Arbitration CAS 2020/A/6889 Antalyaspor A.Ş. v. Richard Danilo Maciel Sousa Campos, award of 22 December 2020

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Just cause for termination according to Article 14bis RSTP
Just cause for termination according to the general principle of Article 14 RSTP
Ne ultra petita

1. **Pursuant to Article 14bis (1) of the FIFA Regulations on the Status and Transfer of Players (RSTP), which was introduced in the 2018 Edition of the said regulations, when a club has failed to pay a player at least two consecutive monthly salaries, such player is considered having a just cause for termination provided that he has put the club in default of payment in writing, granting the club a deadline of 15 day to remedy its debt.**

2. **Article 14bis RSTP comes as a kind of *lex specialis* to the general principle that a contract can be terminated with just cause providing specification with respect to what has to be considered a just cause based on what is the source of the (vast) majority of disputes between professional players and clubs brought before the DRC: unpaid or overdue payables. With regard to the general principle, Article 14 (1) RSTP provides that a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause. Although a warning in writing has consistently been considered a condition for a lawful termination according to FIFA and CAS jurisprudence, the provision at issue does not contain any specific formal requirement with respect to the issue of a prior warning by the party terminating the contract to the other party, and in particular, no specific period of notice is required.**

3. **Without prejudice to the provision of article R57 of the CAS Code, which confers to the CAS full power to review the facts and the law of the case, a CAS panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges to decide all claims submitted by the parties and, at the same time, prevents from granting more than the parties are asking, in accordance with the principle of *ne ultra petita* deriving from Article 58 of the Swiss Code of Civil Procedure.**

I. INTRODUCTION

1. This appeal is brought by Antalyaspor A.Ş. against the decision rendered by the Dispute Resolution Chamber (the "DRC" or the "Chamber") of the Fédération Internationale de Football Association ("FIFA") on 5 December 2019 (the "Appealed Decision"), regarding an employment-related dispute arisen with Mr Richard Danilo Maciel Sousa Campos.

II. PARTIES

2. Antalyaspor A.Ş. (the "Club" or the "Appellant") is a professional football club, based in Antalya, Turkey, competing in the Süper Lig of the Turkish Football Championship. It is a member of the Turkish Football Federation (the "TFF") which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. Richard Danilo Maciel Sousa Campos (the "Player" or the "Respondent") is a professional football player of Brazilian and Belgian nationality, born on 13 January 1990 in Sao Luis, Brazil.

4. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

III. FACTUAL BACKGROUND AND FIFA PROCEEDINGS

5. Below is a summary of the main relevant facts and allegations based on the Parties' oral and written submissions on the file and relevant documentation produced in these appeal proceedings. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator 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 he considers necessary to explain its reasoning.

6. On 21 January 2016, the Player and the Club signed an employment contract valid for three sporting seasons (2015/2016, 2016/2017, 2017/2018), as from the date of signing until 31 May 2018 (the "First Employment Contract").

7. According to Article 4 of the First Employment Contract, the Parties stipulated the following with regard to the Player's net salaries:

> *"4.1. Player shall receive annual legal minimum wage. Total annual payment of each season includes the minimum wages sum and when the annual payment of the season is done, minimum wages considered paid as well.*

4.2. Other Payments

a) 2015-2016 season total 300.000.-EURO

i) 100.000.-EURO on signature date.

ii) 40.000.-EURO x 5 monthly instalments (starting from 15th February 2016)

(…)

b) 2016-2017 season total 500.000.-EURO

i) 50.000.-EURO x 10 monthly instalments (starting from August 2016)

(…)

c) 2017-2018 season total 500.000.-EURO

i) 50.000.-EURO x 10 instalments (starting from August 2017)".

8. During the term of the First Employment Contract, the Club failed to comply with the payment of the Player's salaries in the amount of EUR 225,000 in relation to the sporting season 2017/2018.

9. On 30 July 2018, the Parties signed a new employment contract, named *"Professional Football Player Transfer Contract"*, valid as from 3 August 2018 until 31 May 2020 (the "Second Employment Contract") according to which the Club undertook to pay to the Player the following guaranteed net amounts:

- For the season 2018/2019, a signing fee of EUR 50,000 on 15 August 2018, in addition to 10 monthly instalments of EUR 65,000 starting from August 2018 as well as EUR 25,000 as net allowance fee for accommodation and travel expenses on 15 October 2018 (Article 3.1.1);

- For the season 2019/2020, a signing fee of EUR 50,000 on 15 August 2019, in addition to 10 monthly instalments of EUR 65,000 starting from August 2019 as well as EUR 25,000 as net allowance fee for accommodation and travel expenses on 15 October 2019 (Article 3.2.1).

10. Moreover, the Player was entitled to receive additional variable bonuses adding up to an overall amount of EUR 150,000 for each sporting season of the Second Employment Contract, depending on the Player's performance and on the Club's sports achievements.

11. In addition, under Article 3.3 of the Second Employment Contract, the Parties also acknowledged that the Club owed to the Player outstanding salaries amounting to EUR 225,000 net for the sporting season 2017/2018 under the First Employment Contract, to be payable as follows:

- EUR 100,000 on 15 August 2018;

- EUR 62,500 on 30 October 2018;

- EUR 62,500 on 30 November 2018.

12. By letter dated 27 November 2018 (the "Warning Letter"), the Player put the Club in default of payment of the total amount of EUR 423,500, allocated as follows:

    - EUR 50,000, corresponding to the signing fee due on 15 August 2018; EUR 195,000, corresponding to three monthly salaries for August, September and October 2018, as well as EUR 25,000 as allowance fee for expenses, according to Article 3.1.1 of the Second Employment Contract;

    - EUR 162,500, corresponding to the first and second instalments of overdue payables respectively due on 15 August 2018 and 30 October 2018 according to Article 3.3 of the Second Employment Contract.

    (The Sole Arbitrator hereby notes that the total amount of all the items indicated by the Player actually adds up to EUR 432,500 and not EUR 423,500, which was probably due to a clerical error).

13. The Player urged the Club to comply with the relevant payment within 15 days according to Article 14*bis* of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and pursuant to the Special Provisions, lit. b) of the Second Employment Contract, failing which he would terminate the Second Employment Contract with just cause.

14. The Warning Letter was shipped by UPS courier to the address of the Club's registered office in Antalya, where it was delivered on 30 November 2018.

15. By letter to the Appellant dated 14 December 2018, the Player claimed that the Club had failed to pay the requested amount of EUR 423,500 within the given deadline, and that, since no further delay had been granted in order to remedy the relevant debt, he was terminating the Second Employment Contract with effect from 15 December 2018, reserving the right to take legal action against the Club (the "Termination Letter").

16. In the relevant part, the Termination Letter reads as follows: *"As that notification was received by the club the 30 November 2018 the 15-day regulatory deadline to pay the full outstanding amount is 14 December 2018. The amount of €423,500 was not received. As a result. Mr Sousa hereby terminates the Contract with the Club effective immediately, the 15 December 2018"*.

17. The content of the communication was forwarded on 15 December 2018 via email to the personal address of the Club's director, Mr. Çavuşoğlu, as well as to the official Club's email address, and the letter was shipped by UPS courier to the Club's registered office, and delivered on 19 December 2018.

18. On 20 December 2018, the Player signed a new employment contract with Al-Wahda valid as from 1 January 2019 until 30 June 2019, subject to extension for a further year from 1 July 2019 until 30 June 2020 at the choice of the club. According to the employment contract, the Player was expected to receive a signing fee of EUR 110,000 as well as a monthly salary of EUR 40,000 during the first contractual year, and a monthly salary of EUR 58,334 during the second contractual year, in case of extension.

19. On 11 January 2019, the TFF informed the Player's legal counsel that, having acknowledged receipt of the relevant notification by the latter, the termination of the Second Employment Contract had been duly registered in their records.

20. On 31 January 2019, the Player and Al-Wahda signed a termination agreement of the employment contract signed on 20 December 2018 by which the parties found a settlement as follows: *"1. The two Parties have agreed to terminate the Contract, which was signed between them on 20-12-2018 as well as Contracts and annexes signed between them before the conclusion of this mutual agreement, with effect from 30-01-2019. Both Parties have agreed to settle the dues of the second party as per the terms of the contract. 2. The Second Party acknowledges that his financial dues have been settled and he will receive his monthly salary of (€ 58,334) fifty-eight thousand three hundred and thirty-four Euros for the months of January, February, March, April 2019, total amount will be (€ 233,336) for four months at the dates of disbursement of salaries to foreign professional players and not more than (15) of the next month. 3 Both parties acknowledge that each party is fully released from any claims or financial obligations toward the other party for all contracts and annexes which have been signed by the two parties before this agreement, following receipt of receiving all the dues described above by the Second Party. The signature of the second party to this agreement is considered as an acknowledgement from him"*.

21. On 11 February 2019, the Player lodged a claim before the FIFA DRC against the Club for breach of contract, maintaining he had just cause for termination of the Second Employment Contract and requesting payment of the total amount of EUR 1,559,664, broken down as follows:

- EUR 583,550 as overdue amount (namely, the abovementioned amount of EUR 423,500 + the instalment of EUR 62,500 which became due on 30 November 2018 in accordance with Article 3.3 of the Second Employment Contract + EUR 97,500 corresponding to the salary for November 2018 as well as a proportional amount of the salary for December 2018); [it is hereby noted that, in fact, the aggregate amount would be EUR 583,500];

- EUR 1,017,500 as compensation for breach corresponding to the residual salaries due under the Second Employment Contract as from the date of termination;

- EUR 195,000 as additional compensation, equivalent to three monthly salaries;

- A deduction of EUR 236,336 in compliance with the duty of mitigation, which was the overall amount the Player declared having received from Al-Wahda [it is hereby noted that, in fact, the amount indicated under the relevant termination agreement is EUR 233,336], corresponding to compensation agreed upon with the club for the mutual termination of the relevant employment agreement on 31 January 2019 (in fact, the Player

specified that Al-Wahda failed to pay him any of the salary he was supposed to receive under the relevant employment contract);

- In addition, the Player requested to be awarded a contribution of CHF 10,000 towards the legal fees and costs incurred in connection with the proceedings.

22. The Player specified that, in accordance with Article *14bis* of FIFA RSTP, although the Club was granted a 15-day period to fulfil its financial obligations, it failed to do so and therefore, the conditions for termination were all satisfied.

23. On 14 February 2019, the Player signed an employment contract with Dinamo Minsk valid from 14 February 2019 until 31 July 2020, as well as a supplement to this contract. According to these documents, the Player was entitled to a net monthly salary of USD 15,000 and BYN 1,830.35.

24. In its response to the Player's claim, the Club acknowledged that, due to financial problems, as of 14 December 2018 he owed the Player an overdue amount of EUR 445,000 but argued that the compensation claimed by the Player was excessive, requesting the Player to further mitigate the relevant amount by the alternative salaries received from the subsequent club(s) after termination of the Second Employment Contract.

25. In his replica, the Player reduced his claim from EUR 1,559,664 to EUR 1,288,399 in consideration of two payments made by the Club on 3 August 2018 and on 12 December 2018 respectively, and also as a consequence of the duty of mitigation with respect to the further amounts earned under the employment contract signed with Dinamo Minks from 14 February 2019 until 31 May 2020 (i.e. the date of expiry of the Second Employment Contract).

26. In its final submission, the Club objected to the rightfulness of the Player's termination of the Second Employment Contract affirming that the 15-day period deadline granted by the Player for the payment ended on 14 December 2018 and therefore, the Player could only terminate the contract on the following day.

27. As to the mitigated compensation requested by the Player, the Club insisted that the relevant amount was still excessive and objected to the Player's request of the amount of EUR 195,000 as additional compensation.

28. On 5 December 2019, the FIFA DRC rendered the Appealed Decision, by which the Player's claim was accepted, as follows:

1. *The claim of the Claimant, Richard Danilo Maciel Sousa Campos, is accepted.*

2. *The Respondent, Antalyaspor AŞ, has to pay to the Claimant outstanding remuneration in the amount of EUR 486,000, plus 5% interest p.a. as from 11 February 2019 until the date of effective payment.*

3. *The Respondent has to pay to the Claimant, compensation for breach of contract without just cause in the amount of EUR 802,399, plus 5% interest p.a. as from 11 February 2019 until the date of effective payment.*

4. *Any further claim lodged by the Claimant is rejected.*

5. *The Claimant is directed to inform the Respondent, immediately and directly, of the relevant bank account to which the Respondent must pay the amount mentioned above.*

6. *The Respondent shall provide evidence of payment of the due amounts plus interest to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).*

7. *In the event that the amount due is not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

8. *The aforementioned ban will be lifted immediately and prior to its complete serving, once the due amount is paid.*

9. *In the event that the aforementioned sum is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision".*

29. The grounds of the Appealed Decision were served by facsimile to the Parties on 3 March 2020.

IV. GROUNDS OF THE APPEALED DECISION

30. The grounds of the Appealed Decision can be summarized as follows:

31. Firstly, the DRC considered that, in principle, it would be the competent body to decide the present case, involving an employment-related dispute between a Brazilian and Belgian Player and a Turkish Club, based on the provision of Article 24 (1) in combination with Article 22 lit. b) of the FIFA RSTP.

32. Moreover, considering that the Player lodged his claim on 11 February 2019, the Chamber established that the June 2018 edition of the FIFA RSTP was applicable to the matter at hand as to the substance.

33. With regard to the merits, the DRC noted that on 27 November 2018, the Player put the Club in default of paying the amount of EUR 423,500 as outstanding salaries, granting a 15-day deadline to remedy the default, and subsequently sent the Termination Letter to the Club on 14 December 2018, to be effective as from 15 December 2018.

34. Therefore, the DRC considered that in principle, it appears that the Player met the conditions outlined under Article 14bis of the FIFA RSTP, with respect to the amount of the arrears, the delivery of a letter of formal notice and the prescribed 15-day deadline.

35. With regard to the Club's position, the Chamber noted that the Club acknowledged that, as of 14 December 2018, it owed to the Player outstanding salaries in the amount of EUR 445,000 (which corresponds to more than the minimum threshold of two monthly salaries provided under Article 14bis of the FIFA RSTP). Moreover, the DRC reminded that, in line with its well-established jurisprudence, financial difficulties cannot be considered a valid justification for non-compliance by a club with its essential obligations to pay a player's remuneration.

36. As a result, it was established that the Player had just cause for termination on the basis of Article 14bis of the FIFA RSTP and, as a consequence, the Club was liable to pay compensation under the provision of Article 17 of the said regulations.

37. With regard to the Player's outstanding salaries, the Chamber took into consideration the amount of EUR 423,500, based on the Player's request in his Warning Letter and observed that the Player was also entitled to receive an additional sum corresponding to the third instalment under Article 3.3 of the Second Employment Contract which fell due on 30 November 2018 (i.e. after the notification of the Warning Letter and before termination of the Second Employment Contract). In this respect, although the relevant instalment amounted to EUR 77,250, according to the DCR's findings, the Chamber finally awarded the Player the amount of EUR 62,500 based on the Player's request, in accordance with the principle of *non ultra petita*. Finally, the Chamber established that the Player was entitled to receive a total amount of EUR 486,000 as outstanding remuneration.

38. As to the amount of compensation, the Chamber referred to the provision of Article 17 of the FIFA RSTP in the absence of any compensation clause in the Second Employment Contract and proceeded with the calculation of the monies payable to the Player from the unilateral termination of the Second Employment Contract until the date of its natural expiry and concluded that the Player would have been entitled to receive EUR 1,123,500 (EUR 398,500 + EUR 725,000 for the season 2019/2020).

39. Therefore, the amount of EUR 1,123,500 was regarded as the basis for the final determination of the compensation for breach of contract in the present case. Further, in accordance with the duty of mitigation of damages, the Chamber deducted the amount of EUR 233,336 which the Player received under the termination agreement with Al-Wahda, as well as EUR 239,250, corresponding to the amount earned by the Player under the employment contract signed with Dinamo Minsk over 16.5 months from 14 February 2019 until 31 May 2020 (i.e. the natural expiry of the Second Employment Contract).

40. Finally, the DRC established that the mitigated compensation amounted to EUR 670,914.

41. In addition, the Chamber calculated the additional compensation in accordance with Article 17, (1) ii of the FIFA RSTP, in the amount of EUR 183,750, based on the average monthly salary of EUR 61,250 (EUR (725,000 + 10,000): 12).

42. However, taking into account that the Player's claim was limited to the total amount of EUR 1,288,399, including outstanding remuneration in the amount of EUR 486,000, the Chamber

considered that, in order for the principle of *non ultra petita* to be respected, the total amount of compensation for breach of contract could not be higher than EUR 802,399 (EUR 1,288,399 – EUR 486,000).

43. In addition, and in consideration of the Player's claim, the Chamber also imposed on the Club the payment of interests at the rate of 5% p.a. on the outstanding amount and compensation as from the date of claim, i.e. 11 February 2019.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

44. On 23 March 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (the "CAS Code"). The Appellant chose English as the language of the arbitration and requested that the present case be submitted to a sole arbitrator.

45. On 27 March 2020, the CAS Court Office initiated the present procedure and *inter alia* invited the Respondent to express his view on the Appellant's request for the appointment of a sole arbitrator.

46. On the same day, the Respondent objected to the Appellant's request to appoint a sole arbitrator but reserved the right to reconsider his decision upon receipt of the Statement of Appeal.

47. On 2 April 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

48. On 8 April 2020, the CAS Court Office invited the Respondent to file his Answer within twenty day. On the same day, he requested the CAS Court Office a 14-day extension of this time limit.

49. On 9 April 2020 the CAS Court Office informed the Parties that the Respondent's request for an extension of the time limit to file his Answer had been granted.

50. On 7 May 2020, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.

51. On 12 May 2020 the CAS requested the Parties to state whether they preferred a hearing to be held in the present proceedings or for the Sole Arbitrator to issue an award based solely on the Parties written submissions.

52. On the same day, the Respondent informed the CAS Court Office that he preferred a hearing to be held in the present matter, as well as the Appellant on 19 May 2020.

53. On 10 June 2020, the CAS Court Office informed the Parties that Mr Fabio Iudica, Attorney-at-law in Milan, Italy, had been appointed as a Sole Arbitrator in the present proceedings.

54. On 25 June 2020, on behalf of the Sole Arbitrator granting the Appellant's request in its Appeal Brief, the CAS Court Office invited the Respondent to submit a copy of the employment contract signed with Al-Wahda. Moreover, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in the present proceedings, and they were invited to specify whether they preferred that the hearing be held via video conference or in person.

55. On 29 June 2020, the Respondent submitted copy of the employment contract signed with Al-Wahda on 20 December 2018.

56. On 2 July 2020, the Appellant informed the CAS Court Office that it preferred the hearing to be held in person.

57. On 7 July 2020, the CAS Court Office invited the Appellant to submit additional observations strictly limited to the Player's contract with Al-Wahda, by 14 July 2020. On the same day, the Parties were informed that a hearing would be held in person at the CAS Court Office in Lausanne on 29 July 2020, with request to indicate the names of all persons who would be attending. The Respondent was also invited to specify whether he would participate in person or via video conference.

58. On 14 July 2020, the Appellant submitted its additional observations with respect to the employment contract between the Player and Al-Wahda.

59. On 15 July 2020, the CAS Court Office invited the Respondent to submit his reply to the Appellant's additional observations regarding the employment contract with Al-Wahda, by 22 July 2020.

60. On 20 July 2020, the Respondent submitted his comments in reply to the Appellant's additional observations.

61. On 22 July 2020, the Appellant informed the CAS Court Office that, due to the denial of the visa application submitted by the Club to the Swiss Embassy for the Club's representatives, the latter were not able to enter Switzerland and therefore requested the Sole Arbitrator to conduct the hearing via video-conference. On the same day, upon invitation by the CAS Court Office to submit his position regarding the conduct of the hearing, the Respondent informed having already made non-refundable travel arrangements for himself and his legal counsels and that he would attend the hearing in person, without objecting to the Appellant attending via video-conference.

62. On 24 July 2020, the CAS Court Office informed the Parties that the hearing would be held in person as already scheduled and that the Appellant would be authorized to participate via video-conference. On the same day, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Respondent on the same day and by the Appellant on 27 July 2020.

63. On 29 July 2020 a hearing took place at the CAS Court Office in Lausanne, Switzerland.

64. At the hearing, besides the Sole Arbitrator and Ms Pauline Pellaux, Counsel to the CAS, the following persons were present:

For the Appellant: Mr Ismin Bumin Kapulluoglu, legal representative, attending by video conference.

For the Respondent: Mr Richard Danilo Maciel Sousa Camposand Mr Juan de Dios Crespo Perez, legal counsel, all attending in person.

65. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the composition of the Arbitral Tribunal and that the Sole Arbitrator has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.

66. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally had been duly respected.

VI. SUBMISSIONS OF THE PARTIES

67. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

68. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.

69. According to the Appellant, the Player's unilateral termination of the Second Employment Contract did not satisfy the conditions under Article 14bis of FIFA RSTP, as well as para b of the Special Provisions of the relevant contract.

70. In fact, since the Warning Letter was received by the Club on 30 November 2018, the 15-day time limit prescribed for termination expired on 15 December 2018, which was a non-working day (Saturday), with the consequence that the Player was not authorized to legally terminate the Second Employment Contract on that day, as the deadline would necessarily be extended on the following working-day.

71. As a consequence, the termination notified by the Player with letter dated 14 December 2018 was not supported by just cause.

72. The Appealed Decision is flawed since it is based on the assumption that the Club had received the Warning Letter on 27 November 2018 and not on the 30 November 2018, as this was the date of receipt also confirmed by the Player himself.

73. In addition, the Appellant alleged that by the time the Warning Letter was received, the Club was facing corporate re organization, with the absence of some of its major employees and was not able to transfer funds due to some banking formalities. According to the Club, the Player was informed of the situation and the Parties allegedly agreed on the extension of the 15-day deadline until 19 December 2018. However, the agreement was never stipulated in writing since the Player ultimately informed the Club that, in the meanwhile, he had found another employment opportunity (with the club Al-Wahda) and therefore unilaterally terminated the Second Employment Contract.

74. Moreover, upon receipt of the Termination Letter, the Club also tried to find an amicable solution with the Player and also warned the latter about the non-compliance with the conditions for the unilateral termination, but to no avail.

75. As a consequence of the foregoing, the Appellant argued that the Player terminated the Second Employment Contract without just cause and therefore, he is not entitled to receive any compensation whatsoever.

76. In addition, the Club maintained that the DRC's findings under para 6 of the *"Facts of the Case"* of the Appealed Decision was also based on a non-existing employment contract and non-existing financial provisions (which were never even mentioned by the Player himself).

77. Furthermore, the calculation of the adjudicated amount diverted from the Player's request, which results in a violation of the principle of *non ultra petita*. In fact, the Player refers in his claim to the amount of EUR 1,017,500 as the residual amount of the Second Employment Contract, while the DRC took the amount of EUR 1,123,500 as the basis for the calculation of the amount of compensation, as it results from the *"Considerations of the Dispute Resolution Chamber"* of the Appealed Decision.

78. According to the Appellant's calculation, at the time when the Warning Letter was issued, the Player was entitled to receive outstanding salaries in the amount of EUR 432,500 broken down as follows:

- EUR 100,000 on 15 August 2018 (season 2017/2018);
- EUR 50,000 as signing fee on 15 August 2018 (season 2018/2019);
- EUR 25,000 as expenses on 15 October 2018 (season 2018/2019);
- EUR 62,500 on 30 October 2018 (season 2017/2018);
- EUR 190,000 (actually, the aggregate amount is 195,000 and this was a clerical error editor's note) as salaries for August, September, October amounting to EUR 65,000 each (season 2018/2019).

79. Since the Club had already paid to the Player EUR 115,000 (Euro 50,000 on 3 August 2018 and 65,000 on 12 November 2018), the Player's outstanding receivables amounted to EUR 317,500.

80. After the Termination Letter, the following amounts also became due:

- EUR 62,500, on 30 November 2018 (season 2017/2018);
- EUR 65,000 corresponding to the salary for November 2018 (season 2018/2019);
- EUR 32,500 corresponding to the partial salary for December 2018 (season 2018/2019).

81. Therefore, the outstanding amount at the time of termination, added up to EUR 477,500, although before the DRC the Player originally requested EUR 583,550, which was afterwards reduced to 531,050 in view of the acknowledgement of the payment by the club of EUR 50,000 on 3 August 2018 and an overpayment of EUR 2,500 on 12 November 2018.

82. Conversely, the DRC wrongly awarded to the Player an amount of EUR 486,000 as overdue payables.

83. Moreover, according to the Appellant, the signing fee and the expenditure allowance envisaged under the Second Employment Contract should have been calculated on a pro-rata basis, for 135 days of effective duration (i.e. as of 3 August 2018 until 14 December 2018) out of 302 days of expected duration. As a consequence, the Player would only be entitled to EUR 22,350.99 as signing fee (EUR 50,000 x 135/302) and to EUR 11,175.49 as expenses (EUR 25,000 x 135/302).

84. In conclusion, the Player would only be entitled to the following amounts as of the date of termination of the Second Employment Contract:

- EUR 22,350.99 as partial signing fee;
- EUR 100,000 as outstanding monies for the season 2017/2018;
- EUR 60.806.45 as salary for August 2018 on a pro-rata basis (corresponding to 29 days since the contract commenced on 3 August 2018);
- EUR 65,000 as salary for September 2018;
- EUR 11,175.49 as partial expenditure allowance;
- EUR 62,500 as outstanding monies for the season 2017/2018;
- EUR 65,000 as salary for October 2018;
- EUR 62,500 as outstanding monies for the season 2017/2018;

- EUR 65,000 as salary for November 2018;

- EUR 32,500 as salary for December 2018 on a pro rata basis, corresponding to 15 days until the date of termination,

adding up to EUR 546,832.93, minus EUR 115,000 paid by the Club up until the date of termination, resulting in a total amount of EUR 431,832.93 as outstanding remuneration (instead of EUR 486,000 as established by the DRC).

85. Likewise, the calculation of the compensation granted to the Player is ill-founded and should have resulted in the amount of EUR 493,500, (and not EUR 802,399), as follows:

EUR 1,017,500 (the residual value of the Second Employment Contract claimed by the Player) deducted EUR 350,000 (remuneration stipulated under the employment contract with Al-Wahda based on the information resulting from the Appealed Decision), deducted EUR 174,000 *"as the remuneration corresponding to the term between the original expiry date of the employment contract signed between the Player and Al-Wahda and the expiry date of the employment contract signed between the Player and Dinamo Minsk"* (corresponding to a monthly salary of EUR 14,500 for 12 months). However, since the Respondent did not challenge the Appeal Decision, the findings of the DRC have become finally binding towards the Player and therefore *"the amounts indicated above may only result in deviation of the calculation of the compensation amount, by taking 1.017.500.-Euro as the residual value of the contract (as explained under par. 15 et seq. above), 233.336.-Euro as the minimum amount to be deducted in accordance with the Respondent's employment with Al-Wahda FC and 239.250.-Euro as the minimum amount to be deducted in accordance with the Respondent's employment with Dinamo Minsk"*.

86. With regard to the employment relationship between the Player and Al-Wahda, the Appellant objected the following: a) that the Player failed to demonstrate that he didn't receive any other amount aside from EUR 233,336 stipulated under the termination agreement; b) that the information contained in the Appealed Decision in connection with the employment contract signed with Al-Wahda on 20 December 2018 were conflicting with the content of the termination agreement; c) that the remuneration stipulated under the employment agreement with Al-Wahda has been renounced by the Player as a result of the termination agreement, and, as such, it should be nonetheless deducted from the amount of compensation, according to the duty of mitigation, in the amount of EUR 116,668 (i.e. two monthly salaries of EUR 58,334 for May and June 2019) for the 2018/2019 season.

87. In any case, neither the signing fee of EUR 50,000 nor the allowance for expenses of EUR 25,000 should be calculated in the residual value of the Second Employment Contract with regard to the season 2019/2020.

88. Finally, the Club assumed that a further deduction of the amount of TL 407,653.97 from the Player's receivable should be applied, according to Turkish law, being the sum imposed by a payment order issued by the 6th Enforcement and Debt Collection Office in Istanbul on request of the intermediary allegedly acting on behalf of the Player during his transfer to the Club.

89. In its Appeal Brief, the Appellant submitted the following requests for relief:

"In view of the above factual and legal arguments, the Appellant hereby respectfully requests from the Honourable Sole Arbitrator/Panel to set aside the challenged decision of the FIFA Dispute Resolution Chamber in its entirety and to adjudicate that:

a. To rule the termination of the Claimant as termination without just cause,

b. the Respondent can only be entitled to the amount of 431,832.93 Euro as outstanding remuneration;

c. the Respondent is not entitled to any amount for the premature termination of the employment agreement between the Parties;

d. *to condemn the Respondent to pay the Appellant the legal fees and other expenses in connection with the proceedings".*

90. In its additional observations in relation to the employment contract signed between the Player and Al-Wahda, filed by the Respondent upon instruction of the Sole Arbitrator, the Appellant submitted the following arguments:

- according to the relevant employment contract, the Player was expected to receive a signing fee of EUR 110,000 plus six monthly salaries of EUR 40,000 each, for a total amount of EUR 350,000 which should be deducted from the amount of compensation instead of the amount of EUR 233,336 stipulated under the termination agreement with Al-Wahda;

- the original request for relief to adjudicate that the Respondent is not entitled to any compensation, submitted by the Appellant with the Appeal Brief, *"includes any potential reduction on the compensation amount as adjudicated by the FIFA DRC, in accordance with the legal principle of in toto et pars continetur and argumentum a fortiori".*

91. As a consequence, in its additional observations, the Appellant amended its previous requests for relief as follows:

"In view of all the above *factual and legal arguments, the Appellant hereby respectfully requests from the Honourable Sole Arbitrator to set aside the challenged decision of the FIFA Dispute Resolution Chamber in its entirety and to rule that:*

a. the termination of the Claimant as termination without just cause,

b. the Respondent can only be entitled to the amount of 431.832,93 Euro as outstanding remuneration,

c. the Respondent is not entitled to any amount for the premature termination of the employment agreement between the Parties,

d. without detriment to the Appellant's objections regarding the rightfulness of the termination exercised by the Player, in subsidiary order, the Respondent may only be entitled to the total amount of 493.500

Euro as the termination [compensation, editor's note] *for the premature termination of the employment agreement between the Parties,*

e. to condemn the Respondent to pay the Appellant the legal fees and other expenses in connection with the proceedings".

B. The Respondent's Submissions and Requests for Relief

92. The position of the Respondent is set forth in his Answer and can be summarized as follows.

93. With regard to the facts of the present case, the Player argued that a) the Club completely failed to pay any amount due under the Second Employment Contract for almost 4 months and admitted its default of payment in the amount of EUR 432,832 which is more that the two months threshold in accordance with Article 14bis of the FIFA RSTP; b) the Parties agree that the Warning Letter was notified to the Club on 30 November 2018 via courier; c) the Player terminated the Second Employment Contract with just cause after the 15-day deadline provided in his Warning Letter; d) the Termination Letter was delivered to the Club via courier on 19 December 2018; e) the email read receipt message confirms that the Club's General Manager viewed the Termination Letter via email on 15 December 2018; f) there was no agreement between the Parties to extend the 15-day deadline.

94. The outstanding debt at the time of termination included three monthly salaries for the season 2018/2019, two instalments of the overdue payment relating to the First Employment Contract, a signing fee and an allowance for expenses; therefore, the minimum amount requirement under Article14bis of FIFA RSTP was satisfied.

95. The 15-day deadline for termination, running from 30 November 2018 (i.e. the date when the Warning Letter was received by the Club) was also respected.

96. The Player's unilateral termination was also acknowledged by the TFF on 11 January 2019.

97. With regard to his employment relationship with Al-Wahda, the Player contended that the Emirati club failed to pay him any amount he was supposed to receive under the employment contract signed on 20 December 2018, resulting in the stipulation of the termination agreement on 31 January 2019, whereby Al-Wahda agreed to pay the Player the total amount of EUR 233,336. According to the Respondent, such termination agreement replaced the employment agreement with respect to the monies payable by Al-Wahda.

98. In the course of the FIFA proceedings, both the employment contract signed with Al-Wahda and the employment contract signed with Dinamo Minsk were submitted by the Player in copy to the DRC, voluntarily and in good faith.

99. The amounts calculated by the DRC for both the outstanding remuneration (EUR 486,000) and for compensation for breach (EUR 802,399) are correct and must be confirmed.

100. With specific regard to the compensation for breach, the Player claimed that the calculation correctly complies with the principle of the positive interest, which aims to put the injured party in the position it would have had if the contract had been properly performed, with due consideration of the loss of earnings suffered as a consequence of the breach.

101. In this context, the Appealed Decision was correct in awarding the overdue amount at the time of termination, the residual value of the Second Employment Contract, the additional compensation corresponding to three monthly salaries, mitigated by the monies earned under the employment relationship with Al-Wahda and Dinamo Minks.

102. With regard to the reference contained in the Appealed Decision, to an alleged *"non-existing contract"*, there was no *ultra petita* ruling by the DRC and the Club is trying to take advantage of a possible clerical error in the Appealed Decision.

103. Moreover, the Appellant's claim that the signing fee shall be calculated on a pro-rata basis has no justification in the context of calculating the residual value of a contract in case for termination with just cause; this is all the more true considering that the amounts requested by the Player were all guaranteed fees or guaranteed salaries according to the Second Employment Contract.

104. Likewise, the allowance for expenses for the sporting season 2018/2019 in the amount of EUR 25,000 was not a variable amount and was correctly included in the calculation of the compensation by the DRC, consistent with FIFA and CAS jurisdiction.

105. In his Answer, the Respondent submitted the following requests for relief:

"1. To dismiss the appeal.

2. To issue an award in accordance with the FIFA DRC Decision requiring the Club to compensate the player as follows:

a. outstanding remuneration in the amount of €486,000, plus 5% interest p.a. as from 11 February 2019 until the date of effective payment; and

b. compensation for breach of contract without just cause in the amount of €802,399, plus 5% interest p.a. as from 11 February 2019 until the date of effective payment.

3. Independently of the type of decision to be issued the Player requests the Panel:

a. to fix a sum of 25,000 CHF to be paid by the Club to the Player, in order to contribute to the payment of his legal fees and costs;

and

b. to order the Club to assume the entirety of the administration and procedural fees".

106. In his reply to the additional observations submitted by the Appellant in relation to the employment contract signed with Al-Wahda, the Respondent argued that the content of the relevant contract does not in any way affect the DRC's findings in the Appeal Decision. In fact, the termination agreement replaced the employment contract with Al-Wahda, thus Al-Wahda was only obliged to pay to the Player the amount of EUR 233,336 stipulated under the termination agreement

107. As a consequence, the Player insisted that the Appealed Decision be confirmed.

VII. JURISDICTION

108. Article R47 of the CAS Code provides as follows:

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

109. In its Statement of Appeal, the Appellant relies on Articles 58 of the FIFA Statutes, as conferring jurisdiction to the CAS.

110. Article 58.1 of the FIFA Statutes reads as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*.

111. The jurisdiction of the CAS was not contested by the Respondent and is further confirmed by the signature of the Order of Procedure by both Parties.

112. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY OF THE APPEAL

113. Article R49 of the CAS Code provides the following:

114. *"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"*.

115. According to Article 58(1) of the FIFA Statutes *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

116. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 5 December 2019 and that the grounds of the Appealed Decision were notified to the Parties on 3 March 2020.

117. Considering that the Appellant filed its Statement of Appeal on 23 March 2020, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed timely.

118. Furthermore, the Appeal complied with all other requirements of Article R48 of the CAS Code and is therefore admissible.

IX. APPLICABLE LAW

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

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

120. The Appellant relies on the application of Swiss law, while the Respondent refers both to the FIFA RSTP and Swiss law as the applicable rules.

121. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA RSTP, Edition June 2018, with Swiss law applying subsidiarily.

X. MERITS

122. Addressing the merits of the case at issue, the Sole Arbitrator first observes that it has remained undisputed between the Parties that the Appellant failed to fulfil its financial obligations towards the Player with respect to some monthly salaries and other fees and allowances stipulated under the Second Employment Contract, including the Player's receivables for the sporting season 2018/2019, as well as some previous arrears in relation to the First Employment Contract.

123. According to the Warning Letter, at the time when the Player put the Club in default of payment, the following amounts were outstanding:

- EUR 50,000, corresponding to the signing fee due on 15 August 2018;
- EUR 195,000, corresponding to three monthly salaries for August, September and October 2018,
- EUR 25,000 as expenditure allowance, according to Article 3.1.1. of the Second Employment Contract;

- EUR 162,500, corresponding to the first (EUR 100,000) and second (EUR 62,500) instalments of overdue payables respectively due on 15 August 2018 and 30 October 2018 according to Article 3.3. of the Second Employment Contract.

(As already mentioned above under para 12, the Sole Arbitrator hereby reminds that the total amount of all the items indicated by the Player actually adds up to EUR 432,500 and not EUR 423,500 claimed by the Player on which the Appealed Decision is also based).

124. In view of the above, the Sole Arbitrator confirms that the condition set forth under Article 14bis of the FIFA RSTP was largely met in relation to the minimum amount (equivalent to at least two monthly salaries) for terminating an employment contract with just cause for outstanding salaries, which fact is even not disputed by the Appellant.

125. What is firstly disputed by the Appellant is whether the Second Employment Contract was terminated with just cause since the Club assumes that the Player failed to comply with the second requirement under said Article 14bis concerning the minimum 15-day deadline for termination.

126. According to the Appellant's position, since the Warning Letter was received by the Club on 30 November 2018, the 15-day time limit prescribed for termination expired on 15 December 2018, which was a non-working day (Saturday), with the consequence that the Player was not authorized to terminate the Second Employment Contract on that day, as the deadline would necessarily be extended on the following working-day. In such framework, the Appealed Decision is flawed since it is based on the assumption that the Club had received the Warning Letter on 27 November 2018 and not on the 30 November 2018, as this was the date of receipt also confirmed by the Player himself.

127. On the opposite side, the Player insists that since the Warning Letter was delivered via courier to the Club on 30 November 2018, and the Second Employment Contract was terminated on 15 December 2019, the 15-day deadline prior to termination was indeed respected.

128. The Sole Arbitrator reminds that pursuant to Article 14bis (1) of the FIFA RSTP, which was introduced in the 2018 Edition of the said regulations, when a club has failed to pay a player at least two consecutive monthly salaries, such player is considered having a just cause for termination provided that he has put the club in default of payment in writing, granting the club a deadline of 15 day to remedy its debt.

129. The relevant provision reads as follows: *"In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered"*.

130. With regard to the facts of the case, the Sole Arbitrator notes that the date of delivery of the Warning Letter is the date from which the relevant 15-day time limit shall run. It results from the documentation on file that the Warning Letter was delivered by courier to the Club on 30

November 2018, which is also undisputed between the Parties. Incidentally, the Sole Arbitrator points out that although the Respondent produced copy of an email apparently forwarding the Warning Letter via email on 27 November 2018, there is no proof of the delivery notice of the relevant message.

131. As a consequence, the Sole Arbitrator is satisfied that the last day of the 15-day deadline for the Club to remedy its financial debt towards the Player fell on 15 December 2018.

132. However, it is further noted that 15 December 2018 was a Saturday. In this regard, the Sole Arbitrator observes that Saturdays are officially recognized as equivalent to public holidays according to Swiss Law (Article 1 of the FA of 21 June 1963 on the Application of Limitation Periods to Saturdays; SR 173.110.3).

133. In addition, the Sole Arbitrator reminds that, pursuant to Article 78 of the Swiss Code of Obligations (the "Swiss CO"), *"1 Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognized as a public holiday at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day. 2 Any agreement to the contrary is unaffected"*.

134. Turkey shall be considered the place of performance in the present case, according to Article 74 of the Swiss CO. Although the Sole Arbitrator ignores whether Saturdays are officially regarded as public holidays in Turkey in relation to time limits fixed by law, it may be noted that Saturday is not considered a business day in Turkey, at least as regards banks and offices in general.

135. As a consequence, the Sole Arbitrator considers that it would be more prudent to consider that the 15-day time limit running from 30 November 2018 truly expired on Monday 17 December 2018, being the first following working day. Which is to say that, contrary to what was established in the Appealed Decision, the Club should have been granted time limit until 17 December 2018 to settle its debt before the Player's termination under the provision of Article 14bis of FIFA RSTP.

136. In fact, from the documentation on file, it results that the Termination Letter (which is dated 14 December 2018) was delivered to the Club via courier on 19 December 2018, (and was preceded via email on 15 December 2018), and that the Player has notified the termination of the Second Employment Contract with effect from 15 December 2018, i.e. before the exact expiry of the deadline according to Swiss Law, as mentioned above.

137. Therefore, the Sole Arbitrator shall now address the issue whether the termination of the Second Employment Contract was nonetheless supported by just cause, being established that the second requirement under Article 14bis of the FIFA RSTP was not respected. Would this prevent to establish that the termination of the Second Employment Contract was unjustified, as maintained by the Appellant?

138. In this regard, the Sole Arbitrator points out that, aside from the new provision of Article 14bis specifically ruling on the termination of an employment contract with just cause for outstanding salaries, the FIFA RSTP still provides for a general rule according to which any

party to an employment contract would not be considered in breach in case of unilateral termination with just cause.

139. As it has been underlined by scholars, *"Art. 14bis of the RSTP comes as a kind of lex specialis to the principle that a contract can be terminated with just cause"* providing specification with respect to what has to be considered a just cause based on *"what undisputedly is the source of the (vast) majority of disputes between professional players and clubs brought before the DRC: unpaid or overdue payables"* (see ONGARO O., "FIFA Regulations on the Status and Transfers of Players – The Latest Developments, International Sports Law and Policy Bulletin I/2020 – International Transfer of Players, Sports Law and Policy Center, 2020).

140. With regard to the general principle, Article 14 (1) of the said Regulations provides that *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*. Although a warning in writing has consistently been considered a condition for a lawful termination according to FIFA and CAS jurisprudence, the provision at issue does not contain any specific formal requirement with respect to the issue of a prior warning by the party terminating the contract to the other party, and in particular, no specific period of notice is required.

141. Therefore, considering that under Article 14bis a just cause for termination would exist only provided that both conditions were satisfied, which is excluded in the present case, the Sole Arbitrator needs to ascertain whether the termination by the Player was otherwise justified under Article 14 (1) of the FIFA RSTP in consideration of the specific circumstances of the case at issue.

142. Since Article 14 does not define the meaning nor the extent of *"just cause"*, the Sole Arbitrator reminds that the Commentary to the FIFA Regulations provides guidance as to when an employment contract is terminated with just cause, as follows:

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

143. In this regard, the Sole Arbitrator notes that in CAS 2006/A/1180, a CAS panel stated the following in this respect:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard

Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495).

The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)" (CAS 2006/A/1180, para. 25-26 of the abstract published on the CAS website).

144. In view of the guideline of the well-established jurisprudence mentioned above, the Sole Arbitrator observes that in the present case, the following circumstances are present: a) the Club acknowledged having failed to pay outstanding salaries adding up to three consecutive monthly instalments (EUR 195,000), as well as other bonuses and other allowances payable under the Second Employment Contract; b) in its Appeal Brief, the Club acknowledged that the total amount of the outstanding payments at the time when the Warning Letter was issued corresponds to EUR 317,500, which became EUR 477,500 at the time of termination; c) there is no evidence on file that the Club had any justified reason for failing to comply with its financial obligations towards the Player, therefore the Club's default was unlawful; d) the Player has warned the Club in writing before terminating the Second Employment Contract;

e) when the Second Employment Contract was signed, the Club was already in arrears with the payment of the Player's salaries in the amount of EUR 225,000, in relation to the First Employment Contract.

145. With specific regard to the Warning Letter, the Sole Arbitrator also wishes to point out that although the condition set forth under Article 14bis of the FIFA RSTP with regard to the period of notice was not met, as clarified above, the Club actually had a reasonable period of time to remedy its debt, but failed to do so. Incidentally, in this respect, since the Club argued that the Player could not legally terminate the contract before Monday 17 December 2018 according to Article 14bis of the FIFA RSTP, and considering that the Letter of Termination was delivered to the Club on 19 December 2018, the Sole Arbitrator emphasizes once again that the Club could have shown to be in good faith making the payment on 17 December 2018, but failed to do so. Such circumstance corroborates the Sole Arbitrator's persuasion that the essential conditions under which the Second Employment Contract was concluded were no longer present at the time of the Warning Letter and that the Player could not have a reasonable expectation of the future performance by the Club and of the continuation of the employment relationship with the latter.

146. As a consequence, in consideration of all the foregoing, the Sole Arbitrator holds that the breach by the Club was severe and that the Player had just cause for termination, at least in accordance with Article 14 of the FIFA RSTP, so far as Article 14bis cannot be considered applicable to the case at issue.

147. As a consequence, the first request for relief submitted by the Appellant under point a. of the Appeal Brief (see supra para 91) is rejected.

148. The Sole Arbitrator further also dismisses the Appellant's argumentation relating to the consideration by the FIFA DRC of an allegedly non-existing contract. Indeed, it derives clearly from the Appealed Decision that it was actually based on the Second Contract and the Appellant cannot rely on some manifestly clerical mistakes to argue otherwise.

149. The Sole Arbitrator now turns his attention to the second issue which is disputed between the Parties, in relation to the exact amount of the monies which had become overdue at the time of termination, to which the Player is entitled.

150. The Appealed Decision established that the Club owed to the Player an amount of EUR 486,000 as outstanding remuneration, consisting of EUR 423,500 claimed by the Player in the Warning Letter, as well as EUR 62,500 corresponding to the instalment which became due on 30 November 2018, pursuant to Article 3.3 of the Second Employment Contract.

151. In this regard, the Sole Arbitrator notes that the starting amount taken by the FIFA DRC (EUR 423,500 instead of 432,500) derives from the Player's miscalculation of his overdue payables as mentioned above. Moreover, the final amount of EUR 486,000 does not include neither the Player's salary for November 2018, amounting to EUR 65,000 nor the partial Player's salary for December 2018 (from 1 until 15 December) amounting to EUR 32,500. In fact, the amount of EUR 62,500 awarded by the Chamber in addition to EUR 423,500,

corresponds to the third instalment of arrears payment due on 30 November 2018 in relation to the First Employment Contract, and not to the salary for November 2018, which fact may have been misinterpreted by the DRC. Indeed, it results from the findings in the Appealed Decision, that the claim submitted by the Player to the DRC amounted to EUR 583,550 [actually, the aggregate amount would be 583,500], which means that the Player also requested his salary for November 2018 as well as the partial salary for December 2018 (EUR 423,500+65,000+62,500+32,500). On the other hand, it is hereby reminded that the Player has not challenged the Appealed Decision and therefore, he accepted the amounts calculated by the Chamber.

152. On the other hand, the Appellant contests the awarded amount and submitted request for relief in order for the CAS to adjudicate that the Player is only entitled to the amount of EUR 431,832.93, calculated as follows:

- EUR 22,350.99 corresponding to the proportional share of the signing fee for the sporting season 2018/2019 calculated over a period of 135 days;
- EUR 100,000 corresponding to the first instalment of arrears payment for the sporting season 2017/2018;
- EUR 60,806.45 corresponding to the proportional share of the salary for August 2018 calculated for 29 days, as from 3 August 2018;
- EUR 195,000 (65,000 x3) corresponding to the full salary for September, October and November 2018;
- EUR 11,175.49 corresponding to the partial share of the allowances for expenses for the sporting season 2018/2019;
- EUR 125,000 (62,500 x 2) corresponding to the second and third instalments of arrears payment for the sporting season 2017/2018;
- EUR 32,500 corresponding to the partial share of the salary for December 2018 for 15 days;

adding up to EUR 546,832.93, deducted the amount of EUR 115,000 resulting from two payments of EUR 50,000 and EUR 65,000 made by the Club on 6 August 2018 and 12 November 2018, respectively.

153. With regard to the figures calculated by the Appellant in relation to both the signing fee and the allowance for expenses, the Sole Arbitrator observes that according to the Second Employment Contract, they were not stipulated as contingent or variable payments, as it is also confirmed by the wording of Article 1.1 (as well as Article 2.1. for the sporting season 2019/2020) specifying that they were *"guaranteed amount"*. Moreover, with regard to the expenses, it is clear from the wording of the relevant provision that they were meant as an additional bonus for the Player and not a reimbursement based on receipts. Therefore, the

Appellant's argument is unfounded and shall be rejected. As a result, in place of the Appellant's calculation, the following amounts shall be considered established:

- EUR 50,000 for the signing fee;

- EUR 25,000 for the allowance for expenses.

154. Likewise, the Sole Arbitrator rejects the Appellant's calculation of the salary for August 2018 on a pro-rata basis, since the Parties stipulated the Player's salary on a monthly basis corresponding to a flat-rate sum and not by days; besides the fact that it also results from the file that the Club had already acknowledged before that the full salary for August was due. As a consequence, the salary for August 2018 shall be calculated in its entirety, i.e. EUR 65,000.

155. Therefore, after recalculation of the items above, the Sole Arbitrator deems that the total amount of outstanding remuneration at the time of termination would be equivalent to EUR 592,500. However, the Sole Arbitrator reminds that since the Appealed Decision was not challenged by the Player, the amount calculated by the DRC (EUR 486,000) shall prevail.

156. Moreover, the Sole Arbitrator observes that the Appellant also alleges that the amount of EUR 115,000, corresponding to its partial payment, should further be deducted from the calculation of the relevant outstanding payment.

157. However, the Sole Arbitrator notes that, according to the Appealed Decision, the DRC already took into account the Club's payment when it considered that the Player had reduced his claim from the original amount of EUR 1,559,664 to 1,288,399, as it was mentioned above under para 25. Such conclusion is confirmed by the following considerations:

a) pursuant to the prospect contained in the "Claimant's further submission" filed by the Player to the FIFA DRC, it is clear that the amount of EUR 1,288,399 is obtained, *inter alia*, after deduction of both payments made by the Club (EUR 65,000+EUR 50,000);

b) in order to obtain the amount of compensation payable to the Player, with due respect to the principle of *ultra petita*, the DRC deducted the amount awarded as outstanding remuneration (EUR 486,000) from EUR 1,288,399 (i.e. the reduced claim).

158. Therefore, there can be no doubt that the Club's payment in the amount of EUR 115,000 was computed within the calculation made by the DRC, although the Sole Arbitrator notes that such computation finally affected the amount of compensation instead of the outstanding remuneration.

159. As a consequence, the Appellant's request to deduct the amount of EUR 115,000 from the amount awarded as outstanding remuneration is unjustified as it would result in a double deduction to the detriment of the Player.

160. Finally, the relevant Appellant's request for relief is rejected and the amount of EUR 486,000 established by the DRC is confirmed.

161. Turning his attention to the further allegations put forward by the Appellant against the amount of compensation for breach established by the Appealed Decision, the Sole Arbitrator notes that the Club maintains that the Player would be entitled to no more than EUR 493,500 and that a corresponding request for relief has been submitted by the Appellant with its additional observations filed on 14 July 2020, by way of a subsidiary request.

162. On the other hand, the Sole Arbitrator reminds that the Appellant failed to submit such a request, not even in a generic way, in the Statement of Appeal or in the Appeal Brief. In fact, the Appellant limited its request to the CAS in order to obtain an overturn of the Appeal Decision, by establishing that the Player terminated the Second Employment Contract without just cause, and that he is not entitled to any amount for such premature termination.

163. In this context, the Sole Arbitrator reminds that, without prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Sole Arbitrator is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Sole Arbitrator to decide all claims submitted by the Parties and, at the same time, prevents the Sole Arbitrator from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita* deriving from Article 58 of the Swiss Code of Civil Procedure (see CAS 2016/A/4384; CAS 2015/A/3903; CAS 2014/A/3723; CAS 2008/A/1644).

164. On the other hand, the Sole Arbitrator refers, to Article R56 of the CAS Code, according to which, *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement* ***or amend their requests*** *or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer"* (emphasis added).

165. In such legal framework, the Sole Arbitrator observes that at the hearing, the Respondent was requested to submit his position with specific regard to the Appellant's new request introduced with its additional observation on 14 July 2020, under letter c) of the Appellant's requests for relief, reading as follows: *"without detriment to the Appellant's objections regarding the rightfulness of the termination exercised by the Player, in subsidiary order, the Respondent may only be entitled to the total amount of 493.500 Euro as the termination [compensation, editor's note] for the premature termination of the employment agreement between the Parties"*. The Respondent confirmed to the Sole Arbitrator that he assented to the Appellant's new request submitted on 14 July 2020.

166. Therefore, in accordance with Article R56, in combination with Article R57 of the CAS Code, the Sole Arbitrator is satisfied that he has the authority to adjudicate on the new Appellant's request, with no infringement of the principle of *ne ultra petita*.

167. As a consequence, the Sole Arbitrator shall now address the issue concerning the amount of compensation granted by the Appealed Decision.

168. In this respect, the Sole Arbitrator disagrees with the Appellant's arguments in support of the amendment of the amount of compensation established by the DRC in the Appealed Decision.

169. The claim to exclude the signing fee and the expenditure allowances from the relevant calculation is completely unfounded, being established that such benefits were non contingent or variable amounts but guaranteed payments to which the Player would be unconditionally entitled, had the Second Employment Contract not been prematurely terminated.

170. Likewise, the allegations regarding the employment contract signed by the Player with Al-Wahda are completely unsupported and disproved by the documentation on file. In fact, it results patently clear from the comparison between the employment contract with Al-Wahda and the relevant termination agreement, that the latter replaced in full the club's financial obligations towards the Player. Such conclusion is all the more confirmed by the fact that the employment agreement was signed on 20 December 2018, while the termination agreement was concluded just a month later, on 31 January 2019. Therefore, it is the strong belief of the Sole Arbitrator that the employment contract was never put into effect and the Player only received the amount of compensation stipulated under the termination agreement. No other interpretation seems to be acceptable, nor has the Appellant provided any evidence to the contrary.

171. Moreover, there is no evidence on file that the renouncement deriving from the termination agreement is attributable to the Player's fault or neglect so as the Player may be deemed liable for not complying with his duty to mitigate damages.

172. Consequently, the Appellant's argument that the amount of compensation should be mitigated by the amount of EUR 350,000 in relation to the employment contract signed by the Player with Al-Wahda is completely groundless. Finally, the deductions applied by the FIFA DRC in the Appealed Decision are indeed inclusive of all the alternative amounts earned by the Player after termination of the Second Employment Contract, in the overlapping period, according to the evidence on file.

173. Finally, for the sake of completeness, the Sole Arbitrator notes that the Appellant's allegation with respect to an alleged payment order imposed on the Club by the Debt Collection Office in Istanbul, has remained completely unsupported. The Appellant maintains that the relevant amount of TL 407.653,97 should be deducted from the Player's receivables from the Club in accordance with Turkish law. In this respect, the Appellant completely failed to provide any evidence nor any justification why such an amount should be ever deducted from the amounts payable to the Player, not to mention that, in any case, Turkish Law is not applicable to the present case. Therefore, the relevant claim is rejected.

174. In view of all the foregoing, the Sole Arbitrator has reached the conclusion that the appeal filed by the Club shall be entirely rejected and the Appealed Decision shall be confirmed.

175. The Sole Arbitrator shall not address any other issue and all other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Antalyaspor A.Ş. against the decision of the Dispute Resolution Chamber of FIFA passed on 5 December 2019 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of FIFA on 5 December 2019 is confirmed.

3. The costs of the present arbitration proceedings, to be determined and served to the parties by the CAS Court Office, shall be borne by Antalyaspor A.Ş in their entirety.

4. Antalyaspor A.Ş. shall pay to Richard Danilo Maciel Sousa Campos an amount of CHF 7,000 (seven thousand) as contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.

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