Arbitration CAS 2020/A/7567 PFC Botev Plovdiv v. Zeljko Petrovic, award of 22 November 2021

Panel: Mr Alexander McLin (USA/Switzerland), Sole Arbitrator

Football
Termination of the employment contract with a coach without just cause by the club
Applicable law
Additional interpretation of a provision

1. **In appeal arbitration proceedings Article R58 of the CAS Code assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties. If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel. Where Article 57(2) of the FIFA Statutes additionally refers to Swiss law, such a reference only serves the purpose of making the FIFA Regulations on the Status and Transfer of Players (RSTP) more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. Consequently, the purpose of the reference to Swiss law in Article 57(2) of the FIFA Statutes is to ensure the uniform interpretation of the standards of the industry. Under Article 57(2) of the FIFA Statutes, however, issues that are not governed by the RSTP should not be subject to Swiss law. In fact, this choice of law by the parties affects all matters that are not addressed in the FIFA rules and regulations and that are therefore not regulated. Since they do not require the globally uniform application of the law and thus – are not part of the standards of the industry set by FIFA – they can be left to the autonomy of the parties.**

2. **The question of additional interpretation of a provision only arises where the text is not entirely clear and there are several possible interpretations in order to determine its true scope.**

I. PARTIES

1. PFC Botev Plovdiv (the "Appellant" or the "Club"), having its registered office in Plovdiv, Bulgaria, is a Bulgarian professional football club affiliated with the Bulgarian Football Union (the "BFU"), itself a member of the Fédération Internationale de Football Association ("FIFA"), the international governing body for the sport of football.

2. Mr Zeljko Petrovic (the "Respondent" or the "Coach"), is a Dutch football coach, living in the Netherlands and working as an assistant coach at Feyenoord Rotterdam N.V. at the time of these proceedings.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain his reasoning.

4. On 9 June 2019, the Coach and the Club concluded an employment contract (the "Contract") valid from 12 June 2019 until 31 May 2021, by which the Coach was employed as head coach of the Club. The Contract provided *inter alia* as follows:

> *"3. The monthly remuneration for the job performed is set at the amount of 10000 / ten thousand / euro net, payable monthly until the twentieth of the month following the month for which it is due.*
>
> *3.1. The club pays to the coach additional remuneration for the results achieved in the championship according to accepted and approved internal rules of PFC Botev AD.*
>
> *3.2. The club pays the coach individual bonuses as follows:*
>
> *3.2.1. In the event that the Club qualifies in the first six in the Bulgarian Championship the Club shall pay to the coach a one-time net bonus of EUR 10000, payable within 15 days after the end of the championship*
>
> *3.2.2. In case the Club wins the Bulgarian Cup, the Club pays the coach a one-time net bonus of EUR 20000, payable within 15 days after the end of the championship.*
>
> *3.2.3. In the even that the Club wins a championship title in the Bulgarian Championship, the Club shall pay to the coach a one-time net bonus of EUR 50000, payable within 15 days after the end of the championship.*
>
> *3.2.4. In the event that the Club participates in the first Preliminary Round of the Europa League / Champions League, the Club shall pay to the coach a one-time net bonus of EUR 10000, payable within 30 days after the condition is fulfilled.*
>
> *3.2.5. In the event that the Club participates in a second preliminary round of the Europa League / Champions League, the Club shall pay to the coach a one-time net bonus of EUR 25000 payable within 30 days after the condition is fulfilled.*

3.2.6. In the event that the Club participates in a third round of the Europa League / Champions League preliminary round, the Club pays the coach a one-time net bonus of EUR 35000, payable within 30 days after the condition is fulfilled.

3.2.7. In the event that the Club qualifies in the group stage of the Europa League / Champions League, the Club pays the coach a one-time net bonus of EUR 70000, payable within 30 days after the condition is fulfilled.

3.2.8. In the event of leaving the group stage of the Europa League / Champions League, the Club shall pay to the coach a one-time net bonus of EUR 20000 for each match of the race after that / quarter final, semi-final, final / payable within 30 days after as the condition is fulfilled.

4. The rights and obligations of the parties to this contract shall be determined by the Labor Code and the other regulations of its application, the BFU's norms, the status of the football coach in the BFU system and the PFC documents, including the Internal Rules of PFC Botev AD.

5. This employment contract may be terminated before the expiry of the term under the following conditions:

5.1 By mutual consent of the parties, with a Termination Act / Model of the BFU / with a notarized signature of the signatures of the parties, to the Arbitration Court of the BFU, which legalizes the agreement reached with respective decision.

5.2 On the unilateral grounds of one of the parties provided under paragraph 4 of this employment contract, at the written request of the interested party to the Arbitration Court of the BFU.

5.2.1. The arbitral tribunal in the decision should indicate the grounds for termination of the employment contract, the established performance or the non-fulfillment of the financial terms of the employment contract and determine the consequences of non-fulfillment of the obligations for the defaulting party in the employment contract.

5.3 In the cases described in 5.1. and p.5.2. the parties fulfill their obligations as defined in the employment contract until the date of its termination by the decision of the Arbitration Court of the BFU.

5.4 The decision of the Arbitration Court to the BFU is final.

…

6.2 The Club provides a furnished apartment for the duration of the contract by the coach.

6.3 The club car provides for coach use for the duration of the contract

…

6.5 The two parties agree and declare that the term of this contract can be extended by one year – until 31.05.2022 in this case the CLUB shall notify the COACH in writing about this before 31.12.2021. As in this case the parties negotiate the remuneration in a separate annex.

6.6. After the first season of the contract /31.05.2020 / the coach can unilaterally terminate the contract after payment by him and / or another club for an amount of EUR 125,000. The same option will be available after the second season / 31.05.2021 / in case the parties activate art.6.5.

6.7 The club provides the coach with 4 return air tickets Netherlands-Bulgaria for each season".

5. By a notice dated 8 October 2019 (the "Termination Notice"), the Club informed that Coach that it was terminating the Contract *"pursuant to Art. 328, para. 1, item 5 of the Labor Code, due to lack of qualities for effective performance as of 08.10.2019".*

6. The Termination Notice provided that:

"The following benefits are to be paid to the [Coach]:

- under Art. 224, para. 1 of the LC – for unused annual leave for 2019: seven days;

- under Art. 220, para. 1 of the LC – for failure to notify the notice period: three months".

7. On 4 December 2019, the Club paid the Coach BGN 71,961.54, the equivalent of EUR 36,793.35, for the beginning of October and the three months of notice period.

8. On 8 January 2020, the Coach concluded an employment agreement with the Croatian club Inter Zapresic FC, valid from 8 January 2020 until 30 May 2020, according to which he as entitled to a gross monthly salary of EUR 3000 (or EUR 2375 net). The parties mutually terminated this agreement on 1 April 2020. The Coach claims to have received a total amount of EUR 5445.20 from the Croatian club.

9. On 13 April 2020, the Coach lodged a claim against the Club before FIFA for breach of contract.

10. On 1 July 2020, the Coach signed an employment contract with the Dutch club Feyenoord Rotterdam, valid until 30 June 2021, according to which the Coach was entitled to a monthly gross remuneration of EUR 8334 (or EUR 4153.54 net).

11. On 29 January 2021, the Coach signed an employment contract with the Dutch club Willem II Tilburg B.V. commencing on the same date, according to which the Coach was entitled to a monthly gross remuneration of EUR 15,000 for the 2020-21 season, and additional fringe benefits.

12. In his decision dated 22 September 2020 (the "Appealed Decision"), the Single Judge of the FIFA Players' Status Committee ("PSC"), ruled as follows:

"1. The claim of the Claimant, Zeljko Petrovic, is partially accepted.

2. The Respondent, PFC Botev Plovdiv, has to pay to the Claimant, ***within 30 days*** *as from the notification of this decision, the following amount:*

- EUR 102,518.06 as compensation for breach of contract plus 5% interest p.a. *as from 13 April 2020 until the date of effective payment.*

3. Any further claims of the Claimant are rejected.

4. In the event that the amounts due to the Claimant in accordance with the above-mentioned number 2. is not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision. […]*"* (emphasis original).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 5 December 2020, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "Code"). In its Statement of Appeal, the Appellant requested that a Sole Arbitrator be appointed by the CAS.

14. On 9 December 2020, the CAS Court Office informed the Parties that the proceeding had been initiated, and provided a copy of the statement of appeal to FIFA, in accordance with Article R52 of the Code, setting a ten-day deadline for FIFA to state whether it intended to join the proceedings as a party further to Article R41.3 of the Code.

15. On 18 December 2020, the Respondent agreed to the appointment of a Sole Arbitrator.

16. On 22 December 2020, the CAS Court Office informed the Parties of FIFA's decision to renounce its right of possible intervention in the instant proceedings, notified the same day, in which FIFA stated that notwithstanding this decision, *"FIFA will remain at disposal of the Court of Arbitration for Sport and the relevant Panel in order to answer to specific questions regarding the case at issue"*.

17. On 30 December 2020, the CAS Court Office notified the Parties that the Respondent would not be paying its share of the advance on costs and requested that the time limit for filing its Answer be set after the payment of the entire advance by the Appellant.

18. On 4 January 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

19. On 1 February 2021, further to receipt of payment of the Appellant's share of the advance of costs, the CAS Court Office made the Appeal Brief available to the Parties.

20. On 27 April 2021, following a stay of proceedings requested by the Parties *inter alia* to pursue settlement discussions, and as acknowledged by the CAS Court Office on 28 April 2021, the Respondent filed its Answer in accordance with Article R55 of the Code. The CAS Court Office also informed the Parties on behalf of the Deputy President of the CAS Appeals Arbitration Division that the Panel appointed to decide the present matter was constituted as follows:

- Sole Arbitrator: Alexander McLin, Attorney-at-Law in Lausanne, Switzerland

21. On 29 April 2021, the CAS Court Office acknowledged the Appellant's request for production of documents and request for a second exchange of written submissions, in lieu of a hearing.

22. On 5 May 2021, the CAS Court Office wrote to the Parties informing them that the Sole Arbitrator was granting the Appellant's two requests for production of documents and information.

23. On 11 May 2021, the CAS Court Office acknowledged receipt of the documents provided by the Respondent, and informed the Parties of the Sole Arbitrator's decision to grant the Parties a second round of written submissions. The Appellant was requested to address the Respondent's request for the appointment of an expert on the issue of the calculation the Respondent's gross salary under the Contract.

24. On 3 June 2021, the CAS Court Office acknowledged receipt of the Appellant's additional submission on 1 June 2021.

25. On 29 June 2021, the CAS Court Office acknowledged receipt of the Respondent's reply on 28 June 2021.

26. On 19 July 2021, the CAS Court Office, having noted that the Respondent did not expressly state his preference with respect to a hearing, informed the Parties that, unless not requested otherwise by 21 July 2021, the Sole Arbitrator would render an Award based on the Parties' submissions only.

27. On 22 July 2021, the Respondent confirmed that he does not consider a hearing necessary. On the same date, the CAS Court Office confirmed that no hearing will be held and that the Sole Arbitrator will render his Award based on the Parties' submissions only.

28. On 1 and 3 August 2021 respectively, the Appellant and the Respondent signed the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

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

- The Club does not challenge the Coach's unlawful dismissal on 8 October 2019 and that that the Club owes him compensation.

- The Parties however had elected for the application of the Bulgarian Labor Code (the "BLC"), which results in a different calculation of the compensation owed, as the Appealed Decision erroneously applies the provisions of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

- The 2020 RSTP did not apply to coaches. As a result, there is no gap to be filled by Swiss law in the FIFA regulations, as Swiss law should only be used to fill gaps in areas regulated by FIFA. Under the applicable BLC, the Coach is entitled to compensation in the amount of his gross labor remuneration for the period of unemployment caused by the dismissal, but for no more than six months, mitigated by earnings from other employment during this period.

- The Appellant's procedural rights were violated before the PSC as it did not have the opportunity to address unsolicited submissions and evidence provided by the Respondent in the final phase of the proceedings.

- It cannot be determined from the Appealed Decision what weight was given to which criteria in arriving at the sum that was ultimately awarded to the Respondent. This fails to meet the formal requirements in the relevant procedural rules.

- When the correct rules of law are applied, namely the BLC, which provides for calculation of compensation based on gross earnings, after relevant deductions, the Player is owed a gross amount of EUR 21,967.68.

- Alternatively, should it be determined that Swiss law applies rather than the BLC, the resulting calculation of the amount of compensation due to the Player, also after relevant deductions, amounts to a gross amount of EUR 17,507.24.

- The Appellant makes the following requests for relief:

"The Appellant hereby respectfully requests that the CAS:

Primary

1. *Set aside and annul paragraph III.2 of the operative part of the decision rendered by the Single Judge of the FIFA Players' Status Committee on 22 September 2020 in case 20-00600 and replace it with a new decision, whereby the Appellant has to pay the Respondent compensation for damages calculated as per the "gross-wage method" of not more than EUR 44,103.33 gross, plus 5% interest* p.a. *as of 13 April 2020 until the date of effective payment.*

Alternatively, only if item no. 1 above is rejected

2. *Alternatively, set aside and annul paragraph III.2 of the operative part of the decision rendered by the Single Judge of the FIFA Players' Status Committee on 22 September 2020 in case 20-00600 and replace it with a new decision, whereby the Appellant has to pay the Respondent compensation for damages calculated as per the "gross-wage method" in an amount to be determined at the Sole Arbitrator's discretion, but, in any case, less than EUR 102,518.06, plus 5% interest* p.a. *as of 13 April 2020 until the date of effective payment.*

In any event

3. *Order the Respondent to bear any costs incurred with the present procedure.*

4. *Order the Respondent to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator".*

30. The Respondent's submissions, in essence, may be summarized as follows:

- It is undisputed that the Contract was terminated by the Club without just cause.

- When appropriate principles of interpretation under Swiss law are applied to FIFA rules, the FIFA Regulations on the Status and Transfer of Players which entered into force on 1 January 2021 (the "2021 RSTP") are applicable, with Swiss law applicable for matters not addressed therein. This is also supported by the principles of *lex mitior* and of *lex posteriori derogate lex anteriori.*

- In determining the amount owed to the Player, including the amounts which must be deducted by way of mitigation for salaries earned following the termination of the Contract, the principle of "positive interest" is applicable, by which compensation should be aimed at reinstating the Coach to the position he would have been in had the Contract been fulfilled until the end of its term (see CAS 2006/O/1055 as confirmed by CAS 2015/A/4055). Applying the relevant jurisprudence results in a "grossing up" of compensation such that the Coach should receive the same net compensation as had been agreed under the Contract to the extent necessary in the Coach's country of residence.

- Calculation of compensation should be determined by the application of Annex 8 to the 2021 RSTP, with deductions for salaries earned from the clubs NK Inter Zapresic, Feyenoord and Willem II calculated as amounts net of tax.

- To the extent that the BLC is deemed applicable, the Club's calculations are erroneous as they do not appropriately take into account the periods following Contract termination during which the Coach was unemployed and those when he earned compensation which should be used to determine mitigation.

- The Respondent makes the following requests for relief in its latest submission:

  "1. After having argued and proved in our Statement of Defence and this replica that the applicable law for the present matter should be FIFA Regulations on the Transfer of Players (1 January 2021 edition), and additionally the Swiss legislation; after having argued and proved that the Bulgarian legislation should be completely disregarded and considered inapplicable; after having argued and proved that the Appellant's claims are completely sustained upon baseless arguments and ill- conceived and scattered rationales; after having proved that the claimed value of the compensation for breach of contract is completely incorrect and not corroborated by any evidence, the Respondent requests the completely dismissal of the appeal lodged by PFC Botev Plovdiv, and the confirmation of the Appealed Decision.

  2. As a first alternative to our main request, the Respondent requests that, in case the CAS shall furtherly mitigate the value of compensation for the breach of Contract, the method of compensation to

be the "net-net" method, considering that the Appellant has failed in discharging the burden of proof concerning the proposed "gross-wage" method, and has not presented any arguments legitimating this request. Therefore, the Respondent requests from CAS to take into consideration as a basis for the total residual value of the Contract the amount of EUR 200,000 net to which it should be deducted the amount of EUR 96,863.85 net received by the Appellant (on the date 04.12.2019), Feyenoord Rotterdam N.V. and Willem II Tilburg B.V and the amount of EUR 14,322.58 gross received by NK Inter Zapresic.

3. As a second alternative to our main request, the Respondent requests that, in case the CAS shall adjudicate according to the Bulgarian law, the amount of compensation for the breach of contract to be considered the amount of EUR 58,935.36, and not the proposal made by the Appellant.

4. In all cases, the Appellant should be ordered to pay an interest of 5 % p.a. as of the date 13.04.2020 until the effective payment for whichever amount the CAS will consider appropriate, fair and just.

5. Furthermore, the Respondent requests from CAS to order the Appellant to cover the legal expenses of our party in the amount of CHF 10,000.

6. Finally, we request that all the procedural costs of the present matter to be covered by the Appellant.

7. The Respondent formally reserves the right to present further statements or legal arguments in a hearing session if it will be ordered by CAS".

V. JURISDICTION

31. 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 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".

32. The Appellant relies of Article 58.1 of the FIFA Statutes and Article 23.4 of the 2020 RSTP as conferring jurisdiction on the CAS.

33. The jurisdiction of the CAS was not contested by the Respondent and the Order of Procedure was signed by both Parties.

34. Accordingly, the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

35. Article 58.1 of the FIFA Statutes (2019 ed.) states:

"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".

36. Article 58.2 of the FIFA Statutes (2019 ed.) states:

"Recourse may only be made to CAS after all other internal channels have been exhausted".

37. The Parties received the grounds of the Appealed Decision from FIFA on 20 November 2020.

38. The Appellant submitted its Statement of Appeal on 5 December 2020. The Statement of Appeal complies with all the other requirements set forth by Article R48 of the Code.

39. Accordingly, the appeal is therefore admissible.

VII. APPLICABLE LAW

40. Article 187(1) of the Swiss Private International Law Act ("PILA") provides as follows:

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

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

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

42. Article 57 para. 2 of the FIFA Statutes provides as follows:

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

43. Article 4 of the Contract provides as follows:

"4. The rights and obligations of the parties to this contract shall be determined by the Labor Code and the other regulations of its application, the BFU's norms, the status of the football coach in the BFU system and the PFC documents, including the Internal Rules of PFC Botev AD".

44. As a result, the applicable FIFA regulations and Statutes will be applied primarily. Where gaps exist with respect to the interpretation of FIFA regulations to an area which they are intended to apply, Swiss law shall apply to such interpretation. In keeping with the Parties' contractual choice, the BLC, as the rule of law specifically chosen by the Parties, shall apply subsidiarily; in other words, it shall apply to those matters not regulated by FIFA.

45. In light of the above, the extent to which FIFA and BFU regulations and norms apply to the present matter must be determined in order to further determine whether Swiss law or Bulgarian law applies, the latter being dependent on whether applicable considerations are, or are not, addressed by the *"various regulations of FIFA"*.

46. In accordance with the "Haas Doctrine", Article R58 of the CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties.* […] *Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (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 –, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12).

47. According to the Haas Doctrine, *"in appeal arbitration proceedings* [Article R58 of the CAS Code] *assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties* […]. *If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel.* […] *Where* [Article 57(2) of the FIFA Statutes] *"additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter.* […] *Consequently, the purpose of the reference to Swiss law in* [Article 57(2) of the FIFA Statutes] *is to ensure the uniform interpretation of the standards of the industry. Under* [Article 57(2) of the FIFA Statutes]*, however, issues that are not governed by the RSTP should not be subject to Swiss law. […] In fact, this choice of law by the parties affects all matters that are not addressed in the FIFA rules and regulations and that are therefore not regulated. Since they do not require the globally uniform application of the law and thus – are not part of the standards of the industry set by FIFA – they can be left to the autonomy of the parties. […] Matters that are subject to the parties' autonomy include, for instance, whether and under what conditions a contract materializes, in accordance with which principles this is to be interpreted, whether and under what conditions the fulfilment of a contractual term can be feigned, whether a valid representation exists in connection with concluding the contract, under what conditions and in what amount interest can be awarded, or under what material conditions offsetting against a claim can be declared"* (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 –, Bulletin TAS / CAS Bulletin, 2015/2, p. 14-17).

48. The Club's stance is that the 2020 RSTP, applicable by virtue of the time at which the Coach's claim was filed before FIFA, unlike the 2021 RSTP, do not purport to regulate employment agreements between clubs and coaches. The fact that FIFA included a new "Annexe 8" in the 2021 RSTP that specifically addresses the issue of coaches' employment contracts is an indication that the 2020 RSTP do not address this issue and cannot therefore be applicable.

49. The Coach concedes that the CAS jurisprudence which has applied the RSTP editions prior to that which became applicable on 1 January 2021 reflects that the RSTP is not applicable for disputes between coaches and clubs since previous editions were *"completely mute on this issue"*.

50. Both versions (2020 and 2021) of the RSTP provide at Article 26 the following transitional measures pertaining to their applicability:

"1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.

2. As a general rule, other cases shall be assessed according to these regulations with the exception of the following:

a) disputes regarding training compensation;

b) disputes regarding the solidarity mechanism;

c) labour disputes relating to contracts signed before 1 September 2001.

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".

51. The Coach is of the view that Article 26 RSTP *"implies that matters regulated by the previous regulations should be assessed according to the previous regulations, provided and upon the condition that these bylaws of the international federation had incorporated, even in a tangential form, specific norms regulating a specific issue"*. He considers that, pursuant to Article 18 of the Swiss Code of Obligations ("SCO"), Article 26 RSTP should be given not only its literal meaning (*"interprétation littérale"*), but also a systematic interpretation (*"interprétation systématique"*), a purposive interpretation (*"interprétation téléologique"*) and a compliant interpretation (*"interprétation conforme"*) (CAS 2013/A/3365 & 3366).

52. Engaging in a *"systematic interpretation"*, the Coach observes that the Rules Governing the Procedures of the Players' Status Committee and of the Dispute Resolution Chamber (the "FIFA Procedural Rules") that came into force on 1 January 2021 clearly established that they were applicable not only to new disputes but also for pending procedures. Moreover Article 86 of the FIFA Anti-Doping Regulations provides for the application of the principle of *lex mitior*, by which recent provisions more favorable to someone sanctioned under older regulations should be given the benefit of the more lenient provisions.

53. The Coach also proposes that under a *"purposive interpretation"*, it should be concluded that the absence of a specific exclusion in Article 26 of the 2021 RSTP to the applicability of Annex 8 of the 2021 RSTP is an indication that it was meant to be applied also to disputes preceding 1 January 2021.

54. Finally, the Coach believes that the application of the principle *lex posteriori derogat lex anteriori* favors the application of the 2021 RSTP as this principle is applied on the condition that a new law should not formally modify or amend the previous law, which hypothetically would have deprived a party from its acquired right. Since the Annexe 8 rules are new, argues the Coach, there is no reason not to apply the principle and allow him to *"benefit from a regulatory protection"*.

55. The Sole Arbitrator, with respect, finds the Coach's position on the retroactive applicability of the 2021 RSTP rather far-fetched. The question of additional interpretation of a provision, in this case Article 26 of the RSTP (2020 and 2021), only arises *"[w]here the text is not entirely clear and there are several possible interpretations"* in order to determine its *"true scope"* (CAS 2013/A/3365 & 3366). It is difficult to imagine how Article 26 could be clearer when it states that *"[a]ny case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations"* and the nature of this case clearly does not qualify as one of the listed exceptions to this general rule.

56. In addition, it is noteworthy that the 2020 RSTP use the word "coach" only once (Article 22(c), with respect to FIFA's competence), and there is no mention of disputes involving coaches in Article 1 (*Scope*), whereas in the 2021 RSTP, in addition to Annexe 8 which is dedicated to the issue, a specific provision has been added (Article 1.5) to explicitly extend the scope to *"contracts between coaches and professional clubs or associations"*.

57. The Coach's proposition that principles of *lex mitior* and *lex posteriori derogat lex anteriori* should somehow make the 2021 RSTP applicable fails to make distinctions between procedural rules that become applicable when those proceedings commence as opposed to substantive rules applicable when the relevant facts occurred. The principle of *lex mitior*, moreover, is applicable in a disciplinary context which is not that of the present dispute. Finally, the 2021 RSTP came into force well after proceedings commenced before FIFA, and even before the CAS.

58. As a result, the Sole Arbitrator finds that to the extent the RSTP are applicable, the 2020 edition is to be applied. Seeing as the 2020 RSTP (unlike the 2021 edition) do not regulate the employment relationship between a coach and a football club, the BLC is applicable as the specific rules of law chosen by the parties in the Contract.

VIII. PROCEDURAL DETERMINATIONS

59. Two procedural requests have been made by the Respondent. These are addressed below.

    a. In the event that the Sole Arbitrator does not *"completely dismiss the Appellant's request for adopting the 'gross-wage' method in calculating the compensation receivable by* [the Respondent]*"* he requests that the CAS *"order the Appellant to produce an expert report from which could be assessed the value of the gross salary that the Respondent would have received had the Contract been carried out to term, and the respective gross value of the amount of EUR 10,000 net in Croatia (for the period 08.01.2020-31-05.2021) and in the Netherlands (for the period 01.07.2020-31-05.21)"*.

       In light of the fact that this request was made conditionally and late (in the Respondent's Answer), and that the Appellant does not agree to it, the Sole Arbitrator denies this request on the grounds that it is for the Respondent to produce the evidence upon he intends to rely together with his Answer.

b. In his letter to the CAS of 10 May 2021 to the CAS, the Respondent requests *"from the Sole Arbitrator, under the principle of ex aequo et bono, to order the Appellant to produce information and documents concerning the costs of a furnished apartment per month in Plovdiv and the monthly costs of a car rental"*.

The Respondent justifies this request visibly as reciprocity for the documents and information he was asked to produce. The Sole Arbitrator denies this request given that it is irrelevant to the Respondent's requests for relief. In any event, to the extent the Appellant was providing accommodation and a car to the Respondent while in Plovdiv, he would no longer need them after termination of the Contract and they could therefore not form part of the value of the compensation ultimately awarded.

IX. MERITS

60. The issues to consider are the following:

a. Did the Appealed Decision violate the Appellant's procedural rights?

b. Which methodology should be applied to calculating the quantum of compensation owed by the Club to the Coach?

c. What is the amount owed by the Club to the Coach?

A. Did the Appealed Decision violate the Appellant's procedural rights?

61. The Club considers that several formal and procedural requirements under FIFA rules and regulations as well as mandatory principles of Swiss law were not respected by the FIFA PSC prior to issuing the Appealed Decision, in particular that its right to be heard was not duly respected when the Coach responded to a FIFA request for information from the Coach regarding his employment situation after termination of the Contract. The Club contends that FIFA did not share the Coach's response until it was asked to do so by the Club, and that when it did so FIFA provided this correspondence *"for information only"* and issued the Appealed Decision the following day without the Club having an opportunity to comment on it. This amounted to a breach of FIFA procedural rules and was also contrary to a previous FIFA communication that no further submissions would be admitted to the file (*venire contra factum proprium*). Finally, although the Appealed Decision stated that the *"due consideration to the law of the country concerned"* was given in the calculation of the compensation amount, the PSC ignored Bulgarian law entirely.

62. The Sole Arbitrator, having considered the Parties' views on this issue, notes that he is reviewing the facts and the law *de novo* under Article R57 of the Code. As such, and as it is well established in CAS case law, any procedural defects that might have been present at lower instance can be cured, and are therefore moot, by virtue of the present proceedings before CAS (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary,

Cases and Materials, Edition 2015, comment under Article R57, paras. 29-30, pp. 513-514 and, *inter alia*, CAS 2016/A/4704).

B. Which methodology should determine the calculation of quantum?

63. The applicable provisions of the BLC provide as follows:

*"**Compensation for Failure to Provide Notice***

Art. 220. (amend. - SG, No 100/1992) (1) The party entitled to terminate the labour relationship with notice may terminate it before the expiration of the notice period, in which case it shall owe the other party compensation equal to the amount of the employee's gross labour remuneration for the remainder of the notice period.

(2) The party which has received notice of termination of the employment contract may terminate it before the expiration of the notice period, in which case it shall owe the other party compensation equal to the amount of the employee's gross labour remuneration for the remainder of the notice period.

Compensation for Terminating the Employment Relationship without Notice

Art. 221. (amend. - SG, No 100/1992) (1) (amend., SG 52/04, In force from 1st of August 2004 ; suppl. – SG 58/10, in force from 30.07.2010) When a worker or employee terminates the employment relationship without notice in the cases of Art. 327, Para. 1, items 2, 3 and 3a, the employer shall owe him a compensation to the extent of the gross labour remuneration for the notice period in case of an employment contract for an indefinite period; and to the amount of the real damages in case of an employment contract for a fixed term.

[…]

Compensation for Unlawful Dismissal and for Non-Admission to Work of a Reinstated Employee

Art. 225. (amend. - SG, No 100/1992) (1) In case of unlawful dismissal, the worker or employee shall be entitled to a compensation by the employer in the amount of his gross labour remuneration for the period of unemployment caused by that dismissal, but not for more than 6 months.

(2) (amend. - SG, No 100/1992) When during the period pursuant to the preceding paragraph the employee has worked on a lower paid job, he shall be entitled to the difference in the remuneration. The same right shall apply to unlawful reassignment of an employee on another job with lower pay.

(3) (amend. - SG, No 100/1992) When any unlawfully dismissed employee is reinstated and upon reporting to work to his former position he is prevented from taking that position, the employer and the guilty officials shall be liable jointly and severally to the employee in the amount of his gross labour remuneration from the day of reporting to work till the day of his actual admission to work.

[…]

Gross Labour Remuneration as Basis for Calculation of the Compensations and payment due date (Title suppl. - SG 102/17, in force from 22.12.2017)

Art. 228. (amend. - SG, No 100/1992) (1) The gross labour remuneration as a basis for the calculation of the compensations under this Section shall be the gross labour remuneration received by the employee in the

month preceding the month of the arising of the grounds for the respective compensation, or the last monthly gross labour remuneration received by the employee, unless otherwise provided.

(2) (New, SG, No 100/1998) The amounts of the compensations pursuant to Art. 215, 218, 222 and 225 shall apply, insofar as no greater amounts have been provided in acts of the Council of Ministers, in collective contracts or in labour contracts.

(3) (New - SG 102/17, in force from 22.12.2017) The compensations under this section, due upon termination of the employment relationship, shall be paid not later than the last day of the month following the month, in which the legal relationship was terminated, unless another due date has been agreed in the collective agreement. Upon expiration of this term, the employer shall pay the due compensation together with the statutory interest.

[…]

Termination of Contract of Employment by the Employee with Notice

Art. 326. (1) (amend. - SG, No 100/1992)

[…]

(2) (amend. - SG, No 100/1992; suppl. – SG 108/08) The notice period for termination of an employment contract of unlimited duration shall be 30 days, unless a longer period has been agreed by the parties, but not longer than 3 months. In a collective employment contract, the term for the notice of dismissal under Art. 328, Para 1, Items 1 – 4 and Item 11 may be set to depend on the duration of service of the employee for the same employer. The notice period for termination of an employment contract of an indefinite period shall be 3 months, but not more than the remaining period of the contract.

[…]

(4) (amend. - SG, No 100/1992) The notice period shall begin on the day following receipt of the notice. A notice shall be considered withdrawn upon the employee's request to do so before or at the time of its receipt. With the consent of the employer, a notice may also be withdrawn before the period has expired.

[…]

Termination of Contract of Employment by Employer with Notice

Art. 328. (1) (Amend. SG, No 21/1990 and No 100/1992) Any employer may terminate a contract of employment by giving a notice in writing to the employee in observance of the terms of Art. 326, Para. 2, in the following cases:

1. closing down of the enterprise;

2. partial closing down of the enterprise or staff cuts;

3. reduction of the volume of work;

4. (amend., SG 25/2001) work stoppage for more than 15 working days;

5. when an employee lacks the qualities for efficient work performance;

6. when an employee does not have the necessary education or vocational training for the assigned work;

7. when the employee refuses to follow the enterprise or a division thereof, in which he is employed, when it is relocated to another community or locality;

8. when the position occupied by the employee should be vacated for reinstatement of an unlawfully dismissed employee, who had previously occupied the same position;

9. (revoked – SG 46/07, in force from 01.01.2008)

10. (Amended - SG, No. 2 & 28/1996; amend., SG 25/2001; amend. – SG 101/10; amend. – SG 7/12, amend. – SG, 54/2015, in force from 17.7.2015) when professors, associate professors and doctors of

science when acquiring the right to pension for security length of service and age, when reaching 65 years of age, apart from the cases of § 11 of the Transitional and Final Provisions of the Higher Education Act;

10a. (new - SG 98/15, in force from 01.01.2016) where the employee was granted an insurance service and age pension in reduced amount under Art. 68a of the Code of Social Insurance;

10b. (new – SG 46/10, in force from 18.06.2010; amend. – SG 100/10, in force from 01.01.2011; prev. text of Item 10a - SG 98/15, in force from 01.01.2016) provided that the employment legal relations have occurred after the worker or employee has acquired or exercised his/her pension rights for insurance period of service and age;

10c. (new - SG 98/15, in force from 01.01.2016) where the labour relationship has arisen with an employee, after he was granted an insurance service and age pension in reduced amount under Art. 68a of the Code of Social Insurance;

11. where the requirements for the job have been changed and the employee does not qualify for it;

12. when it is objectively impossible to implement the contract of employment.

(2) (suppl., SG 25/2001) In addition to the cases under Para. 1, enterprise management employees may be dismissed by advance notice as per the terms under Art. 326, Para. 2, and by reason of conclusion of an enterprise management contract. The dismissal can be completed after the commencement of the fulfilment under the contract for management but not later than 9 months.

(3) (new – SG 46/10, in force from 18.06.2010; suppl. - SG 98/15, in force from 01.01.2016) In the cases referred to in Para. 1, item 10a, 10b and 10c, the employer is entitled to receive information ex officio from the National Social Security Institute whether the worker or employee has acquired or exercised his/her pension rights. The National Social Security Institute shall provide the said information free of charge within 14 days term from receiving the request thereof.

[…]

Contest of Lawfulness of Dismissal

Art. 344. (amend. - SG, No 100/1992) (1) Any worker or employee shall be entitled to contest the lawfulness of dismissal before the employer or in court, and demand:

1. recognition of dismissal as unlawful and its repeal;

[…]

3. compensation for the period of unemployment due to dismissal;

[…]".

64. The Appellant points out that the applicable provisions of the BLC, namely Articles 225 and 228.1, refer to *"gross labour remuneration"*, both with respect to the amounts that are owed by a former employer further to unlawful termination, and with respect to the difference in remuneration where the employee has worked in a lower-paid job following termination. He notes that while Article 28 BLC provides for the possibility of a contractual provision, such as a liquidated damages clause, the Contract does not contain one and therefore Articles 225 and 228.1 should be applied to establish compensation.

65. The Respondent is of the view that seeing that the Contract provided for net salary payments, the same approach should apply to the calculation of compensation, and such compensation, when calculating the amounts owed to the Coach as a difference with the salaries paid by his subsequent employers in Croatia and the Netherlands, should be net as well, thereby ensuring,

under the principle of "positive interest", that the Coach receives the same net amount in the face of higher income tax rates in Croatia and the Netherlands as compared to Bulgaria.

66. The Appellant considers that grossing up the Coach's net salary with personal income tax rates in Croatia and the Netherlands would amount to unjust enrichment and has no basis in applicable law or CAS jurisprudence. The Respondent argues that the principle of "positive interest" requires an approach that appropriately applies the income tax rates at the Coach's residence, wherever that may be. Both Parties cite CAS precedent with however differing interpretations. The salient cases are CAS 2006/O/1055, CAS 2008/A/1463 & 1466, CAS 2018/A/1464 & 1467, and CAS 2015/A/4055.

67. The Sole Arbitrator considers that CAS precedent demonstrates the case-specificity of this issue, and in particular the importance of contractual language and applicable law. He does not agree with the Appellant's somewhat simplistic (and inaccurate) interpretation, particularly in the last of these cases, that net salary was simply grossed up with the applicable personal income tax rate at the club's domicile. If fact, in CAS 2015/A/4055, the employing club was Turkish and the player's domicile was Spain, the panel finding in favor of grossing-up the player's compensation according to Spanish tax rates, finding the situation analogous to that in CAS 2006/O/1055. It should be noted however that, especially in CAS 2006/O/1055, very specific contractual language defined applicable tax rates and the tax domicile of the coach at issue in any given contractual year, meaning parties' expectations concerning remuneration obligations were transparent and foreseeable for both parties. It is also noteworthy that Swiss law was deemed applicable in both cases, at least in addition to the applicable FIFA and/or UEFA regulations.

68. As for CAS 2018/A/1463 & 1466, as well as CAS 2018/A/1464 & 1467, the club was Portuguese and the coaches Dutch. Portuguese law was deemed to be applicable to the calculation of compensation resulting from breach of contract, and the panel in these cases determined that the 30% withholding tax rate applicable in Portugal was appropriate to gross up the salaries owed to the coaches.

69. The Sole Arbitrator finds that the instant case has more in common with CAS 2018/A/1463 & 1466 and CAS 2018/A/1464 & 1467 than with CAS 2006/O/1055 and CAS 2015/A/4055 when it comes to the method of calculation of compensation, regardless of the circumstances leading to the breach of contract. This is because, as in these cases, the national law must be taken a whole, or "systemically" in its application. Article 4 of the Contract states that the *"rights and obligations of the parties to this contract shall be determined by the Labor Code and the other regulations of its application…"*. It can reasonably be expected that when the BLC refers to gross amounts for employment agreements in Bulgaria, that these gross amounts should by default and in the absence of an indication to the contrary, refer to gross amounts under Bulgarian income tax rates, in keeping with the deductions made on the Coach's payslips while he was employed by the Club.

70. In addition, while the Coach's arguments with respect to "positive interest" are intuitively compelling and the principle is indeed often applicable under Swiss law, he has not made the case that the same principle is valid under Bulgarian law. For the reasons set forth *supra*, the

burden of establishing the applicability of tax rates other those applicable in Bulgaria for purposes of grossing up (and what these would be exactly) lies with the Coach, and this burden has not been met.

C. Calculating the quantum

71. The Club does not contest the unlawful nature of the Coach's dismissal. In its view, the application of the BLC provides that he is entitled to six months of salary, mitigated by the income earned from subsequent employers during that time.

72. According to the Club, this results in a calculation whereby, when applying Articles 225.1 and 228.1 BLC, he is entitled to three months of full salary calculated on the basis of his September 2019 salary, amounting to a gross amount of EUR 33,967.68 (i.e. 3 x EUR 11,322.56) for the period running from 8 October 2019 until 8 January 2020. For the following three months, as he received EUR 3000 gross per month from Inter Zapresic, this amount must be deducted such that the Club owes him the gross amount of EUR 24,967.68 (i.e. 3 x (EUR 11,322.56 – EUR 3000) for the period from 8 January 2020 to 8 April 2020.

73. This results in a total gross amount of compensation for unlawful dismissal of EUR 58,935.36, to which should be credited EUR 33,967.68 of the amount already paid by the Club for failure to provide three months' notice of termination (and corresponding to the three months from 8 October 2019 until 8 January 2020). With this set-off, the final amount therefore owed by the Club to the Coach under the BLC amounts to EUR 24,967.68.

74. The Coach argues that the amount owed for unlawful termination under the BLC and the amount owed for failure to provide notice are cumulative rather than mutually exclusive. As a result, the Coach is entitled to the amounts already paid to him, plus the full amount of EUR 58,935.36 corresponding to six months' salary for unlawful dismissal.

75. While the Club argues that the Coach's interpretation would amount to unjust enrichment, the Sole Arbitrator disagrees. In his view, the calculation of the compensation due for unlawful termination is separate and distinct from the three months' salary owed for failure to provide timely notice of termination. As a result, and considering that six months' salary is fair compensation for unlawful termination given the fixed-term nature of the Contract which could have been expected to last until the end of its term, the Club owes the Coach the gross salary the latter would have received for the six months from 8 January 2020 until 7 July 2020 following his notice period, as mitigated by other income.

76. This calculation amounts to the following: 6 months of salary from the Club from which is deducted the entirety of the gross salary received from Inter Zapresic as well as seven days' worth of prorated gross compensation from Feyenoord Rotterdam. This translates to 6 x EUR 11,322.56 – EUR 14,322.58 – EUR 1944.60 = EUR 51,668.18.

77. The Club therefore owes the Coach the amount of EUR 51,668.18.

78. The Sole Arbitrator deems it appropriate for interest on this amount to run as of the date of the original claim was brought before FIFA, at a rate of 5% per annum.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by PFC Botev Plovdiv on 5 December 2020 against the decision issued by the Single Judge of the FIFA Players' Status Committee of 22 September 2020 is partially upheld.

2. The decision issued by the Single Judge of the FIFA Players' Status Committee of 22 September 2020 confirmed, save for Item 2 of its operative part which is amended as follows:

   "PFC Botev Plovdiv shall pay Mr Zeljko Petrovic an amount of EUR 51,668.18, plus 5% interest p.a. as from 13 April 2020 until the date of effective payment".

3. (…).

4. (…).

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