Arbitration CAS 2015/A/3894 Khazar Lankaran Football Club v. Eder Jose Oliveira Bonfim, award of 26 August 2015

Panel: Mr José Juan Pintó Sala (Spain), President; Mr Dirk-Reiner Martens (Germany); Mr Michele Bernasconi (Switzerland)

Football
Termination of an employment contract by a player with just cause
Applicable law
Compensation for breach
No reduction of the compensation due to the player

1. **A governing law clause is, by nature, bilateral and reciprocal, as it shall express the parties' choice as to what law shall govern a contract and apply to both parties. In this respect, a clause whereby solely one party committed itself to respect the regulations of a club, the national football association and the national laws during the performance and execution of its contractual obligations does not establish in any way an explicit submission of the contract to any specific law or regulations. In any event, if the main rules to be respected pursuant to the relevant clause of a contract are the sport regulations of the national football association, then due to the hierarchical structure of international football, the association is bound by the FIFA regulations. Therefore, the FIFA Statutes and regulations are applicable and, additionally, Swiss law in accordance with the CAS Code.**

2. **In accordance with Art. 17 of the FIFA Regulations, when a party terminates a contract with just cause, the party responsible for the termination of the contract shall be liable to pay a compensation for the damages caused as a consequence of the early termination of the contract. In accordance with Article 17 and in line with the jurisprudence of the CAS, to establish the compensation due to a player by a club in breach, a CAS panel shall take into account all the circumstances of the case and, in particular, the factors established by Article 17 of the FIFA Regulations.**

3. **There are no legal or factual grounds to reduce the compensation due to a player if the behaviour of a club confirms that it tacitly accepted the termination of the contract by the player and where in no case the arguments raised by said club can lead to justify or mitigate the effects of the breach of the contractual obligations that the club should have fulfilled in accordance with the general principle of *pacta sunt servanda* enshrined in Art. 17 of the FIFA Regulations.**

I. PARTIES

1. Khazar Lankaran Football Club (hereinafter the "Club" or the "Appellant") is an Azerbaijani football club affiliated with the Association of Football Federations of Azerbaijan (hereinafter "AFFA"), which in turn is a member of the Fédération Internationale de Football Association (hereinafter "FIFA"), with its seat in Baku, Azerbaijan.

2. Mr. Eder Jose Oliveira Bonfim (hereinafter the "Player" or the "Respondent") is a Portuguese professional football player born in Brazil on 3 April 1981, with his domicile in Lisbon, Portugal.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings, the evidence taken and the submissions made at the hearing. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 20 April 2012, the Appellant and the Respondent concluded an employment contract (hereinafter the "Contract") valid from 1 June 2012 until 30 June 2014, which in relevant part reads as follows:

> *"[…]*
>
> ***ARTICLE THREE:***
>
> *THE FIRST PARTY UNDERTAKES TO REMUNERATE THE SECOND PARTY WITH A TOTAL AMOUNT OF US 600.000 (SIX HUNDRED THOUSAND US DOLLARS) NETTO, AGAINST FOR HIS SERVICES FOR PERIOD 01.06.2012 – 30.06.2014 TO BE PAID AS FOLLOWS:*
>
> *AN AMOUNT OF US 50.000 (FIFTY THOUSAND US DOLLARS) NETTO, WILL BE PAID TO THE PLAYER ON JANUARY 2013 YEAR.*
>
> *AN AMOUNT OF US 50.000 (FIFTY THOUSAND US DOLLARS) NETTO, WILL BE PAID TO THE PLAYER ON JANUARY 2014 YEAR.*
>
> *AND AMOUNT OF US 25.000 (TWENTY FIVE THOUSAND FIVE HUNDRED US DOLLARS) TO BE PAID AS MONTHLY SALARIES FOR THE PERIOD OF THE CONTRACT (20-MONTHS FROM 01.06.2012).*
>
> *NOTE IF THE PLAYER BECOMES INJURED DURING GAMES OR TRAININGS IN THE CLUB SQUAD, THE MATCHES IN THE PERIOD, WHEN THE PLAYER IS INJURED, ARE CONSIDERED AS MATCHES, IN WHICH THE PLAYER TOOK PART.*

[…]

ARTICLE FIVE:

THE SECOND PARTY UNDERTAKES TO FULLY UTILIZE HIS TECHNICAL CAPACITIES AND EXPERTISE TO PROMOTE, IMPROVE AND ENHANCE THE SECOND PARTY'S FIRST FOOTBALL TEAM IN ORDER TO ACHIEVE THE BEST RESULT IN ALL PERTINENT LOCAL, REGIONAL AND INTERNATIONAL COMPETITIONS.

[…]

ARTICLE SEVEN:

THE SECOND PARTY UNDERTAKES TO ABIDE BY THE RULES AND REGULATIONS OF THE CLUB AND THE AZERBAIJAN FEDERATION TOGETHER WITH THE LAWS AND PRINCIPLES OBSERVED IN THE AZERBAIJAN.

[…]

ARTICLE NINE:

THE TWO PARTIES SHALL MAKE EVERY VIABLE TO AMICABLY SETTLE ANY DISPUTE THAT MAY ARISE IN RESPECT OF THE INTERPRETATION, EXECUTION AND TERMINATION OF THIS CONTRACT OR ANY APPENDIX, ADDENDUM OR EXTENSION THEREOF. OTHERWISE, SUCH DISPUTE SHALL BE REFERRED BY AZERBAIJAN FEDERATION AND FIFA WHOSE VERDICT SHALL BE FINAL AND BINDING TO BOTH PARTIES.

[…]".

5. On 29 July 2013, the Appellant granted permission, in writing, to the Respondent to be absent from the Club until 31 August 2013 and to hold negotiations with third parties to find a new team. The relevant part of the letter reads as follows:

"On behalf of Khazar Lankaran Club we hereby confirm that the professional football player Eder Oliveira Bonfim (citizen of Portugal, born on 3 April 1981, passport No.) is permitted to take part in trials within the squad of any football team until 31 August 2013.

Any football club, which would like to sign the above-mentioned player, is invited to negotiations with Khazar Lankaran FC, which is the proprietor of the sportive rights of the player, according to the contract, which is in force until 30 June 2014".

6. On 3 September 2013, the Appellant issued a document in the following terms:

"Hereby with this document, Khazar Lankaran Football Club confirms that the professional football player Eder Oliveira Bonfim (citizen of Brazil, Passport No) is allowed to be absent in the team until 25 September 2013".

7. On 4 September 2013, the Respondent sent a letter by fax to the Appellant requesting: (i) the payment of the outstanding salaries of July and August 2013, which amounted to USD 50,000, and (ii) his immediate reintegration into the Club's main squad.

8. On 17 September 2013, the Respondent sent a second letter by fax to the Appellant (dated 16 September 2013) whereby, in addition to the requests stated above, he also requested the renewal of his visa, since it was going to expire on 19 September 2013 and mentioned that *"its renewal is an obligation of the club"*.

9. On 23 September 2013, in the absence of any response by the Appellant to the above-mentioned faxes, the Respondent sent a last letter by fax to the Appellant by virtue of which he terminated the Contract. The relevant part of this fax reads as follows:

"Dear Sirs,

Following two unanswered notices sent by fax on 4th and 16th September 2013, I hereby terminate the employment contract we signed on 20th April 2012, with immediate effect due to the following reasons:

As you know, on 20th April 2012 we signed an employment contract for a period of 2 years, starting on 1st June 2012 until 30th June 2014.

Article three of the aforementioned contract stipulates as follows:

[…]

Until today I did not receive the salaries due on 15th August and 15th September.

Thus, I am entitled to receive from the Club the amount of US 50.000,00 (fifty thousand Dollars).

Also, on 3rd September 2013 I was forbidden to enter in the Club's premises and I am also forbidden to practice with the main squad.

With this behavior the Club shows an attitude of disrespect and hostility towards me as an established professional football player.

Finally, my visa expired on 19th September and its renewal is an obligation of the club.

As you did not address this issue, I cannot work in your country and I am in danger of being deported.

For these reasons, the club committed a unilateral breach of contract without just cause.

In light of the above, by the present fax I sent you this formal notice of termination of the employment contract we signed on 20th April 2012, with immediate effect based on the fact that the club failed to comply with its contractual obligations towards me.

Finally, I will file a claim to FIFA deciding bodies, in accordance with the FIFA regulations. *[…]".*

10. On 4 October 2013, the Appellant sent a letter (dated 3 October 2013) to the *Confederação Brasileira de Futebol* (hereinafter the "CBF") in the following terms:

"We bring your attention that the professional football player Eder Jose de Oliveira Bonfim (citizen of Brazil, born in 3 April 1981), has left the club and did not leave any contact to keep in touch with him. The above-

mentioned football player was sent to the reserve team of Khazar Lankaran FC according to the decision of the head coach on 26 July 2013.

Afterwards, he was given permission to take part in trials with any football club. The aim of that permit was to facilitate player to find new team. However, he was no managed to find a club until the last day of the transfer period. Then according to the mutual consent he was given permit to be absent in the team premises until 25 September 2013. He came back to Azerbaijan within the deadline, mentioned in the paper of permission, but then left the country again, this time without any consent of the club.

Currently we are not able to reach the player. We informed the Players Status and Transfer Committee of Azerbaijan Football Federation about the issue. At the same time we write you this letter and would be very thankful if you assist us in this case".

11. After the termination of the Contract, the Player was unable to find another club and thus remained unemployed for the entire 2013/2014 season.

B. Proceedings before the FIFA's Dispute Resolution Chamber

12. On 4 October 2013, the Respondent lodged a claim before the Dispute Resolution Chamber of FIFA (hereinafter the "FIFA DRC") requesting the following payments: (i) USD 50,000 as outstanding salaries for the months of July and August 2013, (ii) USD 275,000 as a compensation for the breach of the Contract, and (iii) an interest of 5% from the date of the outstanding instalments.

13. On 16 October 2014, the FIFA DRC rendered the following decision concerning the aforementioned dispute:

1. The claim of the Claimant, Eder José Oliveira Bonfim, is accepted.

2. The Respondent, Khazar Lankaran FC, has to pay to the Claimant, ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of USD 50,000 plus 5% interest until the date of effective payment as follows:*

a. 5% p.a. as of 1 August 2013 on the amount of USD 25,000;

b. 5% p.a. as of 1 September 2013 on the amount of USD 25,000.

3. The Respondent has to pay to the Claimant, ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of USD 275,000 plus 5% interest p.a. on said amount as from 4 October 2013 until the date of effective payment.*

4. In the event that the amounts due to the Claimant in accordance with the above-mentioned numbers 2. and 3. are not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

14. On 8 January 2015, the grounds of the decision rendered by the FIFA DRC on 16 October 2014 were notified to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 26 January 2015, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against the decision rendered by the FIFA DRC on 16 October 2014 (hereinafter the "Appealed Decision"), with the following Request for Relief:

"1. In accordance with the Article R47 of the Code of Sports-related Arbitration, 2013 edition, the Club partially challenges the Decision of FIFA Dispute Resolution Chamber on the case Eder Bonfim v. Khazar Lankaran FC (case ref. mfl. 14-00065).

2. The club requests the Court of Arbitration for Sports

- *to reduce the amount of the compensation payable to the Player by the Club to 125,000 (one hundred and twenty five thousand) USD which is equal to 5 (five) salaries of the Player;*
- *to deduct from the above-mentioned compensation the amount of 31,815 (thirty one thousand and eight hundred and fifteen), which is already on the card of the Player and finally entitle the Player to receive* ***93,185 (ninety three thousand and one hundred and eighty five) US Dollars.***
- *to condemn the Player to pay* ***only*** *his own shares of the Court expenses".*

Furthermore, in accordance with Article R51 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant informed the CAS Court Office that the Statement of Appeal was to be considered as the Appeal Brief as well.

16. On 30 January 2015, the CAS Court Office invited FIFA to confirm whether it intended to participate as a party in the present arbitration procedure or not.

17. On 13 February 2015, FIFA informed the CAS Court Office that it renounced its right to intervene in the present arbitration procedure.

18. On 20 February 2015, the Respondent filed its Statement of Defence requesting the CAS to grant an award in accordance with Article R55 of the CAS Code:

- *Refusing to grant the appeal;*
- *Confirming the appealed decision of FIFA's Dispute Resolution Chamber, that made a correct evaluation of the evidence and decided accordingly within the legal framework applicable to this case;*
- *Obliging the Appellant to pay the costs of the appeal;*
- *Given that the Respondent was assisted in the present procedure by a professional legal adviser, to order the Appellant to contribute towards its costs.*

19. On 23 February 2015, the CAS Court Office informed the parties that they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely.

20. On 27 February 2015, the Appellant informed the CAS Court Office that it preferred a hearing to be held in the present case.

21. On 2 March 2015, the Responded informed the CAS Court Office that it also preferred a hearing to be held in the present matter.

22. On 31 March 2015, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to resolve the present dispute had been constituted as follows: (i) Mr. José Juan Pintó, attorney-at law in Barcelona, Spain, as President of the Panel; (ii) Dr. Dirk-Reiner Martens, attorney-at-law in Munich, Germany, appointed by the Appellant; (iii) Mr. Michele Bernasconi, attorney-at-law in Zurich, Switzerland, appointed by the Respondent.

23. Both parties countersigned the Order of Procedure issued by the CAS Court Office.

24. The hearing took place in Lausanne on 2 June 2015. In addition to the Panel, the following persons attended the hearing:

For the Appellant:

1. Mr. Tuygun Nadirov, Vice-President of the Club.
2. Mr. Ramil Jahangirov, legal counsel.

For the Respondent:

1. Mr. José Duarte Reis, legal counsel.
2. Mr. José Oliveira Bonfim, the Player.
3. Ms. Dulce Spares Rodrigues, interpreter.

25. Mr. Brent J. Nowicki, counsel to the TAS and Ms. Rosa Monteira, *ad hoc* clerk, assisted the Panel at the hearing.

26. At the outset of the hearing, both parties confirmed that they had no objections to the constitution of the Panel, and did not object to the jurisdiction of CAS. At the hearing, the parties had the opportunity to present their case, to submit their arguments, and to answer the questions posed by the Panel. During the hearing, the Player was examined by the parties and the Panel, and his testimony was simultaneously translated into English by the interpreter, Ms. Dulce Spares Rodrigues. At the end of the hearing, both parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

27. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what follows.

A. The appellant

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

a) As to the facts

29. On 26 July 2013, following a decision by Mr. John Benjamin Toshack, head coach of the Club at that time, a few of the Club's players (including the Respondent) were offered the opportunity to join a new club since the aforesaid head coach did not want to have them on the team.

30. The Respondent was provided with all possibilities in order to find a new club during the course of the transfer period. In addition, the Respondent was also offered, in order to maintain his sporting form, the possibility to play in the Appellant's reserve team, which the Respondent considered unacceptable.

31. The Respondent alleged that his authorization to stay in the country had expired. However, the Respondent did not highlight the fact that it takes about one month to renew such authorization and, since he left the country one month after the authorization expired, there had been no time to renew his visa.

32. During several negotiations between the Appellant and the Respondent, the latter was informed that the former was ready to pay the two outstanding salaries plus a fixed amount as compensation, in accordance with the Labour Code of the Azerbaijan Republic. Likewise, the same calculations were applied to other players, whose contracts were mutually terminated.

33. Moreover, the behaviour of the Player should also be taken into account. In particular, despite two successful seasons within the Club, his undisciplined behaviour in summer 2013 was, among other factors, the reason that lead the coach to dispense his services. In spite of this behaviour, the Club never applied any disciplinary sanction to the Player.

34. With regard to the letters sent by the player on 4, 17 and 24 September, all the attempts from the Appellant to respond failed because it was not possible for the Club to answer it to the same fax number that was used by the Player to send the faxes (for confidentiality reasons as it was a number from a public service center), and because the attempts to send them to the alternative fax provided in his letters (+351213849449) also were not successful.

b) As to applicable law regarding the termination of the Contract

35. The Contract contains no explicit provision regarding the termination of the contractual relationship between the parties. However, Article Seven of the Contract establishes that *"the Second Party undertakes to abide by the rules and regulations of the Club and the Azerbaijan Federation together with the laws and principles observed in the Azerbaijan"*. Thus, as there is no special legal provision in the Azeri's laws applicable to sports relationships, in the present case Article 70 of the Labour Code of Azerbaijan Republic should be applied.

36. According to the official English translation of the aforesaid Azeri's Labour Code available on the website of the Ministry of Labour and Social Protection of the Population, the aforesaid Article 70 reads as follows:

"An employment contract may be terminated at the employers' initiative in the following cases:

a. the enterprise is liquidated;

b. there is a personnel cutback at the enterprise;

c. a competent body decides that the employee does not have the professional skills for the job he holds;

d. the employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and gross violation of job description as indicated in Article 72 thereof without valid reason;

e. if the employee has not justified the expectations within probation period".

37. Article 70 of the Azeri's Labour Code should apply as several contracts with various players of the Club were mutually terminated at the same time and, therefore, such situation should be considered as a *personnel cutback*.

38. In these circumstances, according to Article 77 (par. 1-4) of the aforesaid Azeri's Labour Code:

1. If an individual employment contract is terminated due to a reduction in employees or staff, the employee shall be officially notified by the employer two months in advance in cases provided by Article 70, para. b.

2. During the notice period, the employee shall be given at least one day a week off with pay to enable him to find appropriate work.

3. In an employment contract is terminated under Article 70, para. a and b hereof employees shall be paid:

- *severance equalling the lowest average monthly wage*
- *the average monthly wage for the second and third months after dismissal until he finds a new job*

4. An employer may terminate an employment contract with the employee consent by paying no less than two months' salary in lump sum instead of applying the notice period defined in part I of this Article and Part II of Article 56 of this Code.

39. Therefore, the total amount payable to the Player as compensation for the termination of the Contract is equal to 5 of his salaries.

c) As to the outstanding amounts

40. Part of the Player's salaries were being paid to the Respondent to his personal account in Azerbaijan, in the local currency *("manats"*). Such monthly payments were regularly performed until August 2014.

41. However, although this account is still open, the credit card of the Player on that account expired. Nevertheless, these amounts remained untouched in the Respondent's Azerbaijan account. In this respect, the Appellant offers its assistance in order to obtain a new credit card so the Respondent can withdraw the aforesaid amounts from the referred account.

42. In this regard, the total amount paid since 1 August 2013 until the end of the Contract amounted to 24,959 *manats* (which is equal to 31,815 USD). Thus, this amount should also be taken into consideration and therefore deducted from the amount in dispute.

B. The respondent

a) As to the breach of the Contract

43. It is clear that the Appellant breached the Contract without just cause, as the only reason it adduced in its Appeal Brief was that the Contract was terminated *"according to the decision of the head coach […]"*, which is not a valid reason for termination.

44. The Appellant used the non-payment of the outstanding salaries, the ban from participating in the team, and also the expiry of his visa to exert pressure on the Respondent so that he would accept the termination of the Contract with minimal compensation.

45. The Player could not have shown *"undisciplined behaviour"* during the summer of 2013 because the Player was away from the Club during that summer. The Appellant provides no evidence whatsoever on this.

b) As to the applicable law regarding the termination of the Contract

46. The parties did not make a choice of the applicable law in Article Seven of the Contract. As provided in this Article, only the Respondent *("the second party")* undertook to abide by the rules and regulations stated therein, while the choice of the law applicable to a Contract must be made expressly and explicitly by both parties.

47. Additionally, the wording *"to abide"* does not mean that any dispute arising out of the Contract shall be resolved in accordance with the laws of Azerbaijan.

48. Therefore, the present dispute must be decided, primarily, in accordance with the FIFA Regulations and, alternatively, with Swiss law, in case there is a need to fill a possible lacuna in the FIFA Regulations.

49. Notwithstanding this, even if Azerbaijan law was applicable to the present matter, the referenced Article 70 of the Azeri's Labour Code cannot be applicable to the dispute at hand. Indeed, contrary to what the Appellant asserts, in the present case there was no situation of *personnel cutback,* as *personnel cutback* implies that the dismissed workers are not replaced by others, which was not the case.

c) As to the Appellant's request to reduce the compensation

50. Regarding the request of the Appellant to reduce the amount due as compensation to USD 125,000, the Appellant does not allege in its Appeal Brief any valid reason in order to be granted such a reduction.

51. In this regard, the compensation awarded by the FIFA DRC is in accordance with Article 17 of the FIFA Regulations as well as in accordance with the non-ethical behaviour of the Club, since the Player remained unemployed for the entire 2013/2014 sporting season and, thus, has not been able to mitigate his damages. In fact, the Appellant continues the non-payment of the undisputed outstanding salaries.

d) As to the Appellant's request to deduct the amount of USD 31,815 from the compensation

52. From the beginning of the contractual relationship, the Appellant provided the Respondent with a credit card so that the Respondent could have money in the local currency to pay his personal expenses. These amounts were subsequently deducted from the Respondent's salaries.

53. However, the bank account belongs to the Appellant and not to the Respondent. This was the reason why a new credit card could not be obtained upon the Respondent's request and the reason why the Appellant now offers its assistance in order to obtain the aforesaid new credit card.

54. Anyway, the Respondent does not want to be granted a new credit card in order to take the money out from the Azerbaijan bank account. He only wants to receive the outstanding amounts by means of a bank transfer to his current bank account.

V. ADMISSIBILITY

55. Pursuant to Article 67, para. 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

56. The grounds of the Appealed Decision were communicated to the Appellant by facsimile on 8 January 2015, and the Statement of Appeal was filed on 26 January 2015, i.e. within the time limit required both by the FIFA Statutes and Article R49 of the CAS Code.

57. Consequently, the Appeal filed by the Appellant is admissible.

VI. JURISDICTION

58. 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 him prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

59. The jurisdiction of the CAS, which has not been disputed by any party, arises out of Article 66 and 67 of the FIFA Statutes, in connection with the above-mentioned Article R47 of the CAS Code. Therefore, the Panel considers that the CAS is competent to rule on this case.

VII. APPLICABLE LAW

60. Article R58 of the CAS Code provides 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

61. With regard to the law applicable to the present dispute, the Panel notes that there is controversy between both parties in connection with the interpretation to be given to Article Seven of the Contract, which reads as follows:

ARTICLE SEVEN:

THE SECOND PARTY UNDERTAKES TO ABIDE BY THE RULES AND REGULATIONS OF THE CLUB AND THE AZERBAIJAN FEDERATION TOGETHER WITH THE LAWS AND PRINCIPLES OBSERVED IN THE AZERBAIJAN.

62. In particular, with regard to the interpretation of Article Seven, the Panel notes that, while the Appellant argues that by this clause the parties agreed to submit the Contract to the laws of Azerbaijan, the Respondent maintains that such a choice of law was never made, as in this clause only one of the parties undertook to be bound by such rules, and any choice of law in a contract must be explicitly and expressly agreed by both parties.

63. In this sense, the Appellant argues that, taking into account that *"there is no special provision regarding the sports relations"*, the Azeri's laws should be applied to the present dispute (particularly Articles 70 and 77 of the Labour Code of Azerbaijan). In the Appellant's view, taking into consideration that several contracts with various players of the Club were simultaneously terminated and, therefore, such situation should be considered as the *personnel cutback* envisaged by the aforesaid

articles of the Azeri's Labour Code. However, the Respondent disagrees with this position and maintains that the Azeri's laws are not applicable to the present dispute, that should be settled in accordance with the FIFA Regulations and, subsidiarily, with Swiss law.

64. In this scenario, in order to decide which laws and regulations shall be applied in the present dispute, the Panel shall first determine whether Article Seven of the Contract is a governing law clause or not and if it can be ultimately considered as the *"rules of law chosen by the parties"* in the sense of Article R58 of the CAS Code. For this purpose, the Panel has taken into account that a governing law clause is, by nature, bilateral and reciprocal, as it shall express the parties' choice as to what law shall govern the Contract and apply to both parties.

65. In this regard, the Panel firstly notes that according to the literal wording of the above-mentioned Article Seven, such a clause imposes an obligation only on one of the parties (the Respondent), to comply with the rules and regulations of the Club and the AFFA, as well as with the laws and principles of Azerbaijan. Furthermore, when analyzing the contractual context of Article Seven, the Panel has found that the clauses of the Contract are of three different types: (i) those imposing certain obligations exclusively on the Appellant (e.g. Articles Three and Four), (ii) those imposing certain obligations exclusively on the Respondent (e.g. Articles Five, Six or Seven) and (iv) those establishing mutual and reciprocal obligations and commitments of both parties. So, for example, contrary to the above-mentioned Article Seven, where only the Respondent assumed the obligation to be bound by some specific rules, in Article Nine of the Contract not only one but both parties expressly and reciprocally agreed *("The two parties shall […]"*) to submit all and any disputes arising in respect of the interpretation, execution and termination of the Contract to the jurisdiction of AFFA and to FIFA.

66. Therefore, the characteristics that a governing law clause shall have, and the comparison with the literal wording of Article Seven, together with the systematic interpretation of the Contract as a whole, leads the Panel to conclude that Article Seven of the Contract is not a governing law clause. In other words, the Panel is satisfied that in Article Seven the parties have not established which law or regulation was to be applied to the Contract and to any potential dispute between the parties regarding the interpretation, the execution or the termination of the Contract. Rather, Article Seven is a clause where solely the Respondent committed himself to respect the regulations of the Club, the AFFA and the laws of Azerbaijan during the performance and execution of his contractual obligations. Therefore, the Panel is of the opinion that this Article Seven does not establish in any way an explicit submission of the Contract to any specific law or regulations.

67. As a consequence of the foregoing, the Panel considers that Article Seven of the Contract does not specifically establish the rules of law that according to the will of the parties had to govern the contractual relationship among them. Thus, pursuant to Article R58 of the CAS Code and Article 66.2 of the FIFA Statutes, to settle the present dispute the Panel shall primarily apply the various regulations of FIFA and, if necessary, Swiss law additionally.

68. In any case, and for the sake of completeness, the Panel wants to stress that even if Article Seven was considered as a governing law clause, the resulting law applicable to the present

dispute would ultimately be the same (i.e. the FIFA Regulations), based on the following reasons:

- The regulations referred to in Article Seven were the *"rules and regulations of the Club and the Azerbaijan Federation"*, together with the Laws and principles observed in the Azerbaijan. As a consequence, the main rules to be respected pursuant to this clause are the sport regulations of the AFFA. Taking into account that the AFFA is a member of FIFA and considering that due to the hierarchical structure of international football, AFFA is bound by the FIFA regulations (particularly in cases of international dimension like the one at stake). Accordingly, the Panel considers that the application of Article Seven of the Contract determines in turn the application of the FIFA Statutes and regulations, which are thus applicable to the present dispute. In this regard, the Panel notes that the same conclusion has been reached by other CAS panels in similar cases (e.g. CAS 2011/A/2473).
- In addition, taking into account that the Appealed Decision is a decision passed by the DRC of FIFA, pursuant to Article 66.2 of the FIFA Statutes, in order to settle this appeal procedure *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*. Therefore, appeals procedures against decisions passed by the FIFA bodies shall be decided primarily in accordance with the various regulations of FIFA. This has been declared by the CAS Jurisprudence in previous cases (i.e. CAS 2013/A/3407), establishing that *"[t]he very provision of the FIFA Statutes (Article 66) which confers jurisdiction on the CAS, which jurisdiction the Appellant has utilised to lodge his appeal, itself requires the application of the FIFA regulations and Swiss law as a condition to the conferring of that jurisdiction and therefore to the right of appeal"*.
- Notwithstanding this, and even if the FIFA Regulations were disregarded and the Azeri's laws were applicable to the present dispute, the specific laws cited by the Appellant (i.e. articles 70 and 77 of the Labour Code of Azerbaijan) are not applicable to the present dispute, as they refer to factual situations that have nothing to do with the case at stake (i.e. liquidation of a company, "personnel cutback", lack of professional skills of the employee, breach by the employee of his professional duties or gross violation of the "job description" without a valid reason or, ultimately, to cases where the employee has not met the expectations within the probation period).
- In this regard, the Panel wants to stress that the facts in dispute have nothing to do with a case of staff or collective redundancies (*"personnel cutback"*). In the Panel's opinion, the Appellant not only failed to prove that it was indeed facing such a factual situation but, on the contrary, the arguments given by the Club to support this thesis *("a few players of the team were offered to find them a new club as the head coach did not express willing to see them at his disposal")* demonstrate the contrary: the Appellant decided to terminate the Player's contract because of the decision of the coach. The termination of the contract of 4 players (D., O., P. and Mr. Bonfim) who did not have the trust of the coach (which was executed on an individual basis), and who were obviously substituted by new players, under no circumstances can be defined as *"personnel cutback"*. In fact, this was confirmed by the Appellant itself who acknowledged at the hearing that the above-mentioned Article 70 of the Azeri's Labour was not directly applicable to the case at stake.

- In light of the above, the Panel considers that the Azeri's law relied by the Appellant is not relevant to the present dispute and, even if it was applicable, the factual situation *("personnel cutback")* envisaged by the Azeri's Labour Code for its application, is not given in the case at stake.
- Finally, and just for the sake of completeness and merely *ad abundatiam,* the Panel considers that even if the dismissal of 4 players of the Club was considered as "personnel cutback", in any case the Appellant would have failed to meet the legal requirements established in Article 77 of the Azeri's Labour Code for such a "personnel cutback" which , for example, requires to give the concerned employee two months prior notice *("If an individual employment contract is terminated due to a reduction in employees or staff, the employee shall be officially notified by the employer two months in advance in cases provided by Article 70, para. b […]").* Prior notice that was not given to the Player in the case at stake, which in turn clearly demonstrates that the Appellant never thought that it was facing a case of "personnel cutback".

69. As a result of the foregoing and taking into account the aforementioned provisions, the Panel concludes that the present dispute is to be decided in accordance with the FIFA Regulations (in particular the 2012 Edition of the FIFA Regulations on the Status and Transfer of Players) and, additionally, Swiss Law.

VIII. MERITS

70. According to the parties' submissions and to the further explanations and grounds given at the hearing of the present appeal, the Panel considers that, in order to settle the present dispute, it shall address the following issues:

i. Is there any valid legal reason to reduce the compensation established by the Appealed Decision, as requested by the Appellant?

ii. Shall the amount of USD 31,815 be deducted from the amount claimed by the Respondent, as requested by the Appellant?

A. The potential reduction of the compensation

71. The Appellant requests to reduce the amount of the compensation granted by the Appealed Decision (USD 275,000) to USD 125,000 on the basis of several circumstances alleged in its Statement of Appeal. On the other hand, the Respondent maintains that the compensation granted by the FIFA DRC is the one resulting from the application of Article 17 of FIFA the Regulations on the Status and Transfer of Players (the "FIFA Regulations") and that the Appellant has not given any valid reason that could lead to the requested reduction.

72. To settle this issue the Panel first considers that it is undisputed that the Appellant did not pay the Player's salaries of July and August 2013, as both parties have recognized it, so no further discussion is necessary in this respect. In particular, no reliable evidence was advanced by Appellant to enable the Panel to conclude indeed that the mentioned monthly salaries were not

due as per the first day of the following month but two weeks later only, as claimed in the Player's letter of 23 September 2013. On his side, the Player did not establish that the monthly salaries were due *praenumerando*. The Panel is therefore satisfied that the July salary was due on the first day of August and that the August salary became due on the first day of September, and no salary payment was due in advance. Also in this point, the Appealed Decision can, therefore, be confirmed.

73. In addition, the Panel notes that the Appellant has also recognized that it wanted to terminate the Player's Contract and thus it offered him to do it by mutual consent, but the parties never agreed to such a consensual termination of the employment relationship.

74. This being so, the Panel considers that by not paying the Respondent's salaries of July and August 2013, the Appellant clearly breached its contractual economic obligations towards the Player. In addition, the Panel deems it proven that, as from 3 September 2013 (date on which the Appellant unilaterally allowed the Player to be absent until 25 September 2013) the Player was banned from playing with the first team of the Appellant, even though the Player formally requested (twice) for the Club to reinstate him on such first team (requests that were not answered by the Appellant). Finally, the Panel has also taken into account that the Player requested the Club to renew his visa that was about to expire on 19 September 2013, in order to be able to remain in Azerbaijan and play for the Appellant, but the latter neither renewed the visa, nor performed any act in that respect.

75. As a consequence of the foregoing, the Panel agrees with the Appealed Decision and finds that the Appellant breached the Contract that, in turn, was terminated by the Respondent with just cause. In this regard, as the Appellant itself recognizes, *"the decision of a head coach to dismiss a player puts a club in a difficult position, however a club is solely and fully responsible before a player"*. Indeed, in accordance with Art. 17 of the FIFA Regulations, when a party terminates a contract with just cause, the party responsible for the termination of the contract shall be liable to pay a compensation for the damages caused as a consequence of the early termination of the contract. Therefore, the Panel finds that the Appellant, who is the party in breach, shall pay a compensation to the Respondent for the damages caused.

76. With regard to the amount of this compensation, the Panel is satisfied with the calculation made in the Appealed Decision in accordance with Article 17 of the FIFA Regulations, which is also in line with the jurisprudence of the CAS in this matter. In particular, taking into account all the circumstances of the present case and, in particular, (i) the remuneration and other benefits due to the Player under the existing Contract, (ii) that the Player was not in position to sign a new contract that could mitigate the loss he suffered as a result of the Appellant's behaviour, (iii) the Contract's remaining period, and (iv) the rest of the factors established by Article 17 of the FIFA Regulations, the Panel finds that the total compensation to be paid by the Appellant to the Respondent amounts to USD 275,000, as previously decided by the FIFA DRC.

77. Concerning the potential reduction of the amount of this compensation as requested by the Appellant, the Panel finds that the specific circumstances of the present case cannot lead to the reduction of the compensation but, on the contrary, they confirm the correctness of the

compensation established by the Appealed Decision. In particular, with regard to the circumstances on which the Appellant intends to ground the reduction of the compensation:

- The fact that the Appellant offered the Respondent to play for its *"reserve team"* does not remedy its breach of the Contract at all. On the contrary, it could be considered as a breach of Article 5 of the Contract, according to which the Player *"undertakes to fully utilize his technical capacities and expertise to promote, improve and enhance the second party's first football team […]"* (emphasis added). In addition, regardless of whether this could be considered as a breach of the Contract or not, this circumstance together with the fact that the Appellant was unilaterally granting to the Respondent unsolicited authorizations to be absent from the Club in order to look for a new club, reveals that the Club's intention was to fulfil the wish of its head coach and so terminate the Contract because the coach did not want the Player in the squad anymore.

  In the same line, it is quite revealing for the Panel that the letters sent by the Respondent prior to the termination of the Contract (on the 4th and 17th September) requesting the Club (i) to pay him his outstanding salaries and (ii) to immediately reinstate him into the Club's first team, were not answered by the Appellant. What is even more remarkable, the letter of termination sent by the Respondent on 23 September 2013 was not answered by the Appellant either. In fact, it was not until 4 October 2013 that the Appellant sent a letter, not to the Player but to the CBF, simply informing this national association that, allegedly, they were not able to contact the Player who would have left the country and the team without any consent from the Club.

  In this regard the Appellant maintains that it refrained from replying to the aforesaid facsimiles to one of the fax numbers provided therein (the Azerbaijani one), for confidentiality reasons, because such numbers belonged to a public service center in Azerbaijan. However, the Panel notes that in his correspondence, the Respondent also provided an alternative fax number in Portugal where he could have been contacted by the Appellant. The fact that the Appellant alleges that it tried to reply to the Respondent's letter at this Portuguese number but that the transmission failed, is irrelevant because this statement is not confirmed by any piece of evidence. The Appellant could have easily supported such attempt by filing with its Statement of Appeal the corresponding transmission report of the fax it tried to send to the Player. For this reason, taking into account that in this particular issue the burden of proof is on the Appellant's side, the assertions of the latter in this respect cannot be accepted by the Panel.

  In light of the aforementioned, the Panel is of the opinion that the behaviour of the Appellant confirms that it tacitly accepted the termination of the Contract by the Respondent.

- As to the alleged *"undisciplined behaviour"* of the Player, the Panel notes that this has not been proven by the Appellant, which, in fact has recognized that it *"never applied any disciplinary sanction to the Player for such conduct"*. In lack of any evidence for such an alleged undisciplined behaviour, the Panel cannot retain the argument as a valid defence of Appellant.

78. Therefore, in the Panel's opinion, in no case the arguments raised by the Appellant can lead to justify or mitigate the effects of the breach of its contractual obligations that the Appellant should have fulfilled in accordance with the general principle of *pacta sunt servanda* enshrined in Art. 17 of the FIFA Regulations.

79. Therefore, the Panel concludes that there are no legal or factual grounds to reduce either the compensation due to the Player as established by the Appealed Decision (USD 275,000 plus interest) or its due date determined in the Appealed Decision. Accordingly, the compensation established by the FIFA DRC shall be confirmed.

B. As to the Appellant's request to deduct the amount of USD 31,815 from the amount claimed by the Respondent

80. The Appellant argues that from the beginning of the contractual relationship it gave the Respondent a credit card to withdraw money in local currency for his personal expenses. In the Appellant's words, this money was regularly deposited by the Appellant in a local bank account opened at "Bank Standard" in Azerbaijan, as partial payment of the Player's salaries in the local currency *("manats"* – "AZN"). As a consequence, this money was, at a later point of time, deducted from the Player's total salaries. In this regard, the Appellant contends that these payments were made regularly to this local bank account until the month of August 2013 and that, from that date until the termination of the contract, the Appellant also transferred to this local bank account the total amount of 24,956 AZN.

81. The Appellant also recognizes that, although at the time of the termination of the Contract the aforesaid local bank account was still operative and in effect, the credit card of the Player had already expired, so that the latter could not withdraw any amount. Notwithstanding this, the Appellant maintains that this amount is still deposited in the aforesaid bank account and that the Club is willing to assist the Player to get a new credit card in order to withdraw this money. For this reason, the Appellant considers that this amount (i.e. 24,956 AZN) should be deducted from the salaries due (USD 50,000).

82. On the other hand, the Respondent alleges that the holder of this local bank account is the Appellant, not the Player, and thus when the aforesaid credit card expired, the bank did not issue a new credit card, so he could not withdraw these amounts. The Respondent also contends that at this stage, he does not want the assistance offered by the Appellant to get a new credit card, but simply to receive the amount due for the outstanding salaries.

83. In this regard the Panel first notes that, according to the extract of the bank account provided by the Appellant with its Statement of Appeal, the aforesaid bank account indeed had a positive balance of 20,701.24 AZN. With regard to the possibility of deducting this amount from the amount due to the Player for outstanding salaries, following shall be considered:

- the Panel is convinced that this money belongs to the Appellant, who has access to the aforesaid bank account and can withdraw the deposited amount at any time (as it is evidenced by the fact that the Appellant has full access to the account's extract and balance);

- the Panel is also convinced that the Respondent no longer has direct access to this account and cannot withdraw any funds from it;
- pursuant to Article Three of the Contract, the Appellant undertook to remunerate the Player's salary on a monthly basis and in US Dollars, and not in AZN and not by means of several partial instalments to be withdrawn by a credit card.

Against this background, the Panel considers that the amount that is allegedly deposited as of today's date in the bank account opened at the Standard Bank (20,701.24 AZN) shall not be deducted from the total amount due as outstanding salaries (USD 50,000) because, ultimately, this amount was never paid to the Player, it is beyond his control and indeed still belongs to the Appellant. As a consequence, there are no legal reasons to deduct this amount from the outstanding salaries.

84. Notwithstanding this, at the hearing of this appeal, both parties recognized that before the termination of the Contract, during the months of August and September 2013, the Player made two withdrawals in AZN with his credit card, and agreed to deduct these sums from the amount due as outstanding salaries. In particular, as evidenced by the extract of the aforesaid bank account provided by the Appellant, on 7 August 2013 the Player withdrew the amount of 2,346.78 AZN (i.e. USD 2,990.27[1]) and, on 13 September 2013 he withdrew the amount of 1,867.50 AZN (i.e. USD 2,379.01[2]).

85. Therefore, taking into account that both parties have agreed on deducting these sums from the amounts due as outstanding salaries, and that 2 (two) salaries were due at the time of both withdrawals, the Panel shall determine against which outstanding salary the sums shall be allocated. In this regard, the Panel notes that pursuant to Article 87.1 of the Swiss Civil Code of Obligations ("CO"), *"Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first"*. Therefore, in accordance with Article 87.1 CO, the Panel considers that the total amount (i.e. USD 5,369.28) shall be deducted from the first (and thus the oldest) outstanding salary (i.e. the salary of July 2013).

86. In light of the foregoing, the Panel concludes that the total amount that the Appellant shall pay to the Respondent as outstanding remuneration at the time of the termination of the Contract amounts to USD 44,630.72, which is the difference between the amounts recognized by the Appealed Decision (USD 50,000) and the total amount that shall be deducted from the latter (USD 5,369.28), plus interest as it will be determined below.

87. At this point, the Panel deems it necessary to clarify how this deduction shall affect the interests accrued in connection with the salary of July 2013 that the Appellant shall pay to the

[1] The amount in USD corresponds to the conversion of the AZN into USD, at the selling exchange rate between AZN and USD on the 7 August 2013.
[2] The amount in USD corresponds to the conversion of the AZN into USD, at the selling exchange rate between AZN and USD on the 13 September 2013

Respondent. In this regard, the Panel considers that in accordance with articles 102 and 104 of the Swiss CO, the interests shall be calculated as follows:

- 5% p.a. on the amount of USD 25,000 as of 1 August 2013 until 7 August 2013 (the date of the first withdrawal);
- 5% p.a. on the amount of USD 22,009.73 (i.e. USD 25,000 minus USD 2,990.27) as of 8 August 2013 until 13 September 2013 (the date of the second withdrawal);
- 5% p.a. on the amount of USD 19,630.72 (i.e. USD 22,009.73 minus USD 2,379.01) as of 14 September 2013 until the date of effective payment.

88. Finally, for the sake of completeness, with regard to the amount due for the unpaid salary for August 2013, as no withdrawal has been made against this sum, the interests accrued by this amount are the same as those established in the Appealed Decision, i.e. 5% as from 1 September 2013 until the date of the effective payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Khazar Lankaran Football Club on 26 January 2015 against the Decision rendered by the Dispute Resolution Chamber of the FIFA on 16 October 2014 is partially upheld.

2. Khazar Lankaran FC has to pay to Eder José Oliveira Bonfim the following amounts:

   a. An amount of USD 275,000 plus 5% interest p.a. as from 4 October 2013 until the date of effective payment; and

   b. An amount of USD 19,630.72 plus:

      i. 5% interest p.a. as from 1 August 2013 until 7 August 2013, calculated on a sum of USD 25'000;

      ii. 5% interest p.a. as from 8 August 2013 until 13 September 2013, calculated on a sum of USD 22,009.73;

      iii. 5% interest p.a. as from 14 September 2013 until the date of the effective payment, calculated on a sum of USD 19,630.72; and

c. An amount of USD 25,000 plus 5% interest p.a. as from 1 September 2013 until the date of the effective payment.

3. (…).

4. (…).

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