



Arbitration CAS 2014/A/3797 Khazar Lankaran Football Club v. Fédération Internationale de Football Association (FIFA), award of 9 July 2015

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Marco Balmelli (Switzerland); Mr Mark Hovell (United Kingdom)

Football

Termination of an employment contract without just cause by the club

Sporting sanctions

Mitigating and aggravating circumstances

1. The wording of Article 17 para. 4 of the FIFA Regulations on the Status and Transfer of Players (RSTP) provides in clear terms that FIFA has authority to impose a ban on registration of new players for a specific term of two registration periods to any club that is found to be liable for a breach of contract without just cause within the protected period. Although by taking into account the particular circumstances of each case, the FIFA DRC has followed a “flexible” approach on the application of this provision and is thus exercising discretionary powers before deciding to impose sporting sanctions, Article 17 para. 4 FIFA RSTP, if applied, leaves however no scope for choice out of a possible range of lesser or more severe sanctions.
2. When assessing whether or not the imposition of sporting sanctions is appropriate, the fact that the financial claim of the player was only partially upheld by FIFA and the player only awarded a limited amount of compensation is irrelevant and cannot be taken into account as a mitigating factor. On the other hand, the fact that the club is a repeated offender is an aggravating circumstance which, in view of the fact that the underlying objective behind article 17 para. 4 FIFA RSTP is the need to maintain contractual stability between clubs and professional football players, justifies the imposition of sporting sanctions.

I. PARTIES

1. Khazar Lankaran Football Club (hereinafter referred to as “the Appellant” or “Khazar Lankaran” or “the Club”) is a professional football club affiliated in the Association of Football Federations of Azerbaijan with its registered office in Baku, Azerbaijan.
2. The Fédération Internationale de Football Association (hereinafter referred to as “the Respondent” or “FIFA”) is the international federation governing the sport of football worldwide based in Zurich, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present arbitral proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. In June 2011, Khazar Lankaran concluded an employment contract with the Bosnian - Herzegovinian football Player, V., (hereinafter referred to as "the Player") valid from 6 July 2011 and for the term of one year, *i.e.* until 30 June 2012 (hereinafter referred to as "the Contract").
5. Soon after its entry into force, in August 2011, Khazar Lankaran expressed the intention to terminate the Contract.
6. The Player objected to the termination of his Contract and brought a claim against Khazar Lankaran before the FIFA Dispute Resolution Chamber (hereinafter referred to as the "FIFA DRC") requesting payment of his outstanding contractual salaries and compensation for the early termination of his Contract without just cause.

B. First proceedings before the Dispute Resolution Chamber of FIFA

7. On 12 November 2011, the Player lodged a complaint in front of the FIFA DRC against Khazar Lankaran for breach of the Contract and requested to be awarded the total amount of USD 66,500 net for outstanding salaries and signing on fee, and the additional total amount of USD 68,500 net as compensation for the early termination of his Contract by the Club without just cause.
8. On 20 August 2014 the FIFA DRC rendered its decision in the aforementioned matter (hereinafter: the "Appealed Decision"), by means of which it partially accepted the claim of the Player.
9. The operative part of the Appealed Decision reads as follows:
 - "1. *The claim of the Claimant, V., is partially accepted.*
 2. *The Respondent, Khazar-Lankaran FC, has to pay the Claimant, within 30 days as from the date of notification of this decision the amount of AZN 3,000.*
 3. *In the event that the aforementioned amount is not paid within the stated time limit, interest at the rate of 5% p.a. will apply as of the expiry of the stipulated time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.*

4. *Any further request filed by the Claimant is rejected.*
 5. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
 6. *The Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.*
10. On 21 October 2014 the motivation of the Appealed Decision was notified to the parties.
11. In passing its judgment, the FIFA DRC determined, inter alia, the following:
- Khazar Lankaran had no just cause to unilaterally terminate the employment relationship with the Player and therefore terminated the Contract on 4 August 2011 without just cause. Consequently it is liable for the early termination of the Contract without just cause.
 - Khazar Lankaran must fulfill its obligations as per the Contract until the date of termination of the Contract in accordance with the general legal principle of “*pacta sunt servanda*”. Consequently, it is liable to pay to the Player the remuneration that was outstanding at the time of the termination, *i.e.* the amount of AZN 3,000 consisting of the monthly salary of the Player for July 2011.
 - The Player signed an employment contract with a new club during the relevant period of time, by means of which he was able to reduce his loss of income. In accordance with the constant practice of the FIFA DRC and the general obligation to mitigate damages, the Player did not suffer any financial loss from the violation of the contractual obligations by the Club and as a result no amount should be awarded to the Player as compensation for the early termination of his Contract.
 - Khazar Lankaran has been found by the FIFA DRC to be in breach of contract without just cause in four other cases of claims brought against it by players in the past.
 - On this basis, by virtue of Article 17 par. 4 of the Regulations on the Status and Transfer of Players (hereinafter referred to as the “FIFA RSTP”) and considering that the Contract was terminated unilaterally without justification within the protected period, Khazar Lankaran is banned from registering any new players, either nationally or internationally for the two next entire and consecutive registration periods upon the notification of the decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 23 October 2014, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) against FIFA challenging partially the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”). In this submission, the Appellant designated the Statement of Appeal as the Appeal Brief. The Appellant nominated Dr Marco Balmelli, attorney-at-law in Basel, Switzerland, as arbitrator.

13. In this document the Appellant presented a statement of the facts and legal arguments giving rise to the partial challenge of the Appealed Decision, submitting the following requests for relief:

“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 V. vs. Khazar Lankaran (case ref. 12-00533).

The club requests the Court of Arbitration for Sports to annul the Paragraph 6 of the above-mentioned decision”.

14. Together with its Statement of Appeal the Appellant filed a request to partially stay the execution of the Appealed Decision, and in particular paragraph 6 thereof, according to which *“the Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.*

15. On 30 October 2014, the CAS Court Office acknowledged receipt of the Statement of Appeal serving as Appeal Brief and the request to stay the execution of the Appealed Decision. The Respondent was invited to provide its position regarding the request for a stay of execution within 10 days upon receipt of the CAS correspondence by courier. Finally, the Respondent was invited to provide its Answer to the Appeal Brief within twenty (20) days upon receipt of such correspondence.

16. On 10 November 2014, FIFA nominated Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrator in the present matter.

17. On the same day, FIFA submitted its response to the request for stay of execution, whereby it requested the following:

“On account of all of the above, we respectfully request that the Appellant’s application for stay of execution of the challenged decision be rejected, taking into account that none of the three cumulative conditions constantly applied by the CAS and its jurisprudence when considering applications to stay the execution of a challenged decision is fulfilled within the scope of the application filed by the Appellant. Furthermore, we request that all costs related to the present procedure as well as the legal expenses of the Respondent shall be borne by the Appellant”.

18. On 17 November 2014, the Deputy President of the CAS Appeals Arbitration Division of issued an Order dismissing the request for a stay of execution in this matter due to the failure of the Appellant to demonstrate the three relevant requirements for granting provisional measures as established by the consistent jurisprudence of the CAS (*i.e.* irreparable harm, likelihood of success on the merits of the appeal and balance of interests).
19. On 20 November 2014, FIFA filed its Answer, pursuant to Article R55 of the CAS Code, whereby it requested the following:
 - “1. In light of the above considerations, we insist that the decision passed by the DRC was fully justified. We therefore request that the present appeal be rejected and the decision taken by the DRC on 20 August 2014 be confirmed in its entirety.*
 - 2. Furthermore, all costs related to the present procedure as well as the legal expenses of FIFA shall be borne by the Appellant”.*
20. On 21 November 2014, the CAS Court Office acknowledged receipt of the Answer of the Respondent in the matter and invited the parties to state by 28 November 2014 whether they prefer a hearing to be held or for the Panel to issue an award based solely on the parties’ written submissions.
21. On 24 November 2014, the Appellant informed the CAS Court Office of its preference for a hearing to be held in the matter.
22. On 28 November 2014, FIFA informed the CAS Court Office of its preference for the matter to be decided solely on the parties’ written submissions without holding a hearing.
23. On 1 December 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
 - Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece, as President;
 - Dr Marco Balmelli, attorney-at-law in Basel, Switzerland, and;
 - Mr Mark Hovell, solicitor in Manchester, United Kingdom, as arbitrators.
24. On 19 December 2014, the CAS Court Office, on behalf of the Panel, invited FIFA to submit a copy of the complete case file on which it based the decision under appeal.
25. On 9 January 2015, FIFA provided the CAS Court Office with a copy of its file related to the present matter as requested by the Panel.
26. On 24 February 2015, the parties returned duly signed copies of the Order of Procedure to the CAS Court Office.
27. On 6 March 2015, a hearing was held in Lausanne, Switzerland. In addition to the Panel and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:

a) For the Appellant:

- 1) Mr Tuygun Nadirov, Khazar Lankaran FC Vice President and
- 2) Mr Ramil Jahangirov, Khazar Lankaran FC Legal and Foreign Affairs Counsel.

b) For the Respondent:

- 1) Ms Livia Silva Kägi, and
- 2) Mr Gauthier Bouchat, members of the FIFA Players' Status and Governance Department.

28. At the outset of the hearing, both parties confirmed to have no objection as to the composition of the Panel.
29. The Panel heard the submissions and the evidence from the representatives of each party. The Panel had the opportunity to ask questions and request clarifications on the submissions of each party's representatives. The parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
30. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected.
31. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

32. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all written and oral submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.
33. The Appellant's submissions, in essence, may be summarized as follows:
 - The Appeal is directed only against the imposition of sporting sanctions and more specifically against paragraph 6 of the Appealed Decision by means of which Khazar Lankaran was banned from registering new players nationally and internationally for two registration periods.
 - The ban is extremely harsh and does not reflect the specific factual background of the dispute that gave rise to its imposition and the background experience of the Club in employment related disputes in the recent years.
 - Khazar Lankaran acknowledges that the Player signed the Contract for one season from 6 July 2011 until 30 June 2012. It maintains that said Player was included in the

participation list of the Club for the UEFA Europa League qualifying round at that time, yet it argues that he was never fielded in any of the official games of the Club.

- After that, the coach of the Club at that time expressed the will to terminate the Contract with the Player.
- The Player was duly informed of the situation and he was also provided with an official release document confirming that he was free to sign with a new club.
- At that time, Khazar Lankaran did not find it necessary to sign a mutual termination agreement with the Player believing in good faith that there was an understanding and that he did not intend to raise any financial claims.
- The Player only later objected to the termination of his Contract and lodged a claim before the FIFA DRC requesting a total amount of compensation of USD 135,000. The FIFA DRC, with its Appealed Decision, accepted only a very small part of the financial claim and held that the Club was liable to pay the amount of AZN 3,000, which is approximately equal to EUR 3,000.
- Khazar Lankaran maintains that, contrary to the considerations of the FIFA DRC in the Appealed Decision, it is not a repeated offender in employment related disputes in the recent years, as it has managed to achieve a considerably improved conduct in such cases.
- The cases cited in the Appealed Decision, in which the FIFA DRC found Khazar Lankaran liable for the breach of employment contracts with other players without just cause were not recent, as they had been issued in the years 2012 and 2013. Moreover, considering the fact that over the past ten years the Club has employed more than hundred foreign players, the cases cited in the Appealed Decision are not sufficient to show a pattern of repeated non-compliance with its contractual obligations.
- Khazar Lankaran has put significant effort ever since and it has currently a good compliance record in employment related issues. It cites as an example that in the year 2014 the FIFA DRC dismissed various cases of claims by players that have been brought against the Club, while in the same year the latter has also managed to reach an amicable solution in a dispute with another player.
- Finally, Khazar Lankaran argues that the ban would bring about serious damage to all functions of the Club, as it would not be able to find sponsorship agreements.

34. FIFA's submissions, in essence, may be summarized as follows:

- FIFA endorses the Appealed Decision in its entirety.
- FIFA notes that Khazar Lankaran did not dispute the conclusion of the Appealed Decision that it was responsible for the breach of the Contract with the Player without just cause on 4 August 2011. As a result, this remains an undisputed fact within the scope of the present appeal arbitration procedure and does not need to be further addressed.

- On this premise, FIFA asserts that the Appealed Decision was right to conclude that the breach occurred clearly within the “protected period”, which also remains undisputed by the Appellant. As such, this conclusion also needs to be fully confirmed.
- Furthermore, FIFA argues that according to the wording of Article 17 para. 4 of the FIFA RSTP, whenever a club is held liable for a breach of contract without just cause that occurred during the protected period, sporting sanctions shall in principle be imposed on such club by the FIFA DRC.
- FIFA acknowledges that the FIFA DRC has formed its jurisprudence adopting a flexible approach on the application of Article 17 para. 4 of the FIFA RSTP, ruling on the basis of the particular circumstances of each individual case under consideration.
- The fact that the FIFA DRC only partially accepted the financial claim of the Player, bears no influence on its authority to impose sporting sanctions on Khazar Lankaran, given that the financial claim is decided on the criteria of the financial loss of the Player and not on the conduct of the Club.
- FIFA confirms that the FIFA DRC was right to conclude that Khazar Lankaran is a repeated offender, given that even before this particular claim the Club was found by the FIFA DRC to be liable for the early termination of employment contracts without just cause in four other cases, without however being sanctioned with a ban on registration of players before.
- The assertion that Khazar Lankaran is no longer a repeated offender in the year 2014 is not supported by the DRC’s case statistics. To this end, FIFA cites various cases of the FIFA DRC decided in 2014, in which Khazar Lankaran was found to be in breach of contract without just cause or in default of its contractual obligations towards players. Hence, the argument of the recent improvement in its compliance record is completely disproved.

V. ADMISSIBILITY

35. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]”.

36. The motivated Appealed Decision was communicated by FIFA to the Appellant on 21 October 2014 and the Appellant filed its Statement of Appeal, serving as its Appeal Brief, on 23 October 2014. The Appeal is therefore admissible.

VI. JURISDICTION

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

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

The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2012 edition) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.

38. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

39. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

40. 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”.

41. The Panel notes that Article 66(2) of the FIFA Statutes stipulates the following:

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

42. The Panel is therefore prepared to proceed on this basis and finds that the 2010 Edition of the FIFA RSTP is applicable as to the substance of the dispute, considering that the Appealed Decision was rendered upon a claim initially lodged on 12 November 2011, with Swiss law to be applied subsidiarily, should the need arise.

VIII. MERITS

43. The Panel notes that the Appellant’s sole request for relief is the annulment of paragraph 6 of the operative part of the Appealed Decision by means of which the FIFA DRC decided to impose sporting sanctions comprising of a ban on registration of new players, either nationally

or internationally, for the next two entire and consecutive registration periods, on the basis of Article 17 para. 4 of FIFA RSTP.

44. As rightly observed by FIFA, the Appellant did not contest the conclusion of the Appealed Decision that the Club terminated unilaterally the Contract with the Player without just cause. Consequently, the pertinent findings of the Appealed Decision remain undisputed by the Appellant.
45. Furthermore, the Appellant did not challenge the finding of the Appealed Decision that the breach of the Contract occurred on 4 August 2011, namely during the protected period, as determined in item 7 of the *Definitions* section of the FIFA RSTP.
46. Therefore, the Panel deems that it is fully and conclusively established that the Appellant terminated the Contract with the Player without just cause in August 2011, during the protected period, as confirmed by the Appealed Decision. On this basis the Panel finds that it is not necessary to inquire any further into the circumstances of the termination of the Contract, as these are already established in the Appealed Decision and remain undisputed by the parties.
47. The Appellant effectively challenges the consequences of such breach within the context of the factual background of the dispute. To this end, it maintains that the imposition of sporting sanctions is harsh, or, in other words, disproportionate and excessive, given that the Appealed Decision awarded only a fraction of the financial claim of the Player and that the Club is no longer a repeated offender in employment contract violations.
48. The Panel observes that the applicable provision which is Article 17 para. 4 of the FIFA RSTP stipulates as follows: *“In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period. [...]. The Club shall be banned from registering any new players, either nationally or internationally, for two registration periods”*.
49. The wording of this Article provides in clear terms that FIFA has authority to impose a ban on registration of new players for a specific term of two registration periods to any club that is found to be liable for a breach of contract without just cause within the protected period. This provision leaves no scope for choice out of a possible range of lesser or more severe sanctions.
50. The Panel is aware of the fact that the FIFA DRC has followed a “flexible” approach on the application of this provision, by taking into account the particular circumstances of each case, thus exercising discretionary powers before deciding to impose sporting sanctions.
51. This has also been confirmed by CAS jurisprudence within the context of Article 17 para. 3 of the FIFA Regulations according to which the FIFA DRC as the deciding body has the “authority” and “by no means the obligation” to sanction a Player found to be in breach of contract. [*CAS 2007/A/1359 para. 66.2*].

52. The Panel took specifically note of the fact that the FIFA DRC has found the Appellant liable for the breach of employment contracts with other players without just cause in several cases in the past, without however imposing sporting sanctions at any time before the Appealed Decision. Although this may appear as an inconsistency, the Panel considers that this is intrinsic to the wide scope of discretion enjoyed by the FIFA DRC in such cases. Indeed, the Panel considers that the Appellant has been the beneficiary of such discretion.
53. Contrary to the submissions of the Appellant, the Panel does not see any convincing reason why the imposition of sporting sanctions on the basis of Article 17 para. 4 of the FIFA RSTP was not appropriate or justified in view of the specific facts established by the Appealed Decision, namely a unilateral contract termination without just cause during the protected period.
54. First, the fact that the financial claim of the Player was only partially upheld does not change the fact that the Appellant was responsible for the breach of the Contract without just cause. The amount of compensation awarded by the Appealed Decision was assessed solely on the basis of the financial loss suffered by the Player. The fact that the Player was awarded only limited financial compensation as restitution for his loss is not even remotely relevant to the conduct of the Club itself, or, its degree of fault in the termination of the Contract. As such, the amount of compensation awarded is irrelevant and cannot be taken into account as a mitigating factor.
55. Second, the assertion of the Appellant that it can no longer be deemed to be a repeated offender in contract violations because its compliance record has improved since 2013 is not substantiated by the evidence submitted to the Panel. FIFA drew the Panel's attention to several cases of claims lodged by Players against the Appellant, involving situations of breach of contract or outstanding contractual payments that were decided by FIFA DRC in 2014. Over the last few years, the Panel notes there were in excess of eleven (11) such claims.
56. In this way, the Panel is not convinced that the Appellant has an improved compliance record in employment related issues since the submission of the claim at hand, which would now render the imposition of sporting sanctions unjustified and excessive.
57. On the contrary, the established history of repeated contract violations by the Club in four different cases of players cited in the Appealed Decision is already an aggravating circumstance. Therefore, in view of the fact that the underlying objective behind article 17 para. 4 of the FIFA RSTP is the need to maintain contractual stability between clubs and professional football players, the FIFA DRC was right to impose sporting sanctions against the Appellant in this instance.
58. Lastly, the Panel finds that the Appellant failed to demonstrate any exceptional circumstances that would entail a detrimental impact to its interests or an irreparable harm in sporting or financial terms, warranting the annulment of the sanctions at issue.

59. Hence, in view of the parties' submissions and in consideration of the evidence, the Panel concludes that the imposition of sporting sanctions by the FIFA DRC was appropriate and justified in accordance with Article 17 para. 4 of the FIFA RSTP.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Khazar Lankaran Football Club on 23 October 2014 against the Decision issued on 20 August 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
2. The Decision issued on 20 August 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.