Arbitration CAS 2018/A/6045 Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow, award of 17 February 2020

Panel: Mr Alexander McLin (Switzerland), President; Mr João Nogueira da Rocha (Portugal); Mr Frans de Weger (The Netherlands)

Football
Outstanding remuneration and bonuses in a contract of employment between a player and a club
Applicable law
Statute of limitation
Determination of the date of the exchange rate
Discrimination of the player regarding payment of bonuses

1. **In agreeing to arbitrate a dispute according to the CAS Code, the parties have submitted themselves to the conflict-of law rules contained therein, in particular to article R58 of the CAS Code. Article R58 of the Code, implicitly agreed to by the parties, takes precedence over any explicit choice of law by the parties (for example in the contract), since the purpose of Art. 58 of the CAS Code is to restrict the autonomy of the parties. This article provides for a mandatory hierarchy of the applicable legal framework, which the parties cannot change. Consequently the parties are entitled to freedom of choice of law solely within the limits set by Art. R58 of the CAS Code, with the result that they can only determine the subsidiarily applicable law. In contrast, under article. 58 of the CAS Code, the "applicable regulations" always primarily apply, regardless of the will of the parties. Therefore, FIFA Regulations are applicable principally, and are subject to Swiss law with respect to their interpretation and application where they seek to set uniform standards internationally. The law chosen by the parties, more generally, is to be considered as applicable subsidiarily to the issues not addressed by the FIFA regulations, such as the specific calculation of salary and bonus amounts owed.**

2. **Under Article 25 par. 5 of the FIFA Regulations on the Status and Transfer of Players, the FIFA Dispute Resolution Chamber shall not hear any case subject to the Regulations if more than two years have elapsed since the event giving rise to the dispute. The statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due and not when a formal notice is given, when the contract is terminated or when a dispute actually arises. The triggering moment is the maturity of the debt i.e. the date in which the debt became due. According to article 87 of the Swiss Code of Obligations, payments with no identified purpose e.g. where the debtor failed to specify which of its debts it was paying and how the payment has been allocated, should be attributed to debt arising first.**

3. **In the absence of a definition or further specification on the meaning of the "day of charge" chosen by the parties to calculate the exchange rate between RUB and EUR, a**

CAS panel must apply an objective, reasonable meaning to assess on which date the exchange rate has to be calculated. If evidence brought by one party that *"according to the current law of the Russian Federation, employee's salaries shall be charged on the last day of each month"* has not been contested by the other party which has not established on what grounds in the Russian legislation the "day of charge" should not be "the last day of each month", then the CAS panel can consider the day of charge to be the last day of each month.

4. **According to the subsidiarily national law applicable to the dispute i.e. Article 22, para. 2 of the Labour Code of Russia, the employer has an obligation to provide workers with equal payment for work of equal value. Furthermore, Article 132 of the Labour Code of Russia forbids any discrimination at establishment and change of terms of payment for work. Accordingly, a bonus amount corresponding to the bonus awarded to similarly situated teammates for the win of the national cup during the relevant season at the applicable exchange rate is appropriate and should be granted to the appellant player.**

I. PARTIES

1. Mr. Manuel Henrique Tavares Fernandes (the "Appellant" or the "Player") is a professional Portuguese professional footballer, born on 5 February 1986.

2. FC Lokomotiv Moscow (the "Respondent" or the "Club") is a Russian football club based in Moscow. It is affiliated to the Russian FA and participates in the Russian Professional Football League (First Division).

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as presented in the Parties' written submissions and evidence adduced in the course of the present proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Contract

4. On 1 June 2014, the Appellant entered into an employment contract with the Respondent, valid for five years, i.e. from 1 June 2014 until 31 May 2019 (the "Employment Contract").

5. The relevant terms of Annex No. 1 to the Employment Contract provide as follows:

1.1 During the period of work of the Football player in the Club, the Club is obliged to pay to the Football

player the Remuneration, that shall be paid obligatory and in full amount subject to the condition of the proper performance by the Football player of his obligations under the Contract.

1.2 The Remuneration of the Football player, in accordance with the subparagraph 1.1 of the present Annex, is determined in amount of 383200 (three hundred eight three thousand and two hundred) Euros monthly (before deduction of individual income tax).

1.3 The Club shall pay to the Football player an additional bonus amounting to 2299000 (two million two hundred ninety nine thousand) Euros (before deduction of individual income tax) which is to be paid no later than on 15 July 2014.

1.4 Additional premiums may be paid to the Football player in accordance with the Clubs team bonus system.

1.5 All payments, indicated in the Contract its Annexes, are performed in Russian RUB. In that case, if the due sums are indicated in the foreign currency, the payment is performed in Russian RUB at the rate of the Central Bank of Russia on the day of charge.

1.6 In accordance with the active legislation, the Club deducts the individual income tax from the sums, paid to the Football player. The current individual income tax rate is 13%.

…

2.1.1. The Club is not obliged to provide the apartment for living for the Football player and members of his family (to rent the apartment for the Football player).

2.1.2. Instead of renting an apartment for the Football player the Club shall to pay to the Football player an amount of 5000 (five thousand Euros monthly (before deduction of the individual income tax). The Football player shall rent an apartment on his own.

7. Other than the above, the Employment Contract does not contain a provision regarding the specific payment date of the Appellant's remuneration. In this regard, the Parties did not further define or specify the term "day of charge".

8. Throughout the duration of the Employment Contract, it is undisputed that the Appellant's remuneration was paid by the Respondent in Russian RUB. This said, throughout this period, the Appellant contested the amounts of his salary payments, in particular the exchange rate used by the Respondent for the payment of his salaries.

9. In particular, on 24 July 2015, the Appellant sent a letter to the Respondent requesting the payment of outstanding salaries in the amount of RUB 6'747'918.32 for the period between June 2014 and May 2015, as well as the payment for match bonuses in the total amount of RUB 4'435'000. He also asked the Respondent to provide him with an explanation on the method used for calculation of his salaries in application of the currency rates.

10. Having received no response, on 7 August 2015, the Appellant reiterated the aforesaid requests in a second letter addressed to the Respondent.

11. On 21 August 2015, the Respondent rejected the Appellant's requests, asserting *inter alia* that the *"Labour Code of Russia stipulates that a date of charge is defined by an employer and established in its bylaws. In this regard, we particularly note that any legal entity may set not a specific date, but a period of time when a salary is to be charged"*. Moreover, and in short, the Respondent rejected the Appellant's claim for additional salary and bonus payments, and suggested that the Appellant re-calculate his demand based on erroneous currency exchange rates.

12. On 4 September 2015, the Appellant responded to the Respondent and disputed its assertions on payments, bonuses, and currency rates. The Appellant again reiterated his request for the payment of outstanding salaries and match bonuses, and requested his payslips for the entire period of employment and all documents setting the dates of accrual of salaries and the team bonus system for seasons 2014-2015 and 2015-2016.

13. The Respondent did not respond to the Appellant's requests.

B. The Decision of the Dispute Resolution Chamber of FIFA

14. On 30 April 2017, the Appellant lodged a claim before the FIFA's Dispute Resolution Chamber ("DRC") against the Respondent for outstanding remuneration, requesting RUB 11,182,918.32 plus 5% interest p.a. as of 25 July 2015, detailed as follows:

    1) RUB 6'747'918.32 as outstanding salaries for the period between June 2014 and May 2015;

    2) RUB 522'000.00 as part of a bonus for a match allegedly played on 13 March 2015;

    3) RUB 3'913'000.00 as part of the bonus for the winning of the Cup of Russia, which the club allegedly partially paid on 28 May 2015.

15. In his claim, the Appellant also requested sporting sanctions to be imposed on the Respondent.

16. The Appellant filed a claim on the basis that he was entitled to salaries in the *"total net amount"* of RUB 236'982'510.30 for the period between June 2014 and May 2015, alleging that he had only received RUB 230'234'591.98 and that the Respondent did not use the exchange rate of the Central Bank of Russia applicable *"on the last day of the month"* or, alternatively, *"on the day of payment"*.

17. On 24 August 2018, the FIFA DRC rendered the following decision (the "DRC Decision):

    "The claim of the Claimant, Manuel Henrique Tavares Fernandes, is rejected insofar as it is admissible".

18. On 16 November 2018, the grounds of the DRC Decision were notified to the Parties.

19. The relevant points of the DRC Decision read as follows:

> 6. *In this context, the Chamber first referred to art. 25 par. 5 of the Regulations, according to which the Dispute Resolution Chamber shall not hear any case subject to the Regulations if more than two years have elapsed since the event giving rise to the dispute. Considering that the claim of the Claimant was lodged in front of FIFA on 30 April 2017 only, the Chamber found that it could not enter into any claim for salaries and bonuses that fell due prior to 30 April 2015.*
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> 7. *Taking into account the previous consideration, the Chamber preliminarily concluded that the Claimant's request for the salaries and bonuses accrued before the date of 30 April 2015 was barred by the statute of limitations in accordance with art. 25 par. 5 of the Regulations.*
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> 8. *In continuation, the members of the Chamber took note that, according to the contract, the player's salary was agreed in euros and payable in roubles. Furthermore, the DRC observed that, in his claim, the Claimant argued that the amounts paid by the Respondent in roubles did not cover the amounts contractually agreed in euros. In particular, the player claimed that, pursuant to the applicable exchange rate, the conversion from euros to roubles resulted in outstanding salaries due.*
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> 9. *Subsequently, the Chamber observed that the Respondent submitted its reply to the claim after notification of the closure of the investigation of the matter at hand. As a result, in line with art. 9 par. 4 of the Procedural Rules as well as the Chamber's constant jurisprudence in this regard, the DRC decided not to take into account the reply of the Respondent and established that, in accordance with art. 9 par. 3 of the Procedural Rules, a decision shall be taken upon the basis of those documents on file that were provided prior to the closure of the investigation-phase, in casu, upon the statements and documents presented by the Claimant.*
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> 10. *In view of the aforementioned considerations, in respect of the question as to whether or not the amounts paid by the Respondent in RUB corresponded to the amounts contractually agreed in euros, the members of the Chamber firstly referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the Dispute Resolution Chamber to conclude that it was up to the Claimant to prove that the amounts paid by the Respondent in roubles did not cover the amounts contractually agreed in euros.*
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> 11. *Having stated the above, the members of the Chamber concurred that the Claimant did not substantiate his allegations, as it did not present any evidence in respect of the exchange rate which the Respondent allegedly had to apply to the amounts contractually agreed. In particular, the Claimant did not provide the Chamber with any evidence which could corroborate that the exchange rate indicated by the Claimant was, in fact, correct.*
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> 12. *On account of the aforementioned considerations, the DRC had no other option than to conclude that, since the Claimant had not been able to prove that the amount paid by the Respondent did not correspond to the amount contractually agreed, his claim for outstanding salaries was rejected. In particular, the DRC highlighted that the Claimant failed to provide any official document which would demonstrate that the official exchange rates actually corresponded to the ones he alleged were applicable.*
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> 13. *In continuation, as to the claim for outstanding bonuses, the Chamber first noted that, pursuant the contract, the payment of bonuses was subject to the club's bonus system. With the above in mind, taking into account the documentation presented by the Claimant in support of his petition, the DRC observed that the Claimant had not submitted any evidence with reference either to the club's bonus system or the*

bonuses allegedly agreed. As such, it was not possible for the DRC to ascertain that the player was actually entitled to the requested bonuses.

14. *Consequently, the DRC concluded that the Claimant had not fully substantiated his claim for outstanding bonuses with pertinent documentary evidence in accordance with art. 12 par. 3 of the Procedural Rules and, thus, decided to reject also this part of the claim.*

15. *The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 7 December 2018, the Player filed a Statement of Appeal pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration ("Code") with the Court of Arbitration for Sport ("CAS") against the Respondent with respect to the DRC Decision. In his Statement of Appeal, the Appellant requested that this procedure be referred to a Sole Arbitrator.

21. Moreover, in his Statement of Appeal, the Appellant requested that the CAS order the Respondent to produce certain documents and to fix his time limit to file the Appeal Brief only upon receipt of such documents, as follows:

a) FC Lokomotiv's policy and method of calculation of salaries towards players, applicable during the season 2014-2015;

b) a proof that the Appellant was familiarized with the aforementioned policy (if any);

c) FC Lokomotiv's policy and method of calculation of its bonuses for the season 2014-2015 (including office-memos (if any) basing on which the amount of the Appellant's bonus for the win of the Cup of Russia was decreased, comparing to his teammates) and the list of all players who received a bonus at the end of the season 2014-2015, including the amounts of respective bonuses;

d) a proof that the Appellant was familiarized with the aforementioned policy (if any);

e) payslips for the Appellant's salaries for the period from 01 June 2014 to 31 May 2017, with an indication which currency rate was used to calculate the amounts in Russian RUB;

f) *a proof that the aforementioned payslips were given by FC Lokomotiv to the Appellant, as prescribed by law (if any).*

22. Pending the Respondent's response to this request, the CAS Court Office suspended the Appellant's time to file his Appeal Brief.

23. On 17 December 2018, the Respondent objected to the Appellant's production request.

24. On 18 December 2018, the President of the CAS Appeals Arbitration Division rejected the Appellant's request to suspend his time limit to file the Appeal Brief pending receipt of such requested documents in accordance with Article R32 of the Code. A new deadline of 28 December 2018 for the filing of his Appeal Brief was subsequently set by the CAS Court Office.

25. On 19 December 2018, the Respondent objected to the Appellant's request to submit this matter to a Sole Arbitrator.

26. On 27 December 2018, the Appellant filed his Appeal Brief pursuant to Article R51 of the Code.

27. On 28 December 2018, the Deputy President of the CAS Appeals Arbitration Division decided to submit this matter to a three-member Panel in consideration of the circumstances of the present case and invited the parties to make their respective arbitrator nominations.

28. On 6 January 2019, the Appellant nominated Mr. João Nogueira da Rocha as arbitrator.

29. On 10 January 2019, the Respondent nominated Mr. Frans de Weger as arbitrator.

30. On 4 February 2019, following an agreed-upon extension of time, the Respondent filed its Answer in accordance with Article R55 of the Code.

31. On 6 February 2019, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President:	Mr. Alexander Mc Lin, Attorney-at-Law, Geneva, Switzerland
Arbitrators:	Mr. João Nogueira da Rocha, Attorney-at-Law, Lisbon, Portugal Mr. Frans de Weger, Attorney-at-Law, Haarlem, the Netherlands

32. On that same date, the CAS Court Office confirmed the appointment of Me. Marianne Saroli, Attorney-at-Law in Montreal, Canada, as *ad hoc* clerk.

33. On 13 February 2019, following an inquiry from the CAS Court Office, the Respondent informed the CAS Court Office of his preference for an award to be rendered on the sole basis of the Parties' written submissions. No such response was received from the Appellant.

34. On 28 February 2019, the CAS Court Office advised the Parties that the Panel considered itself sufficiently well-informed with the Parties' written submissions and therefore decided not to hold a hearing in accordance with Article R57 of the Code.

35. On 6 March 2019, the Appellant signed and returned the Order of Procedure in this appeal on the condition that the Panel rule on his request for production, noting as follows:

- A Request for Evidentiary Measures was included in the Statement of Appeal. On 18 December 2018, the President of the CAS Appeals Arbitration Division rejected his request for suspension of his time limit to file the Appeal Brief until receipt of certain documents requested to be produced by the Club while no decision was rendered on the Request for Evidentiary Measures.
- Only the Bonus Regulations were presented by the Respondent from the list of the evidence requested by the Appellant.

- In its Answer, the Respondent did not contest the facts that other players of the team were rewarded by the bonus of RUB 4'350'00.00 (net of taxes) for the win of the Cup of Russia and that payslips were never provided to the Appellant despite having been requested. Thus, the Respondent tacitly confirmed these facts.
- The Respondent stated in its Answer that it had the right to choose any date of accrual of salaries in accordance with the Russian laws, without substantiating such statement and presenting its method of calculation.
- In its Answer, the Respondent did not contest the BDO auditor's letter.

36. On 8 March 2019, the Respondent signed and returned the Order of Procedure.

37. On 8 March 2019, the Panel, in response to the Appellant's inquiry, directed the Respondent to produce all the documents requested by the Appellant within a 10-day deadline, pursuant to Article R44.3 of the Code.

38. On 22 March 2019, the Respondent questioned the Panel's decision of 8 March 2019 and expressed the following comments:

- The decision not to satisfy the Appellant's request for evidentiary measures was taken on 18 December 2018 and consequently, the Respondent asks the Panel to clarify the situation and specify if necessary which documents to produce.
- The Appellant should be in possession of the documents he is requesting. The Appellant has the obligation to produce the evidence that will support his claims while his request for production of certain documents does not meet the requirements set out in Article 44.3 of the Code.
- The Appellant breached Article R44.l of the Code when he submitted additional arguments in his letter dated of 6 March 2019.
- The Appellant made false and misleading conclusions based on his own assumptions as the Respondent never confirmed or admitted the facts stipulated by the Appellant in his letter dated 6 March 2016.

39. On 25 March 2019, the CAS Court Office advised the Respondent that the President of the CAS Appeals Arbitration Division only rejected the Appellant's request for a suspension of its time limit to file appeal brief until there was a decision on the Appellant's request for a production of documents, pursuant to Article R32 of the Code. The Respondent was reminded that only the Panel has the power to decide on the Appellant's request for production of documents, pursuant to Article R44.3 of the Code, and that the Panel would address his comments in the final award.

40. On 25 March 2019, the Respondent filed a single document in response to the Appellant's production request.

41. On 8 April 2019, the Appellant, with the consent of the Panel, commented on the Respondent's document production as follows:

- The Respondent only filed one document from the list of the documents requested, namely the list of players who received a bonus for the win of the Cup of Russia 2014-2015 and failed to produce the following documents:
  a) *FC Lokomotiv's policy and method of calculation of salaries towards players, applicable during the season 2014-2015;*
  b) *a proof that the Appellant was familiarized with the aforementioned policy (if any);*
  c) *a proof that the Appellant was familiarized with the bonuses' policy (if any);*
  d) *payslips for the Appellant's salaries for the period from 01 June 2014 to 31 May 2017, with an indication which currency rate was used to calculate the amounts in Russian RUB;*
  e) *a proof that the aforementioned payslips were given by FC Lokomotiv to the Appellant, as prescribed by law (if any).*
- The Respondent failed to produce its policy and method of calculation of salaries towards players, applicable in the season 2014-2015 and did not provide an adequate explanation on how it calculated the Appellant's salaries and which currency rate it applied.
- By failing to provide to produce the payslips, it can be presumed that the Respondent never provided the Appellant with a chance to know what was paid to him and how it was calculated.
- Only one of the papers presented by the Respondent is relevant, namely the Order dated of 28 May 2015. The other papers presented by the Respondent were not only not relevant, but also not requested by the Appellant.
- The Respondent provided an illustrative and self-explanatory list of employees rewarded by bonuses for the win the Cup of Russia. It appears that most players, whether they had played 1 or 5 matches, were rewarded with RUB 300'00.00. However, the Appellant only received RUB 100'000.00, contrary to Articles 22 and 132 of the Labor Code of Russia.
- A decision to reduce bonuses or to deprive a Player of bonuses could not be arbitrary made by the Club, without a reason, expressly stipulated into the contract or internal regulations.
- In comparison to similarly situated players, there is a clear discrimination of the Appellant's labour rights.

42. On 15 April 2019, the Respondent replied to the Appellant's comments filed on 9 April 2019 as follows:

- The Appellant breached Article R44.l of the Code when he submitted additional arguments in his letter dated of 6 March 2019.
- Contrary to the Appellant's assertion, the Respondent produced three documents, namely: an Order dated 28 May 2015, Order dated of 12 March 2015 and Bonus Regulations.
- The Appellant made false and misleading conclusions.

43. On 16 April 2019, the Respondent objected to the Appellant's comments filed on 9 April 2019 and sought confirmation as to whether they were admitted to the file.

44. On 17 April 2019, the CAS Court Office, on behalf of the Panel, advised the Respondent that the Appellant's comments filed on 9 April were expressly allowed by the Panel further to unsolicited evidence untimely submitted by the Respondent, without any explanations, which the Respondent had ample opportunity to address earlier in the proceedings. The Appellant's submission was therefore permitted under the circumstances.

45. This said, the Panel notes that the lone document filed by the Respondent on 25 March 2019 (i.e. the Order dated 12 March 2015) was not one of the documents requested by the Appellant and does not pertain to any requests for relief. Therefore, for completeness and the avoidance of doubt, the Panel does not accept such document on the file.

IV. SUBMISSIONS OF THE PARTIES

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

A. The Position of the Appellant

47. In his Appeal Brief, the Appellant seeks the following relief:

1. *To uphold the present appeal against the Decision of the Dispute Resolution Chamber of FIFA dated 24 August 2018;*
2. *To rule that FC Lokomotiv shall pay to the Appellant the overdue payables in the net amount of 11 097 918 30 Russian RUB from which 6 747 918 30 Russian RUB is the monthly salary, while the rest 4 350 000 Russian RUB are the team bonuses;*
3. *To rule that FC Lokomotiv shall pay to the Appellant the interest at a rate of 5% per annum, accrued in accordance with Article 236 of the Labour Code of Russia on the amount of 11 097 918,30 Russian RUB as from 25 July 2015;*
4. *To rule that FC Lokomotiv shall contribute to the legal and other costs incurred by the Appellant in relation to these proceedings, in the amount the CAS finds appropriate;*
5. *To rule that FC Lokomotiv shall bear the entire costs of this arbitration and reimburse the Appellant the minimum CAS Court Office fee of CHF 1000 as well as any other amounts of advances of costs paid to the CAS.*

48. The Panel notes that in his Statement of Appeal as well as in the proceeding before the FIFA DRC, the Appellant sought a slightly higher amount of 4'435'000 RUB as unpaid bonus. The

Panel accepts, in conformity with the principle of *non ultra petitum*, that the amount of 4'350'000 RUB as claimed in the Appeal Brief and corresponding to the total amount in dispute of 11'097'918.30 RUB as accepted by the parties in the Order of Procedure is the final amount claimed regarding unpaid bonuses for purposes of the instant case.

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

a) Outstanding salaries

- When signing the Employment Contract (which was drafted by the Respondent), the Appellant was informed by the Respondent that *"day of charge"* expressly meant (as for monthly payments) *"the last day of each respective month"* and (as for all other payments) *"the day of respective payment"*. Respondent later confirmed this information by means of the official letter of its auditor, BDO, as follows: *"According to the current law of the Russian Federation, employees' salaries shall be charged on the last day of each month. In the case of termination of employment contract, any payment due to employee (including the compensation for the termination of employment agreement) shall be charged on the date of termination of employment agreement, i.e. on the final working day of the employee. Date of charge (accrual) may differ from the date of payment"*. Accordingly, it is clear that the Respondent understood that the monthly payments had to be accrued on the last day of each respective month, irrespectively of the dates when they were effectively paid, and, therefore, the official currency rates set by the Central Bank of Russia for the last day of each respective month had to apply.
- On 16 July 2014, the Appellant received payment in the amount of RUB 92'958'841.60, which was equal to EUR 2'000'130.00 at the applicable exchange rate (RUB 46.47 per 1 Euro), set by the Central Bank of Russia for this date. Hence, the Respondent duly executed its obligations under Article 1.3 Annex 1 to the Employment Contract.
- The Respondent, however, never made its monthly payment in one instalment, instead varying the payment over 1 to 3 instalments. For instance, the Appellant received 1 payment in June 2014, 2 payments in July-November 2014, 3 payments in December 2014, 2 payments in January 2015, 1 payment in February 2015, 3 payments in March 2015, 2 payments in April and May 2015.
- During the first year of the employment (period from 1 June 2014 to 31 May 2015), the Respondent made payments to the Appellant without specifications. It was, therefore, impossible for the Appellant to know for which respective month a payment was made.
- According to Article 136 of the Labor Code of Russia, an employer must inform each employee, in writing, the salary amount accrued in that certain month, the deductions that were made to the salary amount, and the total amount that is due and owing. The Respondent, however, did not do this and the Appellant could not verify the accuracy of the Respondent's salary calculations.
- During the first contractual year, all monthly payments had to be accrued on the last day of each respective month, irrespectively of the dates of effective payments. The Appellant was entitled to receive RUB 236'982'510.28 by 31 May 2015, calculated as follows:

	Russian Central Bank's official exchange rate on the last day of the month	Due amount in EUR	Due amount in RUB
2014			
June	45.8251	337'734	15'476'694.32
Jul	47.8958	337'734	16'176'040.12
August	48.6315	337'734	16'424'511.02
September	49.9540	337'734	16'871'164.24
October	54.6378	337'734	18'453'042.75
November	61.4108	337'734	20'740'515.13
December	68.3427	337'734	23'081'653.44
2015			
January	78.1105	337'734	26'380'571.61
February	68.6857	337'734	23'197'496.20
March	63.3695	337'734	21'402'034.71
April	56.8060	337'734	19'185'317.60
May	58.0145	337'734	19'593'469.14
TOTAL:			**236 982 510.28**

- However, as the following chart sets out, the Appellant only received RUB 230'234'591.98 by 31 May 2015.

	Date of payment	Received amount in RUB
2014		
June	27.06.2014	885'600
July	16.07.2014 29.07.2014	14'574'383.82 898'000
August	15.08.2014 28.08.2014	15'173'939.56 913'200.00
September	15.09.2014 26.09.2014	15'326'781.30 945'000
October	14.10.2014 28.10.2014	15'896'965.33 1'013'700
November	14.11.2014 27.11.2014	16'767'877.58 1'122'500.00
December	01.12.2014 15.12.2014	19'614'814.56 1'287'500

	29.12.2014	20'155'033.11
2015		
January	16.01.2015 30.01.2015	1'494'000 24'262'573.78
February	13.02.2015	1'432'000
March	11.03.2015 16.03.2015 27.03.2015	20'638'858.85 1'238'180 19'728'718.02
April	15.04.2015 28.04.2015	1'064'000.00 17'301'043.23
May	15.05.2015 27.05.2015	1'067'000.00 17'432'922.84
	TOTAL:	**230'234'591,98**

- The difference of these two amounts (RUB 236'982'510.28 – RUB 230'234'591.98) amounts to RUB 6'747'918,30 net of taxes, which is what the Respondent owed the Appellant at end May 2015. It is can also be represented as follows:

	Due amount	Date of payment	Received amount in RUB	Amount of debt (on the last day of the month)
2014				
June	15'476'694.32	27.06.2014	885'600	14'591'094.32
July	16'176'040.12	16.07.2014 29.07.2014	14'574'383.82 898 000	15'294'750.62
August	16'424'511.02	15.08.2014 28.08.2014	15'173'939.56 913'200	15'632'122.08
September	16'871'164.24	15.09.2014 26.09.2014	15'326'781.30 945'000	16'231'505.02
October	18'453'042.75	14.10.2014 28.10.2014	15'896'965.33 1'013'700.	17'773'882.44
November	20'740'515.13	14.11.2014 27.11.2014	16'767'877.58 1'122'500	20'624'019.99
December	23'081'653.44	01.12.2014 15.12.2014 29.12.2014	19'614'814.56 1'287'500 20'155'033.11	2'648'325.76
2015				
January	26'380'571.61	16.01.2015 30.01.2015	1'494'000 24'262'573.78	3'272'323.59
February	23'197'496.20	13.02.2015	1'432'000	25'037'819.79

March	21'402'034.71	11.03.2015 16.03.2015 27.03.2015	20'638'858.85 1'238'180 19'728'718.02	4'834'097.63
April	19'185'317.60	15.04.2015 28.04.2015	1'064'000 17'301'043.23	5'654'372.00
May	19'593'469.14	15.05.2015 27.05.2015	1'067'000 17'432'922.84	**6'747'918.30**

- While the Respondent fully paid the Appellant's salaries until April 2015, it failed to pay RUB 6'747'918.30 due and owing for May 2018. By June 2015, the Respondent made partial payments corresponding to the accrued amounts but the balance amount of RUB 6'747'918.30 remains unpaid to this day.
- This outstanding amount arose due to the misapplication of the relevant currency exchange rates by the Respondent during the first year of the Employment Contract. In a letter dated 21 August 2015, the Respondent indicated that it had discretion to choose which date to accrue the monthly salaries and, respectively, which currency rate to apply. In this respect, however, the Respondent failed to provide the Appellant with any document setting the dates of accrual of salaries or with a legal ground enabling the Respondent to choose any date for accrual.
- In the Appealed Decision, the FIFA DRC unreasonably concluded that the claim relating to outstanding salaries *"accrued before the date of 30 April 2015"* were time-barred. The salaries that were accrued before the date of 30 April 2015 were paid. The only outstanding amount corresponded to the salary of May 2015, which accrued on 31 of May 2015, in keeping with Article 87 of the Swiss Code of Obligations ("SCO"). Since the claim before the FIFA DRC was filed on 30 April 2017, it was not time-barred.

b) Unpaid bonus and discrimination of the labour rights

- During the Respondent's licensing procedure, the Appellant was requested to sign a declaration confirming that the Respondent duly executed its pecuniary obligations towards him. The Appellant signed a declaration in protest highlighting that the Respondent paid his salaries using a wrong exchange rate but the Respondent refused to accept the Appellant's assertions concerning this exchange rate issue.
- In response, the Respondent started to put pressure on the Appellant and deprived him of the team bonus for the win of the Cup of Russia in the season 2014-2015. While all his teammates were rewarded by bonuses amounting of RUB 4'350'000 net of taxes, the Appellant (who was one of the only two players who played in all five matches of the Cup of Russia and in four of which he was the first-eleven player) did not get his bonus payment.
- The Respondent's attitude towards the Appellant was driven by Mrs. Olga Smorodykaya, the former President of the Respondent, who was at odds with the Appellant. Nevertheless, further to well-established CAS jurisprudence, the

Respondent's refusal to include the Appellant into the list of workers who had to be rewarded with bonuses, without a valid reason, constitutes a form of discrimination under Russian law. Such assertion is support by Articles 3, 22, and 132 of the Labour Code of Russia which state respectively as follows:

Nobody can be limited in labor rights and freedoms or to get any advantages depending on a gender, race, skin color, nationality, language, origin, property, marital, social and official capacity, age, residence, relation to religion, beliefs, accessory or not belonging to public associations or any social groups and also from other circumstances which are not connected with business qualities of the worker;

The employer is obliged: … to provide workers equal payment for work of equal value;

Any discrimination at establishment and change of terms of payment for work is forbidden.

- Consequently, the Respondent owes the Appellant the bonus for the win of the Cup of Russia (season 2014-2015), in the net sum of RUB 4'350'000 (as paid out to other qualified teammates).

c) Default interest

- Article 236 of the Labour Code of Russia provides as follows:

  "In the case of violation by the employer of time limits for payment of the salary, leave allowance, payments at dismissal and (or) other payments which are due to the worker, the employer is obliged to pay them with payment of the default interest (monetary compensation) at a rate of ***not less than 1/150 of the key interest rate of the Central bank of the Russian Federation*** *operating at this time, from the sums which are not paid in time for each day of the delay, that shall accrue as from the next day after the established period of payment till the day of effective payment, inclusively. In the case of an incomplete payment at the scheduled time of the salary and (or) other payments which are due to the worker, the amount of interest (monetary compensation) shall be calculated from the sums which are actually not paid in time".*

- The key interest rate, set forth by the Central Bank of Russia, is 7.75 % per annum. However, as he only requested the rate of 5% p.a. to be applied in his claim during his underlying procedure with the FIFA DRC, he is limited in this procedure in his request for the same rate (i.e. 5% p.a.). Such amount should be awarded by this Panel accordingly.

B. The Position of the Respondent

50. In its Answer, the Respondent requests this Panel:

1. *To dismiss the appeal against the Decision of the FIFA Dispute Resolution Chamber dated 24 August 2018;*
2. *To uphold the Decision of the FIFA Dispute Resolution Chamber dated 24 August 2018;*
3. *To order the Appellant to participate in legal and other expenses of the Respondent related with the present proceedings in the amount the CAS considers appropriate;*
4. *To order the Appellant to bear the expenses related with the costs of the present CAS arbitration.*

51. The submissions of the Respondent, as contained in its written submissions, are summarized, in essence, as follows:

a) Recalculation of the salaries at the rate of the Central Bank of Russia

- The request to recalculate the salaries at the rate of the Central Bank of Russia on the last day of each respective month or alternatively, on the day of payment, is groundless. Pursuant to the Employment Contract, all the payments indicated therein shall be performed in Russian RUB at the rate of the Central Bank of Russia on the day of charge and not on the day of settlement (payment).
- In accordance with the existing legislation of the Russian Federation, the day of charge of salaries may not coincide with the day of settlement (payment). Taking into consideration the fact that the Labour Code of Russia stipulates that the day of charge is determined by the employer and shall be indicated in the employer's local statutory acts, the Respondent emphasizes that the organization can determine a period (or range of possible dates) when the salaries are to be charged instead of a specific date of charge.

b) The Appellant's claim is time-barred

- In accordance with Article 25 par. 5 of the FIFA Regulations on the Status and Transfer of Players ("FIFA Regulations"), if more than two years have elapsed since the event giving rise to the dispute, such dispute shall not be heard.
- The event giving rise to the dispute is the alleged non-payment of salaries in full as well as non-payment of bonuses for Appellant's participation in the match against FC Rostov in 2014/2015 sports season during the period from 1 June 2014 until 30 April 2015.
- The Appellant's claim is time-barred and therefore, he is precluded from obtaining payments for the salaries and bonuses accrued for the period from 1 June 2014 until 30 April 2015 in full.
- Moreover, the Appellant's reference to Article 87 of the SCO is inadmissible since this legal provision governs situations when the debtor acknowledges the existence of a debt. Here, the Respondent always disputed the debt in its correspondence with the Appellant.
- In response, the Respondent refers to Articles 86.1 and 87.1 of the SCO:

  Article 86.1

  "A debtor with several debts to the same creditor is entitled to state at the time of payment which debt he means to redeem. 2 In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately".

  Article 87.1

  "Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that

first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first. 2 Where several debts fell due at the same time, the payment is offset against them proportionately. 3 If none of the debts is yet due, the payment is allocated to the one offering the least security for the creditor".

In accordance with the foregoing, the limitation period was never interrupted as the Respondent never acknowledged the claim and never made corresponding payments.

c) Bonus Payment

- The Appellant is wrong to assert that he was deprived of team bonus while his teammates received bonus amounting to RUB 4,350,000.
- In reality, the Appellant received team bonuses during the entire season, including bonuses for both participation in the match with FC Rostov (charged on 12 March 2015) and for the win in the Cup of Russia in the season 2014/2015 (charged on 28 May 2015).
- Bonus payments are discretionary taking into consideration such criteria as personal contribution of the employee, each rewarded employee having committed or not a disciplinary offence, etc., and the maximum amount of bonuses is not obligatory for payment. As a result, the Appellant does not have an unconditional right to receive it.
- More specifically, the Respondent relies on the following provisions of the Regulations:

  2.4. The rewarding is performed by the President of the Club upon the listing made by Assistant to President — Director of the Lokomotiv football team based on individual labour estimations of each employee and his personal contribution to fulfillment of objectives and contractual obligations drawn up as the order of the President of the Club.

  2.5. The rewarding of the employees who belong to the category "other employees" determined by the present Regulations is performed upon the decision of the President of the Club and in the amount determined by the President of the Club drawn up as the order of the President of the Club.

  2.6. Articles 3 and 4 of the present Regulations determine the maximum amount of rewards that may be paid to different categories of the employees determined by the present Regulations. The maximum amount of the rewards determined by the present Regulations shall not be essentially charged. The amount of the rewards for each concrete match is determined by the decision of the President of the Club and depends on:

  - *personal contribution of each rewarded employee towards the result achieved by the team in each concrete match;*
  - *each rewarded employee having committed or not a disciplinary offence;*
  - *other criteria.*

d) Discrimination of Labour Rights

- The Appellant's reliance on testimony of former employees (players) of the Respondent to justify his claim for discrimination is extremely subjective and inadmissible in this

procedure. He has put forth no credible or conclusive evidence to support his claim and, therefore, it should be rejected accordingly.

V. JURISDICTION

52. 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.

53. The jurisdiction of CAS, which is not disputed, derives from Article 58 para. 1 of the FIFA Statutes that provides as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 of the Code.

54. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties. It, therefore, follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

55. Article R49 of the Code provides as follows:

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

56. The motivated part of the DRC Decision was delivered to the Appellant on 16 November 2018. The Appellant, in turn, filed his Statement of Appeal on 7 December 2018. Therefore, the 21-day deadline to file the appeal was met and no objection was filed to the contrary.

57. The Panel, therefore, finds that the appeal is admissible.

VII. APPLICABLE LAW

58. Article R58 of the Code provides as follows:

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

59. Separately, Article 57 para. 2 of the FIFA Statutes provides the following:

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

60. As an initial matter, the Panel notes that Article 11.11 of the Employment Contract provides as follows: *"The Parties hereby definitely agree that in the case of any dispute the Russian laws shall only be applicable"*. Moreover, the Employment Contract, which sits at the heart of this dispute, was negotiated and implemented in Russia where the Appellant was an employee of a Russian football club.

61. While the Parties did not make specific submissions on the law to be applied, the Panel observes that they relied upon the application of the Russian law to the present dispute throughout their written submissions.

62. This said, however, it is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act ("PILA") is the relevant arbitration rules of law for an arbitration held in Switzerland (DUTOIT B., Droit international privé Suisse, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P.-Y., in Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad Article 186 PILA).

63. Article 176 para. 1 of PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland. CAS has its seat in Lausanne, Switzerland. Therefore, PILA is applicable to the arbitration proceedings.

64. Article 187 para. 1 of the PILA provides – inter alia – that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*.

65. According to this legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted themselves to the conflict-of law rules contained therein, in particular to Article R58 of the CAS Code (*see* CAS 2008/A/1705, CAS 2008/A/1639, and CAS 2006/A/1141).

66. In addition to their implicit and indirect choice of law, the Parties also explicitly chose the application of Russian law in Article 11.11 of the Employment Contract and have heavily relied upon and substantiated the application of Russian law to the matter at hand throughout their submissions.

67. The manner in which a combination of rules of law and regulations should be applied in the context of a given dispute has been the subject of numerous CAS cases (see e.g. CAS 2013/A/3401, CAS 2013/A/3383-3385, and CAS 2014/A/3742). Within these decisions, the Panels conclude that Article R58 of the Code, implicitly agreed to by the parties, *"takes*

precedence over any explicit choice of law by the parties (for example in the contract), since the purpose of Art. 58 of the CAS Code is to restrict the autonomy of the parties. This Article provides for a mandatory hierarchy of the applicable legal framework, which the parties cannot change. Consequently the parties are entitled to freedom of choice of law solely within the limits set by Art. R58 of the CAS Code, with the result that they can only determine the subsidiarily applicable law. In contrast, under Art. 58 of the CAS Code, the "applicable regulations" always primarily apply, regardless of the will of the parties" (HAAS U., "Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law", CAS Bulletin 2015/2, p. 17).

68. The Panel, therefore, applies this hierarchy to the present matter and finds that the FIFA Regulations are applicable principally, and are subject to Swiss law with respect to their interpretation and application where they seek to set uniform standards internationally. Russian law, more generally, is to be considered as applicable subsidiarily to the issues not addressed by the FIFA regulations, such as the specific calculation of salary and bonus amounts owed.

VIII. MERITS

A. Is the Appellant's claim time-barred?

69. The FIFA DRC concluded that the Appellant's claim relating to outstanding salaries and bonuses accrued before 30 April 2015 was time-barred in accordance with Article 25 par. 5 of the FIFA Regulations. Therefore, as a threshold matter and before entering into the substance of this appeal, the Panel must determine whether the Appellant's claim against the Respondent is time-barred.

70. On the one hand, the Appellant acknowledges receipt of the salaries accrued before 30 April 2015 but asserts that an outstanding amount remains due and owing for May 2015 on the basis that the Respondent misapplied the currency rates. This amount accrued on 31 May 2015. The Appellant contends that he filed his claim before the FIFA DRC on 30 April 2017 and therefore, his claim is not time-barred.

71. On the other hand, the Respondent believes the alleged unpaid salaries and bonuses accrued before 30 April 2015 and therefore, the Appellant cannot assert any claim for remuneration that fell due prior to this date.

72. Under Article 25 par. 5 of the FIFA Regulations, the DRC shall not hear any case subject to the Regulations if more than two years have elapsed since the event giving rise to the dispute. The application of this article has been supported by CAS 2015/A/4350, whereby the Sole Arbitrator found that *"pursuant to the clear wording of the applicable regulations, the statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due and not when a formal notice is given, when the contract is terminated or when a dispute actually arises. The triggering moment is the maturity of the debt"*.

73. In consideration of the foregoing, the Panel considers that the maturity of the debt is to be calculated at the moment which the dispute arises, i.e. the dated in which the debt became due.

74. Here, both Parties refer in their written submissions to Articles 86 and 87 of the SCO. In this respect, the Panel remarks that these articles stipulate the rules of attribution of payments as follows:

"Article 86

1. A debtor with several debts to the same creditor is entitled to state at the time of payment which debt he means to redeem.

2. In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately".

Article 87

1. Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first".

75. The Appellant contends that the amounts due as unpaid, or rather insufficient, salaries should be considered as having arisen in May 2015 and are thereby admissible. He asserts that the Respondent failed to specify which of its debts it was paying and how the payment has been allocated. His argument is grounded in Article 87 of the SCO, according to which the Appellant posits that payments with no identified purpose should be attributed to debt arising first (*see infra* CAS 2016/A/4858). The Appellant's approach leads to a deficit remaining owed in May 2015, which is to be considered as the event giving rise to the dispute.

76. The Appellant's arrival at the outstanding amount of RUB 6'747'918.30 in May 2015 is rather shrewd. The Panel holds that the Appellant cannot be faulted for not having tried to raise the issue in a timely manner (which he did multiple times) and for seeking an explanation as to which exchange rate was applied to his payments, and on what date precisely. He never seems to have received a satisfactory answer, and these were important questions at a time when the value of the RUB was falling significantly against the EUR.

77. While it is unclear why the Appellant waited until the end of the two-year limitation to bring his claim before FIFA, his argument that it was difficult to understand which payments corresponded to which months is valid given that he apparently was never given further explanation or payment slips despite having requested them (namely on 24 July 2015, 1 August 2015 and 4 September 2015). The Panel stresses that only by looking at a full year's compensation in retrospect could the Appellant determine the total amount of the debt he was owed.

78. This being said, from looking at the payment summary table provided by the Appellant and the corresponding bank statements, it does appear that there were two payments each month

that generally corresponded to that month's compensation, with a payment in early March 2015 corresponding to February 2015. It is also clear for the Panel that the Respondent did not generally make the payments in one instalment. As such, the Panel finds it is relatively easy to calculate the amount of the debt outstanding for each month.

79. But the Respondent, in its answer, did not provide any contrary evidence or explain its variations in monthly payments sufficient to upend the Appellant's forensic calculations. It follows that the Respondent simply failed to explain which debts it intended to discharge when making the payments in question.

80. So with this, the Panel is minded to take a broad approach to application of the statute of limitations and follow the position of the Sole Arbitrator in CAS 2016/A/4858, which provided that: *"according to article 87 SCO, when the debtor does not specify which of its debts it is paying to its creditor and the payment receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first"*.

81. While the Appellant argues that the debt owed is to be considered as having arisen in May 2015 if previous payments were systematically applied to the debt having arisen first, the Panel finds that this is not a whimsical approach as it is simply based on the application of Article 87 of the SCO.

82. In opposition, the Respondent reasons that Article 87 of the SCO can only be applied with respect to uncontested debt, and that the debt was contested in this case. In spite of this, the Respondent does not dispute the applicability of Article 87 SCO, but rather its interpretation and application, as it contends that this logic only applies if the debt is not contested, which it is in the instant case.

83. In this respect, the Panel underlines that Article 86 SCO provides *"[I]n the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately"*. Here, the Panel does not have either a statement from the debtor, a receipt from the creditor, or indeed an immediate objection from the debtor. As noted above, the Respondent has not provided any evidence of this to the Panel.

84. Accordingly, Article 87 of the SCO applies and the Panel, therefore, accepts the Appellant's position regarding the time at which the debt accrued. The significance of this finding is that the Appellant's claim is not time-barred.

85. The Panel finds it noteworthy that the FIFA DRC concluded that the Appellant's request for the salaries and bonuses accrued before the date of 30 April 2015 was *"barred by the statute of limitations in accordance with Article 25 par. 5 of the FIFA Regulations"*.

86. The Panel's rationale used to reach its conclusion on this issue is grounded in the relative merit of the parties' arguments. This said, it is debatable whether Article 25 par. 5 of the FIFA Regulations constitutes a true statute of limitations with the meaning that a claim cannot be

brought to before any competent tribunal after two years. In fact, Article 25 par. 5 of the FIFA Regulations seems to be specifically addressed to the internal bodies of FIFA: the PSC, the DRC, the Single Judge or the DRC Judge. FIFA's intent is clear in that it has determined, perhaps for reasons of expediency and resource management, that the FIFA DRC will not hear a claim if it is filed two years after the event giving rise to the dispute. The question remains whether this limitation also applies outside of the scope of FIFA's internal dispute resolution mechanisms.

87. As explained, Appellant's accrual of debt approach has been found valid under the Article 87 SCO rationale. It is not wholly irrelevant, however, that pursuant to Article 128.3 SCO, the statute of limitations for workers bringing claims is five years while Article 129 SCO provides that this is mandatory law that cannot be modified contractually. It would appear therefore that the validity of a limit on a workers' right to bring a claim which first fell due between five and two years prior is questionable. However, as this issue is not determinative in the instant case, the Panel refrains from further analysis, namely how this issue is to be assessed in the context of the applicable regulations (see *supra* § 66).

B. Exchange rate on the "day of charge"

88. The aforesaid is only relevant if there is indeed a remaining debt in favour of the Appellant. How the Panel determines this, however, is dependent on its decision regarding the "day of charge" issue.

89. The Respondent asserts having fulfilled its financial obligations towards the Appellant. Yet, the Appellant claims that the amount paid by the Respondent did not correspond to the amount contractually agreed with respect to the exchange rate. More particularly, the Appellant believes that the outstanding amounts of salaries arose due to an improper application by the Respondent of the currency rates during the first year of the Employment Contract.

90. The Panel notes that it is undisputed that the Appellant received RUB 230'234'591.98 by 31 May 2015. The issue is rather on which date the exchange rate between RUB and EUR had to be calculated.

91. On one hand, the Appellant claims that the monthly salaries had to be charged on the last day of each respective month.

92. On the other hand, the Respondent contends that all the payments indicated in the Employment Contract shall be performed in RUB at the rate of the Central Bank of Russia on the day of charge and not on the day of settlement (payment) as the day of charge of salaries may not coincide with the day of settlement pursuant to the existing legislation of the Russian Federation. The Respondent further asserts, in accordance with the Labour Code of Russia, that the day of charge is determined by the employer and shall be indicated in the employer's local statutory acts.

93. Nevertheless, the Panel recognises that Articles 1.2 and 1.3 of the Employment Contract set out the Appellant's remuneration (including bonus) in EUR.

94. The Panel can reasonably infer that the Appellant was more interested in the amount he would be paid in EUR, rather than the one in RUB, namely in consideration of the international dimension of the employment relationship, and noting that the Appellant was a foreigner to Russia. The fact that he was being paid in RUB is clearly the result of local requirements, which also explains reason for the inclusion of Article 1.1 of the Employment Contract, which specifies that *"if the due sums are indicated in the foreign currency, the payment is performed in Russian RUB at the rate of the Central Bank of Russia on* ***the day of charge****".*

95. Based on a plain reading of the Employment Contract, the Panel determines that the Parties chose to apply the exchange rate on the "day of charge". But in doing so, did not define the term "day of charge". If it had indeed been the intention of the Parties not to apply the exchange rate on the "day of charge", they could have easily specified the exchange rate in the Employment Contract. The Parties did however not do so. Despite the absence of a definition or further specification, the Panel, therefore, must assess on which date the exchange rate between RUB and EUR had to be calculated and in doing so, must apply an objective, reasonable meaning.

96. The Panel starts from the Appellant's declaration whereby he states having been informed at the time of signing the Employment Contract that the last day of each month would be the day of charge. The Appellant substantiates the aforesaid with the BDO auditors' letter, which states that *"according to the current law of the Russian Federation, employee's salaries shall be charged on the last day of each month"*. In this respect, the Panel observes that the Respondent did not contest the plain language of the auditor's letter in its written submissions or otherwise offer a counter-interpretation.

97. Based on the foregoing, the Panel considers the Respondent's silence in response to the evidence placed before it a tacit agreement with the Appellant's argument on this point. It is not sufficient to remain quiet on this pivotal issue, in the face of countervailing evidence, and expect the Panel to apply (yet alone substantiate) a contrary application of this accounting principle. The Panel finds that the Respondent did not establish on what grounds in the Russian legislation the "day of charge" should not be "the last day of each month". Consequently, the Respondent did not succeed in substantiating its position and failed to prove the Parties intended to apply the exchange rate on the "day of charge" as simply determined by the employer.

98. Hence, the Panel considers the day of charge to be the last day of each month. As a result, the amount due and owing to the Appellant is RUB 6'747'918.30.

C. Bonuses

99. As a final matter, the Panel refers to Article 22, para. 2 of the Labour Code of Russia, which specifies an obligation for the employer to provide workers with equal payment for work of

equal value. Furthermore, Article 132 of the Labour Code of Russia forbids any discrimination at establishment and change of terms of payment for work.

100. The Panel must, therefore, address the question of whether the Appellant was discriminated against in comparison to his teammates. To do so, the Panel believes it is relevant to analyse the bonus payments made by the Respondent to the other players who played fewer games than the Appellant during the Cup of Russia.

101. In the course of season 2014-2015, FC Lokomotiv won the Cup of Russia. The team played a total of five matches during this tournament. It appears that the Appellant was one of only two players of FC Lokomotiv who took part in all five matches, the second player being Alexander Samedov. All other players played fewer matches.

102. In four of these five matches, the Appellant was a first-eleven player, including in the final match against FC Kuban, which was also not disputed by the Respondent.

103. At the end of the season 2014-2015, all players of the team, except for the Appellant, were rewarded with bonuses for the win of the Cup of Russia. For instance, Oumar Niasse, who played four matches and scored two goals, was rewarded with RUB 4'350'000.00. Nemanja Pejcinovic, who played four matches but scored no goals and had two yellow cards, was also rewarded with RUB 4'350'000.00.

104. In the face of the foregoing evidence, the Respondent failed to adequately distinguish the Appellant's performance from that of his teammates, in any event sufficiently to justify the non-payment of a bonus. Specifically, it failed to substantiate or explain the alleged disciplinary action against the Appellant, explain how such incident affected his bonus, or provide any specific reason to justify why he did not receive similar bonuses to those received by his teammates.

105. Given the extent of the efforts undertaken by the Appellant in the case at hand to get an explanation as to the discrepancy between payments made to players on his team, the Respondent's statement that the amount is purely "discretionary" seems wholly insufficient, especially when the amount he was awarded corresponds to the "minimum" of what is given for a win early on in the tournament, let alone winning the championship cup.

106. The Respondent's behaviour is reminiscent of the football club in CAS 2010/A/2204, where the CAS Panel affirmed a decision of the RFU which ordered the club to pay bonuses "similar" to other teammates and concluded that the club in question discriminated against certain players in violation of their labour rights. And even in this case the players received more of an explanation concerning the discrepancy in bonus payments than the Appellant appears to have received in the matter before this Panel.

107. In view of the above, the Panel determines that the Respondent did not adequately pay out the appropriate bonus to the Appellant. In consideration of the evidence on file, the Panel determines that a bonus amount of RUB 4'350'000.00 is appropriate, corresponding to the

bonus awarded to similarly situated teammates for the win of the Cup of Russia during season 2014-2015 at the applicable RCB EUR exchange rate on 31 May 2015.

D. Interest

108. The Panel observes that Article 73 of the Swiss Code of Obligations provides as follows:

"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".

109. This interest rate coincides with the Appellant's request set out in his written submissions, and his request before the FIFA DRC.

110. The Respondent does not object to application of this interest rate or make any arguments to the contrary application of a different rate. Indeed, the Respondent does not address the application of legal interest whatsoever.

111. As explained in CAS 2015/O/4014, Swiss law provides that *"in the case of a debt which is identifiable and due prior to the initiation of arbitral proceedings, the date of the summons is the appropriate moment at which interest begins to run"* (GRANGES M., Les intérêts moratoires en arbitrage international, p. 293-298). In the instant case, the Player sent his first summons on 24 July 2015.

112. Therefore, the Panel concludes that interest at a rate of 5% per annum over the amount of compensation shall be awarded to the Appellant as of 25 July 2015.

IX. CONCLUSION

113. In light of the foregoing, the Panel upholds the Appellant's appeal. As a result, the DRC Decision is set aside and the Respondent ordered to pay to the Appellant the amount of RUB 11'097'918. 30, plus interest at 5% p.a. as from 25 July 2015 until the date of final payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Manuel Henrique Tavares Fernandes on 7 December 2018 against FC Lokomotiv Moscow concerning the Decision issued on 24 August 2018 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is upheld.

2. The Decision issued on 24 August 2018 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is set aside.

3. FC Lokomotiv Moscow is ordered to pay to Manuel Henrique Tavares Fernandes the total amount of RUB 11'097'918. 30, plus interest at 5% p.a. as from 25 July 2015 until the date of final payment.

4. (…).

5. (…).

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