



Arbitration CAS 2018/A/5882 FC Rubin Kazan v. Denis Gennadievich Tkachuk & Russian Football Union (RFU), award of 28 August 2019

Panel: Alexander McLin (Switzerland), Sole Arbitrator

Football

Payment of bonuses

Establishment of bonus by contract

Interpretation of a bonus scheme in order to achieve its goal

Club's lack of financial means

1. The language of Article 135 of the Labor Code of the Russian Federation (LCRF) specifies that wages of an employee are set out in an employment contract, and that *“stimulation payments and supplements and bonus systems shall be established by collective agreements, agreements...”*. As a result, the LCRF does not make the establishment of a bonus scheme obligatory *per se*, but rather states that where it exists, it shall form part of a contract and one which may be of a collective nature. If Bonus Regulations were established by the club and, as an annex to the employment contract, were incorporated therein, the Bonus Regulations constitute the document that binds the parties as to the manner in which they should be paid out. Their existence, and the fact that they provide for the payment of bonuses establishes that the payment of bonuses is mandatory by contract.
2. There can only be one correct interpretation if a bonus scheme is to achieve its goal of motivating the team to achieve the desired results. For incentive schemes of this kind to provide the necessary motivation, those striving to achieve this goal must be able to expect that payment of the bonus must be certain upon obtention of the result. Presumably the higher the expected payment is, the greater the degree of motivation to achieve the identified goal. It is therefore essential that the objectives be clearly defined, and that the expected reward for reaching it also be clear.
3. If an employee has the right to receive an expected amount, lack of funds, while practically making it more difficult to pay employees, does not negate the employee's right to payment.

I. PARTIES

1. Football Club Rubin (“FC Rubin”, the “Club”, or the “Appellant”) is a Russian football club based in Kazan, Russia, affiliated with the Russian Football Union, itself a member of FIFA (Fédération Internationale de Football Association, the international governing body for the sport of football). FC Rubin is the successor of Municipal Autonomous Institution Football Club Rubin (“MAI FC Rubin”). FC Rubin was competing in the Russian Football Premier League (the “RFPL”) at the time of these proceedings.
2. Mr. Denis Gennadievich Tkachuk, (the “Player” or the “First Respondent”) is a professional football player of Russian nationality, at the time of these proceedings playing for Krylia Sovetov, a football club in Samara, Russia.
3. The Russian Football Union (“RFU” or the “Second Respondent”) is the Russian national football federation having its principal place of business in, Moscow, Russia, and affiliated with FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain his reasoning.
5. On 16 May 2016, the Player and MAI FC Rubin entered into an employment contract (the “Agreement”), which included an annex detailing certain bonus, penalty and dispute resolution provisions (the “Annex”).
6. The relevant provisions of the Agreement provide the following:

“4.1. *The Club shall:*

4.1.1. *Pay monthly salary to the Football Player in due time and full volume, as well as make any other payments in accordance with this Contract, Annexes hereto, and any other local regulations stipulating the terms and procedure of the bonus payment. ...*

7.3. *The payment procedure and amount of bonuses, financial aid, as well as other remunerations shall be established in accordance with the current regulation of the Club. Such remunerations and payments shall be formalized by a special annex to this Contract (Annex 1), which shall be its integral part”.*
7. In its relevant provisions the Annex reads as follows:

“2.1.3. The Football Player who has duly fulfilled his duties under the Employment Contract shall be provided with extra bonus incentives following the Regulation on bonus payments for the victory of the team in the Russian Football Premier League (RFPL), Russian National Football League (FNL), Russian Cup, UEFA Champions League, and the UEFA Europa League.

2.2. The amounts of the bonuses specified in Clause 2.1 hereof are maximum amounts payable by the Club to the Football Player subject to the perfect performance of the labor obligations by the latter. If the Football Player fails to duly perform his obligations under the Employment Contract, the Club shall be entitled to decrease the bonus payments mentioned in Clause 2.1 of the Regulation on Bonus Payments as provided by Article 3 hereof”.

8. On 20 July 2016, the Club’s CEO, Mr Ilgiz Fachriev, and the Club’s Head Coach, Mr Javier Gracia, approved (by way of their signature) a document entitled “FC RUBIN KAZAN PROVISION SEASON 2016 / 2017 INDIVIDUAL BONUS SCHEME, DISCIPLINARY AND PENALTY REGULATIONS FOR PROFESSIONAL FOOTBALL PLAYERS” (the “Bonus Regulations”).
9. The Bonus Regulations were executed in the Russian and English languages. Their provisions relevant to the case at hand are set out below:

“...

PART 1: INDIVIDUAL BONUS SYSTEM

ARTICLE 1 – OBJECTIVE

With the purpose to motivate the footballers for the highest sport results, taking into consideration the standards of ethics, sporting behaviour and fair play, the Club has agreed on a general team bonus scheme for the season 2016-2017 of the Russian Premier Liga and Russian Cup and will remunerate the sportive success of the Club.

ARTICLE 2 – DETERMINATION OF AMOUNTS OF INDIVIDUAL TEAM BONUSES

2. BONUS GOLD CATEGORY

- 2.1 *For a victory against one of the following clubs in a competitive match in the Russian Premier Liga the individual team bonus for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 20,000 (in words: net US Dollar twenty thousand):*

Zenit St. Petersburg, CSKA Moscow, Lokomotiv Moscow, FK Krasnodar, Spartak Moscow, FK Rostov

- 2.2 *For a draw in an away game against one of the following club [sic] in a competitive match in the Russian Premier Liga the individual team bonus for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 10,000, (in words: net US Dollar ten-thousand).*

- 2.3 *The exact amount of individual team bonuses for each player mentioned on the official team sheet for the game will be defined by the respective Decree issued by the Club's Director General based on the request by the Club's "A" team Head Coach.*

3. BONUS SILVER CATEGORY

- 3.1 *For a victory against one of the following clubs in a competitive match in the Russian Premier Liga/Russian Cup the individual team bonus for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 15,000 (in words: net US Dollar fifteen thousand):*

Terek Grozny, Ural Sverdlovskaya Oblast, FK Amkar Perm, Kyrilia Sovetov Samara

- 3.2 *For a draw in an away game against one of the following clubs in a competitive [sic] match in the Russian Premier Liga the team bonus [sic] for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 7,500.-- (in words: net US Dollar seven-thousand-five-hundred):*

- 3.3 *The exact amount of individual team bonuses for each player mentioned on the official team sheet for the game will be defined by the respective Decree issued by the Club's Director General based on the request by the Club's "A" team Head Coach.*

4. BONUS BRONZE CATEGORY

- 4.1 *For a victory against one of the following clubs in a competitive [sic] match in the Russian Premier Liga /Russian Cup the individual team bonus [sic] for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 10,000.—(in words: net US Dollar ten-thousand):*

FK Ufa, Futbol'nyi klub Anzhi, Orenburg Gazovik, Arsenal Tula, FK Tom Tomsk as well as teams of the Football National Liga (FNL) and teams of the Professional Football Liga (PFL) [sic]

- 4.2 *For a draw in an away game against one of the following clubs in a competitive [sic] match in the Russian Premier Liga /Russian Cup the individual team bonus [sic] for each player mentioned on the official team sheet for the game amounts up to net US-Dollar 5,000.—(in words: net US Dollar five-thousand):*

- 4.3 *The exact amount of individual team bonuses for each player mentioned in the official team sheet for the game will be defined by the respective Decree issued by the Club's Director General based on the request by the Club's "A" team Head Coach.*

ARTICLE 3 – PAYMENTS

The respective individual team bonuses will be paid as follows:

- *50% will be due and payable to each player within 30 (thirty) days after the match they were defined for;*

- *The remaining 50% will be accrued and paid completely to each player with one instalment on the 31st of May, 2017 under the condition that the Club has finished the season 2016-2017 in the official table of the Russian Premier Liga on a position 1st (Champion of Russian Premier Liga) to 4th or if the Club has won the Russian Cup 2016-17”.*
10. Following the first part of the 2016/2017 Championship, the main team was trailing in ninth place. The Club did not pay bonuses (whether to players or coaches of the main team) for the second part of the season.
 11. On 16 February 2018, the Player sent a notice to the Club demanding payment of bonuses for the second part of the 2016/2017 season in the amount of USD 33’125.—.
 12. On 26 February 2018, the Club responded, explaining that while it had a right to pay bonuses, this was not an obligation. The Bonus Regulations established a maximum amount that could be paid but did not necessarily need to be. The Director General of the Club had not issued the requisite decree, and none of the Club’s employees had received bonuses for the second part of the 2016/2017 season.
 13. On 31 May 2018, the Player lodged a claim before the RFU Dispute Resolution Chamber (the “DRC”) seeking the amount claimed above.
 14. On 6 July 2018, the DRC partially upheld the Player’s claim (the “Appealed Decision”), ordering the Club to pay him outstanding bonuses for the 2016/2017 season in the amount of USD 27’500.— in Rubles at the rate established by the Central Bank of the Russian Federation as of the date of payment within 14 business days, plus interest for the delay in payment of the bonuses according to Article 236 of the Labor Code of the Russian Federation (the “LCRF”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 30 August 2018, the Appellant filed its Statement of Appeal against the Respondents with respect to the Appealed Decision, requesting that a sole arbitrator be appointed by the CAS.
16. On 4 September 2018, the CAS Court Office confirmed receipt and invited the Respondents to submit its views concerning the appointment of a sole arbitrator.
17. On 13 September 2018, in the absence of any comments received by the Respondents, the CAS Court Office informed the parties that the decision on whether the case would be submitted to a sole arbitrator would be taken by the President of the CAS Appeals Arbitration Division, or her Deputy, pursuant to Article R50 of the Code of Sports-related Arbitration (the “Code”). The same day, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the case to a sole arbitrator.
18. On 14 September 2018, the Appellant filed its Appeal Brief, pursuant to Article R51 of the Code.

19. On 3 October 2018, the CAS Court Office notified the parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Alexander McLin, Attorney-at-law in Geneva, Switzerland, as Sole Arbitrator.
20. On 23 November 2018, Player filed his Answer in accordance with R55 para. 1 of the Code. The RFU did not submit an Answer. The Player's answer contained a number of document requests for production by the Appellant.
21. On 30 November 2018, the CAS Court Office wrote to the parties on behalf of the Sole Arbitrator, inviting the Player to specify the relevance of each of the evidentiary requests, which he did by letter on 3 December 2018.
22. Also on 3 December 2018, the Appellant was invited to reply to the Player's reasons stated in support of its document production request. The Appellant provided its reply on 10 December 2018.
23. On 12 December 2018, the CAS Court Office notified the parties that the Sole Arbitrator had decided to reject the Player's evidentiary requests in keeping with Articles 57 and 44.3 of the Code, on the basis that they were not relevant to decide the outcome of the dispute.
24. The parties signed the Order of Procedure on 14 January 2019.
25. A hearing was held in Lausanne on 14 March 2019.
26. At the hearing, the Appellant was represented by Mr Mikhail Prokopets and Ms Maria Tokmakova, and assisted by Mr Artur Zastavnichenko, interpreter. The First Respondent was present at the hearing and represented by Mr Evgeny Krechetov, assisted by Victor Bereznoy, interpreter.
27. Prior to the hearing, the First Respondent objected to the Appellant's interpreter on the basis that he was insufficiently independent given his status as an employee of the Club. After consulting the parties, the Sole Arbitrator ruled that the Mr Zastavnichenko could validly interpret given that the Player's representatives would be in a position to correct any potential inaccuracies in translation at the hearing.
28. The following individuals provided testimony at the hearing:
 - a. For the Appellant:
 - Mr Rustam Sayakhov, witness (in person)
 - Mr Nikita Lyutov, expert (via telephone)
 - b. For the First Respondent:
 - Maxim Sergeevich Kannunikov, witness (via telephone)

- Dmitry Viktorovich Kuznetsov, witness (via video link)
- Ms Natalia Stepanovna Savinova, expert (via telephone)
- Mr Denis Gennadievich Tkachuk, Appellant (in person)

29. At the hearing, the following evidence was given:

30. Mr Sayakhov explained that the establishment of the Bonus Regulations were “coordinated” with him when he was Financial Director of the Club at the time, before he became General Director, and that he no longer worked at the Club. Seeing as the Club belonged to the municipality of Kazan, the Bonus Regulations were necessary to establish a “programme of funds” by which the state entity would sponsor the Club. The latter were drawn up to establish maximum bonus amounts for players, which were meant to differ based on the category of the opposing team and the outcome of the matches. The second part of the bonus was meant to be paid out at the end of the season. The protocol for determining payments was that the Head Coach would first make an evaluation and provide a request to the General Director as to the amounts. He would then take the final decision. In his recollection, the amounts paid out were not the maximum amounts. There was no specific form for the request coming from the Head Coach, sometimes they were on paper, and sometimes electronically. The General Director’s decrees as to payment of bonuses were required by law. However, the law did not require that players be informed of them. The main reason that the Club stopped paying bonuses was that the results in the first half of the season were unsatisfactory and that the bonuses were clearly not working to motivate the team. Also, the Club was experiencing financial difficulties and it was deemed inappropriate to pay bonuses in these conditions. In March 2017, a meeting was initiated by the players to ask about the bonuses and Mr Sayakhov stated that they would not be paid. His further responses to the Player’s requests for information about payment of the bonuses, in which he said that he didn’t “know yet” whether they would be paid or would not be paid “for now” were a way to respond “politely”. Generally, the Club was exercising its discretion in its decision not to pay bonuses. This was done the basis of the Head Coach’s assessment which was negative. Mr Sayakhov explained that at the beginning of March 2017, when the Club changed ownership, he became owner of one third of the Club, but that he was no longer an owner once the proceedings before the RFU in this matter (leading to the Appealed Decision) had begun.

31. Mr Lyutov explained that the LCRF distinguishes between what constitutes “regular payments” on one hand, and “disciplinary incentives” on the other. For the latter, payment is generally discretionary unless there is a clear statement that certain sums are to be paid. If there is a defined range, payments should be within the range. If there are no guidelines, payments are at the employers’ discretion. According to Article 191 LCRF, the only limitation on an employer’s rewards to an employee is discrimination. The Bonus Regulations are not illegal, and if they provide for a procedure, it should be followed. They may be modified with respect to their future applicability, but not with respect to the past. An employer may pay more than is provided for in the Bonus Regulations on an ad hoc basis. A reduction in payments is possible for disciplinary reasons. Article 5 LCRF, which determines the role of

Russian labor legislation and standards, does not consider that an employer's practice or customs matter in the application of the LCRF.

32. Ms Savinova explained that while it is indeed a right and not an obligation for bonuses to be paid, as soon as the relevant act is adopted (in this case the Bonus Regulations), it becomes an obligation. The Bonus Regulations cannot be amended unilaterally, and employees would need to be notified of a decision not to pay bonuses. If the latter are referred to in the employment contract, they are incorporated and become part of the salary. As a result, their payment becomes mandatory in the absence of disciplinary violations. If the sufficiency of the employer's funds were to be a condition of payment, this should be reflected in the Bonus Regulations.
33. Mr Kannunikov explained that in the meeting prior to the start of the 2016/17 season, the bonus amounts were displayed on the screen. The players received an explanation as to the doubling of the bonus amounts if they placed in the first four at the end of the season, or if they won the Cup of Russia. The players signed the notification regarding the Bonus Regulations. During the first half of the season, there were payment delays but the bonuses were eventually paid. The Club did not notify the players that they would not receive bonuses; the players understood that they would be paid later on. He explained that he did not file a claim for bonuses before the RFU because he had reached an agreement on compensation that satisfied him when he decided to leave the Club.
34. Mr Kuznetsov explained that he had been the "right hand" to Head Coach Javi Gracia, as his second assistant. He stated that the bonus amounts were displayed on a screen during the meeting with the players at the start of the season, and that each player would come up and sign the "familiarization document" regarding the Bonus Regulations. The coaches never signed the document, but also received bonuses based on a promise by the Club. Mr Kuznetsov received bonuses for the first round. He did not know about the decision not to award bonuses. There was no meeting at which this was announced by Mr Sayakhov. When players asked, they were given promises that unpaid bonuses would be paid in the future. Managers confirmed that bonuses would eventually be paid, before the end of the season.
35. The Player explained that he had played for the Club for one and a half years. Bonuses had been paid out as had been understood during the first half of the season. No meeting ever took place with Mr Sayakhov in which he informed the players that the Club would stop paying bonuses. Had this been the case, it would have taken place mid-season and would have killed morale. Until the end of the season, he felt that the Club would not let them down, as did others. When it became clear that they would not be paid, this felt like a "stab in the back", a "complete deception". He had had a number of conversations with Mr Sayakhov and had expressed understanding with respect to delays. He eventually got tired of the empty promises he received.
36. At the end of the hearing, the Appellant and the First Respondent confirmed that they had no objections concerning the constitution of the Panel and how the proceedings had been conducted. Such Parties also confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

37. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant argues that the DRC did not properly apply relevant labor legislation, nor did it properly interpret or apply the Bonus Regulations. In its view, two questions are necessary to resolve the dispute: (i) whether Russian labor legislation provides for obligatory payment of bonuses, and (ii) whether the Bonus Regulations provides an unconditional obligation of the Club to pay bonuses to the Player.
- Noting that the RFU Regulations on the Status and Transfer of Players are silent on the issue of payment of bonuses, the Appellant considers that Russian labor legislation applies. In applying the latter, an employer who has issued bonus regulations has set a legal basis for incentive payments in case it decides to reward employees, but it is not obliged to make any payments. It essentially has a right, but not a duty, to pay bonuses.
- Article 129 of the LCRF stipulates that
“Wages (payment for the labor of an employee) means remuneration for labor depending on the qualifications of the employee, the complexity, quantity, quality and conditions of work carried out, and also compensation payments (extra compensation payments and supplements, including for working in conditions other than normal ones, working in special climatic conditions and on the territories exposed to radioactive pollution, and other compensation disbursements) as well as stimulating payments (extra incentive payments and supplements, bonuses and other incentive disbursements)”.
- Article 135 of the LCRF provides *inter alia* that
“The wages of an employee shall be set by an employment contract in accordance with the systems practiced by the given employer for paying remuneration for labor.
Systems of remuneration for labor, including basic rates of wages and salaries (official salaries), extra compensation payments and supplements, systems of extra stimulation payments and supplements and bonus systems shall be established by collective agreements, agreements, local normative regulations in accordance with the labor legislation and other normative legal acts containing norms of labor law. ...”.
- The manner in which this right to grant incentive payments can be exercised is shaped by the Bonus Regulations, which in this case constitute the specific provisions foreseen in the LCRF, but the right to pay bonuses at the discretion of the Club does not arise out of the specific wording of the Bonus Regulations but rather out of the LCRF, establishing the employer's ability to reward employees at its own discretion.
- The Bonus Regulations leave no room for interpretation, in that they provide that, under various scenarios in which the Club is victorious on the field of play, each player is to be awarded sums “up to” specified amounts. In addition, this language is to be combined with the provisions in Articles 2.3, 3.3 and 4.3 of the Bonus Regulations that stipulate that

“the exact amount of individual team bonuses for each player mentioned in the official team sheet for the game will be defined by the respective Decree issued by the Club’s Director General based on the request by the Club’s ‘A’ team Head Coach”.

- Three criteria must therefore be met for the Player to be entitled to a bonus: (i) proper work performance by the Player; (ii) positive assessment by the Head Coach of the work performed; and (iii) expression of the Club’s will by means of a decree issued by the Club’s Director General.
- With respect to the amounts claimed by the Player, as the Club issued decrees not to reward all the players in the Club’s main team with bonuses, meaning criteria (ii) and (iii) above were not met. As a result, no obligation arose for the Club to pay bonuses.
- The Bonus Regulations being clearly drafted, under well-established CAS jurisprudence, there is a no need for further interpretation. This is supported by the fact that no other players have claimed bonus payments for the applicable seasons under the Bonus Regulations.
- In the second part of the Russian Championship the Club’s management decided not to reward all players of the Club’s main team as it had become clear that the goal set for the season would not be achieved. It therefore made no sense to allocate funds to player rewards. This decision was made in accordance with both the Bonus Regulations and the LCRF. Accordingly, the Player has no grounds to demand bonuses under the dispute.
- The Appellant makes the following requests for relief:

“The Appellant hereby respectfully asks the Sole Arbitrator to rule as follows:

- 1. The appeal filed by the Club is upheld.*
- 2. The entire decision no. 114-18 issued by the RFU Disputes Resolution Chamber on 6 July 2018 is annulled and set aside.*
- 3. The Respondents shall bear all the costs incurred with the present procedure.*
- 4. The Respondents shall pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Sole Arbitrator”.*

38. The First Respondent’s submissions, in essence, may be summarized as follows:

- The Player argues that according to the Annex (i) the Club was obliged to provide the Player with extra bonus incentives, at least for wins, which had to be established in bonus regulations; (ii) the amounts of said bonuses had to be maxima payable under the condition that the Player properly performed his contractual obligations; and (iii) the Club had the right to decrease such maximum amounts only in the event the Player failed to perform his contractual obligations.

- The Player duly performed his contractual obligations; he was never fined, reprimanded or otherwise penalized.
- At the start of the 2016/2017 season, Head Coach Javi Gracia informed the entire team (including the Player) that he had approved the Bonus Regulations for the season together with the Club's management, and that the players would be rewarded amounts of USD 10'000, USD 7500 or USD 5000 for each win (individual amounts depending on the opponents' level), and USD 5000, USD 3750 or USD 2500 for each draw (again, individual amounts depending on the level of the opposing team). Players that were included in the players' list for a given match but who did not play would receive half of these amounts. If the team placed first to fourth in the Championship of Russia at the end of the season, all earned bonuses would be multiplied by two.
- With respect to payment of the bonuses and as provided in Article 3 of the Bonus Regulations, 50% of the maximum amounts provided for in the case of wins and draws were payable mandatorily within 30 days of the relevant match, whereas 50% were only payable at the end of the seasons provided the team places in first to fourth place in the final Russian Championship rankings.
- The fact that the Bonus Regulations included the term "up to" with respect to the amounts to be paid reflected the condition associated with the final Russian Championship rankings. Only 50% of the listed amounts were mandatory, and the second 50% were due only in the event of placement in the top four at the end of the season. As a result, the "up to" wording took into account the limited variability in potential payment associated with this condition.
- The fact that the Head Coach's explanation to the players, when taking into account the bonus amounts mentioned, concords with this interpretation of the Bonus Regulations and makes it clear that this is the manner in which they were meant to be interpreted. Moreover, the Club's practice in the first half of the 2016/2017 season was to remunerate the Player accordingly.
- Bonus payments to players stopped after Mr Rustam Sayakhov become General Director of the Club on 22 February 2017. After this, Head Coach Javi Gracia continued to assure the players that bonuses would be paid despite the fact that Club was facing temporary financial difficulties. In addition, Rustam Sayakhov also answered the Player's direct enquiries, for some time after having left the Club upon expiration of the Agreement in May 2017, as to whether bonuses would ultimately be paid without stating that they would not be paid until 26 February 2018, after the Player had sent a formal warning to the Club requesting payment.
- At this time the Club took the position that it had decided some time previously, "following the matches" for which the Player should have received bonuses, not to award them. This was evidenced in "decrees" allegedly issued by the Club following each match in the second half of the 2016/2017 season, which were not made available to the players

at the time. As a result, the Player was actively deceived by the Club and made to believe that bonuses would be forthcoming when indeed they were not.

- According to the LCRF, once an employment contract with specific bonus provisions is adopted, it becomes the obligation of the employer to obey them, and any changes to them must be made in advance of their application. The decision to establish a bonus scheme is therefore a right, but once enacted it becomes an obligation to abide by it. The Club could not make a decision to cancel the individual Bonus Regulations without the Player's consent.
- The Bonus Regulations could only reasonably be interpreted, in light of the Club's practice in the first half of the 2016/2017 season, such that the maximum sums provided for therein were payable. Once the obligation to remunerate has been established, applicable jurisprudence clearly indicates that bonuses may not be reduced arbitrarily or on the basis of insufficiency of the employer's funds, without taking the Player's performance into account.
- The Head Coach never made recommendations not to pay bonuses, and the Decrees, which refer to the fact that decisions not to pay the bonuses were grounded in "unsatisfactory results" of the team even when the team was victorious and qualified for the semi-finals of the Russian Championship were produced after the fact to justify the decision not to pay bonuses as a result of the Club's financial situation.
- Even if the Club had the right to reduce the amount of bonuses paid (*quod non*), to do so would clearly be an abuse of this right by virtue of the Club's stated intention to pay the bonuses and the Player's good faith reliance thereon.
- The First Respondent makes the following requests for relief:

"... Mr Denis Gennadievich Tkachuk respectfully requests that the Sole Arbitrator rules as follows:

- 1. The appeal filed by FC Rubin against the Decision of the RFU Dispute Resolution Chamber No 114-18 dd 6 July 2018 is dismissed;*
- 2. FC Rubin shall contribute to the legal and other costs incurred by Denis Gennadievich Tkachuk in relation to these proceedings, in the amount the Sole Arbitrator finds appropriate;*
- 3. FC Rubin shall bear the entire costs of this arbitration".*

V. JURISDICTION

39. 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 insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

40. Article 47 of the RFU Statutes provides that:

“In accordance with the relevant provisions of FIFA, UEFA and RFU Statutes any appeal on the final and legally binding decisions of FIFA, UEFA and RFU can be lodged to CAS”.

41. Article 51 para. 12 of the RFU Regulations on Dispute Resolution provide that:

“2. A decision of the [Players’ Status Committee of the RFU] or Chamber, which is rendered on issues specified in subpars. ‘b’, ‘v’, ‘g’, ‘e’, ‘z’ of para 1. Article 13 of these Regulations, may be appealed only to the CAS within 21 days from the moment of receipt by the parties of a decision [...] with grounds (in final form)”.

Article 13 para. 1 of the RFU Regulations on Dispute Resolution provides that:

“The Chamber bears and resolves the following disputes:

[...]

v) about violation of the terms of employment contracts of players, including the employment contract concluded for the period of temporary transfer (‘loan’), attachments, supplementary agreements to the contract and agreements on termination of the employment contract, as well as violation of the terms of collective agreements, agreements, provisions and other local legal acts”.

42. The jurisdiction of CAS derives from the above provisions of the RFU Statutes and Regulations, and Article R47 of the Code.

43. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Appellant and the First Respondent. It, therefore, follows that CAS has jurisdiction to decide on the present dispute.

44. The CAS, therefore, has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

45. As provided *supra* at § 40, a decision of the DRC, further to the RFU Regulations on Dispute Resolution, must be appealed within 21 days of receipt of the final reasoned decision.

46. The Parties received the DRC decision from the RFU on 9 August 2018.

47. The Appellant submitted his Statement of Appeal on 30 August 2018.

48. The appeal is therefore admissible.

VII. APPLICABLE LAW

49. Article 187(1) of the Swiss Private International Law Act (“SPILA”) provides as follows:

“The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection”.

50. Article R58 of the Code provides more specifically as follows:

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

51. The preamble to the Agreement states that the Parties’ *“rights and duties shall be regulated by labor law and other normative acts of the Russian Federation containing labor norms, collective agreements, agreements, as well as local regulations adopted by the Club with account for the regulations of the Russian Football Union, regulatory documents of the International Federation of Association Football, Union of European Football Associations, Russian Football Union, Russian Premier League [...]”.*

52. The Appealed Decision was issued by the DRC in accordance with RFU Regulations, Article 1 of which provides:

“When considering the disputes, the Chamber and the Committee apply the Constitution of the Russian Federation, federal constitutional laws, normative acts of the President of the Russian Federation and resolutions of the Government of the Russian Federation, regulatory legal acts of federal executive bodies, regulatory legal acts of constituent entities of the Russian Federation and other normative legal acts in force in the territory of the Russian Federation, the RFU Statutes, the rules adopted by the FIFA, UEFA and the RFU, decisions of the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) [...] in terms of court practice of applying these norms, usual and customary business practices, as well as contracts, agreements, if they are concluded in accordance with the legislation of the Russian Federation”.

53. The Parties agree that the RFU Regulations should apply, with Russian laws should be used to fill any lacunae.

54. The RFU, which has issued the challenged decision, is based in Russia.

55. Applying this hierarchy, these positions and facts to the present matter, the RFU Statutes and Regulations (subject to the FIFA Statutes and together with the regulations of UEFA), apply. Russian labor legislation and other norms of labor law are to be considered as applicable subsidiarily.

VIII. MERITS

56. The issues for consideration in this case center around the extent to which a discretionary right to award bonuses is absolute or qualified, and whether it is qualified, the extent to which it can be qualified.
57. The Appellant essentially argues that its right to pay bonuses is discretionary, and that the extent of this discretion is absolute or quasi-absolute in that it may, despite a practice adopted early during the football season, change this practice if it so wishes. The Bonus Regulations are essentially guidelines that set player's expectations as to what they might receive (not necessarily what they will receive) as a result of achieving certain outcomes on the pitch. This is clearly supported by the reference in the Bonus Regulations to maximum amounts. The existence of such maxima implies that there is a range of possible payments that can be made. The absence of an identified minimum means that this minimum can be zero.
58. The Player argues that while the applicable law provides for discretion as to the establishment or non-establishment of a bonus scheme, the manner in which the bonus scheme is applied creates expectations as to the future application of the scheme and the correct interpretation of the bonus regulations. In effect, bonuses at an expected level become salary and must be paid.
- a. Is the payment of bonuses obligatory (i) under the LCRF, or (ii) by contract?**
59. The language of Article 135 LCRF specifies that wages of an employee are set out in an employment contract, and that "*stimulation payments and supplements and bonus systems shall be established by collective agreements, agreements...*".
60. As a result, the LCRF does not make the establishment of a bonus scheme obligatory *per se*, but rather states that where it exists, it shall form part of a contract and one which may be of a collective nature.
61. It is undisputed that the Bonus Regulations were established by the Club and, as an Annex to the Agreement, are incorporated therein. Thus, to the extent that bonuses are to be paid to the Player, the Bonus Regulations constitute the document that binds the parties as to the manner in which they should be paid out. Their existence, and the fact that they provide for the payment of bonuses establishes that the payment of bonuses is mandatory by contract.
62. This finding, however, does not *ipso facto* mean that the amount of a given bonus payment may not be zero. For this purpose, the language of the Bonus Regulations and the manner in which they have been interpreted in practice is determinative.
- b. If so, what conditions apply to (i) the payment of bonuses and (ii) the bonus amounts?**
63. The Bonus Regulations specify a number of conditions which determine the ultimate sum due as a bonus. These include the category of team being played, the result of the given match,

and whether or not the team placed in the top four in the Russian Championship standings at the end of the season.

64. The Appellant argues that since it has the discretion as to whether or not to award bonuses at all, it has complete discretion as to whether or not to do so even if the Bonus Regulations exist, given that these provide that bonuses may be awarded “up to” the stipulated amounts. The Appellant argues that “up to” necessarily identifies a maximum amount that may not be surpassed for a given achievement, and that since there is no specified minimum, it must necessarily be zero. This provides the Club with the discretion not to recognize an achievement if it deems, of its own volition, that a bonus is not to be awarded. As a result, an excellent sporting performance or lack of disciplinary record of any kind by a given Player could result in the non-award of a bonus for reasons that are entirely beyond the Player’s means of influence.
65. The Player rather holds that the Club was obliged to pay the maximum amounts established in the Bonus Regulations under the condition that the Player performed his contractual obligations, and that the Club only had the right to decrease said amounts if the Player did not meet such obligations. The use of the terms “up to” with respect to the maximum amounts was meant to provide for the possibility that a Player may be penalized for disciplinary reasons. It could also refer to the fact that 50% of the bonuses were payable within 30 days of the achievement giving rise to them, while 50% would only be paid once the end-of-season result was known. These terms therefore allowed for a variability in payments that was inherent to the Bonus Regulations’ objective to achieve both short-term (match) and long-term (championship) results.
66. Both of these interpretations are not entirely unreasonable, at least theoretically. There can, however, only be one correct interpretation if the bonus scheme is to achieve its goal of motivating the team to achieve the desired results. For incentive schemes of this kind to provide the necessary motivation, those striving to achieve this goal must be able to expect that payment of the bonus must be certain upon obtention of the result. Presumably the higher the expected payment is, the greater the degree of motivation to achieve the identified goal. It is therefore essential that the objectives be clearly defined, and that the expected reward for reaching it also be clear.
67. This is what the Bonus Regulations do, at least as far as clarifying that wins over certain categories of teams are worth more than wins against other teams, seeing as the amounts identified for each are not the same. To the extent that there could be any doubt in the Player’s mind with respect to the manner in which the Bonus Regulations would be applied, there were two sources primary sources of information: (i) the information provided by the Head Coach, and (ii) the manner in which the Club went about applying the Bonus Regulations when the season got underway.
68. It so happens that both of these confirmed the Player’s logical interpretation that the “maximum” amounts referred to in the Bonus Regulations were the actual amounts that could be expected. During the first half of the season, this is how they were applied by the Club. No other interpretation was provided. Moreover, it appears that the policy of paying team

members who did not play during a given match one half of the “maximum” bonus amounts – despite the fact that the Bonus Regulations did not provide for this explicitly – corresponded to the Club’s practice. As the Head Coach had explained that this is the way in which the Bonus Regulations would be applied, it is clear that the Head Coach was speaking for the Club when he informed the players, including the First Respondent.

69. All of this supports the Player’s interpretation of the Bonus Regulations that the “maximum” bonus amounts were those that all parties intended should be paid to the players. In addition to this, the fact that the Bonus Regulations were drawn up by the Club and the application of the principle of *in dubio contra stipulatorem* indicates a finding in the Player’s favour.
70. Finally, the fact that Mr. Sayakhov did not tell the Player forthrightly that the bonuses would not be paid and strung him along for some time before it became evident that this would be the case is far from “polite” (the reason Mr. Sayakhov provided as an explanation for the content of his answers to the queries raised by the Player). As the Player correctly explained, the announcement mid-season that no further bonuses would be forthcoming would have likely had a devastating effect on team morale. Given that the team managed to reach the semi-finals of the Russian Championship, it is not out of the realm of possibility that part of the players’ motivation for their late-season achievement was, at least partially, due to the expectation of higher bonus payouts as a result.
71. The reasons provided by Mr. Sayakhov as justification for non-payment are not compatible with the Club’s obligations under the Bonus Regulations, and therefore the Agreement. Lack of funds, while practically making it more difficult to pay employees, does not negate the employee’s right to payment. The Player had a right to receive the expected amounts.

c. Did the lack of payments to Player in the second half of the 2016/17 season breach the Club’s obligations to him?

72. For the reasons set forth above, given that the LCRF provides for bonuses to be subject to an agreement, and given that this agreement existed and did not give the Club the ability to forego the payment of the sums identified therein and that it did not do so, the Club breached its obligations to the Player.
73. As a result of the foregoing, the Sole Arbitrator does not see a basis upon which to change the decision of the RFU DRC.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Football Club Rubin Kazan on 30 August 2018 against the decision issued by the RFU Dispute Resolution Chamber on 6 July 2018 is dismissed.
2. The decision issued by the RFU Dispute Resolution Chamber on 6 July 2018 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.