, be heard as a witness. The Player, however, objected to this request. In accordance with Article R56 of the Code, the Sole Arbitrator, therefore, decided not to admit Mr Kisel as witness, but allowed him to be part of Slavia's legal team and render declaration in such capacity. At the same time, the Sole Arbitrator announced his decision to admit the submissions filed by the Player on 19 July 2018, and that a decision on the admissibility of the Player's appeal would be rendered in the final award.

74. The Sole Arbitrator, then, heard the deposition of Mr Nicolas Franco, indicated as a witness by the Player, a declaration of the Player and oral submissions by counsel. The other witness indicated by the Player, Mr Diop, could not be reached by phone and, in the event, the Player renounced to his deposition. The declarations heard by the Sole Arbitrator can be summarized as follows[1]:

i. Mr Franco, the agent of the Player, referred to the negotiation of the Slavia Contract and indicated that no discussion had taken place with respect to the dates on which the payment of the monthly salary was due. At the same time, Mr Franco declared that he had never been informed of any invoicing requirement for the Player and that the Player was never requested to issue invoices;

ii. the Player confirmed that he was not aware of any obligation to issue invoices or of any tax formalities. However, the Player admitted having signed a power of attorney, but he was told that it concerned his visa. The Player stated also that he had been a victim of Slavia and that he gained no advantage from the termination of the Slavia Contract;

iii. counsels:

- for Slavia: insisted that the only question raised by Slavia's appeal concerned the amount of compensation it was entitled to receive and not the liability of the Player. In fact, the DRC correctly held that the Player had no "just cause" to terminate the Slavia Contract. In such framework, in the opinion of Slavia, the key issue concerns the date on which the payments were due; such date was not indicated in the Slavia Contract, but followed a practice, based on the issuance of the Player's invoices, consistently adopted within Slavia and generally observed in the Czech football. According to such practice, the due date was the last day of the month following the one to which the salary referred. As a result, at the time the Termination Letter was sent, only one monthly salary was due;

[1] The summary which follows is intended to give an indication of only a few key points touched at the hearing. The Sole Arbitrator emphasises that he considered the entirety of the declarations made at the hearing.

- for the Player: indicated that Slavia had never paid timely the amounts due, and that the Player had to complain several times in that regard. In addition, the Player was not aware that invoices had to be issued, and, with respect to the due dates, the Slavia Contract has to be interpreted against Slavia, which drafted it. As a result, at the time of termination, nearly three monthly salaries were due;

- for Astra: submitted that Astra has been involved in a dispute that concerns only Slavia and the Player, and that there are no reasons to hold it jointly liable with the Player. In any case, Slavia has never demonstrated the existence of the general practice in the Czech football it invokes. In addition, there is no law chosen by the parties which applies to the merits of the dispute, which involves three parties, and in which Astra was dragged. Under these circumstances, Swiss law should apply because FIFA is an association based in Switzerland and its decision is the object of the appeal.

75. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

76. This section of the award does not contain an exhaustive list of the parties' contentions, its aim being to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of Slavia

77. In its Statement of Appeal and in its Appeal Brief in CAS 2018/A/5565, as subsequently corrected for *"obvious clerical and administrative reasons"*, Slavia sought the following relief:

> *"(i) To accept this appeal against the FIFA DRC's Decision, dated 21 September 2017 (ref. no. 15-01101/pas), with grounds delivered to* [Slavia] *on 26 January 2018.*
>
> *(ii) To partially annul the FIFA DRC's Decision and adopt a new one, stating that* [the Player and Astra] *are jointly and severally liable to pay to* [Slavia] *a compensation for breach of contract by* [the Player] *in the amount of 319.380 EUR, or 288.795 EUR, at least, that is already respective of outstanding remuneration in the amount of EUR 30,000 payable to the Player, or offsetting these counterclaims.*

(iii) To condemn the [Player and Astra] *to payment of the whole CAS administration costs and Arbitrators' fees.*

(iv) To fix a sum of 20,000 CHF to be paid by the [Player and Astra] *to* [Slavia]*, to help pay for its defence fees and costs".*

78. In its answer to the appeals of the Player (CAS 2018/A/5582) and of Astra (CAS 2018/A/5589), then, Slavia requested the CAS to hold as follows:

i. with respect to the appeal of the Player:

"(i) to dismiss/reject the [Player]*'s appeal in full.*

(ii) to condemn the player (…) to payment of the whole CAS administration costs and Arbitrators' fees.

(iii) to fix a sum of 20,000 CHF to be paid by the player (…) to the club SK SLAVIA as a partial compensation of its legal fees and other expenses (incl. translation services) incurred in connection with this proceeding".

ii. with respect to the appeal of Astra:

"(i) to dismiss/reject the [Astra]*'s appeal in full.*

(ii) to condemn [Astra] *to payment of the whole CAS administration costs and Arbitrators' fees.*

(iii) to fix a sum of 20,000 CHF to be paid by [Astra] *to the club SK SLAVIA as a partial compensation of its legal fees and other expenses (incl. translation services) incurred in connection with this proceeding".*

79. In essence, Slavia, in its written submissions and at the hearing, indicated that in its opinion the Decision has to be confirmed in the portion where the DRC found that the Player had terminated the Slavia Contract without "just cause" and that Astra was jointly liable to pay compensation for the damages caused by the Player's breach; however, the Decision has to be modified with respect to the amount of compensation Slavia is entitled to receive. As a result, and for the same reasons, the appeals filed by the Player and by Astra have to be dismissed.

80. Preliminarily, however, Slavia challenges the admissibility of the Player's appeal, because, in its opinion, the Player failed to designate the proper club as the respondent, when he had named to be the respondent *"Sportovni Klub Slavia Praha, Full Adress Vladivostocka 1460/2, (100 05) Praha, Czech Republic"*. Slavia highlights, in fact, that such indications correspond to a different legal

entity and not to Slavia. Therefore, Slavia has no standing to answer a relief requested by the Player against a different subject.

81. In the merits, then, Slavia makes submissions relating to the amount of compensation and its calculation; relating the outstanding remuneration awarded to the Player; and answering the claims of the Player and Astra.

82. With respect to the amount of compensation claimed, and its calculation, the submissions of Slavia can be summarized as follows:

i. the amount set by the DRC, on the basis of the average remuneration between the Slavia Contract and the Astra Contract over eleven months, is *"disproportionately low and/or incorrectly determined, according to evidence and the law"*. In fact, the parameter of the *"remaining value of average of remuneration between contracts"* as an element to determine the amount of compensation payable in the present proceedings must be discarded, because no weight should be given to the value of the Astra Contract, which provides for a remuneration 50% lower than the remuneration under the Slavia Contract. Indeed, the real circumstances pertaining to the conclusion of the Astra Contract (to which Slavia was not a party and therefore by which it should not be adversely affected) are suspicious, and the low contractual remuneration could have been agreed intentionally to reduce the value of any liability. In addition, the salary under the Astra Contract was concluded more than six months after the Slavia Contract was unilaterally terminated by the Player. Thus, the total value of the contract (a component of the compensation to be paid to Slavia) should be increased to at least **EUR 165,000**, *i.e.* to the total value of the Slavia Contract for the remaining contractual period, not averaged with the total value of the Astra Contract;

ii. in the alternative, the total value of the contract for the remaining contractual period based on the average value of the Slavia Contract and of the Astra Contract should take into account also all payments and benefits payable or provided under the Astra Contract, including the non-monetary receivables, such as value of accommodation, etc.. In other words, the value of the Astra Contract should be increased. As a result, the average of remuneration between the Slavia Contract and Astra Contract over the relevant period should be **EUR 134,415**, determined as follows: EUR 134,000 (total amount of remuneration for the entire duration of the Astra Contract) + EUR 26,000 (total amount of additional bonuses for the entire) + EUR 5,400 (total value of additional accommodation bonuses for the entire duration of the Astra Contract) + EUR 4,500 (other "extra" additional bonuses paid to the Player on the occasion of some special events) = EUR 169,900 (the amount of all remuneration and benefits/ bonuses for the entire duration of the Astra Contract) / 18 (total number of months of duration of the Astra Contract) = EUR 9,439 (average monthly remuneration under the Astra

Contract) * 11 (remaining number of months until the day of expiration of the Slavia Contract) = EUR 103,829 (total value of the Astra Contract). That amount should then be averaged with the compensation due to the Player under the Slavia Contract (corresponding to EUR 165,000: point (i) above);

iii. at the same time, with regard to other relevant objective criteria for the calculation of compensation, the signing fee paid by Slavia to the Player should also be included in the calculation of the compensation. In fact, the DRC accepted Slavia's demand for reimbursement of the amortized training fee paid to FC Petrolul and awarded the amount of EUR 72,072 in that respect, to be added to the amount for the remaining value of the contract, but rejected the Slavia's request for reimbursement of the amortized signing fee. The transfer fee and the signing fee *"belong to the same group of costs paid by a new club in connection with engagement of a player"*. Therefore, the total amount of compensation should be increased by the unamortized part of the paid signing fee, equal to at least EUR 22,308, determined as follows: EUR 58,824 (total amount of paid signing fee) / 29 (total number of months of basic duration of the Slavia Contract) = EUR 2,028 (average amount of paid signing fee) * 11 (remaining number of months until the expiration date of the Slavia Contract) = **EUR 22,308**. In the alternative, the signing fee paid to the Player should be computed as part of his salary and considered in the determination of the residual value of the breached Slavia Contract;

iv. additional compensation owing to the specificity of sport should also be awarded, in light of the status and behaviour of the Player and of the circumstances of the case relating to the termination of the Slavia Contract. In fact, the Player was 28 years old when he concluded the Slavia Contract and was a well-established professional football player and a valuable part of the "A-team" up until the termination of the Slavia Contract, voted by fans as the Best Player of the 2013-2014 season. As a result, additional compensation in the amount of EUR 90,000 (corresponding to six months' salary) should be awarded;

v. consequently, the compensation to be awarded should be increased to EUR 349,380, or at least to EUR 318,795, depending on whether the remaining value of the Slavia Contract is averaged or not with the Astra Contract. Such amount would correspond to the lost profit of the expected transfer fee, include the costs paid in connection with the engagement of the Player, and correspond to a *"fair and justified"* amount.

83. With respect to the outstanding remuneration due to the Player, Slavia does not directly contest the Player's entitlement to the amount of EUR 30,000 awarded by the DRC for June and July 2015, but requests the CAS to set-off the sum against the payment of the compensation for breach of contract due by the Player. As a result, the final amount to be paid to Slavia should be EUR 319,380 or EUR 288,795, depending on the measure of compensation and resulting

from the deduction by it of the sum of EUR 30,000.

84. With respect to the appeals of the Player and Astra, Slavia answers as follows:

i. in general terms, the Player misinterprets the Slavia Contract and the relevant facts at the basis of the conclusions reached by the DRC in the Decision. The Player's arguments are based on the claim that monthly salaries had not been paid according to the Slavia Contract. However, such contention is misleading, since the term *"monthly"* in the Slavia Contract refers to the period for which the Player's salary was paid, while the date of payment was never exactly specified in the Slavia Contract;

ii. the DRC came to the conclusion of the existence of a contractual practice on the basis of the express confirmation by the Player in the FIFA proceedings. The Player's change of attitude is inadmissible. The appeal arbitration procedure before CAS in fact is not meant to correct the erroneous strategies applied in the DRC proceeding. In light of the prohibition of "*venire contra factum proprium*", the Player cannot contradict his own previous conduct. Moreover, the related doctrine of *judicial estoppel* also prevents the Player from adopting a position contrary to the one taken in earlier proceedings;

iii. the Player's criticism of the Decision and the submission that Swiss law has to be applied with respect to the determination, *inter alia*, of the timing of payment of the salaries, cannot be accepted. In fact:

- the DRC reached its conclusions on the basis of undisputed facts as to the practice relating to payments, and the identification of the law governing the due date was not necessary; and,

- contrary to the Player's submissions, the Slavia Contract contains an express provision on the applicable law chosen by the Parties. In fact, the Parties agreed in the preamble of the Slavia Contract to conclude it *"according to the Par. 1724 and following of the Civil Code"* (the "Czech CC"), *i.e.* in reference of Czech law.[2] Therefore, Czech law should be applicable for all matters not regulated by the FIFA regulations, with no room left for Swiss law;

iv. the day on which the payment of monthly salaries was due could be determined on the basis of appropriate interpretation of the Slavia Contract, or of some of its provisions,

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[2] Section 1724 so reads: *"(1) By a contract, parties express their will to create between them a mutual obligation and adhere to the contents of the contract. (2) The provisions on contracts also apply with the necessary modifications to an expression of will whereby one person reaches out to other persons, unless it is excluded by the nature of the expression of will or a statute"*. Praha also cites Section 1725 of the Czech CC: *"A contract is concluded once the parties have stipulated its contents. The parties are free to conclude a contract and determine its contents within the limits of the legal order"*.

or according to the circumstances of the case. For instance, the obligation to pay monthly remuneration set by Article IV para. 1 point a) of the Slavia Contract had to be read in connection with the Player's obligation under Article II para. 12 to issue the invoices for his salaries each month. Therefore, the invoices supported the Player's monthly remuneration and determined the due date of his salary. In that respect there was a constant practice between the parties to the Slavia Contract, since each invoice was issued at the end of the month. The due date of monthly remuneration was specified by the Player's invoice which represented the Player's request for payment. Consequently, the Player's remuneration was payable within one month of the end of the respective month;

v. the argument of Slavia with respect to the identification of the due date fully complies with Czech law, more precisely with Sections 1958 and 1962 of the Czech CC,[3] since the due date specified in the invoices was established in favour of Slavia, and according to the prohibition of "*venire contra factum proprium*" the Player cannot require payment before the due date, which was previously determined by him. In addition, regarding the *"constant practice during the relationship"*, Section 556 of the Civil Code[4] is relevant, as it allows an interpretation of the contract according to the circumstances of the case. In the same way, the Player's argument about the impossibility of a *novation* as a result of the practice, the lack of contractual obligation defining the due payment makes this principle not applicable to the present case. Thus, there is no original obligation that could be replaced by a new one;

vi. the conclusion reached on the basis of Czech law is confirmed by Article 102 of the Swiss Code of Obligations (the "Swiss CO"),[5] and by Article 18 of the Swiss CO, governing the interpretation of contracts,[6] while Article 323 para. 1 of the Swiss CO is

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3 Section 1958: *"(1) If the time of performance has been exactly stipulated or otherwise determined, the debtor is obliged to perform even without being requested to do so by the creditor. (2) If the parties do not stipulate the time when the debtor is to discharge a debt, the creditor may demand performance immediately and the debtor is then obliged to discharge the debt without undue delay"*. Section 1962: *"(1) If the time of performance is in favour of both parties, the creditor may not require that the performance be provided early, and the debtor may not perform the debt early. (2) If the time of performance is in favour of the debtor, the creditor may not require that performance be provided early, but the debtor may discharge the debt early. (3) If the time of performance is determined in favour of the creditor, he may require that performance be provided early, but the debtor may not discharge the debt early"*.

4 Section 556: *"(1) What is expressed by words or otherwise is interpreted according to the intention of the acting person if the other party was aware or must have known of such an intention. If the intention of the acting person cannot be ascertained, the expression of will is attributed the same meaning which would be typically attributed by a person in the position of the person against whom the will was expressed. (2) When interpreting the expression of will, account is taken of the regular dealings of parties in legal transactions, what preceded the juridical act, as well as the manner in which the parties subsequently demonstrated what content and relevance they attach to the juridical act"*.

5 According to which: *"1. Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee. 2. Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline"*.

6 Which so provides: *"When assessing the form and terms of a contract, the true and common intention of the parties must be*

not applicable, since the Slavia Contract does not imply an employment relationship. In that regard, under an established practice recognized by Czech courts, a professional player performs his duties to a club under a business contract, rather than an employment contract: the player is a registered VAT taxpayer with a valid VAT identification number. In that respect, the Player even co-signed a letter from the accounting and consulting company HELLAND dated of 1 July 2014 to Slavia, regarding VAT payments;

vii. with respect to the "invoicing" issue, the following can be noted:

- the invoices were regularly issued and provided to Mr Petr Stejskal, *i.e.* the accounting and tax advisor of the company HELLAND, who had been authorized by the Player to represent him in all his affairs relating to his economic, tax and accounting matters;

- the services provided by the Player were taxable in the Czech Republic and therefore he was required to file his tax returns, on the basis of taxation documents, which were regularly in Czech. However, Slavia does not know whether HELLAND issued the invoices in other languages, which the Player could understand;

- the fact that payments were made before the due date (*e.g.*, in the middle of the following month as opposed to the end of the following month) does not carry adverse legal consequences for Slavia with regard to the pattern of payments to the Player.

85. In summary, according to Slavia, there was only one payment due as at the day of termination of Slavia Contract, *i.e.* the remuneration for May 2015. A non-payment of one monthly salary cannot be considered a persistent and material non-fulfilment of Slavia's contractual obligations, justifying early termination of a contract. The obligation of the Player to pay the damages he caused has to be confirmed. And Astra should be jointly and severally liable with the Player for any compensation owed, pursuant to Article 17 para. 2 of the RSTP.

B. The Position of the Player

86. In his Statement of Appeal in CAS 2018/A/5582, the Player sought the following relief:

"1. To accept this appeal against the Decision of the Dispute Resolution Chamber dated 21 September 2017.

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ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".

2. To adopt an award annulling the said decision and adopting a new one declaring that:

a) The decision of the Dispute Resolution Chamber dated 21 September 2017 is annulled; and

b) The Player is entitled to receive the amount of EUR 209.670,40 arising from the contractual obligations accepted and assumed by the Club.

3. To fix a sum of 15,000 CHF to be paid by the Respondents to the Appellant, to help the payment of his legal fees and costs.

4. To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrators fees.

In addition, the Appellant reserves the right to amend and/or expand upon the above prayers for relief in its Appeal Brief".

87. In his Appeal Brief, the Player amended his request for relief as follows:

"a) The Panel would accept this Brief of Appeal within the current consolidated proceedings against SK SLAVIA PRAHA (…) before CAS.

b) The Panel would render an award annulling the Decision issued by FIFA Dispute Resolution Chamber hereby appealed;

c) The Panel would upheld this Appeal, and pursuant to the terms presented, would render a final Award whereby it will be determined that Appellant terminated the employment agreement with just cause and, consequently, Respondent would be declared the exclusive party liable for the early termination of the employment agreement.

d) Respondent is therefore held liable for breach of the employment agreement signed between the Parties with the inherent legal consequences;

e) Respondent is ordered to pay the amount of two hundred eighty-five thousand of Euros (€ 285.000), as follows:

- *One Hundred ninety-five hundred Euro (€ 195.000) corresponding to the outstanding salaries according to the contract.*

- *Ninety Thousand Euro (€ 90.000) as compensation for breach of contract.*

f) Respondent is ordered to pay Appellant interest of 5% per annum;

g) Respondent is ordered to pay the entire sum related to CAS administration costs and Panel fees;

h) The Panel to render a decision whereby Respondent shall be disbursing Appellant a sum in order to cover the legal defence fees, expenses and costs in the FIFA proceeding in the amount of ten thousand Swiss Francs (CHF 10.000);

i) The Court to render a decision whereby Respondent shall be disbursing Appellant a sum in order to cover its legal defence fees, expenses and costs in the amount of fifteen thousand Swiss Francs (CHF 15,000)".

88. Such requests were confirmed in the Player's answer to the appeals of Slavia (CAS 2018/A/5565) and of Astra (CAS 2018/A/5589).

89. In essence, the Player submits that Slavia acted in clear violation of the Slavia Contract and the *"universal legal principle"* of good faith in contractual relations. The Player left Slavia because of the absence of payments since April 2015: at the time, the Slavia Contract was terminated, the salaries for May, June and July were owed. Therefore, Slavia is not entitled to any compensation from the Player. Accordingly, the Decision is to be reversed and compensation has to be granted to the Player, because of the Slavia's contractual violations.

90. According to the Player, his appeal is admissible: the respondent in CAS 2018/A/5582 was correctly identified, and the objection raised by Slavia has no merits. *"SK Slavia Praha"* and *"Sportovni Klub Slavia Praha"* are the same and sole football club.

91. The centre of the disputes, in the Player's opinion, regards the date on which the salaries were actually due. In that respect, the Player disagrees with FIFA's conclusion that the monthly salary payments fell due at the end of the respective following month. In fact, in the absence of a clear contractual provision, this point must be decided in accordance with the FIFA regulations, as supplemented by Swiss law, if necessary. Since the FIFA regulations are silent about due dates for salary payments, Swiss law applies to fill any possible gap, especially Article 323 of the Swiss CO, pursuant to which *"Unless shorter periods or other payment terms have been agreed or are customary and unless otherwise provided by standard employment contract or collective employment contract, the salary is paid to the employee at the end of each month"*. As a result, the salary for May 2015 was due at the end of that month, and there is nothing in the Slavia Contract leading to the conclusion that payments could be made one month later. The DRC analysed the Slavia Contract based on a "constant practice". This is incorrect because Slavia's contractual obligations remained and could not be transformed by a "constant practice". Indeed, in its *"Final provisions"*, the Slavia Contract provides that *"any changes in the Contract made be made only with the consent of both Parties. Changes in the Contract must be in written form, otherwise they are not valid"*. Since there is no written

document to this effect, the "constant practice" of Slavia could not replace the consent of both parties, nor can it be interpreted as tacit acceptance from the Player. Any modification of the contractual terms would be tantamount to a *novation* and a breach of the principle of "*pacta sunt servanda*".

92. Slavia's strategy to establish its payment schedule by providing seventeen unsigned invoices for February 2014 to June 2015 is also devoid of merits: the Player never saw those invoices, in Czech, a language he does not understand, before the FIFA's proceedings. In addition, the relevance of the invoices is contradicted by Slavia's behaviour, which made several payments before the salaries were allegedly due. For instance, the monthly salary of February 2014 was paid on 13 March 2014, while it was due on 31 March 2014 according to the invoice. Furthermore, the issuance of an invoice is a secondary obligation, and it cannot be invoked by a party to determine arbitrarily when an employee's salary is payable. In addition, the contractual clauses of a professional contract can never be interpreted to the detriment of the employee on the basis of two principles: "*in dubio pro operario*" and "*in dubio contra stipulatorem*", as confirmed by CAS 2013/A/3401.

93. According to the Player, there is another issue regarding the relations with HELLAND: an email sent on 12 November 2014 to the Player's agent, through a Slavia's employee, Mrs Lucie Medalova, contained a supposed French translation of a power of attorney requested by HELLAND, dated of 1 July 2014 and allegedly signed by the Player in front of a Notary. Mrs Medalova answered the Player's agent by email, attaching again a power of attorney dated 24 April 2014 completely written in Czech and supposedly signed by the Player along with a translation in French. The Player notes the absence of any official translation, public certification or notarial authentication on said document and further asserts that the French translation of authorization is false, as the documents refer to the Cape Verdean football player Fernando Neves, not him.

94. At the same time, it cannot be held that the Player *"clearly accepted this situation when he stayed in the Claimant's club without any complaints"*. In fact, he verbally complained about the late salary payments during his employment relationship with Slavia, sent four reminders and filed two claims against Slavia before the Czech Board of Arbitrators and DRC to obtain the payments.

95. In light of the foregoing, the DRC committed an error when it declared that, *"at the time of the termination i.e. 28 July 2015, only the salary of May was due. Indeed, the salary of June 2015 would have fallen due on 1 August 2015"*. Contrary to the DRC's conclusion, there was "just cause" for the Player to terminate the Slavia Contract, in light of Slavia's breaches. The RSTP has no definition of what constitutes a "just cause", but Slavia's breach of its contractual obligations had a certain seriousness to justify a "just cause" due the late payments. In fact, Article 14 of the RSTP indicates that, *"should the violation persist for a long time or should many violations be cumulated over certain period of time, then it is most probable than the breach of contract has reached such level that the party suffering*

the breach is entitled to terminate the contract unilaterally". And late payments or non-payments of salaries constitute "just cause" for termination of the contract (CAS 2015/A/4046 & 4047, CAS 2015/A/4042, CAS/A/4322, and CAS 2006/A/1180). In addition, under the Commentary to the RSTP, a three-month period without receiving the salaries is a *"long period of time"* and entitles to the affected party to terminate the employment contract with just cause. In some cases, however, the DRC accepted a contract breach based on a lack of two payments. As a result, and conversely, the termination by the Player does not constitute a termination of the Slavia Contract without just cause.

96. In that context, no relevance has to be given, in the Player's opinion, to the disciplinary sanctions imposed on him by Slavia. Indeed, the Player admits being absent as of 17 June 2015 until 21 June 2017, but his absence was caused by a misunderstanding due to a change in the coaching staff of the club. In fact, *"during the summer 2015 (…)* [Slavia] *was undergoing a chaotic period"*, and the Player, willing to join Slavia, was just waiting for instructions to start the pre-season, and was ordered to wait until the situation became clearer. The sanctions, then, were imposed only after the Player had terminated the Slavia Contract, several days after the occurrence of the events at stake, with the sole purpose of off-setting the amounts owed, at a time the Player was no longer an employee of Slavia. In addition, the Player alleges that he was not bound by the Disciplinary Regulations, since he never signed them, nor were they attached to the Slavia Contract. Finally, he was not duly notified of Slavia's Disciplinary Committee hearing; thus his right to be heard was violated, since he could not be present.

97. As a result, Slavia is liable to pay compensation for breach of contract, corresponding to the residual value of the Slavia Contract in the amount of EUR 195,000, for the outstanding salaries owed to the Player, plus an additional compensation of EUR 90,000.

C. The Position of Astra

98. In its Statement of Appeal, and in identical terms in its Appeal Brief, in CAS 2018/A/5589, Astra sought the following relief:

> *"- The Decision issued on 21 September 2017 by FIFA Dispute Resolution Chamber in case file 15-01101/pas is partially set aside;*
>
> *- The claim lodged by the club SK Slavia Praha against AFC Astra is dismissed;*
>
> *- AFC Astra does not owe any amount to SK Slavia Praha;*
>
> *- Should you reject the second and third claim, AFC Astra requests that the debts owed by every respondent to each other to be set-off, up to the amount of the lowest debt;*

- *All the arbitration costs shall be borne by the respondent, who will be obliged to reimburse AFC Astra the entire amount paid as arbitration costs and legal expenses".*

99. Astra did not submit any answer to the appeal filed by Slavia (CAS 2018/A/5565) in which it was also named a respondent.

100. In its submissions, in essence, Astra endorses the Player's arguments and submits that the conclusions reached by the DRC are erroneous for the following reasons:

- contrary to Slavia's contentions, the Slavia Contract did not stipulate the payment terms for the salaries owed to the Player. Consequently, Slavia must fulfil its financial obligations towards the Player immediately and at the beginning of each month pursuant to Article 75 of the Swiss CO;

- the practice of payment of monthly salaries at the end of the following month was imposed on the Player by Slavia and did not result from a mutual arrangement between the parties. Therefore, this practice should not be considered as a *modus operandi* on which both contracting parties agreed to;

- there is no evidence of a constant practice in the Czech football regarding the due date of payment of salaries, along the lines suggested by Slavia;

- from the beginning of the contractual relation, the Player raised with Slavia the issue of the late payments. The Player, therefore, had "just cause" to terminate the Slavia Contract due to these repeated delays and the non-payment of the salaries of April, May and June 2015 at the time of the termination.

101. More specifically, with respect to its joint and several liability under Article 17 para. 2 of the RSTP, Astra submits that the DRC applied the rule without considering the many particularities of the case. According to Astra, the expression *"shall be jointly and severally"* implies a rebuttable possibility and presumption, but not a certainty or automaticity. Therefore, Astra should be authorized to prove it was not involved in the termination of the Player's employment agreement with Slavia.

102. In the case regarding the Player, it is to be noted that he remained unemployed between 30 July 2015 and 9 January 2016. On 10 January 2016, he signed an employment contract with Astra, valid from 10 January 2016 until 30 June 2016, *i.e.* more than five months after he had terminated his contract with Slavia. At that time, Astra *"made sure that the Player* [was] *free of any obligations to any other club"* and that Astra did not interfere with the contractual relationship between the Player and Slavia. In addition, after the termination of the Slavia Contract, the Player was involved in negotiations with several other clubs prior to discussing with Astra's

representatives. This assertion implies that Astra is not guilty of the termination of the Slavia Contract, and does not have any connection with it: Astra was not aware of the Player's situation and of the ongoing litigation with Slavia before signing the contract.

103. In summary, the DRC unreasonably applied Article 17 para. 2 of the RSTP, because it has not been proven that Astra was involved in the termination of the agreement without just cause, nor that it induced the Player not to comply with his contract, especially by not showing up to training sessions.

104. Also the amount that the Player was ordered to pay to Slavia was wrongly set, because the value of the Astra Contract is lower than EUR 80,663. In reality, the total value of the Astra Contract was only EUR 38,000, since it was concluded for an initial period of 6 months and the Player's monthly salary was EUR 6,500 net. Moreover, during the period between the termination of the Slavia Contract and the conclusion of the Astra Contract, the Player was a free agent. Thus, the average amount should not include this period.

105. A final point is made with respect to set-off. Pursuant to Article 120 of the Swiss CO, the lowest debt must be set-off against Slavia's claim. Since Slavia owes EUR 30,000 to the Player and the Player owes to the club EUR 194,903.50, in the case, the Player should pay EUR 164,903.50 to Slavia.

V. JURISDICTION

106. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 58 para. 1 of the FIFA Statutes.

107. Article R47 of the Code provides as follows:

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

108. Article 58 para. 1 of the FIFA Statutes reads as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

109. The jurisdiction of the CAS is not contested by the Parties. Moreover, all Parties confirmed CAS jurisdiction by the execution of the Order of Procedure, and no party objected to the

proceedings or the jurisdiction of the CAS. It follows, therefore, that CAS has jurisdiction in this appeal.

VI. ADMISSIBILITY

110. Article R49 of the Code provides as follows:

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

111. As noted above, Article 58 para. 1 of the FIFA Statutes provides that appeals *"shall be lodged with CAS within 21 days of notification of the decision in question"*. The same 21-day deadline is mentioned on the last page of the FIFA Decision (*"The Statement of Appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision"*).

112. The Decision was rendered on 21 September 2017; however, the grounds of the Decision were notified to the Parties by DHL on 25 January 2018. All appeals were filed within the applicable of 21-day deadline. The statements of appeal comply with the requirements set by Article R48 of the Code. No Party objects otherwise.

113. Only one issue was raised as regards the admissibility of the appeal. It concerns the objection raised by Slavia with regard to its standing to answer the Player's appeal. The issue, regarding the merits of the dispute, will be examined below.

114. It therefore follows that these appeals are admissible.

VII. MANDATE OF THE SOLE ARBITRATOR

115. According to Article R57 para. 1 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case submitted to him. As a result, the Sole Arbitrator hears these consolidated proceedings *de novo* and is not limited to the examination of the submissions or of the evidence that were adduced by the Parties before the DRC. As a result, contrary to Slavia's exception, based on the principle of *estoppel* or otherwise, the Player was not restricted before CAS by any principle of *estoppel* or of non-contradiction of his prior submissions.

VIII. APPLICABLE LAW

116. Article R58 of the Code provides as follows:

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

117. Article 57 para. 2 of the FIFA Statutes provides the following:

> *"The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law".*

118. During the course of the procedure, the parties referred to and relied upon the FIFA regulations (and chiefly the RSTP) in both their oral and written submissions. However, the parties disagreed with the application of any subsidiary law. In particular, the Player and Astra assert that no choice of law was decided upon between the parties and that "just cause" is a "by-product" of the FIFA regulations, not national law. As such, the Sole Arbitrator should only rely on the FIFA regulations, which are to be interpreted under Swiss law, when deciding on the alleged breach of the Slavia Contract. On the contrary, Slavia asserts that the Slavia Contract contains an express provision on the applicable law chosen by the Parties. According to Slavia, in fact, the parties agreed in the preamble of the Slavia Contract to conclude it *"according to the Par. 1724 and following of the Civil Code"*. The provision refers to Czech law; therefore Czech law should be applicable for all matters not regulated by the FIFA regulations.

119. As noted above, Article R58 of the Code provides that the dispute shall be decided first and foremost according to the applicable regulations. The term *"applicable regulations"* within the meaning of Article R58 of the Code refers to the rules of the association that made the first-instance decision which is being contested in the appeals arbitration procedure. In the case at hand, the applicable regulations are the FIFA regulations, and chiefly the RSTP.

120. Subsidiary, to the extent that the *"applicable regulations"* do not provide for a solution of the dispute, Article R58 of the Code refers the arbitral tribunal to the law chosen by the parties. This only comes into play if the relevant questions of the dispute are not dealt with or covered by the *"applicable regulations"*. In fact, under Article R58 of the Code the *"applicable regulations"* always primarily apply, regardless of the will of the parties: this Article provides for a mandatory hierarchy of the applicable legal framework, which the parties cannot change. Consequently the parties are entitled to freedom of choice of law solely within the limits set by Article R58 of the Code. The question is whether this subsidiary law is the Czech or the Swiss law.

121. In the case at stake, in fact, the Sole Arbitrator notes that the *"applicable regulations"* (the FIFA

Statutes) contain a reference to a national law: Swiss law. The Slavia Contract, however, appears to be subject, as a result of an implicit, but clear choice, to Czech law. The Sole Arbitrator notes that Swiss law, as referred to by Article 57 para. 2 of the FIFA Statutes does not prevail over the choice of law made by the parties in the Slavia Contract to govern it. Rather, this gives rise to a co-existence of the *"applicable regulations"*, of Swiss law and of Czech law.

122. In that regard, the Sole Arbitrator holds that the application of Swiss law is confined to ensuring the uniform application of the FIFA regulations. In other words, Article 57 para. 2 of the FIFA Statutes merely confirms that the FIFA regulations are based on concepts borrowed from Swiss law. Therefore, if questions of interpretation arise about the application of the FIFA regulations, recourse must be made to Swiss law in this regard. Conversely, any other issues regarding interpretation and application that are not addressed in the FIFA regulations, *i.e.* for which FIFA has not set any uniform standards, are subject to the law that has been chosen by the parties: in this case, Czech law. As a result, and for instance, insofar as the FIFA rules make reference to "just cause" for termination of contracts, that concept shall fall to be interpreted according to Swiss law. On the other hand, where an issue arises with regard to the due date for payments under a contract, since the FIFA regulations do not provide for rules in that respect, the different law governing the contract at stake, chosen by the parties, shall apply to settle it.

123. The Sole Arbitrator shall proceed on such basis in the legal discussion which follows.

IX. MERITS

124. The object of the dispute is the Decision which found that the Player breached the Slavia Contract (because he terminated it without "just cause") and was therefore ordered to pay compensation for damages, together with his new club Astra, which was held to be jointly liable to Slavia. At the same time, the Player was recognized to be entitled to receive some payments as outstanding salaries.

125. The Decision is criticized by all parties: by Slavia, which wants the amount of compensation to be increased; by the Player, who wants it to be reversed so that Slavia is found liable for breach of contract and ordered to pay compensation; and by Astra, which seeks at least the cancellation of its joint liability. The Player's claim to be paid some outstanding salaries at the time of the termination of the Slavia Contract is not *per se* challenged by Slavia, which only seeks a declaration to be entitled to set it off against the damages it requests to be awarded.

126. In light of the parties' submissions, there are several issues that the Sole Arbitrator has to examine: in essence, they concern the Player's termination of the Slavia Contract on 28 July 2015, and whether it was made with or without "just cause", and imply the consideration of the consequences of such finding, chiefly with regard to the payment of compensation and, if the case, the joint liability of Astra. The Sole Arbitrator shall analyse those issues separately and in

sequence.

127. A preliminary issue is, however, to be considered. It concerns the objection raised by Slavia with regard to the Player's appeal. According to Slavia, the Player did not designate it as the respondent, but a different legal entity: *"Sportovni Klub Slavia Praha, Full Adress Vladivostocka 1460/2, (100 05) Praha, Czech Republic"*. Therefore, Slavia has no standing to answer a relief requested by the Player against a different entity.

128. Under Article R48 of the Code, it is the responsibility of the Appellant to indicate in the statement of appeal *"the name and full address of the Respondent(s)"*. This provision corresponds to a general feature of Swiss law of civil procedure: the respondent in a civil action is the subject named as such by the claimant. According to Article 221 para. 1 of the Swiss Code of Civil Procedure (the "Swiss CCP"), a claimant must specify the parties to the proceedings in his or her statement of claim. Once the claimant has identified the respondent he or she is not allowed to substitute the original respondent by another respondent. As it was indicated, *"Die Bezeichnung der Parteien (…) ist* [in Art. 221 Abs. 1 Bst. a ZPO)] *so vorzunehmen, dass über deren Identität kein Zweifel besteht. (…) Eine Berichtigung ist nicht möglich, wenn damit ein Parteiwechsel bezweckt wird"* [free translation: The designation of the parties must be done (according to Art. 221 (1) lit. a of the CCP) so that there is no doubt as its identity (…). A correction is not possible if a change of parties is intended]: SUTTER-SOMM T., Schweizerisches Zivilprozessrecht, 2nd ed., 2012, No. 1031; see also in the same sense KuKo-ZPO/NAEGELI/RICHERS, 2nd ed., 2014, Art. 221 no. 4; SUTTER-SOMM/HASENBÖHLER/LEUENBERGER, Kommentar zur Schweizerischen Zivilprozessordnung, 2nd ed., 2013, Art. 221 no. 15 *et seq*..

129. With respect to the party against which a claimant intends to initiate judicial proceedings, Swiss law follows, therefore, a rather formalistic approach. The respondent is the party identified by the claimant in its statement of claim. However, in limited cases there is room for rectification: in fact, a distinction should be made between (i) cases in which the denomination of the respondent in the statement of claim is unclear or it was affected by a simple *"editorial error"* and (ii) cases of actual modification of a petition. Therefore, rectification appears to be possible if the real respondent could be identified on the basis of elements of the file or if the claim could not refer to any subject other than the real respondent, and not to the respondent mentioned by mistake. See ATF 131 I 57, E. 2.4: *"La substitution de parties doit être soigneusement distinguée de la rectification des qualités des parties. Sur le plan tant théorique que procédural, les deux notions ne se confondent en effet nullement, en dépit de l'apparente similarité des termes. Les qualités des parties sont rectifiées lorsqu'une erreur affecte la dénomination de l'une d'elles, en sorte que les mentions légales qui permettent en principe d'assurer leur identité ne sont pas pleinement réalisées. L'hypothèse vise donc le cas d'une simple erreur rédactionnelle, distincte à ce titre d'une modification formelle du lien d'instance, et qui peut en conséquence se limiter à faire l'objet d'une correction par voie prétorienne, sans commander l'annulation de l'acte qu'elle affecte (…). La jurisprudence du Tribunal fédéral repose également sur cette distinction. C'est ainsi que, dans des cas particuliers, il a été jugé que tout risque de confusion pouvait être écarté - bien que la désignation erronée se rapporte à une*

tierce partie qui existait effectivement - si la véritable débitrice pouvait être identifiée par l'indication des numéros des séquestres en cause et du montant des créances en poursuite (cf. arrêt P.898/1986 du 6 novembre 1986, publié in SJ 1987 p. 22, consid. 3c) ou si la partie avait effectivement su ce qu'elle devait savoir, soit que les prétentions découlant d'un contrat d'entreprise (mentionnées dans la demande de citation en conciliation) ne pouvaient concerner qu'elle-même et non la société mentionnée par erreur" [free translation: The substitution of the parties must be carefully distinguished from the rectification of the qualities of the parties. From a theoretical and procedural perspective, the two concepts are in no way identical, despite the apparent similarity of the terms. The qualities of the parties are rectified when a mistake affects the title of one of them, since the legal notices, that are normally meant to ensure the identity of the parties, are not fully realized. This premise refers to editorial errors, subject to a simple Praetorian correction that does imply the annulment of the act it affects, and therefore it differs from an actual modification of a petition. The jurisprudence developed by the Federal tribunal is also based on this distinction. Thus, in some cases, it was found that any risk of confusion could be ruled out - although the wrong designation relates to a third party that actually existed - if the actual debtor could be identified by indicating the number of receivers as well as the amount of the claims in the proceedings (see judgment P.898 / 1986 of 6 November 1986, published in SJ 1987 p. 22, recital 3c) or if the party had actually known what he/she/it had to know, namely that the claims arising from a business contract (cited in the request for conciliation) could only concern him/her/it and not the company mentioned by mistake].

130. In light of the foregoing, the Sole Arbitrator concludes that, notwithstanding the indication of a different address, the Player intended by implication to name Slavia (the appellant in CAS 2018/A/5565) as a respondent to the appeal he brought (registered as CAS 2018/A/5582) against the same Decision attacked by Slavia. The Sole Arbitrator is led to this conclusion by the elements of the file, which point to the identification of Slavia as the subject entitled to answer the claim brought by the Player, as well as by the position adopted by Slavia, which was able to answer in the merits such claim, as if it was a claim against it. In addition, the Sole Arbitrator notes that the two entities (*"SK Slavia Praha"* and *"Sportovni Klub Slavia Praha"*) have a common name, and therefore the mistaken identification of *"Sportovni Klub Slavia Praha"* as a respondent does not rule out the possibility that *"SK Slavia Praha"* was to be the real, intended respondent.

131. Therefore, Slavia ("*SK Slavia Praha*") can be considered as the "passive subject" of the claim brought before CAS by the Player wishing to set aside the Decision, as Slavia's position was concerned by that Decision. Hence, Slavia has standing to be sued (*légitimation passive*) in the present arbitration.

A. Did the Player have "just cause" to unilaterally terminate the Slavia Contract?

132. On the merits of the dispute, the first question that the Sole Arbitrator has to examine is the

termination of the Slavia Contract, as declared by the Player on 28 July 2015 and chiefly whether the Player had "just cause" to terminate the Slavia Contract based on late payment of his salary.

133. Although no definition of what represents a "just cause" is available in the RSTP, the Commentary to the RSTP can be useful. Its pertinent portion (N2 to Article 14) reads as follows:

> *"The definition of "just cause" and whether "just cause" exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".*

134. According to the well-established CAS jurisprudence, namely *inter alia* CAS 2006/A/1180, CAS 2008/A/1589, CAS 2013/A/3165, and CAS 2014/A/3643, non-payment or late payment of a player's salary by his club may constitute "just cause" to terminate the employment contract. For instance, in CAS 2006/A/1180, the Panel declared as follows:

> *"The non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated as in the present case – constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of the obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee", (…) the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract".*

135. In other words, since the non-payment or the late payment of a "not insubstantial" amount due as salary is a severe contractual breach, the party who is suffering such a breach (and has given a warning) is entitled to unilaterally terminate the contract with "just cause", pursuant to Article 14 of the RSTP.

136. The Sole Arbitrator finds that both prerequisites (mentioned by the Panel in CAS 2006/A/1180 para. 134 above) for the early termination with "*just cause*" of the Slavia Contract, because of Slavia's failure to meet its payment obligations, are satisfied.

137. In this case, Slavia agreed to pay to the Player a monthly salary of EUR 15,000 net *"from 01.02.2014 to 30.06.2016",* according to Article IV of the Slavia Contract.

138. The Sole Arbitrator notes that the Player received payments for the remaining portion of the signing bonus on 20 April 2015 (no indication has been given with respect to the payment of the first portion of the signing fee; the Sole Arbitrator, therefore, assumes that it was timely paid, as no dispute arose in its respect) and for the salaries from Slavia as follows:

Payment of the:	**Made on:**
February 2014 salary	13 March 2014
March 2014 salary	24 April 2014
April 2014 salary	9 July 2014
May 2014 salary	9 July 2014
June 2014 salary	29 July 2014
July 2014 salary	18 August 2014
August 2014 salary	18 September 2014
September 2014 salary	21 October 2014
October 2014 salary	20 November 2014
November 2014 salary	20 January 2015
December 2014 salary	24 June 2015
January 2015 salary	4 March 2015
February 2015 salary	*"31/3 a 9/4"*[7]
March 2015 salary	4 May 2015
April 2015 salary	15 July 2015
May 2015 salary	5 August 2015

139. The timing of the above payments is not in dispute. What is in dispute is whether Slavia was justified in making the payments at the times it did and therefore whether it was late with respect to any alleged due date. Actually, the signing fee was paid, in its final portion, some 14 months after it fell due (15 February 2014): hence, there is no doubt that Slavia was late in making that payment. In addition, Slavia did not pay the salaries at the end of each relevant month, but mainly in the course of the following month. The question is whether such salary payments were late or not. This question is not immaterial, considering that those payments were in the end made: it is relevant to the extent it could show a "pattern of behaviour", allowing payments not to be made at the end of each relevant month, but in the course of the following month. Should this be the case, when the Player sent, on 10 July 2015, a "warning" letter (see para. 19 above), only two months (and not three as claimed by the Player) would have been due, and one of them would have been paid within the deadline set by the Player (see para. 20 above).

7 The Sole Arbitrator interprets *"31/3 a 9/4"* as payment completed by 9 April 2015.

Therefore, as submitted by Slavia, the termination declared on 28 July 2015 would not be justified, as only one month was due.

140. Indeed, on 28 July 2015, the Player sent to Slavia the Termination Letter on the basis that Slavia had failed to comply with its financial obligations. More specifically, the Player asserted that at the time of the termination, Slavia owed the Player the outstanding salaries for May and June 2015. It is from this act of termination that the Parties dispute whether the Player had "just cause" to terminate the Slavia Contract.

141. The Slavia Contract does not explicitly provide the due payment terms for the salaries or under which circumstances Slavia could delay payments to the Player. The issue is therefore whether any provision of Czech law allowed Slavia to make the payment of the Player's salary at the time it did.

142. Slavia contends that the justification for the timing of the salary payments follows somehow from the Slavia Contract, under which the payments would be due upon issuance of the Player's invoices. In fact, Slavia asserts that each invoice was issued at the end of the month and that the monthly remuneration fell due at the end of the following month pursuant to a constant practice during the contractual relationship. The due date of the monthly remuneration was allegedly stated on the Player's invoice, which represented his request for payment.

143. In this regard, the Sole Arbitrator notes that Article II para. 12 of the Slavia Contract contains a clause whereby the Player undertook *"to make out invoice for the provision of his services for financial fulfilments provide to the Club for the appropriate calendar year; invoices for services provided in the calendar year must be made out monthly"*. However, the Slavia Contract has no provision stipulating that the Player's salary payments were conditional upon receipt of such invoices. As a result, the Sole Arbitrator considers the reference to invoices irrelevant to support Slavia's position that such amounts were not due payable until thereby received.

144. Furthermore, Slavia argues that these practices, more generally the timing it followed in the payment of the salaries, are commonly observed in the Czech football marketplace and more specifically are consistent with the relevant provisions of Czech law, namely Sections 556, 1958 and 1962 of the Civil Code.

"Section 1958

(1) If the time of performance has been exactly stipulated or otherwise determined, the debtor is obliged to perform even without being requested to do so by the creditor.

(2) If the parties do not stipulate the time when the debtor is to discharge a debt, the creditor may demand performance immediately and the debtor is then obliged to discharge the debt without undue delay".

"Section 1962

(1) If the time of performance is in favour of both parties, the creditor may not require that the performance be provided early, and the debtor may not perform the debt early.

(2) If the time of performance is in favour of the debtor, the creditor may not require that performance be provided early, but the debtor may discharge the debt early.

(3) If the time of performance is determined in favour of the creditor, he may require that performance be provided early, but the debtor may not discharge the debt early".

"Section 556

(1) What is expressed by words or otherwise is interpreted according to the intention of the acting person if the other party was aware or must have known of such an intention. If the intention of the acting person cannot be ascertained, the expression of will is attributed the same meaning which would be typically attributed by a person in the position of the person against whom the will was expressed.

(2) When interpreting the expression of will, account is taken of the regular dealings of parties in legal transactions, what preceded the juridical act, as well as the manner in which the parties subsequently demonstrated what content and relevance they attach to the juridical act".

145. Contrary to Slavia's assertions, the Sole Arbitrator holds that none of the provisions identified by Slavia in the Czech law corroborates its position.

146. In fact, the Sole Arbitrator notes that, according to the express provision of Section 1958 para. 2 of the Civil Code, if the parties have not stipulated (as in the case at hand) the time when the debtor (Slavia) is to discharge a debt, the creditor (the Player) may demand performance immediately and the debtor is then obliged to discharge the debt without undue delay. In other words, as soon as the monthly services of the Player have been discharged, the Player is immediately entitled to remuneration. The reference to *"monthly remuneration"* contained in the Slavia Contract (Article IV) corroborates this conclusion, as it indicated that the remuneration referred to *"monthly"* services. Therefore, as soon as the month was completed, the remuneration was due under the Slavia Contract and pursuant to Section 1958 para. 2 of the Civil Code. In addition, the Sole Arbitrator holds that the time of performance of the salary payment obligation is meant to be in favour of both parties: it is in the interest of the employer, which wants to receive the services for which payment is made, and is in the favour of the employee, who expects to be remunerated for the services rendered. As a result, pursuant to Section 1962 para. 1 of the Civil Code, the Player could not require that the salary be paid before the end of the relevant month, but this did not mean that Slavia was entitled to delay performance of its debt.

147. In addition, the Sole Arbitrator finds that the reference to the behaviour of the Parties, made relevant for interpretative purposes by Section 556 of the Civil Code, is of no help to Slavia. In fact, Slavia did not establish that the payment of salaries at the end of the following month was based on a practice during the contractual relationship, which the Player accepted without complaining, and did not provide tangible evidence to demonstrate that these alleged practices were commonly accepted in the Czech football marketplace. Indeed, the dates indicated above (para. 138) appear to be rather "erratic" and do not show a consistent pattern – which would not – in any case, explain why the signing fee was finally paid more than a year after it was due. Actually, the payments for salaries were not made at the end of the following month, and therefore contradict the general "practice" invoked by Slavia.

148. In fact, the Sole Arbitrator acknowledges the existence of complaints filed by the Player with regard to the late payments. The Player gave warnings, namely by duly serving notices of default. Indeed, the Sole Arbitrator recognizes that:

- on 21 January 2015, the Player sent Slavia a reminder to pay the remaining balance of EUR 25,000 net of the signing fee by 29 January 2015. Such amount was due since 15 February 2014;

- on 5 February 2015, the Player filed a claim with the arbitral panel of the FACR given that Slavia failed to pay the Player the remaining portion of the signing fee on 29 January 2015;

- by the date of 13 April 2015, the Player's monthly salary of December 2014 remained unpaid while Slavia paid his salaries for January and February 2015 respectively on 4 March 2015 and on 9 April 2015;

- on 13 April 2015, Slavia sent a letter to the Player, undertaking to pay the salary of December 2014 and ultimately, a penalty of EUR 5,000 if such payment wasn't made by 31 May 2015;

- on 22 April 2015, the Player withdrew the claim filed with the arbitration panel of the FACR after Slavia paid the remaining balance of the signing fee on 20 April 2015. Such amount had remained unpaid for more than a year, *i.e.* since 15 February 2014;

- on 24 June 2015, the Player was forced to lodge a claim before the FIFA DRC since Slavia violated its undertaking to pay his monthly salary of December 2014 no later than 31 May 2015. The player withdrew his claim on 29 June 2015 after Slavia paid the outstanding amount;

- on 30 June 2015, the Player sent a first default notice to Slavia, requesting payment of outstanding salaries of April and May 2015 (EUR 30,000);

- on 10 July 2015, the Player sent a second notice, requesting payment of the outstanding salaries of April, May and June 2015 (EUR 45,000) and warned Slavia that he would terminate the Slavia Contract should the outstanding amount not be remitted within a 10-day deadline.

149. Moreover, the Sole Arbitrator notes the Player's declaration that he expressed on many occasions, in person or by telephone, his disagreement with Slavia about its failure to comply with its financial obligations, and that the Player communicated in person such disagreement to the different members of the technical and administrative staff of Slavia.

150. In addition, the Sole Arbitrator notes the evidence provided by the testimony of the Player's agent, Mr Nicolas Gabriel Franco, during the hearing, who, more precisely, declared that late payment issues were also raised verbally during the contractual relationship. The Sole Arbitrator is aware of the fact that Mr Franco may have an interest in the present case, and is also in dispute with Slavia (dispute which is the object of separate CAS proceedings), but, at the same time, notes that Mr Franco made those declarations under oath, and that Slavia did not offer contrary witness evidence.

151. It is clear from the above that, before termination, the Player had already requested compliance, without full result. Out of the three outstanding payments indicated in the notices of 30 June 2015 and 10 July 2015, only the monthly salary of April 2015 was paid to the Player on 15 July 2015, and Slavia paid his monthly salary of May 2015 only on 5 August 2015, *i.e.* after the termination of the Slavia Contract.

152. In consideration of the above, the Sole Arbitrator is of the opinion that, on 28 July 2015, the Player was owed salaries from May and June 2015, and that the Player gave Slavia sufficient prior notice to cure its breaches. Moreover, the Sole Arbitrator highlights that the Player often waited a long time to receive payment of his monthly salaries through the entire contractual relationship with Slavia, namely a delay of over five months for his remuneration of December 2014 and more than a year for the remaining balance of his signing fee.

153. Bearing in mind that the key issue of this dispute is the date of payment, the Sole Arbitrator recalls that it shall be the responsibility of all clubs to pay their players timely. The payment of remuneration is one of the fundamental duties any club has towards a professional player whereas each player shall expect that his employer will honour its contractual obligations. And in this regard, Slavia failed to validly submit any admissible evidence establishing a common practice of late payments to any of its other players or players in the Czech league.

154. In the Sole Arbitrator's view, the fact that Slavia was always late does not mean that a right to be late arose. In the case at dispute, several late payments by Slavia were cumulated over a certain period of time. The Sole Arbitrator finds that Slavia's submissions, however carefully presented by learned counsel, were not sufficiently substantiated to support its assertions.

155. Therefore, the Sole Arbitrator concludes that the abovementioned contractual breaches by Slavia justified the termination of the contract by the Player and considers that the Player duly terminated the Slavia Contract with "just cause" on 28 July 2018.

B. What are the consequences of such conclusion?

156. Pursuant to Article 17 para. 1 of the RSTP:

> *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

157. According to the RSTP Commentary (N5 and N6 to Article 14):

> *"5 In the event of "just cause" being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.*
>
> *6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".*

158. In addition, as indicated in the CAS jurisprudence (CAS 2012/A/3033):

> *"The (…) Player is, in principle, entitled to compensation because of the breach of the Employment Contracts by the Club. (…), although it was the Player who terminated the Employment Contracts by filing a claim against the Club with FIFA, the Club was at the origin of the termination of the Employment Contracts and is thus liable to pay compensation for damages suffered by the Player as a consequence of the early termination".*

159. In light of the foregoing, the Sole Arbitrator holds that the Player terminated the Slavia Contract, but it was rather Slavia who caused the termination by breaching its contractual obligations. Therefore, Slavia is liable under the RSTP (and irrespective of any qualification of

the Slavia Contract as an employment agreement or otherwise) to pay compensation for the damages suffered by the Player as a result of the early termination.

C. How is compensation to be calculated?

160. Having determined that the Player had "just cause" to terminate the Slavia Contract and that the Player is entitled to compensation, the Sole Arbitrator turns to the calculation of such compensation.

161. The Sole Arbitrator notes that the first step to be made would be to consider any applicable provision concerning the liquidation of damages contained in the contract at stake. As indicated in the CAS jurisprudence, Article 17 para. 1 of the RSTP *"asks (…) the adjudicating body to first verify whether there is any provision in the agreement at stake that does address the consequences of a unilateral breach of the agreement by either of the party. Such provisions are for instance so-called buy-out clauses, i.e. clauses that determine in advance the amount to be paid by a party in order to terminate prematurely the employment relationship. Such kind of clauses are, from a legal point of view, liquidated damages provisions"* (CAS 2007/A/1358, CAS 2007/A/1359). Also in this respect, Article 17 of the RSTP serves to reinforce contractual stability in international football (the principle of *pacta sunt servanda*) against unilateral contractual breaches and terminations (CAS 2012/A/2874, CAS 2012/A/2932, CAS 2008/A/1519 & 1520). The Sole Arbitrator, however, notes that the Slavia Contract did not provide a method to calculate the compensation for a contractual breach.

162. In the absence of a "liquidated damages" clause, the Sole Arbitrator notes that there is a growing *consensus* in the CAS jurisprudence as to the application of the "positive interest" principle. The Sole Arbitrator agrees with such approach and underlines that the application of the criteria indicated by Article 17 para. 1 RSTP should aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly. More specifically, the Sole Arbitrator relies upon CAS 2008/A/1519 & 1520, whereby:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see STREIFF/VON KAENEL, Arbeitsvertrag, Art. 337d N 6, and STAEHELIN A., Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also WYLER R., Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).

The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations".

163. As a result, the Player has the right to compensation to be determined under the provisions of Article 17 of the RSTP, in the light of the principle of the *"positive interest"* and with due consideration of the duty to mitigate damages according to Swiss law. In other words, the compensation shall be based on the remaining duration of the Slavia Contract and the salary the Player would have earned under it, had there been no breach by Slavia. In addition, the Sole Arbitrator must take into account the amount of the salary earned by the Player from Astra. In summary, the damage to be compensated corresponds to the difference between the salary earned under the Slavia Contract and the Astra Contract.

164. In such context, the Sole Arbitrator notes that:

    i. under the Slavia Contract, the Player was entitled to receive the net amount of EUR 15,000 per month;

    ii. it is not disputed that the monthly salaries for June and July 2015, totalling EUR 30,000 net, accrued prior to the termination of the Slavia Contract, remain outstanding;

    iii. under the Astra Contract, the Player was entitled to receive the net amount of EUR 6,500 per month, plus a single payment in the net amount of EUR 10,000 due on 20 January 2016.

165. Slavia underlines that the concept of mitigation of loss is a fundamental part of Article 17 para. 1 of the RSTP and argues that the Player did not fulfil his obligation to mitigate his loss. More specifically, Slavia contends that the Player should have concluded a new agreement earlier and negotiated a salary similar to the one he was entitled to under the Slavia Contract. Taking into consideration the proportionality of the residual value of the Slavia Contract as against the value

of the Astra Contract, Slavia believes it should not be penalized for having offered in the past a higher salary to the Player.

166. Slavia's assertions, however, are only hypothetical suspicions. The Sole Arbitrator notes indeed that six months after the breach of contract by Slavia, the Player signed an employment contract for a substantially lower salary with Astra (but allegedly with accommodations and other benefits). The Sole Arbitrator, however, is not in position to accept Slavia's suspicions that the low contractual remuneration was agreed intentionally by the Player and Astra in order to reduce the value of any future liability: no evidence was offered to disprove the clear wording of the Astra Contract. In the same way, the Sole Arbitrator cannot take into account additional payments to reduce the compensation, given the lack of evidence in this regard.

167. In view of the above, the Sole Arbitrator is not convinced by Slavia's assertions with respect to the alleged failure of the Player to mitigate his damages, on the basis that it took him six months to conclude a new agreement and that he agreed to substantially lower financial conditions.

168. Even if the Player received a lower remuneration under his new contract with Astra than under his former contract with Slavia, his compensation should not be reduced or calculated on the basis of the average remuneration between the Slavia Contract and the Astra Contract over eleven months.

169. The Sole Arbitrator holds that the Player acted in good faith after the breach by Slavia in seeking further employment to limit the damages resulting from the breach. It cannot be said that his actions were taken in an effort to obtain an unjust enrichment. In other words, the Player was sufficiently diligent in limiting his damages, and thus be considered having mitigated his loss.

170. On the basis of the foregoing principles, therefore, the compensation to the Player can be calculated, on the basis of the following formula:

Payments expected under the Slavia Contract –
Payments received under the Astra Contract =

Compensation to be paid

171. As to the first point, the Sole Arbitrator notes that for the period of August 2015 to June 2016, corresponding to the remaining eleven months under the Slavia Contract, the Player expected a payment of EUR 165,000 net (11 x EUR 15,000).

172. As to the second element (measure of mitigation), the Sole Arbitrator remarks that, for the six months the Player was employed with Astra (January to June 2016), he received salaries in the total net amount of EUR 39,000 (6 x EUR 6,500), plus the single payment in the amount of

EUR 10,000 net paid by Astra on 20 January 2016, for a total net amount of EUR 49,000.

173. As a result, the Player is entitled to compensation in the amount of EUR 116,000 net. In addition, the Player is entitled to receive the payment of EUR 30,000 net for the salaries of June and July 2015, accrued prior to the termination of the Slavia Contract, for a total amount of **EUR 146,000**.

174. On a different note, the Player seeks an amount of EUR 90,000 as compensation for breach of contract. On one hand, the Player contends that Slavia had no actual interest to keep him in the team and wanted him to leave. On the other hand, Slavia asserts that the Player was a well-established professional football player and a valuable part of the "A-team" up until the termination of the Slavia Contract and that he was voted by fans as the Best Player of the 2013-2014 season.

175. It is not clear to the Sole Arbitrator how the Player calculated his claim for EUR 90,000 and why this amount should be awarded as compensation. In this respect, the Sole Arbitrator finds that the Player failed to substantiate this request for relief.

176. Moreover, the Sole Arbitrator is mindful of the principles associated with the "specificity of sport" and the parties' arguments in this regard. In this respect, the Sole Arbitrator adheres to the reasoning of a previous CAS panel in CAS 2007/A/1358, where it considered the following about the "specificity of sport":

> *"The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football".*

177. Furthermore, the Sole Arbitrator recalls case CAS 2013/A/3411, where it considered the following about the "specificity of sport":

> *"According to CAS case law, the "specificity of sport" is not an additional head of compensation, nor a criteria allowing to decide in ex aequo et bono, but a correcting factor which allows a panel to take into consideration other objective elements which are not envisaged under the other criteria of Article 17".*

178. Although the Sole Arbitrator finds that Slavia was entirely to blame for breaching the Slavia Contract, he is not convinced that the circumstances under which Slavia decided to do so were of such a particular gravity that the amount of compensation to be awarded to the Player would have to be increased or decreased. This is especially true considering that neither party provided clear indication as to how such factor might affect the calculation of the damages to be

compensated to the Player by Slavia.

179. Without more, any such increase or decrease of the amount owed to the Player based on the principle of "specificity of sport" is rejected.

D. Legal interests

180. The Player also requested 5% interest *per annum* since 28 July 2015, *i.e.* the termination of the Slavia Contract. The Sole Arbitrator should thus assess whether this request should be satisfied.
181. In this regard, the Sole Arbitrator observes that Article 73 of the Swiss CO provides as follows: *"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".*

182. The Sole Arbitrator is aware of the CAS jurisprudence, which granted interest from various dates. However, the date of termination of the contract is the moment in which a claim for compensation arises. As a result, the Sole Arbitrator concludes that interest at a rate of 5% *per annum* from 28 July 2015 shall be paid to the Player.

E. Costs incurred in the FIFA proceedings

183. The Sole Arbitrator notes that the Player requested also that Slavia be ordered to reimburse him the costs incurred in the FIFA proceedings, in the amount of CHF 10,000.

184. The Sole Arbitrator does not find this request to be justified. Even though the Decision is to be set aside, it did not entirely grant the request submitted by the Player, in proceedings started by Slavia. As a result, this request has to be dismissed.

F. Joint and Several Liability of Astra

185. In consideration of the foregoing, the claims of Astra concerning its joint and several liability associated with the Player's breach of the Slavia Contract, as previously assessed in the Decision, are moot.

X. CONCLUSION

186. In light of the foregoing, the Sole Arbitrator finds that the appeals filed by the Player and by Astra have to be granted and that the appeal filed by Slavia has to be dismissed. As a result, the Decision is to be set aside and Slavia ordered to pay to the Player the amount of EUR 146,000 net, plus interest at 5% *p.a.* as from 28 July 2015 until the date of final payment. All other requests for relief have to be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SK Slavia Praha on 14 February 2018 against Damien Mohand Boudjemaa and AFC Astra concerning the decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is dismissed.

2. The appeal filed by Damien Mohand Boudjemaa on 15 February 2018 against SK Slavia Praha concerning the decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is partially upheld.

3. The appeal filed by AFC Astra on 19 February 2018 against SK Slavia Praha and Damien Mohand Boudjemaa concerning the decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is upheld.

4. The decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 21 September 2017 is set aside and SK Slavia Praha is ordered to pay Damien Mohand Boudjemaa the net amount of EUR 146,000, plus interest at 5% *p.a.* as from 28 July 2015 until the date of final payment.

5. (…).

6. (…).

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