



Arbitration CAS 2015/A/3889 Danilyuk Mikhail v. Football Club Shinnik, award of 9 June 2015

Panel: Prof. Michael Geistlinger (Austria), Sole Arbitrator

Football

Players' agent contract

Players' agent fee for agent contracted by club

It is not unusual under FIFA's and its member associations' regulations that the remuneration of a players' agent is composed of a basic remuneration and a bonus payment, the latter mainly depending on the quality and performance of the player in the transfer of which the agent has been involved. A players' agent who has been contracted by a club shall be remunerated by payment of a lump sum that has been agreed upon in advance. Apart from the requirement that an agreement must be concluded in advance there are no limits how this lump sum is calculated and composed. Whereas FIFA advises players' agents to use standard contracts, the parties to the representation contract are at liberty to enter into additional agreements and to supplement the standard contract made available by FIFA, provided that the laws applicable in the territory of the association for arranging employment in the country concerned are duly complied with.

I. THE PARTIES

- 1.1. Mr. Danilyuk Mikhail (hereinafter referred to as "Mr Danilyuk" or "the Appellant") is a professional players' agent. He is Russian citizen.
- 1.2. The Football Club Shinnik (hereinafter referred to as the "Club" or "the Respondent") is a Russian football club currently competing in the Russian National Football league (second division). The Club is affiliated with the Russian Football Union (hereinafter referred to as the "RFU").

II. FACTS

- 2.1. On 10 August 2011, Mr Danilyuk and the Club concluded an Agency Agreement (hereinafter referred to as "Contract"). The Contract was registered by the Commission of the RFU on Operations of Football Players' Agents No 058-022 with stamp of 9 August 2011. According to Article 1.1 of the Contract Mr Danilyuk was hired as the Club's agent to provide legal and factual action on behalf of the Club, in particular *"bold negotiations with the professional sportsman*

[K.] (hereinafter referred to as the “Professional Sportsman”) [hereinafter referred to as “the Player”] *with a view to enter into an employment agreement between the Professional Sportsman and the Club on the conditions, specified by the Club*. Article 1.2 of the Contract specified that the services under the Contract “*shall be deemed rendered, provided the Club and the Professional Sportsman enter into an employment Agreement*”.

- 2.2. Mr Danilyuk organized the transfer of the Player to the Club. On 16 August 2011, the Club and the Player entered into an employment agreement.
- 2.3. This fact and the fact that Mr Danilyuk “*fully performed his obligations to the Club within the terms specified*” was confirmed by an Act to the Agency Agreement dated 16 August 2011 and signed by Mr Danilyuk and the Club (hereinafter referred to as the “Act”). By Article 1.2 of this Act the Club “*accepted the requested scope of works (services) and does not have any claims with regard to the terms and the scope of the works carried out*”. Article 2.1 of the Act specified that the “*sum payable by the Club to the Agent amounts to 50,000 (fifty thousand) US dollars (not subject to VAT). It is to be transferred in rubles until 15 October 2011 at the exchange rate of Russia’s Central Bank on the payment date*”.
- 2.4. The sum specified in Article 2.1 of the Act corresponds to the remuneration provision of Article 3.1 of the Contract. According to the latter provision an additional remuneration determined by Articles 3.5 and 3.6 of the Contract has been agreed upon. Article 3.5 of the Contract provides that in case “*the Professional Sportsman participates in the official games of the Club in the Russian football championship of the sport season 2012 – 2013, sport season 2013 – 2014, the Club shall pay to the Agent an additional remuneration in the amount of 50,000 (fifty thousand) US dollars per each such season. The Club shall pay this additional remuneration in the form of a prepayment until the 15th day of the month following the month of the expiration of the registration period (transfer window) in Russia. The said remuneration is not to be paid to the Agent for the sports season, in which the Professional Sportsman does not play for the Club*”. Article 3.6 of the Contract provided for another additional remuneration in case of a transfer of the Player to another sport football club before the expiration of the employment agreement with the Club.

Article 3.2 of the Contract reads as follows:

“The payment of the Agent’s remuneration shall be carried out after conclusion of the Act of execution of the services which is to be signed by the authorized representatives of the parties”.

- 2.5. On 15 July 2013 the Club duly paid the sum of 50,000 US Dollars according to Article 3.1 of the Contract and Article 2.1 of the Act to the Contract, but did not pay the sum of another 50,000 US Dollars provided for under Articles 3.1 and 3.5 of the Contract, which was requested by Mr Danilyuk since the Player was fielded two times in the sports season 2012 – 2013 (Sibir – Shinnik, Enisey – Shinnik). In all other 15 matches of this season the Professional Sportsman was in reserve.
- 2.6. On 17 April 2014, Mr Danilyuk submitted a complaint to the Club by telegraph message and set a deadline for payment until 23 April 2014. Mr Danilyuk reserved his right to petition to the RFU – FIFA in case of non-payment by the set deadline.

- 2.7. On 29 May 2014, Mr Danilyuk lodged a claim at the Dispute Resolution Chamber of the RFU (“Palata po razresheniyu sporov”, National Dispute Resolution Chamber, hereinafter referred to as “NDRC”), since the Club did not pay the required sum.
- 2.8. On 4 August 2014, the Club filed a reasoned statement of defence before the NDRC and argued that Mr Danilyuk in fact has not participated in the transfer of the Player to the Club. The Club relied on a witness statement of the Player who declared that his employment agreement has been signed with participation of his representative Muminov Kakhor and that he was not familiar with any other agreements (agency agreements) serving as a prerequisite for his transfer. The Club argued that the agreement between the Club and Mr Danilyuk was “*a sham transaction, as it was entered into without the intention to create legal consequences corresponding to it*”. Further to that the Club submitted that Mr Danilyuk was no licensed agent and, thus, had no right to petition to the NDRC.
- 2.9. On 14 August 2014, the NDRC decided that it had jurisdiction because it was a dispute on the violation of conditions under agreements entered into with licensed football agents and that the conditions for payment of the additional remuneration set by Article 3.5 of the Contract had been fulfilled and that the Club, therefore, had to pay to Mr Danilyuk the additional remuneration in the amount of 50,000 US Dollars in rubles, at the exchange rate of Russia’s Central Bank as of the payment date and that such payment shall take place within 30 days of the entry into force of the NDRC’s decision. Further to that, the Club was ordered to pay to Mr Danilyuk the charge for consideration of the claim by the NDRC in the amount of 15,000 rubles within 30 calendar days.
- 2.10. The Club appealed from the decision of the NDRC to the Players’ Status Committee of the RFU (hereinafter referred to as “PSC”) and repeated its arguments from the first instance procedure. In the Club’s view, the agreement concluded with Mr Danilyuk was an imaginary deal. Practically, Mr Danilyuk asked for payments for actions he did not perform. At the hearing before the PSC, the Club’s Sports Director S.V. Korovkin explained that it was him who, as the person responsible, had gathered all information on the Player and had conducted further negotiations concerning his transfer. The obligation to participate in sporting events is already covered by Article 3.1.2 of the Employment Agreement. Mr Danilyuk, thus, was asking twice the same fee for the same action, namely the athlete’s participation in official games.
- 2.11. The Club finally reiterated that the agent would not be licensed and that he hence has not the right to bring a claim before the RFU bodies.
- 2.12. By decision of 3 October 2014, handed over in full to Mr Danilyuk on 14 January 2015 (hereinafter referred to as “Appealed Decision”), the PSC entered into the merits of the case without expressing any reservation on the Appellant’s ability to bring its case before the RFU, granted the appeal and dismissed Mr Danilyuk’s claim concerning the additional payment of 50,000 US Dollars. The PSC referred to Article 3.2 of the Agency Agreement.

- 2.13. In the Appealed Decision the PSC indeed found that *“in violation of Clause 1, Article 1008 of the Civil Code of the Russian Federation, the Agent did not furnish the Club with an Agent report, the parties did not conclude an additional Act of Completed work (Clause 3.2 of the Agency Agreement), which would have been a reason for payment of an additional fee. The Agent’s obligation to execute and submit its reports is mandatorily established by Article 1008 of the Civil Code of the Russian Federation, and the Agent shall fulfil it due to the requirements of Article 309 of the Civil Code of the Russian Federation (and) Article 422 (of) the Civil Code of the Russian Federation”*. Secondly, the PSC concluded that *“the Agent’s demand for an additional fee under the considered agreement is unjustified, as the terms of Clause 3.5. of the Agency Agreement found no ground for payment of money to the Agent, but merely repeat the subject of the Agent’s core service, for which the latter has already received a fee in full. Pursuant to the Agency Agreement, the Agent obtains the right to a fee as a consequence of setting of labour relations between the Club and the Football Player. As such relation(s) were set, and pursuant to the Act of August, 16, 2011 the Agent and the Club (had) agreed with the exhaustion of the agency function and full payment of the fee due, the Agent’s further claim means a demand of repeated payment for the same actions. During decision making, the Committee also gives attention to the fact that the Football Player himself knew nothing of the Agent’s participation in his employment. This circumstance could indicate sham of the considered Agency Agreement in full. However, the Parties raised no claims concerning the fee paid previously”*.

III. PROCEEDINGS BEFORE THE CAS AND EVENTS DURING THESE PROCEEDINGS

- 3.1. On 19 January 2015, Mr Danilyuk submitted his Statement of Appeal against the PSC’s decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as “the Code”).
- 3.2. On 27 January 2015, the Counsel to the CAS forwarded the Statement of Appeal to the Respondent, informed on the deadline for the Appeal Brief and asked the Club by a deadline of 5 days whether it agrees to the appointment of a sole arbitrator.
- 3.3. On 4 February 2015, the Club objected to the Statement of Appeal and submitted a letter signed by the Player which reads as follows:

“Explanation

About the circumstances of signing the Employment Agreement between me and NP FC ‘Shinnik’ in person of General Director Rozhnov A.A: I can explain the following: the Employment Agreement was sign(ed) between me and the Club (on) 16 August 2011 after the expiration of my Contract with FC Zhemchuzhina, as I was a “free Agent” after discontinuation of mentioned FC. Signing the Employment Agreement, its text and conditions were examined by my representative Muminov Kakhor, who assists me in this procedure. I knew nothing about the participation of any other Agents in my transfer”.

- 3.4. By letter of the same day, the Counsel to the CAS advised the Club that it had not been invited yet to express its position on the merits of the case. This will happen after receipt of the Appeal Brief. But the Counsel to the CAS reiterated her request of 27 January 2015 to comment on the appointment of a sole arbitrator requested by Mr Danilyuk.

- 3.5. Since no objection from the Club arrived within the set deadline, the Counsel to the CAS informed the parties by letter dated 9 February 2015 of the decision of the President of the CAS Appeals Arbitration Division to appoint a sole arbitrator.
- 3.6. In accordance with Article R51 of the Code, Mr Danilyuk filed his Appeal Brief on 13 February 2015.
- 3.7. By letter of the Counsel to the CAS of 17 February 2015, the Club was notified the Appeal Brief, including exhibits and granted a deadline of 20 days from receipt of the letter to submit its answer.
- 3.8. On 6 March 2015, Mr Michael Geistlinger, professor in Salzburg, Austria, was appointed as Sole Arbitrator in this case.
- 3.9. On 20 March 2015, the Club filed its Answer by fax and, thus, missed the deadline of 20 days from the day of delivery of the Appeal Brief to it, which was 19 February 2015. The deadline, thus, was 11 March 2015. The Club did not express any grounds for the late filing of its answer, neither in the answer itself, nor on or before 25 March 2015, as it has been invited to do so by letter of the Counsel to the CAS dated 20 March 2015. Since Mr Danilyuk objected to the admissibility of the Respondent's Answer and the Club did not provide any reasons for its late filing, the Sole Arbitrator decided to exclude the Respondent's Answer from the CAS file. This decision was communicated to the parties on 31 March 2015 and they were given a deadline of 9 April 2015 to inform the CAS Court Office whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the parties' written submissions.
- 3.10. On 1 April 2015, Mr Danilyuk, and on 7 April 2015, the Club informed the CAS Court Office on their preference to have no hearing held in this matter and that the Sole Arbitrator shall decide the case based on the submissions in writing.
- 3.11. On 22 April 2015, Mr Danilyuk, and on 24 April 2015, the Club signed the Order of Procedure and agreed that the Sole Arbitrator will render a decision on the case based on their submissions in writing.

IV. SUBMISSIONS OF THE PARTIES

A. THE APPELLANT:

- 4.1. Mr Danilyuk bases the jurisdiction of CAS on Article R47 of the Code read together with Article 47 of the RFU Statutes and Article 53 of the RFU Regulations on Dispute Resolution. The Statement of Appeal and the Appeal Brief were submitted in time and fulfilled all other requirements. Thus, CAS holds jurisdiction and the appeal is admissible.
- 4.2. Referring to Article R58 of the Code, to Article 1 para 1 of the FIFA Players' Agents Regulations 2008 (hereinafter referred to as "FIFA PAR") and Article 2 of the Preamble to the RFU Players'

Agents Regulations 2010 (hereinafter referred to as “RFU PAR”) as well as Article 7.1 of the Contract, Mr Danilyuk holds that the FIFA PAR and RFU PAR shall apply as *lex specialis* and prevail over any general rules, including those contained in the legislation of the Russian Federation, except for binding ones. Russian law shall supply subsidiarily.

- 4.3. As to the merits, Mr Danilyuk proposes to CAS to proceed by answering the following questions in their order: “1) *Whether the services were rendered by the Agent? If the answer to the first question is affirmative, then* 2) *Whether the option of additional remuneration stipulated in art. 3.5 of the Contract is valid? If the answer to the second question is affirmative, then* 3) *Whether the Agent is entitled to receive the additional remuneration? If the answer to the third question is affirmative, then* 4) *What is the amount of the additional remuneration?”.*

a) Services under the Contract were rendered by the agent

- 4.4. Mr Danilyuk refers to Article 1.1 of the Contract which obliged him to hold negotiations with the Player with the purpose of concluding an employment agreement between the Player and the Club on the conditions set by the Club. Such employment agreement was entered on 10 August 2011. According to Article 1.2 of the Contract the conclusion of the employment agreement was enough in order to have the services under the Contract being considered as performed. Since Article 3.2 of the Contract requires that an act of execution of the services must be concluded in order to have the remuneration provided by the Contract paid, Mr Danilyuk and the Club signed the respective Act on 16 August 2011. Article 1.1 of this Act confirms full and timely performance of Mr Danilyuk’s obligations before the Club. By payment of 50,000 US Dollars as first part of the agency remuneration, the Club confirmed proper performance by the agent. Considering the principle of *venire contra factum proprium*, the Club would contradict to its own behaviour by arguing the non-fulfilment of his obligations by Mr Danilyuk. Mr Danilyuk represented the Club, whereas Mr Muminov represented the Player in the transfer at stake.

b) Validity of the “bonus payment” provided by the Contract

- 4.5. Mr Danilyuk holds that the PSC was wrong in assuming repeated payment for one and the same core service. In the opinion of Mr Danilyuk, the PSC went against what the parties had stipulated in the Contract and against the practice of the jurisdictional bodies of FIFA and the RFU. From quoting the text of Articles 3.1 and 3.5 of the Contract, Mr Danilyuk concludes that the remuneration under the Contract has been split into two parts, a “*fixed remuneration*” of 50,000 US Dollars and a “*bonus payment*” of 50,000 US Dollars for each sports season (2012 – 2013 and 2013 – 2014) the Player takes part in official matches for the team of the Club in the football championship of Russia. The “*bonus payment*” is based on this event occurrence.
- 4.6. According to Mr Danilyuk, the deal that has been made is to be considered a “*deal made under condition*”, according to Article 157 para 1 of the Civil Code of the Russian Federation. This provision reads as follows:

“The deal shall be regarded as made under the suspensive condition, if the parties have made the arising of the rights and duties dependent on the circumstances, about which it is unknown, whether it (they) will, or will not, take place”.

- 4.7. Mr Danilyuk argues that the practice of bonus payments is quite commonly used by contracts of clubs and football agents because it splits the risks as to the quality and suitability of the player by dividing the agency remuneration into a first minimum payment to which will be added a further payment in case of realisation of the conditions set by the contract for such second payment. Mr Danilyuk supports his argument by referring to the decision of the DRC of the RFU in the case no. 129-13 of 29 August 2013 and to the decision of the PSC no. 03121004 of 26 March 2012. Mr Danilyuk concludes that the option of additional remuneration as a deal made under condition is recognized by the Russian legislation and by the practice of FIFA and RFU jurisdictional bodies. Mr Danilyuk holds that guided *“by the pacta sunt servanda principle, the provision of additional remuneration, stipulated in art. 3.5 of the Contract, is valid and must be duly performed by the Club”*.

c) Right of the agent to receive of additional remuneration under Article 3.5 of the Contract

- 4.8. Mr Danilyuk refers to Article 3.5 of the Contract and provides evidence from the official website of the Russian Football National League showing that the Player took part in official matches of the Club in the football championship of Russia in the sporting season 2012-2013. A second additional payment would be due under condition of participation in official matches of the Club in the football championship of Russia in the sporting season 2013-2014. According to Article 3.5 of the Contract the Club is obliged to pay the additional remuneration due for each season in the form of a prepayment until the 15th day of the month following the month of the expiration of the registration period.
- 4.9. Thus, according to Mr Danilyuk, the Contract does not provide any further instructions to the agent. The PSC erred when it referred to Articles 1008, Clause 1, 309 and 422 of the Civil Code of the Russian Federation and asked for an agent report and an additional Act of Completed Work as mandatory requirements for the payment of the additional remuneration. The PSC improperly interpreted Article 3.2 of the Contract. This provision asks for an Act of Completed Work (Act of execution) only for the fixed remuneration and not also for the bonus payment. The bonus payment depends just on the performance of the Player and not on any new kind of services by the agent to the Club.
- 4.10. In the reading of Mr Danilyuk of Article 1008 of the Civil Code of the Russian Federation, the obligation to provide the client with agent's reports is not a mandatory rule. This provision reads as follows:

“Article 1008 Reports by the Agent

1. During the performance of the brokerage contract [must read: the Agency Agreement] the agent shall be obliged to submit his reports to the principal in the order and in the time-limits which are provided for by the contract. In the absence of appropriate terms and conditions in the contract, reports shall be submitted by

the agent to the extent of the execution of the contract by him or upon the expiry of the validity term of the contract”¹.

- 4.11. Mr Danilyuk understands from Article 1006 of the Civil Code of the Russian Federation that the payment of agency fees does not directly depend on the availability of the agent’s reports. This provision reads as follows:

“Article 1006 The Bonus of the Agent

The principal shall be obliged to pay to the agent the bonus in the amount and in the order established by the brokerage contract [must read: Agency Agreement]”.

- 4.12. Mr Danilyuk adduces support for his view from two decisions of the Federal Arbitration Court of North Caucasus District, the first of which (of 9 November 2010, case no. A56-30147/2008) states that *“the possibility to pay the Agent’s fee does not directly depend on the availability of the Agent’s reports within the meaning of Article 1006 of the Civil Code of the Russian Federation”*. The second decision (of 22 July 2003, case no. F08-2135/2003) holds that *“The arguments on illegality of agency fees collection have been reasonably rejected since the possibility of its payment within the meaning of Article 1006 of the Civil Code does not directly depend on the provision of the Agent’s reports when the service provision has been proved[n]”*.
- 4.13. Mr Danilyuk concludes that *“it is clear that the absence of the reports (which have never been requested by the Club) and Acts (the existence of which is not required under the laws of the Russian Federation) cannot be a reason of non-payment of the additional remuneration by the Club as referred in the Appealed Decision”*.
- 4.14. Mr Danilyuk further refers to CAS 2013/A/3160 where at para 87, the Single Arbitrator found that *“as a general rule Article 2 of the FIFA PAR 2008 only establishes that “The players’ agent is entitled to be remunerated for the service he provides” without mentioning any formal requirement as a precondition for the relevant right”*. Notwithstanding this, the principle *ubi lex voluit dixit, ubi noluit tacuit* has to be applied according to Mr Danilyuk with reference to CAS 2006/A/1151, at para 15.
- 4.15. In Mr Danilyuk’s opinion, therefore, it was sufficient title for payment of the bonus sum that it had been established that the Player took part in the football championship of Russia in the season 2012-2013 for the Club and that the last month of the transfer window was September. Thus, the sum was due to the agent no later than 15 October 2013.

d) The amount of the additional remuneration due to the agent

- 4.16. Mr Danilyuk refers to Article 3.5 of the Contract according to which the Club is obliged to pay to the agent the additional remuneration in the amount of 50,000 US Dollars to be paid in rubles at the exchange rate of the Central Bank of Russia at the payment date for each of the two seasons mentioned. The dispute at stake refers to the season 2012-2013, thus one time 50,000 US Dollars are due to the agent.

¹ The translation of the Russian terms into English is not consistent throughout the exhibits submitted by the Appellant. The Sole Arbitrator, reading Russian language, holds that the Russian term “agentskiy dogovor” shall be translated in the same manner in all documents as “Agency Agreement”.

4.17. Mr Danilyuk submits the following Prayers for Relief:

- “1) The appeal filed by Mr. Danilyuk Mikhail is upheld;*
- 2) The decision issued by RFU Players’ Status Committee on 03 October 2014 is set aside;*
- 3) The Football Club “Shinnik” shall pay to Mr. Danilyuk Mikhail the amount of 50 000 USD as agency remuneration and 5% of the interest per year starting from 15 October 2013;*
- 4) The Football Club “Shinnik” shall bear all the costs incurred with the present procedure;*
- 5) The Football Club “Shinnik” shall pay to Mr. Danilyuk Mikhail a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel”.*

B. THE RESPONDENT:

4.18. The Respondent, who did not submit its Answer in time, objects to the payment and stated in its letter dated 7 April 2015 that all the facts written in its Answer excluded from the CAS file *“are fully acknowledged by written submissions presented in case file”*.

4.19. The Sole Arbitrator has of course taken into account the Respondent’s arguments as presented in the decision of the NDRC and in the Appealed Decision as well as in its letter of 4 February 2015. The Player’s statement, submitted by the Club on 4 February 2015, was also considered by the Sole Arbitrator. The Player stated that the Employment Agreement was signed between him and the Club after the expiration of his contract with his former club FC Zhemchuzhina. When signing he was a “Free Agent” and he made his representative Muminov Kakhor, who assisted him in this procedure, examine the Contract. The Player stated that he knew nothing about the participation of any other agent in his transfer. The Respondent draw the conclusion from this statement that there was no agreement or link between Mr Danilyuk and Mr Muminov.

V. CAS JURISDICTION AND ADMISSIBILITY

5.1. The jurisdiction of the CAS follows from Article R47 para 1 of the Code and from Article 47 para 1 of the RFU Statutes read together with Article 53 para 2 of the RFU Regulations on Dispute Resolution, which both have been referred to by number 3 of the Appealed Decision, whereby the Appealed Decision obviously meant Article 53 and not Article 63 of the RFU Regulations on Dispute Resolution. Article 63 is dealing with the entry into force of the PSC decision.

5.2. Article R47 para 1 of the Code reads 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”.

5.3. Article 47 para 1 of the RFU Statutes reads as follows:

“1. In accordance with the relevant provisions of the FIFA, UEFA and RFU Statutes, any appeal against final and legally binding decisions of the FIFA, UEFA and RFU shall be heard by the CAS. This Court of Arbitration for Sport, however, does not hear appeals concerning the matters stipulated by the FIFA, UEFA and RFU, or appeals against the decisions of an independent and properly constituted Russian arbitration tribunal referred to in Article 45 hereof”.

5.4. Article 53 para 2 of the RFU Regulations on Dispute Resolution reads as follows:

“2. The decision of the Committee [meant: PSC] can be appealed only to the Court of Arbitration for Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days from the moment of receipt of the decision”.

5.5. The PSC decision in full was notified to Mr Danilyuk on 14 January 2015. The Statement of Appeal was submitted to CAS on 19 January 2015 and the Appeal Brief on 13 February 2015, thus, both well in time.

5.6. The Respondent argued before the NDRC and before the PSC, that there was no jurisdiction given because the agent did not have a RFU license. Neither the NDRC, nor the PSC discussed this argument. Both bodies held that jurisdiction was given and, thus, implicitly rejected the Respondent's argument. The Appellant in his Appeal Brief mentioned that Mr Danilyuk held the license No. 058 issued by the RFU, but did not substantiate this fact by evidence. The Respondent in his reaction to the Statement of Appeal, dating from 4 February 2015, did not reiterate its respective argument before the NDRC and PSC, but argued that there was no link between the Player's representative, Mr Muminov Kakhor, and Mr Danilyuk Mikhail. By so arguing, since the Answer was excluded from the CAS file, and by failing to challenge the Appealed Decision before CAS, the Respondent implicitly recognized that Mr Danilyuk was a licensed agent as stated in the NDRC decision and that the RFU bodies had jurisdiction. Even if the license had expired in the period between 29 May 2014, when Mr Danilyuk lodged his claim before the NDRC, and today, the procedure before the RFU would have already started properly and jurisdiction been given based on an undisputed license of Mr Danilyuk at that moment of time, RFU and then the CAS would then also be entitled to review the merits of the case.

5.7. By signing the Order of Procedure, the Respondent agreed not to contest the jurisdiction of CAS and both parties expressly confirmed the jurisdiction of CAS by their signature.

5.8. The Sole Arbitrator, thus, holds that CAS has jurisdiction and the appeal is admissible.

VI. APPLICABLE LAW

6.1. Article R58 of the Code provides as follows:

“The Sole Arbitrator 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 Sole Arbitrator deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for his decision”.

6.2. According to Article 7.1 of the Contract the parties shall be liable *“for non-performance or undue performance of conditions hereof, according to the applicable legislation of the Russian Federation, as well as the regulations of the FIFA, UEFA, and RFU”*. The applicable regulations, therefore, are the FIFA Players’ Agents Regulations (2008), which according to their Article 1 para 1 *“govern the occupation of players’ agents who introduce players to clubs with a view to negotiating or renegotiating an employment contract or introduce two clubs to one another with a view to concluding a transfer agreement within one association or from one association to another”* and which according to their Article 1 para 5 must be implemented and enforced by the RFU subject to sanctions according to their Article 36.

6.3. The RFU did so by the RFU Players’ Agents Regulations as amended in 2010 which is confirmed by para 2 of its Preamble. As to its scope, para 2 of its Preamble reads as follows:

“The following rules are regulating the procedure of issuing the licenses for carrying out activities of the players’ agents, the activity of the players’ agents, the relations of the agents with the players, with the football clubs and between each other, the control of the activity of the agents and also the application of sanctions for violation of the following rules”².

6.4. Para 1 of the Preamble of the RFU Players’ Agents Regulations confirms that the regulations have been set up *“considering the legislation in effect of the Russian Federation”*.

6.5. Thus, the Sole Arbitrator finds that the FIFA Players’ Agents Regulations and the RFU Players’ Agents Regulations, as far as in compliance with the FIFA Regulations, and, subsidiarily, the law of the Russian Federation shall apply.

VII. MERITS

A) LEGALITY OF THE AGENT’S CONTRACTUAL REMUNERATION PROVISIONS UNDER FIFA AND RFU REGULATIONS

7.1. The Sole Arbitrator finds that Mr Danilyuk and the Club have signed an Act on Execution giving evidence that Mr Danilyuk performed the obligations enumerated in Article 1.1 of the Contract. Article 1.2 of the Contract lays down that these services *“shall be deemed rendered, provided the Club and the Professional Sportsman enter into an employment Agreement”*. The Player in his statement attached to the Club’s letter dated 4 February 2015 did not deny that he has entered an employment agreement with the Club. Article 1.2, thus, was fulfilled. It is not required for the execution of the Contract that the Player knew about the participation of any other agents in

² The English translation of the respective exhibit was corrected by the Sole Arbitrator in order to fully meet the Russian original.

his transfer. The objective result was achieved and this fact was confirmed in writing, as required under Article 3.2 of the Contract, by the Club and Mr Danilyuk.

- 7.2. The Sole Arbitrator finds that the wording of Article 3.1 of the Contract concluded between Mr Danilyuk and the Club is clear and does not need for any interpretation. This provision provides for a (basic) agent's remuneration in the amount of 50,000 US Dollars and for additional remuneration, determined by Articles 3.5 and 3.6 of the Contract. Article 3.6 is not applicable in the current case, since no transfer of the Professional Sportsman to another football club before the expiration of the employment agreement with the Club took place. Thus, it must be determined whether any and if so, which additional remuneration is due to Mr Danilyuk according to Article 3.5 of the Contract.
- 7.3. Article 3.5 of the Contract provides that in case the Player participates in the official games of the Club in the Russian football championship of the sport season 2012-2013, sport season 2013-2014, the Club shall pay Mr Danilyuk per each season 50,000 US Dollars as additional remuneration. In the present case Mr Danilyuk asks for the additional remuneration for the season 2012-2013.
- 7.4. By its nature the additional remuneration must be understood as a bonus payment. By assisting to the transfer of the Player, Mr Danilyuk and the Club could not foresee whether the Player will fit into the Club's team and whether he will show his capacities and potential in the new surroundings to such satisfaction of the Club's coaches that they will select him to participate in the official games of the Club in the Russian football championship. This goes, in particular for a Player, whose function is the position of a goalkeeper.
- 7.5. By referring to the official web-site of the Russian Football National League Mr Danilyuk submitted evidence that the Player participated twice on the field and was 15 times in reserve in the official games of the Club in the Russian football championship of the sport season 2012-2013. The wording of the Contract might have raised perhaps an issue for interpretation if the Professional Sportsman would have been set in reserve all 17 times. But even in such a case the requirement "participate" (Russian: "prinimat' uchastie") would have been fulfilled, because the Player would have had to be registered as part of the official team in order to be allowed to replace a fielded and perhaps injured goalkeeper during the game. On the other hand there was also the risk that the Player would not show such harmonious integration into the team that he would neither have been considered for being fielded, nor for being put in reserve. These three options, but also the force majeure option that the Player himself was injured and could neither have been fielded nor been put in reserve, explain why there is a separate and additional ground which is to be added to the agent's core service and, thus, justifies an additional payment.
- 7.6. The composition of the agent's remuneration by a basic remuneration and a bonus payment, the latter mostly depending on the quality and performance of the Professional Sportsman, is not unusual within FIFA and its member associations. Article 29 para 2 of the FIFA Players' Agents Regulations provides that within the scope of a player's transfer, Players' agents are forbidden from receiving any remuneration other than in the cases provided under Chapter IV of these regulations. Article 20 para 5 of the FIFA Players' Agents Regulations, which is the

relevant provision of Chapter IV in the present context, lays down that a players' agent who has been contracted by a club shall be remunerated by payment of a lump sum that has been agreed upon in advance. Apart from the requirement that there must be an agreement in advance, there are no limits how this lump sum is calculated and composed. By Article 21 read together with Annexe 3, FIFA advises players' agents to use a standard contract. But the parties to the contract are "*at liberty to enter into additional agreements and to supplement the standard contract accordingly, provided that the laws applicable in the territory of the association for arranging employment in the country concerned are duly complied with*" (Article 21 para 2). Even if the standard contract of annexe 3 for the case of a club as client speaks of "*one lump sum*" which shall be received by the players' agent as commission, the liberty of the parties to supplement the standard contract and/or to enter into additional agreements, allow also to have the lump sum composed of a basic remuneration and one or more bonus payments agreed upon in advance.

- 7.7. Also the RFU Players' Agents Regulations by Article 14 para 2 lit d read together with para 11 and Article 16 do not prohibit the players' agent and the club to conclude a contract which provides a basic remuneration and one or several bonus payments for the agent, provided that the overall amounts specified in Article 16 are not overdrawn. The Sole Arbitrator does not see any indication in the RFU file of the present case or statements of the parties that these amounts would have been overdrawn by paying a basic remuneration of 50,000 US Dollars and a bonus payment for the season 2012-2013 of another 50,000 US Dollars.

B) LEGALITY OF THE AGENT'S CONTRACTUAL REMUNERATION PROVISIONS UNDER RUSSIAN CIVIL LAW

- 7.8. Article 14 para 5 of the RFU Players' Agents Regulations requires that the Contract must comply with the requirements of the Civil Code of the Russian Federation except in case the contract in accordance with the Russian legislation is subject to the application of the law of another state. An agency agreement is ruled by Chapter 52 (Articles 1005 – 1011) of the Civil Code of the Russian Federation. Article 1011 of the Civil Code includes, depending on whether the agent is acting on the club's or on his own behalf, also Chapter 49 (Mandate, see Article 972 below in para 7.10) or Chapter 51 (Commission, see Article 991 below in para 7.10) as applicable on the relations ensuing from an agency agreement as far as those provisions do not contradict to the provisions of Chapter 52 or to the nature of the agency agreement.
- 7.9. Article 1006 para 1 of the Civil Code of the Russian Federation refers with regard to the agent's remuneration to the agency agreement and lays down no further requirements, neither as to the amount, nor as to the payment procedure. Article 1006 para 2, which refers to Article 424 number 3 of the Civil Code of the Russian Federation for the determination of the amount of remuneration due to an agent, applies only if the agency agreement does not include any provision or if the provisions of the agency agreement do not allow to determine the amount. Similarly the provision of Article 1006 para 3 of the Civil Code of the Russian Federation ruling on the payment procedure applies only if the contract does not provide provisions for the payment procedure.
- 7.10. Article 972 of the Civil Code of the Russian Federation ruling on the remuneration in case of a

Mandate, and Article 991 of the Civil Code of the Russian Federation ruling on the remuneration in the case of a Commission also confirm the decisive character of the contract and do not set up any requirements which might allow to consider the provisions of Articles 3.1 and 3.5 of the Contract to violate the Civil Code of the Russian Federation. Thus, the Sole Arbitrator holds that the provisions of Articles 3.1 and 3.5 of the Contract are perfectly valid and applicable.

C) NO OBLIGATION TO PROVIDE AN ADDITIONAL AGENT’S REPORT AND ADDITIONAL ACT OF EXECUTION OF SERVICES

- 7.11. Since the bonus payment according to Article 3.5 of the Contract is not dependent on any service provided by Mr Danilyuk, the provision of Article 3.2 of the Contract asking for the conclusion of an Act of Execution of Services cannot apply with regard to the bonus payment. There are no additional services, apart from those mentioned above at para 7.1, of the agent to be executed in this case. Condition for payment is that the Player participated in the official games of the Club in the Russian football championship of the sport season 2012-2013. This has been shown by Mr Danilyuk to the Sole Arbitrator and Club and, besides, was evident to the Club.
- 7.12. Article 1008 para 1 of the Civil Code of the Russian Federation provides that during the execution of the agency agreement the agent is obliged to provide the club with reports in a procedure and at times as laid down by the agency agreement. If there are no such provisions in the contract, it is up to the agent to periodically give reports on the execution of the contract or to report at the end of the contract period.
- 7.13. Article 14 para 2 lit f) of the RFU Players’ Agents Regulations considers as obligatory content of an agency agreement to lay down the obligation of the agent to report to the principal at the times specified by the contract, but at least every 6 months of the period of effective force of the Contract. The FIFA standard representation contract does not address the report obligation.
- 7.14. The Contract by Articles 2.2.2, 2.2.3, and 2.2.4 addresses the information obligation of the agent and chose the periodic reporting system, however, not strictly implementing the minimum 6 months rule asked for by the RFU Players’ Agents Regulations. Thus, an argument on eventual violation of the RFU Players’ Agents Regulations could be given. Such violation, however, can result only in a sanction laid down by Article 20 para 2 of the RFU Players’ Agents Regulations (reprimand or fine). It would not entitle to withhold the bonus payment. Besides, the question would arise whether the registration of the Agency Agreement according to Article 15 of the RFU Players’ Agents Regulations does not cure any violation of this regulation not being followed up by the RFU Commission when registering the Agency Agreement.
- 7.15. With regard to the contract at stake, and, in particular, the bonus payment according to its Article 3.5, the question arises which report could have been made by Mr Danilyuk at all. Mr Danilyuk could have only reported that he did not provide any service in the time between the Act of Execution of Services dated 16 August 2011 and the notification of his request for payment of the bonus sum on 17 April 2014. But even if reportable services would have been realized, and even if there is an RFU obligation simply to be fulfilled, in the opinion of the Sole

Arbitrator the non-fulfilment of such obligation is of no relevance for the issue of the bonus payment.

- 7.16. The Sole Arbitrator, thus, concludes and holds that the appeal of Mr Danilyuk is upheld and the Club shall pay the amount of 50,000 US Dollars as additional remuneration due because the Player participated in the official matches of the Club in the Russian football championship in the sporting season 2012-2013. According to Article 3.5 of the Contract the sum is to be paid in rubles at the exchange rate of the Central Bank of Russia at the payment date. The payment was due on 15 October 2013. According to Article 395 para 1 of the Civil Code of the Russian Federation the amount of interest due in case of late payment depends on the bank discount rate at the seat of the Club on the payment day. In case of a court procedure, the court is authorized to answer the request of the creditor and determine the amount due based on the bank discount rate on the day of submission of claim or issuance of the judgment. Starting from 14 September 2012, the Bank of Russia has determined the bank discount rate at 8,25 % for the whole of Russia. Since Mr Danilyuk has just asked for 5 %, the Sole Arbitrator holds that 5 % interest per year as from 15 October 2013 shall be paid by the Club in addition.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Appeal of Mr Mikhail Danilyuk is upheld.
 2. The Decision issued by the RFU Players' Status Committee on 3 October 2014 is set aside.
 3. The Professional Football Club "Shinnik" shall pay the amount of 50,000 US Dollars in rubles at the exchange rate of the Central Bank of Russia at the payment date plus 5 % interest per year as from 15 October 2013.
- (...)
6. All other motions or prayers for relief are dismissed.