Arbitration CAS 2018/A/5578 Jean-Sony Alcenat v. Steaua Bucuresti, award of 26 October 2018

Panel: Prof. Petros Mavroidis (Greece), President; Mr Clifford Hendel (USA); Mr Efraim Barak (Israel)

Football
Termination of employment contract without just cause
Burden of proof
Just cause
Notice prior to termination

1. **It follows from Article 8 of the Swiss Civil Code that unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact. Put differently, facts pleaded have to be proven by those who plead them. In practice this means that a party invoking a specific right is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. Also under established CAS jurisprudence any party wishing to prevail on a disputed issue must discharge its burden of proof, *i.e.* must give evidence of the facts on which its claim is based. The two requisites included in the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must therefore provide the CAS panel with all relevant evidence that it holds, and, with reference thereto, convince the panel that the facts it pleads are true, accurate and produce the consequences envisaged by it. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party.**

2. **While the FIFA rules do not precisely define the concept of "just cause", this concept – referenced in Article 14 FIFA Regulations on the Status and Transfers of Players – is quite similar to "good reason" included in Article 337.2 Swiss Code of Obligations. When considering the existence of a "just cause" or "good reason", respectively, CAS has often followed the jurisprudence of the Swiss Federal Tribunal, according to which "good reason" exists when the quintessential terms and conditions (either general/objective or specific/personal) which formed the basis of the contractual arrangement are no longer respected. Put differently, only material, serious breaches of a contract can possibly be considered as "just cause". Lack of respect of auxiliary terms and conditions, conversely, could not be offered as "good reason" (just cause) for lawfully terminating a contract. In this vein, the Swiss Federal Tribunal has repeatedly held that in presence of good cause, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations.**

3. For a party to be allowed to validly terminate an employment contract, it is often required, based the principle of good faith, that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations. However, the duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning were deemed necessary. In a nutshell, this is the case when it is clear that the other side does not intend to comply with its contractual obligations.

I. THE PARTIES

1. Jean-Sony Alcenat ("the Player" or "the Appellant") is a professional football player, born in Haiti on January 23, 1986. He currently resides in Portugal.

2. Steaua Bucuresti ("the Club" or "the Respondent") is a football club based in Bucharest, Romania. It is a member of the Romanian Football Association ("HFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

II. FACTS

3. The parties to the dispute disagree on whether the contract linking the Player to the Club was (or was not) terminated with just cause, and if so, by whom. The Player claims that the Club breached the contract by terminating it without just cause, and, in the alternative, that he himself terminated it, albeit with just cause and accordingly without breach. The Club, conversely, claims that it is the Player who had breached the contract by terminating it without just cause. Because of their diverging positions on this score, the parties to the dispute reach diametrically opposed conclusions regarding the legal consequences of the alleged breach.

4. The dispute between the parties was first submitted to the FIFA Dispute Resolution Chamber (DRC). It is against the DRC decision that the Player has raised his appeal. In what immediately follows, the Panel first explains the factual background that gave rise to the dispute before the DRC, and then presents the DRC decision in a nutshell. The Panel then moves on to discuss the appeal before the CAS and the respective legal claims and arguments of the parties before the CAS (Section III), before presenting the Panel's decision with respect to its jurisdiction (Section IV), the applicable law (Section V), the merits of the case (Section VI), and finally the attribution of the costs of the proceedings (Section VII).

A. Background

5. The Player and the Club concluded an employment contract valid as from the date of signature (July 1, 2015) until June 30, 2018. The employment contract (that is, the official translation thereof provided to the Panel, the content of which is not in dispute between the parties), under its Article J (1), provides for a monthly salary of an amount equivalent to 18,334 EUR, payable

on 30th of each calendar month. Furthermore, in its relevant part to this dispute, the employment contract reads as follows:

Article S:

a) The applicable law is the Romanian law.

b) This individual labour contract will be deemed as signed in Romania and all dispute, controversy and misunderstanding resulting from or in relation to this individual labour contract will be governed, interpreted, understood and resolved in accordance with the Romanian law in force, as well as with the statutes and sports regulations.

c) The contractual liability, establishing the damages and penalties are regulated by the civil law, the sports statutes and regulations, as well as the annexes to this individual contract.

Article V:

The provisions of his individual labour contract are supplemented with the provisions of the Law No. 53/2003 – Labour Code and the applicable collective labour agreement ….

6. The contract is supplemented by a "Professional Annex", which both parties signed and agreed forms an integral part of the contract. The Professional Annex, in its relevant part reads as follows:

Article 3.1(b):

The player is obliged:

….

(b) To present immediately, in case of injury or sickness during its activity of professional player, to the medic of the football team and to submit to all the medical and therapy measures indicated by the latter or by the specialists to which he is sent;

Article 3.1(j):

Failure to comply with any of the provision under letter a) – i) will entail sanctions, in accordance with legal or regulations provisions, namely:

- Written warning;

- Interdiction of participating to official, friendly matches or training sessions for a term of 1-3 months;

- Sports penalty of up to 25% of the value of contractual rights of the player during one competition year.

Article 4.4:

The Club undertakes:

….

To ensure to the player 500 euro (in RON at the NBR exchange rate of the date of payment) monthly for the payment of the rent and 2 return plane tickets per season for the player and his family, for the route Bucharest – Port au Prince (Haiti) – Bucharest.

7. The Player was granted a Romanian residence visa running until July 31, 2016. Following a few months at the Club, the Player was loaned to FC Voluntari, another Romanian club, and signed a contract to this effect running from February 19, 2016 to June 30, 2016. He modified his visa status on December 22, 2015 to take account of his move to Voluntari, without however modifying the date of expiry of his visa. As Voluntari is located within one kilometre from the Northern border of Bucharest, the Player kept the apartment he had originally rented upon arrival at the Club. The lease contract for his apartment was running from August 1, 2015 until July 31, 2016, and it forms part of the record before the Panel.

8. While at FC Voluntari, the Player was informed by the Club, through its employee, Robert Ioan, of the procedure for renewing his visa. This communication took place on April 28, 2016, and the Club deposited the fee required for extension. The Player informed the Club (at a meeting held on May 13, 2016) that he had been called to participate in the 2016 Copa Centenario tournament where he would represent his country, Haiti. The official invitation to participate had been issued on May 6, 2016. The Player would have to be on international duty from June 3 to June 26, 2016. Because he had to leave in the next days, he decided that he would proceed with the renewal of his visa upon return to the Club on July 1, 2016 (since his loan to FC Voluntari would have expired on June 30, 2016).

9. While on international duty, the Player suffered an injury. The injury was suffered during a game against Colombia on May 29, 2016, a friendly training match before the official kick off of the 2016 Copa Centenario. It was reported as hamstring injury that could lead to further complications, if aggravated. The Player participated in two of the three games that Haiti played during the tournament. Because his team, Haiti, lost all three games that it played, Copa Centenario was over for the Player as of June 12, 2016.

10. The Player followed the team doctor to Miami, Florida where he spent three days, and returned to Haiti on June 15, 2016. He continued rehabilitation with the same doctor in Haiti until his return to Bucharest on July 14, 2016, even though the medical doctor had taken the view that the Player should continue rehabilitation until July 30, 2016. He was contacted by the Club on July 1, 2016, the Club urging him to return to Bucharest, since his loan to FC Voluntari had expired, and the Copa Centenario was over by that time. In a WhatsApp message sent that day, he claimed that he was still in the United States for rehabilitation purposes.

11. He eventually returned to Bucharest on July 14, 2016. He had already sent the documents requested by Mr. Ioan on May 13, 2016. Nevertheless, under Romanian law, the Player's

physical presence was required for his request for renewal to be processed. The Player agreed to appear before the Romanian authorities.

12. The request to renew the visa was denied by a decision issued on July 11, 2016 because the application was not properly done. On July 20, 2016, the Player and Mr. Ioan appeared before the Immigration Office of Voluntari, only to hear that their request for renewal had been denied.

13. There is disagreement between the parties as to the facts here. The Player believes that the reason for refusal was the lack of production of various documents (taxes, the so-called REVISAL (an internal document of the Club), passport, that the Club could and should have submitted to the authorities. The Club states that the request for renewal was denied because the Player had not procured evidence of a new rental agreement. Furthermore, the Club also maintains that the Player had erroneously requested an application of a "civil" visa, while he was in possession of an "employment" contract linking him to the Club from June 30, 2015 for a period of three years.

14. Following the lack of renewal, the Club, on July 22, 2016, sent a letter to the Player informing him of the suspension of their contractual relationship. The Club in this and subsequent communications with the Player maintained that it wanted to revive its contractual relationship with the Player, and denied any wrongdoing and/or lack of diligence regarding the renewal of the Player's visa. The Player, in various communications with the Club during this period, stated that he had received no help from the Club throughout this process. On August 11, 2016, he sent his letter of termination to the Club, stating as reason the Club's alleged lack of diligence to obtain and submit the necessary documents to the authorities in order for them to process his request for renewal. On August 21, 2016, the Club offered its collaboration to resolve the issue. Nothing much happened after that, until the day when the Player sued for damages against the Club before the DRC. The Player eventually signed a new contract with C.D. Feirense, a Portuguese club, for the 2016-2017 season, subsequently renewing it for the 2017-2018 season as well.

B. Proceedings before the FIFA Dispute Resolution Chamber (DRC)

15. The Player sued before the DRC, which issued its decision on July 13, 2017. The DRC found against the Player on two grounds. First, because the Player had consulted with the medical doctor of the national team of Haiti, without respecting his contractual obligation to inform the Club and do as told in this matter. Second, because it stems from the facts that neither the Player, nor the Club had interest in renewing the contractual relationship between them.

16. The DRC held that it did not have sufficient elements at its disposal in order to determine whether the refusal to renew the contract was due to the non-presentation of a rental agreement. In its view, the facts before it, as presented by the parties, could not tilt the decision towards one or the other direction. As it had already enough grounds to issue its decision, it did so leaving the relevance of the rental agreement undecided.

17. The DRC found that the Club had to pay the Player the salary for the ten days of the month of July 2016 the Player was present in Romania (that is, between July 14-24, 2016), as well as the

price for the air ticket the Player purchased on his own account, even though the Club was contractually obliged to do so. Specifically, the DRC held:

> *1. The claim of the Claimant/Counter-Respondent, Jean-Sony Alcenat, is partially accepted.*
>
> *2. The Respondent/Counter-Claimant, FC Steaua Bucuresti, has to pay to the Claimant/Counter-Respondent **within 30 days** as from the date of notification of the present decision, outstanding remuneration in the amount of EUR 8,297.87, plus 5% interest p.a. on said amount as from 1 August 2016 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent **within 30 days** as from the date of notification of the present decision, additional outstanding remuneration in the amount of CHF 1,900.*
>
> *5. In the event that the aforementioned sum is not paid within the state time limit, interest at the rate of 5% p.a. will fall due as from the expiry date and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *6. Any further claim lodged by the Claimant/Counter-Respondent is rejected.*
>
> *[…].*

18. The DRC decision was communicated to the parties by email on January 30, 2018.

19. It is against this decision of the DRC that the appeal has been lodged.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On February 19, 2018 the Statement of Appeal was lodged with the Court of Arbitration for Sport ("the CAS") in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration ("the Code").

21. On March 6, 2018 the Appellant submitted his Appeal Brief in accordance with Article R51 of the Code.

22. On March 8, 2018, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present proceedings.

23. On April 4, 2018, following disagreement between the parties whether to submit the case to a CAS Panel of three arbitrators or a Sole Arbitrator, the CAS Court Office informed the parties that the President of the Appeals Arbitration Division had decided to appoint a three-member Panel to hear the appeal.

24. On May 11, 2018, the Respondent filed its Answer to the Appeal in accordance with Article R55 of the Code.

25. On May 17, 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President:	Mr. Petros C. Mavroidis, Professor, Commugny, Switzerland
Arbitrators:	Mr. Clifford J. Hendel, Attorney-at-law in Madrid, Spain
	Mr. Efraim Barak, Attorney-at-law in Tel Aviv, Israel.

26. On June 25 2018 and June 27 2018, the Respondent and the Appellant, respectively, submitted a signed version of the Order of Procedure.

27. On July 16, 2018, a hearing was held at the CAS headquarters in Lausanne, Switzerland. In addition to the Panel, Ms. Carolin Fischer, Counsel to the CAS attended the hearing.

- The Player was present at the hearing, and was represented by Mr. Josep Francesc Vandellos Alamilla, Attorney-at-law in Valencia, Spain;

- The Club was represented by Mr. Gauthier Bouchat, Attorney-at-law in Brussels, Belgium, who was accompanied by Mr. Robert Ioan, a club employee.

28. Upon request by the Panel, the parties confirmed that they had no objection with regard to the composition of the Panel, and the manner in which the process had been handled up to the hearing-stage. At the end of the hearing, both the Appellant and the Respondent explicitly confirmed that their right to be heard had been fully observed throughout the arbitration proceedings.

29. The Panel reminded the Appellant that there was an outstanding issue, namely the production of the renewal of the contract that the Player had signed with C.D. Feirense, subsequent to the termination of his contractual relationship with the Club. The Player's counsel confirmed that he would be sending a copy within the briefest deadlines. On July 17, 2018, the CAS Court Office received a copy of the renewal. The CAS Court Office distributed the copy to the members of the Panel, as well as to the Respondent for comments.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

30. The following section summarises the parties' main arguments in support of their respective requests for relief. Even though the Panel has examined the full record submitted by the parties to the dispute, in what follows it presents only the claims and arguments, which, in the Panel's view, were relevant in deciding the issues before it.

A. The Appellant

31. It is the view of the Appellant that the Club had *de facto* terminated the contract without just cause, by refusing to provide the Player with the requisite help in order to process the renewal for visa. The letter of the Club of July 22, 2016 is clear testimony to this fact. The duty of the Club is circumscribed in Article 18.4 of the FIFA Regulations on the Status and Transfers of Players ("RSTP"), which is the legal benchmark to decide this dispute. Alternatively, the Appellant maintains that he terminated the contract with just cause, precisely because he was facing total lack of cooperation from the Club, and could not process the application for renewal on his own. As a result, the Club must pay the remainder of the contract (Article 17 of the RSTP; Article 337 Swiss Code of Obligations ("CO")). Assuming the Panel agreed to the claim, it would have to set aside the DRC decision.

32. Romanian Law is irrelevant in the Appellant's view. Article 18.4 RSTP suffices by and large to adjudicate the present dispute. Nevertheless, assuming the Panel were to apply Romanian law, then it would have to reach the same outcome. Article 18.4 RSTP shifts the burden to deal with all administrative issues regarding visas to the Club. The rationale for this provision is that clubs are better equipped to address similar issues, and players should anyway focus on their profession, and not be distracted by administrative hassle. At the very least, the Club should take the lead and involve the Player only to the extent strictly necessary in order to renew a visa. The Club failed to do as much.

33. The Club acted in bad faith throughout the period in which the renewal of the residence visa was discussed and applied for, and especially in the critical month of July 2016. Its first reaction to the numerous requests by the Player to proceed with the application came only on July 20, 2016 when the request for renewal of visa had been denied. It then sent an email to the Player stating that the contract between them was henceforth "invalid".

34. Contrary to the Club's allegations, the Player had repeatedly requested assistance in order to process his application, but received none. Of course, no one could reasonably expect the Player to renew the visa by himself, since he lacked the expertise to do that. Knowledge of Romanian law is a necessary, if not decisive, element in this endeavour. Lack of help by the Club thus, amounted to *de facto* termination of the contract without just cause.

35. The Club was effectively implementing a strategy to dissociate itself from the Player, especially since the latter returned to Romania on July 14, 2016. All its actions and inactions during the days that preceded and followed the Player's arrival in Romania point to a well-thought attitude aiming at terminating the contractual relationship with the Player. The Club could, for example, if it wanted to assist the Player and act in good faith, insert a hotel address to take care of the rental-related issues, as it had done the first time he had signed with the Club. The Club chose not to do so.

36. The Player had not taken meaningful steps in connection with the renewal of his residence visa prior to returning to Romania on July 14, 2016 because he wanted to focus on his international obligations, and play a good tournament with the Haiti national team. The Copa Centenario is a very prestigious tournament, and the Player had been presented with a unique opportunity to

show his talent. Alas, he was injured a few days before official kick off. The Player suffered from chronic knee problems, and this was much known to the Club. He further suffered a hamstring injury on May 29, 2016 while playing for the national team in an exhibition game against Colombia. It is this latter injury that needed additional treatment, which he underwent first in Miami and then in Haiti where he returned around June 15, 2016. He informed the Club of his injury only on July 1, simply because until June 30, 2016 he was on loan to Voluntari FC, and consequently, he did not need to inform the Club before that date.

37. Still, the Player was diligent. He gathered all documents he could reasonably be expected to put together, and submitted for civil visa renewal only because the Club has similar arrangements with other players as well, and because his loan contract with FC Voluntari was a "civil", not an "employment" contract.

38. The Appellant maintains that the request for renewal of his visa was denied for reasons other than the lack of a rental renewal. The Club has disingenuously offered the lack of a rental agreement as the real reason behind the refusal. In truth, the visa was not renewed because the Club lacked due diligence and did not submit a series of documents at its disposal to the competent Romanian authorities. The Appellant does not deny that a valid rental agreement is necessary in order to renew the visa. In his view, though, the fact that his lease continued in effect until the end of July 2016 (one week after the expiry of the visa) established that he had a fully-sufficient rental agreement in effect on the date of expiry of the visa. Furthermore, the lack of production of a rental agreement was in any event due to lack of diligence by the Club, since it could have used a hotel address, as it had been the case when the Player had signed his contract with the Club in 2015. Finally, the Player's Annex 7bis (the authenticity of which the Respondent initially challenged, but later at the hearing changed its position and admitted its authenticity) indicates that the visa was denied for reasons other than lack of a rental renewal.

39. The President of the Club left the Player in no doubt, when communicating to him that the contract was invalid, and that he had to leave the country as a result as per applicable Romanian law. The letter sent by the President to the Player on July 20, 2016 leaves no room for further discussion on this point.

40. The Appellant therefore asks the Panel to accept its appeal, set aside the DRC decision, and impute all legal and administrative costs to the Respondent.

41. Specifically, the Appellant submitted the following requests for relief:

    1) The decision passed by the FIFA Dispute Resolution Chamber on 13 July 2017 is set aside.

    2) The appeal filed by the Appellant against the Decision by the FIFA Dispute Resolution Chamber on 13 July 2017 is upheld and the Panel issues a new decision declaring that:

       The Appellant terminated the employment contract with the Respondent, with just cause on 11 August 2016, or in the alternative, that the Respondent Club terminated it

without just following the failure to obtain the visa/work permit or following the suspension of the employment contract.

The Respondent has to pay the Appellant all outstanding salaries at the moment of termination, in the amount of 24.839,61 EURO NET plus interest of 5% p.a. or in the amount determined by the Panel, as from the due date pursuant to the Employment Contract, until the date of effective payment.

The Respondent has to pay the Appellant compensation for breach of contract in the amount of 414.585 EURO NET plus interest of 5% p.a. as from 11 August 2016 or in the amount determined by the Panel. Alternatively, compensation shall be calculated from the date of termination of the contract by the club;

The Respondent has to pay the Appellant 2.738 Euro representing the cost of the flight ticket of 23 July 2016 (vid. Annex 11).

To impose the Respondent a sanction equivalent to half of the annual wages of the Player for one sporting season corresponding to the "specificity of sport" and according to article 337c al. 3 of the Swiss Code of Obligations.

3) To fix a sum, to be paid by the Respondent to the Appellant, in order to pay its defence fees in the amount to be determined at the full discretion of the Panel, and condemn the Respondent to the reimbursement of any and all advance of costs and court office fee paid by the Appellant.

B. The Respondent

42. The Respondent claims that the law applicable to this dispute are the FIFA Statutes and FIFA Regulations, complemented by Swiss law, to the extent there are gaps in the FIFA Regulations. For issues such as renewal of visa, where the FIFA Statutes or FIFA Regulations are silent, it is the law provided for in the contract that applies. The contract explicitly provides for the application of Romanian law in this respect.

43. Article 18.4 RSTP does not apply, since it concerns the issuance of work permits, not residence permits, which is the issue in dispute. What is at stake here is the renewal of a contract, the validity of which has not been disputed. The Respondent accepts, nonetheless, that although distinct, there is no firewall between work permit- and visa-requirements. The Player had to renew the visa while in possession of a valid work permit. Renewal of the visa is the responsibility of the Player, and the Club is, of course, under the duty to assist. Indeed, the Club did try to help quite in time, when already in April 2016, Mr. Ioan alerted the Player to the expiry of his visa in July 2016, and offered to help him throughout the process of renewal.

44. The Club was in good faith throughout the process, and there are various elements on record that prove that this had indeed been the case. The relevant narrative starts well before July 20, 2016. It starts when Mr. Ioan, anticipating the return of the Player to play with the Club after the termination of the loan to Voluntari, already in April 2016 asked the Player to start

proceedings leading to the renewal of visa. It is the Player who refused to comply with the request, stating that he would take care of renewal upon his return from international duty, around mid-June 2016. This fact, in and of itself, establishes that the Club was diligent in renewing the visa. It is the Player who took a risk, when leaving it for the last minute to proceed with the renewal. Additional proof that the Club had been diligent, and wanted indeed to proceed with the renewal, is the fact that it paid all administrative fees for renewal already on April 28, 2016, as bank documents on record prove.

45. Conversely, it is the Player who had adopted a dubious, and often non-cooperative attitude throughout the process. First, as already stated, he left renewal for the last minute. Second, he should have informed the Club, as per his contract obligation, about his injury right away, and should not have gone to a doctor not approved by the Club. Third, it is unclear whether he was in the United States on July 1, 2016 undergoing rehabilitation (as per his WhatsApp message) or in Haiti, since before the Panel he claimed that he had returned to Haiti on June 15, 2016, without adding that he subsequently returned to the United States. Fourth, even during the renewal process, during July 2016, the Player continued with his behaviour that showed evident lack of interest to pursue his football career with the Club. A request for renewal, under Romanian law, must be made thirty (30) days at least before the expiry of the original visa. If a request is submitted within 30 days from expiry, a fine might be imposed. The Player chose the latter option. If request has been made, and the submitted documents are not complete, the physical presence of the person requesting renewal before the Administration Office is required. Mr. Ioan convened with the Player to appear there at 8am (that is as early as possible) on July 20, 2016, in order to avoid queuing. The Player showed up at the Administration Office only around noon that day. When the request was denied because the rental renewal had been missing, Mr. Ioan and the Player drove back together to the President's office. The Player refused to go up and meet with the President, stating that he was hungry. Mr. Ioan went up to the President's office by himself in order to explain what had happened in the Administration Office, and why the request for visa had been refused. The Player however, claims that he waited for the President to come down, and met with him later, a claim that Mr. Ioan could not confirm.

46. It is the Player who, through his Romanian lawyer, submitted the wrong application by asking for renewal of a civil and not employment visa as per the applicable Romanian law. The Player cannot hide behind the fact that the Club might have signed civil contracts with other professional players. The type of visa the Player had to renew was "employment", and not for "commercial, professional, humanitarian, religious activities". All he had to do was to check that his original visa was indeed an employment visa and not civil visa, and proceed with the renewal. By requesting renewal for a civil visa, he (and his lawyer) committed an error, and this error can only be imputed to him, and not to the Club.

47. Furthermore, it is the Player and the Player only who could possess the rental renewal. In fact, in various WhatsApp messages sent to Mr. Ioan he had confirmed that he was working on it. Alas, he never managed to renew his rental lease, and this is why his visa request was denied. This fault should be attributed entirely to the Player: as per Article 4.4 of the contract signed between the Club and the Player, the Club's sole obligation in this context was to pay a rental subsidy. It was not to procure a lease or its renewal. Consequently, it was for Player to obtain

renewal for his lease. Indeed, eventually he even informed the Club in another WhatsApp message that he would get renewal through a relative (mother) of his lawyer. He never did. His lease ended on July 31, 2016, that is a few days after he presented himself at the Administration Office asking for his visa renewal. Similar short-term rentals nevertheless, do not meet the requirements of Romanian Law for proof of rental agreement, and this is why his request for visa renewal was turned down.

48. The Player's submission entitled "Annex 7bis" is irrelevant, since it was premised on an erroneous type of renewal (civil, not employment). On the contrary, the Respondent's Exhibit 12 is the relevant indication of the Romanian immigration authorities as to the reason for the denial of the extension of the residence visa, that is, the lack of a lease agreement.

49. Subsequently, the Player declared (in yet another WhatsApp message) that he would arrange his visa renewal from abroad. Nothing happened. On August 1, 2016, that is after his departure from Romania, he sent a message claiming that it was for the Club to renew his visa, and requested payment of two months of salary (July and August 2016). The Club replied that it wanted him back, and did not want to end their relationship, since, anyway as per Article 50 of the applicable Romanian Law, the renewal could always take place within six months from the expiry of the original visa. The Player never replied to this message. The next the Club heard from him was that he had sued the Club before the DRC, the decision of which largely confirmed the Club's position.

50. The Respondent then asks the Panel to confirm the DRC decision, and impute all legal and administrative costs to the Appellant.

51. Specifically, the Respondent submitted the following requests for relief:

    1. Reject the Appellant's claim for outstanding remuneration;

    2. Reject the Appellant's claim for compensation;

    3. Reject the Appellant's claim for reimbursement of the cost of the flight ticket;

    4. Reject the Appellant's claim pertaining to the specificity of sport;

    5. Order the Appellant to bear the arbitration costs;

    6. Award the Respondent a contribution towards its legal fees and other expenses incurred in connection with the arbitration.

    Or in the alternative,

    1. Order the Respondent to pay EUR 6,505.61 as salary for the month of July 2016;

    2. Reject the Appellant's claim for compensation;

    3. Reject the Appellant's claim for reimbursement of the cost of the flight ticket;

4. Reject the Appellant's claim pertaining to the specificity of sport;

5. Order the Appellant to bear the arbitration costs;

6. Award the Respondent a contribution towards its legal fees and other expenses incurred in connection with the arbitration.

Or in the further alternative,

1. Dismiss the Appeal lodged by the Appellant;

2. Order the Appellant to bear the arbitration costs;

3. Award the Respondent a contribution towards its legal fees and other expenses incurred in connection with the arbitration.

V. JURISDICTION

52. The jurisdiction of the CAS, which is not disputed by the parties, derives from Article R47 of the Code and Article 66 para. 1 of the FIFA Statutes in connection with Article 24 para. 2 of the RSTP.

53. Article R47 of the Code stipulates:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with 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 it prior to the appeal, in accordance with the statutes or regulations of that body".*

54. Article 57 para. 1 of the FIFA Statutes states:

> *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players' agents".*

55. Article 24 para. 2 of the RSTP provides that:

> *"*[…] *Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".*

56. The present appeal is directed against a final decision of the DRC, the statutes and regulations of which provide for an arbitration clause in favour of the CAS. Thus, the appeal falls within the scope of Article R47 of the Code. It follows that the CAS has jurisdiction over the present matter.

57. Finally, the Panel was legally established and constituted, and the parties confirmed at the hearing that this had indeed been the case.

58. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case, and can decide the dispute *de novo*. The Panel may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY OF THE APPEAL

59. In accordance with Article 58 para. 1 of the FIFA Statutes,

> *"appeals against final decisions passed by FIFA's legal bodies […] shall be lodged with CAS within 21 days of notification of the decision in question".*

60. The appealed decision was notified to the Appellant, with grounds, on 30 January 2018 and there is no dispute that the Statement of Appeal was filed within the statutorily permissible 21 days. The appeal is thus admissible. To put this point to rest, the Respondent did not raise any claim to the effect that the appeal was inadmissible, neither in its written pleadings, nor during the hearing before the Panel.

VII. APPLICABLE LAW

61. The discussion above points to a disagreement between the parties regarding the applicable law in this dispute. Whereas the Appellant believes that the dispute can be adjudicated within the four corners of the FIFA regulations, and more precisely, Article 18 RSTP, the Respondent demurs that Romanian law applies when it comes to establishing the requirements for visa renewals. This is so, because to the extent that FIFA Statutes do not regulate an issue, it is Romanian law that applies, since the parties had contractually agreed to its relevance in this respect.

62. To decide this issue, the Panel looked into the three distinct provisions that address it head on: Article 2 of the FIFA Rules governing the procedures before the PSC (Players' Status Committee) and the DRC; Article 57.2 of the FIFA Statutes; and Article R58 of the Code.

63. Article R58 of the Code requests from the Panel to decide the dispute:

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

64. Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber reads as follows:

"In their application and adjudication of law, the Players' Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at a national level, as well as the specificity of sport".

65. Finally, Article 57.2 of the FIFA Statutes reads as follows:

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

66. With regard to the question of which edition of the RSTP shall apply, the Panel concludes that the RSTP (2015 edition) are applicable because the employment agreement was concluded in July 2015.

67. Against this background, the parties contractually agreed in Article S of their contract (as cited above) that:

"a) The applicable law is the Romanian law.

b) This individual contract will be deemed as signed in Romania and all dispute, controversy and misunderstanding resulting from or in relation to this individual labour contract will be governed, interpreted, understood and resolved in accordance with the Romanian law in force, as well as with the statutes and sports regulations.

c) The contractual liability, establishing the damages and penalties are regulated by the civil law, sports statutes and regulations, as well as the annexes to this individual contract".

68. In the same vein, Article V of the contract, also cited above, explicitly refers to the Romanian law No. 53/2003 as law applicable to the present contract.

69. The Panel, in light of the above, decided that, in order to resolve this dispute, it would have recourse to the relevant FIFA regulations, and accessorily to Swiss law, to the extent necessary. With respect to questions not addressed in the FIFA regulations, the Panel would have recourse to Romanian law, since this has been the will of the parties as expressed in the employment contract that they have signed.

VIII. MERITS

70. The central issue in the present appeal is to identify which party (if any) breached the employment agreement by terminating it without just cause. The Panel, of course, reviews the dispute *de novo* (Article R57. 1 of the Code). In doing so, it is not limited to reviewing the legality of the appealed decision, but it can issue a new decision based on legal and factual reasoning that did not form the basis of the decision issued by the DRC. Procedural flaws occurred through the previous instance are cured by the *de novo* appeal to the CAS (MAVROMATI D., "The Panel's right to exclude evidence based on Article R57 para. 3 CAS Code: a limit to CAS' full power of review?", CAS Bulletin 1/2014, p. 50). Nevertheless, the parties did not adduce new evidence that had not been submitted before the DRC, other than the fact that the Player,

besides the injury suffered on May 29, 2016 while on international duty, also endured a chronic knee injury of which the Club had been aware all along their contractual relationship. As the Panel explains in what follows though, this information has no bearing on the *ratio decidendi* of this award. Furthermore, no party has argued that a procedural flaw had been committed in the proceedings before the submission of this appeal to the CAS.

71. Recall that this dispute concerns an appeal against a decision by the DRC. The Panel notes that the burden of proof to rebut the evaluation by the DRC lies with the Appellant. Longstanding CAS jurisprudence has held as much:

> *"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*
>
> *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (CAS 2016/A/4580, para. 91, with further references to CAS 2015/A/309; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).

72. At this stage, the Panel would like to recall the *ratio decidendi* of the DRC decision. The DRC found in favour of the Club basing its decision on two distinct grounds: first, in its view, neither of the parties was interested in pursuing further their contractual relationship, and hence, no compensation was due in either direction; second, because the Player had breached the contract without just cause when deciding to visit the doctor of the Haitian Football Federation without reporting the incident to the Club, as he was obliged to do because of the contractual obligation he had assumed (Article 3.1b of the "Professional Annex" to his contract). The DRC did not find itself to be in a position to decide whether the lack of the rental renewal should be imputed to the Player or not. Still, it went on to find that no compensation was due to the Player other than for the days in July 2016 when he was present in Romania.

73. The Panel largely adheres to this reasoning, albeit on different grounds, as will be explained in what now follows.

74. The Panel shares the DRC finding that neither of the parties was particularly interested in renewing the contract. The Player left it for the last minute to renew his visa, accepting thus an increased risk that renewal might not be immediately granted. One can only speculate about

what the end of the process might have been, had he initiated the proceedings already in April 2016, as recommended by the Club. One thing is certain, though: he would have had more time to correct errors and omissions. Last minute errors proved, alas, fatal. And it should not go unnoticed that the Player did not attempt to rekindle with his efforts to renew during the six-month period during which, as per Romanian law, renewal (as opposed to new request) is still possible. The Club, on the other hand, did not close the door to the Player returning to the Club even after the refusal by the Romanian authorities to renew his visa. To the Panel, this finding entails that the claim of the Appellant that the Club *de facto* terminated the contract without just cause falls. At the same time though, it did not sanction the Player, as it could have done, for contractual violations. One appropriate illustration is the fact that the Player was fourteen days late when he arrived back with the Club on July 14, 2016. The Club acquiesced to his delay. Furthermore, the Club on the one hand claims that the Player should have informed it (and not FC Voluntari, the club for which he was playing when he was injured), and by not informing it the Player was in breach of Article 3.1(b) of the "Professional Annex", but on the other hand, refused to sanction its behaviour as it could have done under Article 3.1(j) of the same document.

75. The Panel disagrees with the DRC finding regarding the rental renewal. In the Panel's view, it was incumbent on the Player to proceed with the renewal, the Club being contractually obliged to provide a rental subsidy and nothing beyond that. There is nothing intricate or unfathomable in renewing a lease, and not even the most far-fetched reading of Article 18.4 RSTP could lead to the opposite conclusion. Absent contractual obligation to do so, the Club cannot be punished for not renewing the Player's lease. As a result, the non-renewal of the visa should be attributed to the Player's negligence. On these two grounds, the Panel finds that the Club cannot be held liable for the lack of renewal of the visa, and, as a result, the Club is not liable for compensating the Player for the period of the contract running from the refusal of renewal of the visa to the end of the contractual relationship between the Club and the Player. Finally, the Panel finds the relevance of the Player's breach or possible breach of the obligation embedded in Article 3.1(b) of the "Professional Annex" to be of secondary importance. The Panel takes each issue in turn.

A. The Parties were not interested in continuing their contractual relationship

76. The Appellant argued that he terminated the agreement with just cause on August 11, 2016 or, in the alternative, that the Respondent terminated it without just cause following the failure to obtain the visa/working permit. To proceed with its evaluation, the Panel needs to first provide its understanding of the term "just cause".

i. Understanding of Just Cause

77. Pursuant to the legal maxim *"pacta sunt servanda"*, contracts must be performed in good faith (cf. ATF 135 III 1, c. 2.4 = JdT 2011 II 524).

78. Article 14 of the RSTP provides for the possibility of terminating a contract with just cause as follows:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

79. The Commentary on the RSTP offers some clarifications regarding the ambit and scope of "just cause":

"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" (RSTP Commentary, N2 to Article 14).

80. CAS jurisprudence specifies that while the FIFA rules do not precisely define the concept of "just cause", reference to it is compulsory when it is relevant to resolve disputes (CAS 2006/A/1062; CAS 2008/A/1447). Article 337. 2 of the CO, to which the Appellant has referred in its pleadings contains a similar concept:

"Any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason".

The concept of "just cause", as defined in Article 14 RSTP, is quite similar to "good reason" included in Article 337. 2 CO.

81. When considering the existence of a "just cause" or "good reason", respectively, the CAS has often followed the jurisprudence of the Swiss Federal Tribunal, according to which "good reason" exists (and, consequently, an employment contract may be lawfully terminated) when the quintessential terms and conditions (either general/objective or specific/personal), which formed the basis of the contractual arrangement, are no longer respected (ATF 101 Ia 545). Lack of respect of auxiliary terms and conditions, conversely, could not be offered as "good reason" (just cause) for lawfully terminating a contract.

82. In this vein, the Swiss Federal Tribunal has repeatedly held that, in presence of good cause, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2001; Judgment 4C.67/2003 of 5 May 2003; WYLER R., Droit du travail, Berne 2002, p. 364; TERCIER P., Les contrats spéciaux, Zurich 2003, N 3402, p. 496). According to this jurisprudence, the infringement must be serious (Judgment 4C.240/2000 of 2 February 2001).

83. The case law of the Swiss Federal Tribunal offers various illustrations of "just cause" (or lack of it). A unilateral or unexpected change in the status of an employee, which is not related either to company requirements or to the organization of the work or to a failure of the employee to observe his/her obligations has been considered a just cause for termination (Unpublished judgments of October 7, 1992 in SJ 1993 I 370, of November 25, 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81). Similarly, in certain circumstances, a refusal to pay all or part of the salary was also considered just cause for termination (STAEHLIN A., Kommentar zum

Schweizerischen Zivilgesetzbuch, Obligationenrecht, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/WAEBER/BRUCHEZ, Commentaire du contrat de travail, Lausanne 2010, N 7 ad Art. 337 CO).

84. CAS jurisprudence echoes the case law of the Swiss Federal Tribunal, in that only material breaches of a contract can possibly be considered as "just cause" (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100).

85. For a party to be allowed to validly terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations. A CAS case for example held:

> *"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship"* (CAS 2006/A/1180).

The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning were deemed necessary. In a nutshell, this is the case when it is clear that the other side does not intend to comply with its contractual obligations.

86. It is against this legal benchmark that the Panel will proceed to evaluate the question whether the Player had just cause in terminating his contract. To do that, the Panel needs to assess the behaviour of both parties. A contractual relationship by definition involves a strategic interaction between the parties, and it is very rarely the case that actions are totally independent of the behaviour of the other party.

ii. The Conduct of the Parties throughout the contractual relationship

87. The Player, as per his own admission, was in Haiti as of June 15, 2016, and waited until July 14, 2016 to return to Romania. Even if he had to undergo rehabilitation, he could do so in Romania, while processing the paperwork for his visa renewal. He did not. He left it for later, for the last ten days left. He was not fazed by the prospect of having to pay a fine, as he started the renewal during the thirty days before expiry of his visa.

88. The Club, on the one hand initiated the process already in April 2016, but did not insist with the Player to speed up the process so that they can wrap it up in time. It indulges. In a similar vein, apart from the letter sent to the Player during August 2016 mentioned above, it does not insist on the Player to come back and complete the process. Even after it had received the letter

of termination by the Player, it still attempted to resolve the issue in an amicable manner, inviting the Player to renew efforts to obtain the visa.

89. The Club thus did not, neither *de jure* nor *de facto* terminate the contract. It never sent a letter of termination to start with. The Club suspended the contract as the visa renewal had been denied due to reasons attributable to the Player, leading to the employment relation being illegal if it was continued without a valid visa. The "suspension" of the contract presents the Panel with a puzzle. Probably, the Club meant that the contract could be revived if the Player completed the visa renewal within the six-month period that Romanian law provides holders of a valid work permit to do so. Its subsequent actions (letter of August 21, 2016) confirm this view. Indeed, if the Club wanted to push for termination, it could have done so on different occasions: when the Player did not return from the Copa Centenario on time, that is, on July 1, 2016 as he was obliged to; even immediately after receiving the letter of August 11, 2016 where the Player explicitly stated that he was terminating the contract.

90. The Club was indulgent, but indulgence does not amount to *de facto* termination of the contract, as the Appellant claims. The Club did not push the Player to become pro-active in his quest for a visa renewal, but did not neglect its duties to inform the Player about the process, the timeliness of the submission etc. In fact, all evidence before the Panel shows that Mr. Ioan was consistently aware of what needed to be done, and in regular contact with the Player who was the recipient of his advice regarding the renewal of the visa.

91. The Player's termination of the contract is without just cause. There is more, though. The Player is at fault for not renewing his visa for the reasons explained in what follows.

B. The Player is liable for not renewing his visa

92. There are two issues the Panel needs to discuss here. Was the request denied because of lack of production of a valid rental agreement, or for other reasons? Who was liable for this error? The Panel takes each issue in turn.

93. Recall that the parties agree that under the applicable Romanian regulations for granting such visa, the production of a valid rental agreement is pre-requisite for obtaining a visa renewal. In this context, the Panel is not convinced by the Player's argument that given that his lease continued in effect until the end of July 2016 (i.e. one week after the expiry of the visa), at the date of the expiry of the visa indeed a fully-sufficient rental agreement was in effect. In the Panel's view it is highly unlikely that any visa will be granted based on a rental contract of which only few days remain prior to the expiry of the visa. This is even more the case when a valid rental agreement is a mandatory requirement to obtain a visa. Hence, the second question outlined above becomes the key in addressing this issue.

94. Who was then responsible for producing a valid rental agreement? As quoted above, Article 4.4 of the "Professional Annex" makes it clear that the Club's obligation was limited to providing him with a rental subsidy. The Club was under no obligation to do anything else. Similar contractual clauses are commonplace.

95. The Player himself implicitly sides with this view, when, in WhatsApp messages between him and Mr. Ioan (on the record), he states that he would be receiving the rental lease from a relative (mother) of his attorney.

96. Finally, the burden on the Player when it comes to renewing his lease is not disproportionate. Article 2.2 of the lease contract reads:

> *The period of the Contract is of 1 (one) (year) starting with 1.08.2015 until 31.07.2016 with possibility to be extended within an additional act agreed by both parts.*
>
> ….
>
> *Should the period of the Lease Contract be extended, the interested party must notify its intention to the other party at least 30 days before the expiry of the Period set forth in the Contract.*

There is no evidence on record of similar notification by the Player, and the Appellant never argued that he had proceeded this way neither in the pleadings to the Panel, nor during the hearing.

97. It follows from the analysis above that the Player terminated his employment contract without just cause. Furthermore, he is also responsible for not renewing his visa by not procuring a valid rental agreement, as he is for not providing any proof to the effect that he attempted to renew the existing rental agreement, or to sign a different rental agreement. Absent a valid residence visa, he could not sign a valid employment contract, or more to the point, his otherwise valid employment contract would lose its validity. Through his behaviour, he provoked the demise of his contractual relationship with the Club.

98. The Panel at this stage, wanted to quash any doubts regarding the reason for refusal by the Administration Office to renew the visa. On July 11, 2016, the mentioned rationale for refusal is stated as follows:

> *Your request has been cancelled, for the following reasons: Incorrect documentation, in which respect you have the obligation to be present for the submission of the application at the headquarters of the territorial immigration authority where you have declared your residence or domicile.*
>
> *Lack of taxes, lack of revisal, lack of passport, the wrong case was selected.*

The wording makes it clear that the Player had selected "the wrong case". This is exactly the argument of the Respondent: the Player should have asked for renewal of "employment"- not "civil" visa. The term "incorrect documentation" lends strong support to this claim. Furthermore, it is because of this refusal that the Player appeared in the Administration Office at Voluntari on July 20, 2016 alongside Mr. Ioan. His appearance in the office at Voluntari is justified by the fact that the Player had on his own initiative modified his residency notification already on December 22, 2015, as explained above. When they appeared at the Administration Office, they were told that no visa would be issued absent a valid rental lease. This is what the Player failed to produce. For the reasons developed above, it was for the Player to produce this document. He is thus, solely responsible for the non-issuance of the visa renewal.

C. The Duty of the Player to Report His Injury

99. Recall that under Article 3.1(b) of the "Professional Annex", the Player is required:

> *"To present immediately in case of injury or sickness during its activity of professional Player, to the medic of the football team and to submit to all the medical and therapy measures indicated by the latter or by the specialists to which he is sent".*

100. There is an issue whether the Player should report to Steaua or Voluntari where he was on loan. He reported to the Club on July 14, 2016, that is, thirteen days after the expiry of his loan to FC Voluntari. He did inform the Club of his injury though, on July 1, 2016, that is the first day after the end of his loan spell. The Panel does not have to decide whether the Player had to inform the Club immediately, and not FC Voluntari, even though it had some sympathy for this view. The reason why the Panel opts to exercise judicial economy in this context is two-fold: first, because it has already reached a definitive conclusion on the dispute on the grounds mentioned above; second, because the behaviour of the Club evidences that the absence of notification of the injury was not decisive. The Panel explains this latter point briefly.

101. The Club acquiesced to the Player's behaviour, and did not even bother to sanction him, although it could have easily done so. Article 3.1(j) of "Professional Annex" reads:

> *"Failure to comply with any of the provisions under letter a)-i) will entail sanctions, in accordance with legal or regulations provisions, namely:*
>
> *- Written warning;*
>
> *- Interdiction of participating to official, friendly matches or training sessions for a term of 1-3 months;*
>
> *- Sports penalty of up to 25% of the value of contractual rights of the Player during one competition year".*

102. The Club did not even send a reprimand, a written warning. In doing that, it acquiesced to the Player's lack of notification.

D. The Legal Consequence

103. For the reasons explained above, the Panel does not fully adhere to the DRC decision. It agrees that no compensation should be paid by either party for the termination of the contract. The Panel disagrees that the Player should be remunerated only *pro rata* for the month of July. Instead, he should receive his salary not only for the 11 days of the month that he was present in Romania before his visa renewal was rejected, but for the entire 24 days until the date of refusal of renewal of visa that is 24/30 x 18,334 (i.e. 14,667.20) EUR plus 5% interest rate. As regards the reimbursement of the air ticket requested by the Player, the Panel observes that according to its understanding, the DRC decision, which granted the Player an amount of 1,900 CHF for an airplane ticket rather than the amount of 2,738 EUR for the (largely) business class ticket that he actually bought, may have reflected the DRC's determination that he was entitled

to reimbursement for economy class travel only. The Club in its written submissions in the present proceedings denied the claim for the reimbursement of the flight ticket based on the argument that this claim lacks contractual basis stating that: *"Indeed, art. 4.4 of the Professional Annex to the Employment Contract stipulates that the Club has the obligation "to ensure to the player (…) 2 return plane tickets per season for the player and his family, for the route Bucharest - Port au Prince (Haiti) - Bucharest"*. The Club thus argued that the absence of indication as to the class of ticket to be reimbursed should be understood to limit the reimbursement obligation to the price of an economy ticket. The Club did not develop this position any further in the proceedings. The Panel therefore sees no reason not to order payment as requested in the amount of 2,738 EUR. It seems reasonable to the Panel to grant the price of a business class ticket, in particular as the flight in question included multiple legs of travel and was of quite significant duration. Furthermore, in case of possibly differing interpretations of the clause in the agreement, the Panel is comfortable in interpreting the clause *contra proferentem*: since it did not specify economy class only, reimbursement for business travel (particularly in the circumstances of the case and travel by the Player only and not his family) is not necessarily excluded or inappropriate. The Appellant's assertion of an entitlement to compensation by reason of the 'specificity of sport' is noted, but in view of the Panel's conclusion reached above that the Respondent has not breached the employment agreement by terminating it without just cause, this assertion becomes irrelevant since the consequence of the finding in respect to the breach is that the Appellant is not entitled to any kind of compensation whatsoever.

IX. CONCLUSION

104. In conclusion, the Panel finds that:

(1) The DRC decision must be amended and include the following orders;

(2) The Respondent will be ordered to pay 14,667.20 EUR and 5% interest per annum from the initial due date that is July 30, 2016 until the date of effective payment, as outstanding remuneration.

(3) The Respondent will be ordered to pay 2,738 EUR (instead of 1,900 CHF) in reimbursement of his personal expenses (flight ticket).

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on February 19, 2018 by Jean-Sony Alcenat against the decision of the FIFA Dispute Resolution Chamber of July 13, 2017 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber dated July 13, 2017 is amended as follows:

   Steaua Bucuresti is ordered to pay to Jean-Sony Alcenat 14,667.20 EUR plus 5% interest *per annum* from July 30, 2016 until the date of effective payment, as outstanding remuneration.

   Steaua Bucuresti is ordered to pay to Jean-Sony Alcenat 2,738 EUR as reimbursement for a flight ticket.

(…)

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