Arbitration CAS 2014/A/3643 Club Promotora del Pachuca S.A. de C.V. v. Facundo Gabriel Coria & Fédération Internationale de Football Association (FIFA), award of 5 June 2015

Panel: Mr Juan Pablo Arriagada Aljaro (Chile), President; Prof. Martin Schimke (Germany); Prof. Gustavo Abreu (Argentina)

Football
Compensation following unilateral termination of employment contract by player with just cause
Just cause
Time-limit for termination of employment contract with just cause
Obligation by employer to protect the employee's personality

1. **Being an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances, only in case of a particularly severe breach of the labour contract. In case of a less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned. A player who has been hired by a club as foreign player for the club's first team and who is not fielded amongst the foreign players for the first game of the season may immediately terminate his employment contract with the club with just cause, without prior warning, in circumstances where the number of foreign players fielded by the club in the first game of the season reaches the full quota of foreign players of the club. This is even more the case if prior to the first game of the season the club had openly criticised the player's performance and shown an attitude towards the player based on which the player could not have reasonably been expected to carry on the employment relationship.**

2. **A party prepared to put an immediate end to an employment agreement on the grounds of a just cause only has a short period of reflection, after which it must be assumed that the said party chose to continue the contractual relationship until the expiry of the agreed period. A period of reflection of two to three business days following the event that gives raise to the grounds of just cause is a maximum. An extension of a few days is tolerated only under exceptional circumstances.**

3. **Under Swiss law, the employer has the obligation to protect the employee's personality. The case law has deduced thereof a right for some categories of employees to be employed, in particular for employees whose inoccupation can prejudice their future carrier development. The employer has to provide these employees with the activity they have been employed for and for which they are qualified, and is not authorised to employ them at a different or less interesting position than the one they have been employed for. A player who has been hired to train and play with a club's first team has a right to be employed under these – contractually agreed – terms. An exclusion from**

this position may – depending on the circumstances – seriously prejudice the player's career development, if *e.g.* it deprives the player of the chance to put his talent in evidence and to increase his market value.

I. PARTIES

1. Club Promotora del Pachuca S.A. de C.V. (hereinafter the "Appellant") is a football club with its registered office in San Agustín Tlaxiaca, Pachuca de Soto, Hidalgo, Mexico. It is a member of the Mexican Football Federation (Federación Mexicana de Fútbol Asociación, A.C. – hereinafter "FMF"), itself affiliated to the Fédération Internationale de Football Association since 1929.

2. Mr Facundo Gabriel Coria (hereinafter "the Player" or, together with the Fédération Internationale de Football Association, the "Respondents") is a professional player of Argentinean nationality.

3. The Fédération Internationale de Football Association (hereinafter "FIFA" or, together with the Player, the "Respondents") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

B. The agreements signed between the Parties

5. Since July 2010, the Spanish club Villarreal CF SAD (hereinafter "Villarreal") was the holder of the Player's federative rights.

6. On 7 January 2011, Villarreal and the Appellant entered into an agreement consisting of two elements: the temporary loan of the Player and an option granted to the Appellant to acquire the definitive transfer of the Player (hereinafter the "Loan Agreement"). The main characteristics of this document can be summarised as follows:

- Pursuant to clause 2 of the preamble of the Loan Agreement, the Appellant was *"interested in acquiring the temporary cession of federative rights of [the Player], with the purpose of enrol him with the staff of its main professional team, from January 7, 2011 to June 2012[1]"*.
- Villarreal accepted to transfer the Player to the Appellant on a temporary loan basis from the date of the signature of the contract until 30 June 2012.
- In exchange and among other obligations, the Appellant agreed to pay to Villarreal the amount of USD 260,000 in the following three instalments:
    - USD 85,000 on 8 January 2011
    - USD 85,000 on 1 July 2011
    - USD 90,000 on 1 December 2011;
- Pursuant to clause 9 of the contract, the Appellant *"shall have the preferential option to definitively purchase 100% of the federative rights of the [Player]. For such, it shall inform [Villarreal] of its intention to exercise that option, in writing, at least 15 days before the end of the cession period. Then, [the Appellant] shall pay the amount of [EUR 2,100,000] payable within the next 30 days after that communication"*.
- The effectiveness of the Loan Agreement was conditional upon a) the Appellant entering into an employment agreement with the Player and b) the Player expressly accepting the terms of the Loan Agreement, which he actually countersigned in approval.
- In respect to the applicable law in case of disputes, the following clause was inserted: *"In case of dispute or divergence regarding the interpretation or enforcement of this contract, the parties shall submit themselves to FIFA Regulations and Statutes, which shall prevail"*.

7. The Appellant and the Player signed an employment agreement dated 6 January 2011 (hereinafter the "Employment Agreement"). This document provides so far as material:

> *"**5. Contract Validity***
>
> *Indefinite, which comprises the validity of 2 seasons corresponding to the following tournaments (…)*
>
> *SEASON 2010-2011 (SOLELY TORNEO CLAUSURA 2011)*
>
> *SEASON 2011-2012 (TORNEO APERTURA and TORNEO CLAUSURA 2012)*
>
> ***6. Total Balance of the Season***

		SALARY		OTHERS			TOTAL
SEASON	2010-2011 (…)	$	228.000 USD	$		$	228.000 USD
SEASON	2011-2012	$	456.000 USD	$		$	456.000 USD

> *(…)*
>
> *The amount shall be taken as an integrated salary, i.e., it includes all proportional portions that correspond to*

[1] The quoted excerpts in para. II letters B) and C) were translated from Spanish into English by the Appellant.

vacation bonus, extra salary, overtime and similar. (…).

8. Season:

SEASON 2010-2011 (SOLELY TORNEO CLAUSURA 2011) AND SEASON 2011-2012 (TORNEO APERTURA AND TORNEO CLAUSURA 2011 (sic)).

9. Start date of payment: *01/15/2011*
End date of payment: *05/31/2012*

10. Modality of salary:

Reference Salary: *$ 228.000 USD (…) NET OF TAXES*

Conditioned Salary

Total: *$ 228.000 USD (…) NET OF TAXES*

11. Work Conditions:

Player acknowledges his labor relationship with the [Appellant] shall solely be governed by the provisions included in the labor contract, the provisions included in the Internal Labor Regulations of the [Appellant], whose copy is dully (sic) enrolled with FMF and that is now handed to the Player, and by the FMF and International Football Association Board (FIFA) Statute and Regulations, as well as by the provisions of Section Six, Chapter X of the Federal Labor Act.

(…).

13. Termination

Special reasons for termination are:

- *Serious infringement or recurrent serious infringements.*
- *Evident loss or reduction of the Player's capacity to play Soccer.*

14. Registration

Both parties accept and acknowledge that this Contract shall be registered at FMF, which is of the essence of validity and enforcement of all considerations set forth herein, being that in case of any dispute arising from the labor relationship of both parties no other agreement shall be referred to, and the provision of Article 56 of this FMF Statute shall be observed (…)".

C. The Player's termination of the Employment Agreement with the Appellant

The 2010-2011 season

8. It is undisputed that during the 2010-2011 season, the Appellant fully complied with its contractual obligations, *i.e.* the first instalment of the Loan Agreement was paid in a timely manner and so were the Player's salaries.

9. Allegedly, the Player's sporting performances appeared quickly to be insufficient and not up to the Appellant's expectations. As a consequence and according to the written witness statement of the Appellant's Vice-President, Prof. Andrés Miguel Fassi Jürgens, dated 16 July 2014, the Player *"just played 5 games, as a reservist [and] played just one game as a holder or titular [of the Appellant's*

first team]".

10. In response to this situation and according to Mr Fassi Jürgens' statement, the Appellant put in place a *"special conditioning program to obtain an optimal level"*. The Player trained with the first team but played with the Appellant's B-team, five times, before he was given a red card for misconduct and received a 4-match ban. For this incident and in accordance with its internal regulations, the Appellant imposed upon the Player a fine of USD 45,600.

11. Eventually, the 2010-2011 season came to an end and the Appellant's players took their annual vacation. The pre-season training was to start in June 2011.

The 2011-2012 season

12. On 13 July 2011, the Appellant sent to Villarreal the following message, a copy of which was forwarded to the Player's agent:

> *"(…) Hereby, we request a solution to the administrative and sportive situation of the [Player], property of your Sport Club, on loan to [the Appellant].*
>
> *Below, we comment our situation and request your approval for a solution.*
>
> 1. *[The Appellant], in December 2010, contracted the professional services of the [Player]. The contract is a loan deal of 18 months with option to buy.*
> 2. *After 6 months in the Institution and after the end of the Tournament, the yield of the Player was quite negative. He played in only one match, came on as a substitute in 4 matches and did not exceed 150 minutes during the whole season. His adaptation in the physical plan was very hard, his physical conditions for participating in sport were poor, and after 3 months of special work to get into shape, he was sent off the game due to indiscipline, which lead to a suspension of 4 matches, ending the Tournament in a very bad position.*
> 3. *In view of the situation, technical and directive bodies decided to find a substitute for him in the current Tournament, which starts on July 23.*
> 4. *[The Appellant] is aware of the obligations and commitments undertaken with Villarreal Sports Club, and we do not want jeopardize any commitments accepted.*
> 5. *We simply request from Villarreal Sport Club authorization to transfer the commitments undertaken in December 2010, which are the payment of USD 85,000 in July 2011 and the payment of USD 85,000 in December 2011. [The Appellant] has the option to transfer such commitments, and in aggregate with your representative, we are looking for the best future option both for the player and Villarreal Sport Club (…)".*

13. The first game of the 2011-2012 season took place on 23 July 2011. Five foreign players were fielded by the Appellant and the Player was not one of them. It is undisputed that at that time, the Player was not formally registered with the Appellant's first team.

14. On 26 July 2011 (according to the Player) and on 27 July 2011 (according to the Appellant), the Player notified in writing the Appellant of the fact that he was putting an end to their contractual relationship with immediate effect. His notice provides so far as material:

"(…) I take the liberty to address myself to you with regard to the professional sporting employment contract that entails me to your institution, in order to express the following: the club you manage has breached its duty of employment and actual occupation towards me, as it has not registered me as player of its staff. According to the provisions regulated by the Mexican Soccer Federation, which you know well, the maximum "quota" of foreign players allowed to be registered is five (5) players per club; in this regard, your institution has already contracted with and registered such number (except for the subscriber). All of them have made their debut on the date dispute on 07/23/2011, what prevents me from performing.

In addition to this, I was excluded from the team and I am training with the juvenile divisions (sub-20), where I cannot legally perform as well. As a result, I have not got a federative "record" or "registration" and, therefore, it will be absolutely impossible for me to perform in the Mexican league (regardless of any effort I make in the trainings). This situation implies a clear infringement to the basic obligations of effective employment from any employer towards his employee; this situation means a ground for termination of contract under the employer's solely responsibility. Consequently, I declare as terminated the employment contract entered into between us, due to your exclusive fault, and I let you know I will bring a lawsuit before the relevant instances claiming for the corresponding indemnification and the applicable sporting sanctions (…)".

15. On 27 July 2011, Villarreal reacted to the Appellant's request of 13 July 2011 as follows:

"Dear Sir,

We kindly inform you our disappointment with the situation relating the [Player] which is currently loaned to your club until 30 June 2012 from [Villarreal].

The loan agreement detains intrinsic obligation that the loaned player become registered to play (or at least available) for your club. This is not occurring in nowadays, since the player is currently not registered in the Femexfut.

Moreover, we kindly remind you that currently there is an outstanding amount (i.e. 85,000 USD) due as instalment of the loan fee, as well as another one to be paid in December 2011.

In this context, [Villarreal] kindly warning and request you as follows:

a - To immediately register the [Player] in your first team;

b - To allow the player to train with the first team;

c - If these obligations are not fulfilled within the maximum period of 48 hours, it will be considered as breach of the loan agreement.

d - To immediately pay the outstanding amount regarding the loan fee in July 2011.

In this regard, we hope to hearing from you, in particular, that the aforementioned obligations have been fulfilled because if not we will have no other alternative except lodge the competent claim against Pachuca for breach of contract in order to receive the overdue amount, as well as losses and damages occasioned to [Villarreal]".

16. On 28 July 2011, the Player entered into a new employment relationship with the Argentinean club Estudiantes de la Plata. It was a fix-term agreement effective until 30 June 2012 and the Player's total remuneration was amounting to ARS 345,000, equivalent to USD 80,500.

17. On 2 August 2011, Villarreal put an end to the Loan Agreement due to the Appellant's alleged

breaches of contract.

18. The same day, the Appellant informed Villarreal of the fact that it had paid the second instalment of the Loan Agreement and that it was not in a position to register the Player as the latter had unilaterally terminated the Employment Agreement. In this regard, the Appellant insisted on the fact that, according to the applicable regulations of the FMF, clubs had until 5 September 2011 to register all their foreign players and that nowhere in the Loan Agreement or in the Employment Agreement, there was an obligation upon the Appellant to register the Player before this deadline. It also implied that it would seek compensation against the Player as his early termination of the Employment Agreement was without just cause.

19. With a fax letter dated 5 August 2011 and sent to the Appellant, the Player answered the letter sent by the latter on 27 July 2011 and maintained that he terminated the Employment Agreement with just cause. In support of his allegations, he put forward the following:

> *"(…) Regarding the date, you inform as the limit to enrol foreign players, it is not relevant once you have already contracted the five foreign players (apart from the subscribed) allowed by the federative rules. In fact, it was only after all of them were lined up for the first match that I terminated the contract for cause, once it was impossible to be selected to play in the tournament, as [the Appellant] had exhausted the quota of foreigners with other players.*
>
> *Regarding the obligation of effective occupation of the player, contrary to what you state, it implicitly and explicitly exists as it may be in the specific scope of soccer. Although you are not forced to select a certain player for the match, you have to train your main team which is enrolled for the tournament, having at least the actual possibility to take part in the game. In this case, you systematically violate such obligation by making me train with the sub-20 amateur team and enrolling some other 5 foreigners, preventing any possibility of playing in the tournament. (…)".*

D. Proceedings before the FIFA Dispute Resolution Chamber

20. On 4 September 2011, the Appellant initiated proceedings with the FIFA Dispute Resolution Chamber (hereinafter the "DRC") to order the Player to pay in its favour an amount of USD 618,000 plus interest, corresponding to the sum of a) the Player's salaries for the season 2011-2012 and of b) the two first instalments of the Loan Agreement paid to Villarreal.

21. On 21 November 2011, the Player lodged a counter-claim against the Appellant, requesting to be awarded the total amount of USD 425,500 plus interest, composed of (see decision of the DRC, dated 27 February 2014):

- *"USD 50,000 of the 'unlawful' fine imposed by [the Appellant].*
- *USD 45,600 for the unpaid salary of July 2011.*
- *USD 410,400 for the remaining salaries until May 2012, after the deduction of the amount of USD 80,500 allegedly corresponding to the total remuneration to be received from the Argentinean club, Estudiantes de la Plata".*

22. In a decision dated 27 February 2014 (hereinafter the "Appealed Decision"), taking into account

a) the fact that the Player was *"deregistered"* before the season 2011/2012, b) the Appellant had exhausted its quota of foreign players as of July 2011, c) the Player was not among those registered foreign players, d) the Appellant's letter of 13 July 2011, the DRC *"considered that at the time of the termination of the contract, i.e. on 26 July 2011, despite the arguments of the club that the deregistration was not definitive and that the player could still be registered until September 2011, the player had good reasons to believe that his registration would not occur. In particular, considering that the club had already informed Villarreal regarding its wish to transfer the player. Consequently, and considering the situation of the player at the time of the termination, the Chamber was of the opinion that the objective circumstances at the time did provide the player with just cause to prematurely terminate the employment contract"*. In particular, the DRC held that the Appellant breached the Player's fundamental rights, consisting not only in the timely payment of his salary but also in the right to access training and to be given the possibility to compete with his teammates in official matches.

23. In light of the above, the DRC concluded that the Player was entitled to compensation. As regards the amounts claimed by the Player, the DRC made the following findings:

> The Player's counter-claim included also the amount of USD 45,600 relating to the salary of July 2011. However, the DRC found that half of the month of July 2011 had already been paid to the Player, who was therefore only entitled to USD 22,800 as outstanding remuneration corresponding to half of the salary for July 2011 plus 5 % interest since the date of the termination on 26 July 2011.
>
> With regard to the compensation for breach of the contract, the DRC held that the Player was entitled to the monies he would have earned if the employment relationship had not been prematurely terminated (USD 352,700 corresponding to the salaries as from 15 July 2011 until May 2012 minus the remuneration received from his new employer, Estudiantes de la Plata (i.e. USD 80,500)).

24. As a result, on 27 February 2014, the DRC decided the following:

> *"1. The claim of the [Appellant] is rejected.*
>
> *2. The counterclaim of the [Player] is partially accepted.*
>
> *3. The [Appellant] is ordered to pay to the [Player], within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 22,800, plus 5% interest p.a. on the said amount since 26 July 2011 until the date of effective payment.*
>
> *4. The [Appellant] has to pay to the [Player], within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 352,700 plus 5% interest p.a. as of 21 November 2011 until the date of effective payment.*
>
> *5. If the aforementioned sums plus interest are not paid within the above-mentioned time limits the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.*
>
> *6. Any further request filed by the [Player] is rejected".*

25. On 2 June 2014, the Parties were notified of the Appealed Decision.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 23 June 2014, the Appellant filed its statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (hereinafter the "Code").

27. On 30 June 2014, the CAS Court Office acknowledged receipt of the Appellant's statement of appeal, of its payment of the CAS Court Office fee and took note of a) its nomination of Prof. Dr. Martin Schimke as arbitrator, b) of its request to order the Player to produce his employment contract namely with Estudiantes de la Plata and c) to suspend its deadline for filing the appeal brief until a decision on its request of production of documents is taken.

28. On 30 June 2014, the Player informed the CAS Court Office that Mr Ariel Reck would represent him in the present dispute and that he was nominating Prof. Gustavo Albano Abreu as arbitrator. He also requested that the language of the proceedings be Spanish and agreed to submit the dispute to mediation.

29. On 2 July 2014, the CAS Court Office acknowledged receipt of the Player's letter of 30 June 2014 and invited the Parties to provide within two days their position with regard to the language of the arbitration. FIFA was also invited to inform within 5 days whether it agreed with the nomination of Prof. Gustavo Albano Abreu as the Respondents' arbitrator.

30. On 7 July 2014, the CAS Court Office acknowledged receipt of the various letters sent by the Parties and noted that:

    - the Respondents objected the Appellant's request for a suspension of its deadline for filing its appeal brief. Under these circumstances, it advised the Parties that it would be for the President of the CAS Appeals Arbitration Division to decide on this matter.
    - the Respondents objected Spanish as the language of this procedure, which would therefore be conducted in English.
    - FIFA did not object the nomination of Prof. Gustavo Albano Abreu as arbitrator.
    - the *"appellant and the [Player] agree with the possibility to submit this dispute to mediation. However, given that [FIFA] remained silent in this respect, this procedure will continue under the appeals arbitration rules"*.

31. The same day, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to dismiss the Appellant's request to suspend its deadline for filing its appeal brief.

32. On 11 July 2014, the Appellant requested a 5-day extension of the deadline to file its appeal brief, which was eventually granted.

33. On 16 July 2014, the Appellant filed its appeal brief in accordance with Article R51 of the Code.

34. On 12 August 2014, the Player requested a 5-day extension of the deadline to file his answer, which was granted.

35. On 13 August 2014, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Juan Pablo Arriagada Aljaro, President of the Panel, Prof. Dr. Martin Schimke and Prof. Gustavo Albano Abreu, arbitrators.

36. On 14 and 22 August 2014, FIFA and the Player filed their respective answers in accordance with Article R55 of the Code.

37. On 26 August 2014, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

38. On 27 August 2014, both Respondents confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas, on 2 September 2014, the Appellant expressed its preference for a hearing to be held.

39. On 5 September 2014, the Parties were informed that the Panel had decided to hold a hearing, which was scheduled for 21 January 2015, with the agreement of the Parties.

40. On 25, 26 November and 22 December 2014, the Player, the Appellant and FIFA respectively signed and returned the Order of Procedure in this appeal.

41. The hearing was held on 21 January 2015 at the Hotel Lausanne Palace, in Lausanne Switzerland. The Panel members were present and assisted by Mr Antonio de Quesada, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

42. The Parties did not raise any objection as to the composition of the Panel.

43. The following persons attended the hearing:

- For the Appellant, its attorneys, Mr Breno Costa Ramos Tannuri and Mr Ramy Abbas.
- The Player was not present but was represented by its legal counsel, Mr Ariel Reck.
- FIFA was represented by Mrs Isabel Falconer and Mr Ignacio Triguero, members of its Players' Status and Governance Department.

44. The Panel heard evidence from the Player (called by his legal counsel) and from Prof. Andrés Miguel Fassi Jürgens (called by the Appellant), via teleconference, with the agreement of the President of the Panel and pursuant to Article R44.2 para. 4 of the Code, which is also applicable to appeal arbitration procedure (see Article R57, para. 3 of the Code). The Player and Prof. Andrés Miguel Fassi Jürgens, who were invited by the President of the Panel to tell the truth subject to the consequences provided by Swiss law, were examined and cross-examined by the Parties, as well as questioned by the Panel.

45. At the end of the hearing, the Parties accepted that their rights before the Panel had been fully respected and agreed that they would use their best efforts to resolve the dispute amicably within ten days. After the Parties' final arguments, the Panel closed the hearing and announced that, should the dispute not be resolved to the mutual satisfaction of the Parties, it would render its award in due course.

46. The Parties asked for several time-extensions in order to try to find an amicable settlement of the dispute.

47. On 16 March 2015, the Appellant's legal counsel informed the CAS Court Office that the Parties failed to reach an amicable settlement to their dispute.

IV. SUBMISSIONS OF THE PARTIES

(i) The Appeal

48. The Appellant submitted the following requests for relief:

> *"The Appellant respectfully submits to the attention of the Court of Arbitration for Sport the following requests for relief:*
>
> *FIRST - To set aside the Appeal Decision since it clearly contravenes mandatory and consolidated principles of the current Lex Sportiva, as well as provisions of the applicable laws;*
>
> *SECOND - To confirm that the [Player] unilaterally terminated the Employment Contract without just cause;*
>
> *THIRD - To uphold that the Appellant shall be entitled to receive from the [Player] the compensation amount of USD 260,000 (cf. Art. 17, par. 1 of the FIFA RSTP), plus interest of 5% p.a. as of the date on which the Employment Contract was terminated, i.e. 27 July 2011;*
>
> *FOURTH - To impose a restriction of 6 (six) months on the [Player's] eligibility to play official matches following the notification of the award issued by the present CAS Panel (cf. Art. 17, par. 3 of the FIFA RSTP);*
>
> *FIFTH - To condemn the [Respondents] to the payment of the legal expenses incurred by the Appellant during the ongoing arbitration, at least in the amount of EUR 20,000 (twenty thousand Euros); and*
>
> *SIXTH - To establish that the costs of this arbitration procedure before CAS shall fully be borne by the [Respondents]".*

49. The submissions of the Appellant, in essence, may be summarized as follows:

- The Player had no just cause to prematurely terminate the Employment Agreement:

- Before he was loaned to the Appellant, the Player was playing for the B-team of Villarreal. This explains why his physical and technical skills were far below the standards of the Appellant's first team. In order to upgrade the Player's performances, a special program was specifically put in place. It was decided that the Player would train with the Appellant's first team and play matches with its second team. In spite of all the Appellant's efforts, the Player's progresses were stopped by his four-game suspension, following the red card he received for having *"verbally assaulted the referee"*. Under these circumstances, the Player could not reasonably expect to play with the Appellant's first team.

- The Appellant has never de-registered the Player. In the beginning of the 2011-2012 season, the Player was not registered yet. As a matter of fact, in the beginning of each new season, the Appellant chooses the foreign players, who will be registered. In the present case and according to the applicable regulations, the Appellant had until 5 September 2011 to register the Player. The latter did not give to the Appellant this opportunity as he unilaterally terminated the Employment Agreement on 27 July 2011.

- With its letter of 13 July 2011, the Appellant was trying to be transparent and to invite Villarreal as well as the Player to find a mutually satisfactory solution to the situation. This letter *"simply clarified, based upon the highest good-faith, that the Appellant, at first instance, intended to replace (or transfer) the [Player], conditioned upon the formal consent from the Player's Agent and Villarreal"*. In this letter, the Appellant clearly insisted upon the fact that it was its intention to fulfil every aspect of its contractual obligations.

- The Player has never protested or complained about the special program, in particular about playing with the Appellant's B-team. Before a player *"decides to terminate his contract, it should have been not only advisable but compulsory to let the club know, firstly that he is complaining that the club's conduct is not in accordance with the contract and secondly, that he is not prepared to accept such breaches of contract in future"*.

- The Player *"has never forwarded any warning to the Appellant before the termination letter dated 27 July 2011. Indeed, the [Player] has never shown any disagreement nor complaint about any decision taken by the Appellant during the period in which he remained under the Employment Contract. It is important to have in mind, that the [Player] received the correspondence [dated 13 July 2011] and has never provided any response whatsoever to the Appellant. The 5 (five) foreign players listed by the Appellant for the first match of the season were chosen much before the date itself, i.e. 23 July 2011. The [Player] was aware of that and has never shown any disagreement to the Appellant during the term of the Employment Contract"*.

- The party willing to put an immediate end to the employment agreement on the ground of a just cause must act without delay otherwise it is deemed to have renounced the right of termination. In light of the above considerations, the Player's notice of 27 July 2011 was filed too late.

– Based on the above, the DRC was wrong when it found that the Player had *"good reasons to believe that his registration would not occur"*. *"Shockingly, the members of the FIFA Chambers have*

not clarified which 'good reasons' those were. By omitting to elaborate on this, FIFA indisputably violated its obligations (cf. Art. 14 par. 4, lit. f)".

- In addition, the findings of the DRC are mainly based on the Appellant's letter of 13 July 2011, which was nothing more than an invitation from the Appellant to negotiate an amendment of the Loan and of the Employment Agreements. Again, if no consensus could have been reached, the Appellant would have respected the original terms of its contractual obligations. In this regard, *"having received the negative answer from Villarreal to the possibility of transferring the [Player] to a third club, the Appellant promptly fulfilled with the request made by Villarreal within the time limit imposed, i.e. paid the second instalment due as loan fee".*

- With its letter of 13 July 2011, the Appellant only wanted to open the discussion as regards the Player's professional future. A *"solution could have been easily found, i.e. registration before the FMF or a transfer to a third club".*

- The Player and Villarreal were acting in bad faith as they obviously had planned to put an end to their relationship with the Appellant before the termination notice of 27 July 2011. As a matter of fact, the Player signed a new employment agreement with the Argentinean club Estudiantes de la Plata on 28 July 2011. *"It is very unlikely that the [Player] terminated the Employment Contract on 27 July 2011 and within less than 24h left the city of Pachuca in Mexico, travel to Argentina, met the representatives of Estudiantes, negotiated (and agreed?!) the terms and conditions of said new contract and signed it".*

- The Appellant is entitled to the following compensation:

Remuneration paid to the Player for the first season:	USD	228,000
Three instalments derived from the Loan Agreement:	USD	260,000
Specificity of sport:	USD	228,000
Saved expenses (Player's salary for the 2011/2012 season): ./.	USD	456,000
TOTAL:	**USD**	**260,000**

- *"It has been established above that the [Player] unilaterally terminated the Employment Contract and as such termination occurred after only six months of the Employment Contract's commencement this must be regarded as a termination during the protected period. There can therefore be no doubt that sporting sanctions must be imposed on the [Player]".*

(ii) The Answers

a) The Player

50. The Player filed an answer, with the following requests for relief:

"We request the Court for relief in order to solve the present dispute. Specifically and for the grounds expressed in this answer we request:

1. To confirm the FIFA DRC decision in its entirety.

2. *To order [the Appellant] to pay all costs and expenses relating to the FIFA DRC and the CAS arbitration proceedings.*
3. *To order the [Appellant] to pay a contribution towards the legal fees and other expenses incurred by [the Player], estimated in CHF 15.000.-*
4. *Subsidiary, in the unlikely case the Panel considers [the Player] was responsible for the breach, to decide that[the Appellant] has no standing to appeal in relation to the player's sanction and has no right to compensation since it faced no actual damage due to the termination of the contract".*

51. The submissions of the Player may, in essence, be summarized as follows:

- The Player had a just cause to prematurely terminate the Employment Agreement:
  - According to the clear wording of the Loan Agreement, the Appellant committed itself to register the Player and to field him with its first team throughout the duration of the Employment Agreement. This was obviously important for both, the Player and Villarreal. The non-registration of the Player a) affected his performance and market value and b) was inconsistent with the purpose of a loan, which was to allow the Player to be fielded as often as possible in order to gain experience. *"The employee has the right to exercise an activity as the one that was originally agreed in the contract. He can't be moved to a position that is worse of the position he was before, which is way below of his qualifications and was not predicted".*
  - It is undisputed that the Player accepted to play some games with the Appellant's B-team. But this was only part of a mutually agreed *"reconditioning program". "While this might be a reasonable measure to recover the player's fitness, while he was still registered and was still training with the first team, and the move was indeed consented by [the Player], a* ***non-registration*** *together with a* ***permanent*** *move to the B-team (to train and being unable to play officially) is certainly not reasonable and a measure that cannot be admitted, and [the Player] and Villarreal never consented".*
  - *"(…) clubs have a general obligation to register players and failure to comply with such obligation amounts to a severe breach of contract".* As soon as the Player was aware of the fact that five foreign players were registered (exhausting thereby the Appellant's quota of registered foreign players), he immediately put an end to the Employment Agreement. The Player was faced with a *fait accompli*. The Appellant has never made any concrete offer to the Player or presented a solution to compensate his non-registration and the consequences deriving therefrom.
  - For the season 2011-2012, the Appellant *"decided to replace the player with another foreign player and wrote a letter to the parent club Villarreal informing the Spanish side that the [Appellant] was aware of the commitments towards Villarreal but was asking to transfer such commitments. The player's agent was only copied. [The Appellant] only asserted in the letter [dated 13 July 2011] it will respect the obligations towards Villarreal, never towards [the Player]".*

- The Appellant is trying to mislead the Panel, when it claims that it had until 5 September 2011 to register the Player. As a matter of fact, *"while the deadline to register a foreign player is indeed September 5th, this deadline is irrelevant if the club already registered 5 foreign players before such time limit"*. It must be observed that, in its appeal brief, the Appellant has never explained how he would have registered the Player, had the latter not terminated the Employment Agreement.

- The Player cannot be criticised for not having given any prior warning to the Appellant before he served his notice in view of the circumstances, *i.e.* a) the Player found out that he was not registered on the first match of the season, b) the quota of registered foreign players was exhausted with other players, c) the Appellant confirmed in writing that it decided to replace him with another player. In such a situation, a warning would have been pointless.

- *"In the highly improbable case that the Panel decides that it was the player the one who breached the employment contract we consider there shall be no compensation"*, as the Appellant did not suffer any damage.

- The Appellant has no standing to appeal against the absence of sporting sanctions upon the Player.

b) FIFA

52. FIFA filed an answer, with the following requests for relief:

> *"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 27 February 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".*

53. The submissions of FIFA may, in essence, be summarized as follows:

- FIFA fully endorses the findings of the DRC.

- The Player had a just cause to prematurely terminate the Employment Agreement. As a matter of fact, he had numerous reasons to believe that he was no longer wanted by the Appellant:

  - In its letter dated 13 July 2011, the Appellant explicitly informed Villarreal that:

    - The Player's performances were poor.

    - It had decided to substitute him with another player. The statement contained in the said letter unambiguously constitutes a *"clear decision"* and not just the expression of a desire to substitute the Player.

- It wanted to transfer the Player elsewhere.
- It refused to register the Player for the 2011-2012 season.

o Contrary to the Appellant's assertion (according to which it could/would have registered the Player as the deadline to do so, had not yet expired), *"the Appellant had already made the decision to replace the Player, when it expressly communicated this on 13 July 2011, in writing to Villarreal"*.

o It must be observed that, at the beginning of the 2011-2012 season, consistently with its own decision, the Appellant fielded a team comprising a full quota of five foreign players, none of whom was the Player. *"In effect, the substitution had been completed, since the [Player's] place as one of the five registered foreign players was taken by another player (…) exactly as the Appellant stated it would do"*.

o The actions *"of the Appellant specifically indicate that it valued the other five foreign players above the [Player], so in order to follow through with its alleged intention to register the [Player], the Appellant would first have had to de-register one of those five players which it valued higher"*.

o In its letter of 13 July 2011 as well as in its appeal brief, the Appellant *"refers to the player in extremely negative terms. So while the Appellant insists that it was its attention to register the player before 5 September 2011, its attitude towards the player at the time, and its attitude towards the player now strongly indicate that this was extremely unlikely"*.

o In its letter of 13 July 2011, the Appellant has not committed itself to respect its contractual obligations towards the Player.

- The Appellant breached the Player's fundamental rights, namely his right to access training and to be given the possibility to compete in official matches. In view of the circumstances of the case, the Player cannot be blamed for not having given previous warnings to the Appellant before he terminated the Employment Agreement. As a matter of fact, it was an emergency for him to find another employer. *"If the [Player] was not registered for a club before the relevant registration periods closed [i.e. 5 September 2011], then he would have had his access to competitive football blocked completely, and would have endured this until the relevant registration periods were open again – some months later at the earliest"*.

- Since the decision of the DRC must be affirmed, the Appellant's request for sporting sanctions against the Player must be dismissed.

V. APPLICABLE LAW

54. Article R58 of the Code provides the following:

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

to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

55. Pursuant to Article 62 para. 2 of the FIFA Statutes, which were in force in 2011 or pursuant to Article 66 para. 2 of the current FIFA Statutes, *"[t]he 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".*

56. Regarding the issue at stake, the Parties have not agreed on the application of any specific national law. As a result, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

57. It can be observed that, in their respective submissions, the Parties adopted the same approach; *i.e.* they agreed on the application of the relevant FIFA regulations, and accessorily, Swiss law.

58. The case at hand was submitted to the DRC on 4 September 2011, i.e. after 1 October 2010 which is the date when the revised FIFA Regulations for the Status and Transfer of Players, edition 2010, came into force (hereinafter the "RSTP"). As a consequence, the case shall be assessed according to these regulations (see Article 26 para. 1 of all the subsequent editions of the FIFA Regulations for the Status and Transfer of Players).

VI. JURISDICTION

59. Article R47 para. 1 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".

60. The jurisdiction of CAS, which is not disputed, derives from Articles 62 *et seq.* of the FIFA Statutes (edition 2011) or Articles 66 *et seq.* of the current FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.

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

62. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. ADMISSIBILITY

63. There was a dispute as to the timeliness of the appeal brief.

64. On 11 July 2014, the Appellant requested a 5-day extension of the deadline to file its appeal brief, which was granted. On 16 July 2014, the Appellant filed its appeal brief.

65. However, on 5 December 2014 and for the first time, the Respondents noted that there was contradictory information about when exactly the appeal brief was filed. Whereas the appeal brief is dated 16 July 2014, there are several documents on record, which suggest that it was sent on 17 or 18 July 2014. Under these circumstances, the Respondents were of the view that the appeal was inadmissible.

66. On 11 December 2014, the Appellant claimed that it fully observed the extended time limit and supported its allegation with a copy of the first page of its appeal brief, which carried a) the stamp of *"PostNet"* (allegedly one of FedEx's authorized *"shipcenters"*) followed by a handwritten note *"Received on 16/07/2014"* and an illegible signature.

67. Pursuant to Article R32 para. 1, third sentence of the Code, *"The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location where the notification has to be made, on the last day on which such time limits expire"*. Obviously, this rule also applies when the deadline was duly extended.

68. At the hearing before the CAS, the Respondents claimed that the Appellant failed to demonstrate that the appeal brief was sent within the set time limit. According to them, the handwritten note attributed to *"PostNet"* was not a convincing evidence as courier delivery services companies provide their customers with a reference number, which allows them to track the status of their shipment. They found suspicious that the Appellant went so far as to obtain a handwritten confirmation when all the necessary delivery information can be obtained via internet.

69. The Respondents are suggesting that the handwritten note attributed to *"PostNet"* is a forged document, meant to deceive the members of the Panel to admit the allegedly belated appeal brief. The Respondents adduced no evidence to ascertain such an allegation, which is serious and should not be made absent a basis in fact. The Panel observes that the litigious document was made available on 11 December 2014 and its authenticity had never been questioned before the hearing. Only then, did the Respondents request a copy of a printed invoice, with the tracking number and the shipment dates. This information could have been requested much earlier as the Appellant submitted the litigious documentation on 11 December 2014.

70. Under these circumstances, the Panel finds that the handwritten note attributed to *"PostNet"* is valid and that the Appellant has met the burden of proof of having sent its appeal brief *"before midnight, time of the location where the notification has to be made, on the last day on which such time limits expire"* (see Article R32 para. 1, third sentence of the Code).

71. It results from the above that the appeal is admissible as the Appellant submitted it within the deadline provided by Article R49 of the Code as well as by Article 63 para. 1 of the FIFA Statutes (edition 2011) or Article 67 para. 1 of the current FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VIII. MERITS

72. On the one hand, the Appellant claims that it has always carried out its obligations timely and exhaustively and that the Player had no just cause to prematurely terminate the Employment Agreement. It alleges that it was accepted by all the Parties, including the Player, that the latter was not physically fit to play with its first team. The Player had never complained about the *"reconditioning program"* specifically put in place for him. In the absence of any warning, the Player's resignation came as a surprise to the Appellant, which did not get the opportunity to resolve the issue to the satisfaction of all the Parties, namely by registering the Player in its first team (which was still possible until 5 September 2011) or by finding a new employer. The Player took advantage of the Appellant's letter of 13 July 2011, to try to create a misleading appearance of "just cause" for terminating the employment relationship in order to sign with another club, with whom he obviously had already entered into negotiations. In any event and according to the Appellant, the Player's termination notice of 27 July 2011 was filed too late.

73. On the other hand, the Respondents contend that the Player had a just cause to terminate the Employment Agreement as he had numerous reasons to believe that the Appellant did not want him anymore. This is illustrated by its letter dated 13 July 2011. In addition, the Appellant failed to comply with its contractual commitments; *i.e.* to register the Player and to field him with its first team. As a matter of fact, the registration by the Appellant of five foreign players implied not only that it was impossible for the Player to be fielded with the Appellant's first team for the 2011-2012 season but that he was permanently downgraded to the Appellant's B-team.

74. The main issues to be resolved by the Panel in deciding this dispute are the following:

A. Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?

B. What is the compensation due?

A. Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?

i.) In general

75. Article 13 of the RSTP defends the principle of contractual stability by expressly stating that *"a contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

76. However, the principle of contractual stability is not absolute as Article 14 of the RSTP provides that *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*. This provision is substantially identical to Article 14 of the RSTP edition 2005.

77. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 14, page 39):

"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.

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

5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

78. However, the FIFA Regulations do not define what constitutes a *"just cause"*. Therefore, abiding by ample CAS jurisprudence, the Panel examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2008/A/1518, para. 59, page 22).

79. Article 337, para. 1, first sentence, of the Swiss Code of Obligations ("CO") provides that *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause"*.

80. Under Swiss law, such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of *"just cause"*, as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (*ibidem*). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of a less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is just cause (Article 337 para. 3 CO).

81. The party prepared to put an immediate end to the employment agreement on the grounds of a just cause has only a short period of reflection, after which it must be assumed that the said party chose to continue the contractual relationship until the expiry of the agreed period. A period of reflection of two to three business days is a maximum. An extension of a few days is tolerated only under exceptional circumstances (ATF 130 III 28 consid. 4.4; 123 III 86 consid. 2a; decision of the Swiss Federal Court of 24 August 2004, 4C.348/2003, consid. 3.2; WYLER R., Droit du Travail, Berne 2008, p. 502; AUBERT G., Du contrat individuel de travail, in: Commentaire Romand, Code des obligations I, Bâle, 2012, ad art. 337, N. 11, p. 2098).

82. Under Swiss law, the employer has the obligation to protect the employee's personality (Article 328 CO). The case law has deduced thereof a right for some categories of employees to be

employed, in particular for employees whose inoccupation can prejudice their future carrier development. The employer has to provide these employees with the activity they have been employed for and for which they are qualified. The employer is therefore not authorised to employ them at a different or less interesting position than the one they have been employed for (WYLER, op. cit., p. 320).

ii.) In particular

83. The following facts are undisputed:

- The Player was hired to play with the Appellant's first team. According to the Loan Agreement (also signed by the Player), the Appellant was *"interested in acquiring the temporary cession of federative rights of [the Player], with the purpose of enrol him with the staff of its main professional team, from January 7, 2011 to June 2012"*.

- During the 2010-2011 season, the Player was registered with the Appellant's first team. However and in view of his sporting performance, the Player eventually trained with the Appellant's first team and played with its B-team.

- In the beginning of the 2011-2012 season, the Player was not registered with the Appellant's first team.

- Pursuant to Article 8 of the applicable Competition Rules, first professional division of the FMF (Reglamento de Competencia, Primera Division Profesional – hereinafter "FMF Regulations"), at the start of the season 2011-2012 each club is allowed to register up to five foreign and/or naturalized players, who may be fielded simultaneously.

- According to Article 28 of the same regulations (as translated from Spanish into English by the Player) *"Clubs which on July 15 2011 have not yet registered the maximum number of foreign players, will have up to September 5, 2011 to register foreign players who have been registered in another National Association"*.

- On 13 July 2011, the Appellant sent a letter to Villarreal, a copy of which was forwarded to the Player's agent, to announce that *"the yield of the Player was quite negative (…), [his] adaptation in the physical plan was very hard, his physical conditions for participating in sport were poor, and after 3 months of special work to get into shape, he was sent off the game due to indiscipline, which lead to a suspension of 4 matches, ending the Tournament in a very bad position. In view of the situation, technical and directive bodies decided to find a substitute for him in the current Tournament, which starts on July 23"*. Simultaneously, it also requested *"from Villarreal Sport Club authorization to transfer the commitments undertaken in December 2010 (…)"*.

- On 23 July 2011, the first game of the 2011-2012 season took place and the Appellant had fielded five foreign players. The Player was not one of them.

- On 26 July 2011 (according to the Player) and on 27 July 2011 (according to the Appellant), the Player notified in writing the Appellant of the fact that he was putting an

end to their contractual relationship with immediate effect.

- Eventually, the Player entered into a new labour agreement with the Argentinean club Estudiantes de la Plata, for which he accepted to play for a considerably lower yearly salary (USD 85,000 instead of USD 456,000).

84. In view of the above chronology of events, the Panel finds evident that the Appellant was dissatisfied with the Player's sporting performances, which were obviously not up to its expectations. In its letter dated 13 July 2011, it stated its disappointment in an unambiguous manner. More than that, the words used by the Appellant to describe the Player were not only harsh, but they also suggest that the latter was to be blamed for the poor season of its first team. The Appellant made clear that it was not interested in the Player's services anymore.

85. The Appellant's words were followed by deeds:

- In its letter of 13 July 2011, the Appellant confirmed that it unilaterally took the decision *"to find a substitute for [the Player] in the current Tournament, which starts on July 23"* and that it was seeking to obtain from Villarreal the *"authorization to transfer the commitments undertaken in December 2010"*.

- For the 2011-2012 season, the Appellant did not register the Player.

- On 23 July 2011, it fielded a team comprising a full quota of five foreign players. The Player was not among them.

- The letter of 13 July 2011 was sent just days away from the first match of the 2011-2012 season, which is very late, considering that a) the Appellant was unhappy with the Player's performances already at the end of (or before) the 2010-2011 season, b) it had to make arrangements to find the Player's substitute certainly prior 13 July 2011. In other words, the decision to get rid of the Player was taken much earlier but the Appellant waited the last moment to disclose its intention to the Player, giving him even less time to consider other professional options, before the imminent end of the transfer window.

86. In light of the above considerations, the Panel holds that the Player had objective reasons to believe that the Appellant had no intention to perform its side of the Employment Agreement. The Player was hired to train and play with the Appellant's first team and had a right to be employed under these terms, which had been agreed contractually. The exclusion from this position and his *de facto* demotion, since a substitute was hired, could have seriously prejudiced his career development, as it deprived him completely of the chance to put his talent in evidence and to increase accordingly his market value. Bearing in mind the Appellant's criticism and attitude towards the Player, the Panel finds that the latter could not reasonably be expected to carry on the employment relationship. For the same reasons, the Panel does not see any more lenient measures, which could have been taken by the Player in order to resolve the situation and to maintain the contractual relationship. In particular and under the specific circumstances of the case, the Panel sees no reason for the Player to give a warning prior to his resignation as

such a notification would have been of no use. As a matter of fact, the Player had no motive to believe that the Appellant's decision to substitute him was not final.

87. In this regard, the Appellant claims that, according to the applicable regulations, it had until 5 September 2011 to register the Player. It contended that since the Player *"decided to terminate the Employment Contract summarily, i.e. no previous warning has ever been addressed to the Appellant, it became impossible in any case to the Appellant to perform the registration requested by Villarreal, despite of the fact that the registration period deadline set out by the FMF was 5 September 2011"*. With regards to the burden of proof, it is the Appellant's duty to objectively demonstrate the existence of what it alleges (Article 8 of the Swiss Civil Code; ATF 132 III 449; consid. 4). It is not sufficient for it to simply assert a state of fact for the Panel to accept it as true (see for instance CAS 2010/A/2071, para. 48). In the present case, the wording of Article 28 of the FMF Regulations suggests that the deadline of 5 September 2011 applies only to teams, which *"on July 15 2011 have <u>not yet</u> registered the maximum number of foreign players"* (emphasis added). In the present case, the Appellant has not offered any evidence a) that it could have made use of the time limit laid down in Article 28 in spite of the fact that on 15 July 2011 it had already a full quota of foreign players and b) that it could have/would have de-registered one of them in order to reintegrate the Player in its first team. In addition, in view of the Appellant's words and attitude towards the Player, it is very unlikely that it would have considered the option of registering the Player, simply because the latter sent a warning.

88. The Appellant also claims that the Player's termination notice was filed too late. There is a dispute about whether the Player sent its letter of resignation on 26 or 27 July 2011, even though before the DRC, the Appellant stated that *"on July 26th the player Facundo Gabriel Coria (…) expressly communicated us his irrevocable decision to breach his employment contract (…)"*. In any case, based on the circumstances of the case, the Panel holds that it was only on 23 July 2011 that there was no longer any doubt as to the Appellant's decision to remove the Player from its first team. When it fielded five other foreign players for the first game of the season, the Appellant implemented the decision, which had been announced in its letter of 13 July 2011. In view of the foregoing, the Panel finds that the termination notice was filed timely, whether it was sent on 26 or 27 July 2011 (i.e. within two or three days following the first match of the season).

89. Finally, the Appellant contends that the Player acted in bad faith as it had planned to put an end to the employment relationship before the termination notice of 27 July 2011. As a matter of fact, the Player signed a new employment agreement with the Argentinean club Estudiantes de la Plata on 28 July 2011. According to the Appellant, *"It is very unlikely that the [Player] terminated the Employment Contract on 27 July 2011 and within less than 24h left the city of Pachuca in Mexico, travel to Argentina, met the representatives of Estudiantes, negotiated (and agreed?!) the terms and conditions of said new contract and signed it"*. The Panel observes that the Player accepted to work with the Argentinean club for a significantly lower yearly salary (USD 85,000 instead of USD 456,000). It is also clear that the Player was ready to accept a substantial financial sacrifice in order to be registered in a first team, which the Appellant was not ready to offer him, any more. Under these circumstances, the Player cannot be accused of bad faith, even if the signature of his new employment agreement with club Estudiantes de la Plata took place shortly after the termination notice.

90. In conclusion and on the basis of the foregoing consideration, the Panel finds that the Player terminated unilaterally and prematurely the Employment Agreement with a just cause and in a timely fashion.

B. What is the compensation due?

91. It appears that the Panel came to the same conclusion as the DRC, which held that the Appellant breached the Player's fundamental rights, consisting not only in the timely payment of his salary but also in the right to access training and to be given the possibility to compete with the Appellant's first team in official matches.

92. The DRC concluded that the Player was entitled to compensation and gave a detailed explanation of the amounts to be awarded to him.

93. The Appellant did not provide any reason justifying a reduction of the compensation awarded by the DRC.

94. Moreover, the Player, in his answer filed in the present procedure, requested the Panel to confirm the Appealed Decision.

95. Under these circumstances, the Panel finds that the Appealed Decision must be upheld in its entirety, without any modification.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Promotora del Pachuca S.A. de C.V. against the decision rendered on 27 February 2014 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision rendered on 27 February 2014 by the FIFA Dispute Resolution Chamber is confirmed.

(…)

6. All other or further requests and prayers of relief are dismissed.