Arbitration CAS 2014/A/3483 S.C.S. Fotbal Club CFR 1907 Cluj S.A. v. Ferdinando Sforzini & Fédération Internationale de Football Association (FIFA), award of 31 March 2015

Panel: Mr Marco Balmelli (Switzerland), President; Mr Vit Horacek (Czech Republic); Mr Manfred Nan (the Netherlands)

Football
Breach of employment contract between a club and a player
Jurisdiction of FIFA Dispute Resolution Chamber
Legal nature of the dispute
Res iudicata
Pacta sunt servanda

1. **The FIFA Dispute Resolution Chamber ("FIFA DRC") may lack jurisdiction for a football-related dispute of international dimension for which it would generally have jurisdiction if and to the extent that the parties to the dispute have clearly elected a national forum and that the latter is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. Under the aforementioned conditions the national body may become competent; the burden of proof with respect to the existence of such a body lies with the party contesting the competence of the FIFA DRC.**

2. **In general, sanctions imposed by a club on a player for an alleged violation of his duties under the employment contract are to be regarded as a disciplinary matter; however, within the framework of the contractual relationship between the employer and the employee a dispute arising from such sanction is considered to be an employment-related one. In contrast, a purely disciplinary matter involving not only the parties of the employment contract but the competent disciplinary bodies of the respective sporting organization would be for example a breach of the "Rules of the game" or other matters that such bodies are called to rule upon.**

3. **In case a club follows its regulatory requirements for the imposition of a fine on one of its players, if the respective procedure was compliant with basic procedural rights (*i.e.* the player in question was offered due opportunity to present his case and was granted the possibility to defend himself) and if the player's right to be heard has been respected, a final decision to this effect should in principle have a *res judicata* effect and can no longer be reviewed by the FIFA DRC. However, for any decision by the club to sanction the player as well any respective ratification of that decision to become final and binding in the meaning of *res iudicata* it is essential that such decision is effectively notified to the parties or addressees of such decision.**

4. In case the parties to a loan agreement agree to prematurely terminate it, the club employing the player is not automatically released from its obligations under the employment contract (*e.g.* payment of outstanding salaries) unless the termination agreement does either explicitly or impliedly release the club from its respective obligations towards the player under the employment contract. Instead, the general principle of *pacta sunt servanda* prevails pursuant to which the player is entitled to any outstanding salaries under the employment contract for the services he had rendered.

I. THE PARTIES

1. S.C.S. Fotbal Club CFR 1907 Cluj S.A. (the "Club" or "Appellant") is a professional Romanian football club that competes in the Romanian Lega 1. The Appellant is affiliated to the Romanian Football Federation, which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA or "Second Respondent").

2. Mr Ferdinando Sforzini (the "Player" or "First Respondent") is a professional Italian football player who had a one-year employment contract with the Appellant in the season 2010/2011.

3. The Fédération Internationale de Football Association 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. Its Dispute Resolution Chamber rendered the decision which the Appellant is appealing against in the present proceedings.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts and allegations based on the parties' written submissions and evidence adduced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 25 August 2010, the Player and the Club concluded an employment contract (hereinafter the "Contract") valid as from 24 August 2010 until 30 June 2011. The Contract was agreed upon following the conclusion of a loan agreement between the Player, the Club and the Italian club Udinese Calcio. In accordance with the Contract, the Player was entitled, in addition to a signing fee and bonuses, to the net amount of EUR 250'000, payable in 10 monthly installments of EUR 25'000.

6. Article 12.1 of the Contract reads as follows:

> *"Any dispute between the parties arising from or in connection with this agreement, including its validity, interpretation, execution or termination, shall be settled amiably. Unless the Parties shall reach an amiable resolution, then any such dispute shall be submitted to the competent bodies of the Romanian Football Association or FIFA".*

7. It is undisputed between the parties that the Club arranged only for the payment of salary for September 2010 and that the payments of the salaries for October 2010 until the end of 2011 were never made.

8. On 8 December 2010, the Club played an UEFA Champions League match against AS Roma (the "Match"). While it is undisputed that the Player was not fielded in the Match, the exact whereabouts before and during the Match and reasons why he did not participate in the Match remained disputed between the Club and the Player.

9. On 7 January 2011, Udinese Calcio, the Player and the Club agreed to terminate the loan agreement prematurely.

10. On 24 January 2011, the Board of Directors of the Club sanctioned the Player by ordering him to pay a sum in the amount of 25% of the value of his yearly income.

11. This sanction was then ratified by the Romanian Disciplinary Committee of the Professional Football League (the "DCRPFL") on 9 February 2011.

B. Summary of the proceedings before the FIFA Dispute Resolution Chamber

12. On 15 February 2011, the Player filed a claim against the Club before the FIFA Dispute Resolution Chamber (hereinafter "FIFA DRC") indicating that he did not receive his salary for the months of October 2010 until January 2011 (four installments). In this respect, the Player stated that the Club, the club Udinese Calcio and himself had agreed to terminate the loan agreement prematurely, but stressed that the Club had not settled its outstanding debts. In summary, the Player requested to be awarded with the amount of EUR 80'645.00, in detail

- *EUR 25'000 plus 5% interest as from 1 November 2010*
- *EUR 25'000 plus 5% interest as from 1 December 2010*
- *EUR 25'000 plus 5% interest as from 1 January 2011*
- *EUR 5'645 plus 5% interest as from 8 January 2011 (corresponding to the salary for the first 7 days of January 2011).*

13. In its reply, the Club, first of all, rejected the competence of FIFA to deal with the matter asserting that the Contract is governed by Romanian Law, and by the regulations of the Romanian Football Federation (hereinafter the "RFF") and that the Committee for the Resolution of Disputes of the RFF is the only competent body.

14. Furthermore, the Club stated that the parties had concluded a termination agreement (hereinafter the "Termination Agreement") pursuant to which the parties should be released from all their financial obligations towards each other. In this respect, the Club referred to Article 3 of the Termination Agreement which stipulates that:

"this agreement is free of charge; thus no financial fees whatsoever are implied by the parties".

15. On 28 June 2013, the FIFA DRC rendered its decision (hereinafter the "Appealed Decision") upholding the Player's claim, with, inter alia, the following operative part:

"1. The Claim of the Claimant, Ferdinando Sforzini, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, CFR 1907 Cluj, has to pay to the Claimant, within 30 days as from the date of notification of this decision, the amount of EUR 68,750 plus 5% interest as follows:

a) 5% p.a. on the amount of EUR 25,000 as of 26 November 2010 until the date of effective payment;

b) 5% p.a. on the amount of EUR 25,000 as of 26 December 2010 until the date of effective payment;

c) 5% p.a. on the amount of EUR 30,645 as of 8 January 2011 until 11 March 2011;

d) 5% p.a. on the amount of EUR 18,750 as of 12 March 2011 until the date of effective payment.

[…]".

16. On 13 January 2014, the grounds of the Appealed Decision were communicated to the parties. The FIFA DRC ordered the Club to pay the outstanding remuneration under the Contract. Regarding the disciplinary fine, the Chamber regarded the penalty in the amount of 25% of the value of the Player's yearly income as disproportional and, therefore, void. The Chamber also noted that, during the disciplinary proceedings, the Player had no chance to defend its legal views on that matter and therefore his right to be heard was violated.

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

17. On 31 January 2014, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"). Furthermore, the Appellant requested that the appeal be decided by a Sole Arbitrator.

18. On 10 February 2014, the Appellant asked for an extension of the time limit for filing the appeal brief with a term of 5 days based on Article R32 of the CAS Code.

19. After having been granted an extension of time by the CAS by letter of 10 February 2014, on 17 February 2014, the Appellant submitted its appeal brief in accordance with Article R51 of the CAS Code. In its appeal brief, the Appellant requests CAS to decide as follows:

    a) *"To affirm the present appeal against the challenged decision;*

    b) *To set aside the challenged decision;*

    c) *To declare that the 2nd Respondent has no jurisdiction over the Decision no. 426 from 09 February 2011 issued by Disciplinary Commission of the Romanian Professional Football League in the case file no. 03/CD/2011;*

    d) *To declare that the Decision no 426 from 09 February 2011 issued by Disciplinary Commission of the Romanian Professional Football League in the case file no 03/CD/2011 is final and binding upon the Respondents;*

    e) *To declare that the amount of 68'750 Euros owed by the 1st Respondent toward our club as financial penalty is deducted from his salaries and other financial rights which became due under the employment contract;*

    f) *To state that our club does not owe any amount to the 1st Respondent as contractual rights and that the player should reimburse the amount of 7.702 Euro to our club (prayer for relief modified within the appeal brief);*

    g) *To fully dismiss the original claim filed by the player Fernandino Sforzini;*

    h) *To compel the Respondents, jointly and severally, to the payment of legal expenses incurred by our club in the present procedure;*

    i) *To establish that the cost of arbitration procedure shall be borne by the Respondents, jointly and severally".*

20. On 17 February 2014, the Second Respondent informed the CAS Court Office that it would prefer a panel of three arbitrators.

21. On 20 March 2014, the CAS Court Office informed the parties on behalf of the President of the CAS Appeals Arbitration Division, that the present procedure shall be submitted to a panel of three arbitrators.

22. On 28 March 2014, the Appellant nominated Dr. Vit Horacek as arbitrator.

23. On 2 April 2014 and on 3 April 2014, the Second Respondent and the First Respondent each and jointly nominated Mr Manfred Nan as arbitrator.

24. On 11 June 2014, the CAS Court Office informed the parties that pursuant to Article R54 of the CAS Code, the Panel appointed to hear the appeal was constituted as follows:

    President: Dr. Marco Balmelli, attorney-at-law, Basel, Switzerland

Arbitrators: Dr. Vit Horacek, attorney-at-law, Praha, Czech Republic
Mr Manfred Peter Nan, attorney-at-law, Arnhem, the Netherlands

25. In the same letter, the Respondents were granted a 20-day limit for filing their answers.

26. By letter of 12 June 2014, the Second Respondent requested the CAS Court Office to fix a new time limit for filing its answer after termination of the FIFA World Cup in Brazil on 13 July 2014. The CAS Court Office invited the Appellant and First Respondent to inform it whether they consent or object in that respect.

27. On 17 June 2014 and in the absence of any objection, the CAS Court Office fixed the Second Respondent's 20-day time limit for filing an answer to start running on 14 July 2014.

28. On 24 June 2014, the First Respondent asked the CAS Court Office, in accordance with Article R32 of the CAS Code, to be granted a five-day extension to submit his answer which was granted by the CAS Court Office on the same date.

29. On 7 July 2014, the First Respondent filed his answer, in accordance with Article R55 of the CAS Code, requesting the following:

1) "To reject the appeal;

2) To uphold the Challenged Decision;

3) To condemn the Appellant to the payment in the favour of the First Respondent of the legal expenses incurred;

4) To establish that the costs of the arbitration procedure shall be borne by the Appellant".

30. On 31 July 2014, the Second Respondent filed its answer, in accordance with Article R55 of the CAS Code, requesting the following:

1. "To reject the present appeal against the decision of the Dispute Resolution Chamber (hereafter also: the DRC) dated 28 June 2013 and to confirm the relevant decision in its entirety.

2. To order the Appellant to cover all the costs incurred with the present procedure.

3. To order the Appellant to bear all legal expenses of the second Respondent related to the procedure at hand".

31. On 8 August 2014, the First Respondent informed the CAS Court Office that he did not consider a hearing necessary to be held.

32. On 11 August 2014, the Second Respondent informed the CAS Court Office that, in its opinion, a hearing was not necessary.

33. On 18 August 2014, the Appellant informed the CAS Court Office that it did not consider a hearing necessary. Furthermore, it submitted two written witness statements – each of them

translated into English – and furthermore requested the Panel to allow a reply to the answers by the Respondents.

34. On 28 August 2014, the President of the Panel decided, following the Respondents' respective objections and in the absence of exceptional circumstances, to not admit the witness statements filed on 18 August 2014 and to not allow a reply to the Respondents' answers, pursuant to Article R56 of the CAS Code. Furthermore, the parties were informed that the Panel decided not to hold a hearing and to deliver an award solely based on the written submissions of the parties.

35. The Panel confirms that it carefully studied and took into account in its deliberations all submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. JURISDICTION

36. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

37. The jurisdiction of the CAS is provided by Article 67 (1) of the FIFA Statutes (2013 edition) which reads:

> *"Appeals 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".*

38. It follows from these provisions that CAS has jurisdiction over the present case. The jurisdiction of the CAS was not contested by the Respondents and was confirmed by all parties' respective signature of the Order of Procedure.

V. ADMISSIBILITY

39. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".*

40. The motivated FIFA decision was notified on 13 January 2014. The appeal was filed on 31 January 2014. Therefore, the appeal was timely submitted and is admissible.

VI. APPLICABLE LAW

41. 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

42. 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".*

43. Article 13.4. of the Contract states that:

> *"This Agreement shall be supplemented accordingly with the provisions under the Regulation on the status and transfer of football players and other regulations of the Romanian Football Association and Professional Football League".*

44. The Panel deems that the parties agreed that various regulations of the Romanian Football Association shall supplement the Contract. However, the parties did not make any clear reference to other regulations that should govern the proceedings of the case. Given that the Player legitimately submitted the case to the FIFA DRC, the applicable regulations to this dispute are, pursuant to Article R58 of the CAS Code, the FIFA regulations and, additionally, Swiss law.

VII. MERITS

45. The Appellant requests the Panel to state that the FIFA DRC did not have jurisdiction to hear the Player's claim against the decision no. 426 from 09 February 2011 issued by the DCRPFL in the case file no. 03/CD/2011. Furthermore, it requests the Panel to set aside the Appealed Decision and to hold that nothing is due to the First Respondent under the Contract. Finally, the Appellant requests the Panel to state that the First Respondent owes the Appellant the amount of EUR 68'750 as a financial penalty which has to be deducted from the Player's salaries and/or other financial rights towards the Club.

46. Accordingly, the Panel is requested to decide

- firstly, whether or not the FIFA DRC had jurisdiction to hear the claim against the decision issued by the DCRPFL,
- secondly, whether or not the parties agreed to release the Appellant from all its financial obligations towards the First Respondent under the Contract and
- finally, whether or not the First Respondent owes the Appellant a penalty in the amount of EUR 68'750 which allows the Appellant to declare a set-off.

a) Regarding the jurisdiction of the FIFA Dispute Resolution Chamber

47. The Appellant argues that the FIFA DRC did not have jurisdiction to hear the Player's claim for allegedly outstanding payments given that the decision issued by the DCRPFL had confirmed the penalty issued by the Board of Directors of the Club which had effectively set off any outstanding debts towards the Player. The Appellant alleges in this relation that the Player had refused to play in the Match and that disciplinary proceedings against the Player were initiated as a consequence of such behaviour.

48. In doing so, the Appellant submits that the FIFA DRC and the DCRPFL have different subject matter jurisdictions, the FIFA DRC is not a sport court with jurisdiction to perform judicial review of the DCRPFL, and the FIFA DRC interfered with the decision rendered by DCRPFL without having involved the latter and granting it the possibility to submit the necessary defenses.

49. In this regard, the Panel first of all has to define whether or not the parties to the Contract have explicitly agreed on a certain national or international judicial body which is deemed to be competent to settle any dispute arising out of the contractual relationship.

50. In Article 12.1 of the Contract the parties agreed that

> *"Any dispute between the parties arising from or in connection with this agreement, including its validity, interpretation, execution or termination, shall be settled amiably. Unless the Parties shall reach an amiable resolution, then any such dispute shall be submitted to the competent bodies of the Romanian Football Association or FIFA".*

51. In this regard, the Panel considers that the parties to the Contract did not explicitly refer to the competence of a certain national or international body which would exclude the competence of all other bodies which might be invoked. The clause merely mentions two alternatives, the *"competent bodies of the Romanian Football Association* ***or*** *FIFA"* (emphasis added).

52. Moreover, the Romanian Professional Football League, as Member of FIFA, is subjected to the judicial system of FIFA. The Panel notes in this respect Article 22 lit. b) of the FIFA Regulations for the Status and Transfer of Players which provides:

> *"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent for employment related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the Association and/or collective bargaining agreement".*

53. Neither the First Respondent nor the Appellant had sought redress before a civil court. Therefore, as an exception, if the parties have clearly elected a national forum and the latter is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, only then the national body may become

competent. The burden of proof with respect to the existence of such a body lies with the party contesting the competence of FIFA.

54. Therefore, the Panel finds that the competence of the FIFA DRC is set under two prerequisites:

(1) Firstly, the penalty issued by the Board of Directors of the Club and confirmed by the DCRPFL can be regarded as a matter of an employment-related dispute having an international dimension;

(2) Secondly, the Appellant failed to prove that the Romanian Professional Football Association is able to guarantee fair proceedings which respect the principle of equal representation of players and clubs and has been established at national level within the framework of the association.

55. Regarding the first prerequisite, the Panel holds that all circumstances surrounding the Player's sanction by the Club have to be taken into consideration. It is clear to the Panel from the file that the sanction on the Player was mainly imposed for his alleged non-performance of his contractual obligations, namely to take part in the Match. In general, sanctions imposed by a club on a player for an alleged violation of his duties under the employment contract are indeed to be regarded as a disciplinary matter, but within the framework of the contractual relationship between the employer and the employee rendering a dispute arising from such sanction an employment-related one. In contrast, a purely disciplinary matter involving not only the parties of the employment contract but the competent disciplinary bodies of the respective sporting organization would be for example a breach of the "Rules of the game" or other matters that such bodies are called to rule upon. However, in the present case, the sanction imposed on the Player was handed down by the Club. It is the Panel's conviction that this holds true notwithstanding the fact that the Player's sanction was ratified by the DCRPFL as it was at the discretion of the Club whether and to what extent the Player was sanctioned. The authority of the DCRPFL to supervise sanctions issued by its affiliated clubs and the possibility of a player to appeal such supervisory decision, *i.e.* the "ratification" of a sanction, may enlarge the Player's rights, but cannot change the employment-related nature of the sanction and the ensuing dispute. In conclusion, the Panel considers the Player's legal action against his sanction as a genuinely employment-related dispute.

56. The Panel considers that the employment-related dispute is also of an international dimension, taking into account the nationality of the Player and the seat of the Club.

57. Regarding the second prerequisite, the Panel, has taken all submissions of the Appellant regarding the question of an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs into due consideration.

58. In this respect, the Panel notes that the Appellant's submissions only comprise citations of a limited number of articles of the RFF's disciplinary regulations with regard to the competence of the RFF and RPFL's adjudicatory bodies and the enforcement of sanctions. In particular, the Appellant failed to provide the Panel with a complete copy of the RFF's disciplinary regulations,

which appear to constitute the basis of the relevant proceedings at national level, or other regulations pertinent in that regard.

59. Moreover, *in arguendo*, the Appellant did not prove that the Player was offered the possibility to present his case, thus to ensuring fair disciplinary proceedings in which his right to be heard was respected. In this regard, neither the decision of the Board of Directors of the Club, nor the decision no. 426 of 9 February 2011 issued by the DCRPFL mention the fact that the Player was present during the hearings or had other possibilities to defend himself. There is no evidence in the file regarding the proper summoning of the Player and as such the Panel is not convinced that the Player's right to be heard was respected.

60. Irrespective of the precedent prerequisites, the Appellant did not submit any documents that may prove that the DCRPFL in general observes the principle of equal representation of players and clubs by an adequate composition of the tribunal.

61. Thus, summarizing on the second point, the Panel considers that the Appellant failed to prove that an independent arbitration tribunal guaranteeing fair proceedings which respect the principle of equal representation of players and clubs has been established at national level within the framework of the RFF, pursuant to Article 22 lit. b FIFA Regulations for the Status and Transfer of Players and FIFA Circular no. 1010 dated 20 December 2005.

62. In conclusion, the Panel harbours no doubts that under Article 12.1 of the Contract the choice of the forum pertained to the party deciding to act against the other, with the consequence that the Player had the option to lodge an admissible claim with the FIFA DRC as shown above.

63. The Panel further holds that this is not a question of whether the FIFA DRC can or cannot review a decision of the DCRPFL, as the FIFA DRC is one of two alternative fora and not an appeals body in a hierarchical structure vis-à-vis the DCRPFL. For the same reasons it is also not warranted that the FIFA DRC involves the DCRPFL in any shape or form as purported by the Appellant.

64. Further to the conclusion that the FIFA DRC had rightfully accepted jurisdiction, the Panel turns its attention to the question whether the ratification of the monetary fine by the DCRPFL has to be considered *res iudicata* to the extent that the FIFA DRC would have been barred from reconsidering the Player's claim before it.

65. The Panel observes that the Appellant refers to CAS 2013/A/3109 and argues that said decision addresses a situation in a comparable set of facts and that it concludes that neither FIFA nor CAS can revisit the legitimacy of the sanction. In this respect, the Appellant argues that the FIFA decision "interferes" with the DCRPFL decision, *i.e.* it violates the principle of *res iudicata.*

66. As shown above, the Panel holds that the fine imposed by the Club for alleged misconduct of the Player and the Player's claims for outstanding payments in this relation ultimately constitute an employment-related dispute.

67. However, in the present case, the monetary fine was not only handed down by the Club, but it was ratified by the DCRPFL. As such, the Panel will have to assess the status of such ratification and assess whether such ratification has the binding effect of *res iudicata* on the FIFA DRC as far as the monetary fine is concerned.

68. The Panel observes that it appears that the Club correctly followed the procedure set by the RFF for the imposition of monetary fines on one of its players.

69. Further, the Panel finds that in case a club followed the regulatory requirements for the imposition of a fine on one of its players, if this procedure was compliant with basic procedural rights and if the player's right to be heard has been respected, a final decision to this effect should in principle have a *res judicata* effect and can no longer be reviewed by the FIFA DRC.

70. Different from CAS 2013/A/3109, the Panel considers in the present case to have no evidence on record that the ratification of the DCRPFL was effectively notified to the Player. For any decision to become final and binding in the meaning of *res iudicata* it is, however, essential that such decision is effectively notified to the parties or addressees of such decision.

71. Moreover, the Appellant did not prove that the Player was offered due opportunity to present his case, thus to ensuring fair disciplinary proceedings in which his right to be heard was respected. In this regard, neither the decision of the Board of Directors of the Club, nor the decision no. 426 issued by the DCRPFL mention the fact that the Player was provided with the possibility to defend himself. There is no evidence in the file regarding the proper summoning of the Player and as such the Panel is not convinced that the Player's right to be heard was respected.

72. Therefore, the Panel comes to the conclusion that the decision no. 426 of the DCRPFL to ratify the monetary sanction of the Club had no *res iudicata* effect binding the FIFA DRC.

b) Regarding the effect of the Termination Agreement

73. The Appellant argues that by effect of the Termination Agreement, the Player and the Appellant had agreed to release the Appellant from all its financial duties under the Contract and that, therefore, the Player should not be entitled to the outstanding salaries.

74. In this regard, the Appellant refers to Article 3 of the Termination Agreement which reads that *"This Agreement is free of charge; thus no financial fees whatsoever are implied by the parties"*.

75. In this respect, considering the Termination Agreement and the circumstances of the present case, the Panel does not find any argument that might support the Appellant's contention that it should be released from all of its obligations under the Contract. The Termination Contract, signed by the Italian Club Udinese Calcio, the Player and the Club, merely terminated the loan agreement between the two clubs to the effect that the Player was not playing any longer for the Appellant. The Panel deduces from the clear language and context of aforementioned

Article 3 that it merely stipulates that the Termination Agreement itself does not cause for either party any additional costs in connection with the loan agreement.

76. In fact, the Termination Agreement does neither explicitly nor impliedly release the Appellant from its obligations towards the Player under the Contract. If the parties had intended to release the Appellant from all of its financial obligations under the Contract, then it could have been provided for within the Termination Agreement.

77. Therefore, the general principle of *pacta sunt servanda* remains, pursuant to which the Player is entitled to the outstanding salaries under the Contract for the services he had rendered.

c) Regarding the outstanding salaries

78. The FIFA DRC decided in its Appealed Decision that the Appellant is ordered to pay outstanding salaries in an amount of EUR 68'750 to the Player.

79. The Appellant however alleges that the Player was entitled to a total amount of EUR 125'000 over the contractual period, but that since the Club paid the Player a total amount of EUR 63'952 already, the Player is only entitled to an amount of EUR 61'048.

80. The Appellant further contends that no salaries were due over August 2010 and January 2011.

81. The Panel recalls that the Player, as relevant, was entitled to an amount of EUR 250'000 over the 2010/2011 football season, payable in 10 monthly installments of EUR 25'000.

82. It remained undisputed that the Player's salary of October, November, and December 2010 remained outstanding. In addition, since the Contract was mutually terminated on 7 January 2011, the Panel finds that the Player is also entitled to salary over the first 7 days of January 2011. Consequently, the Panel finds that the Player was in principle entitled to a total amount of EUR 80'645 as outstanding salary.

83. It further remained undisputed that the Appellant already proceeded with the payment of EUR 11'895. This amount shall therefore be deducted from the outstanding amount, leading to the conclusion that an amount of EUR 68'750 is still outstanding, as concluded by the FIFA DRC.

84. The Panel carefully assessed the evidence provided by the Appellant as to the payment of EUR 63'952 to the Player and finds that this evidence indeed shows that certain payments were made. However, since the Player was also entitled to bonuses under the Contract, and in the absence of any clear reference being provided by the Appellant to explain the reason of payment for each transfer, the Panel is not convinced by the evidentiary value of these payment confirmations.

85. Consequently, the Panel finds that the Player is in principle entitled to outstanding salaries in an amount of EUR 68'750.

d) Regarding the penalty in the amount of EUR 68'750

86. The final issue to be examined by the Panel is whether the Appellant could impose a fine of EUR 68'750 on the Player and, if so, if this fine could be set-off against the Player's entitlement to his outstanding salaries in an amount of EUR 68'750.

87. The possibility for the Appellant to impose a fine on the Player is contemplated in the applicable regulations of the RFF. More specifically, Article 24 (5) of the RFF Regulations, in a translation provided by the Appellant, determines the following:

> *"The sanctioning of players by clubs for disciplinary violations shall be performed under the conditions set out by the RFF Disciplinary Regulations, the Internal Regulations of the clubs, and the contract signed by the two parties, respectively. The applicable sanctions shall be as follows:*
>
> *a) a written warning;*
>
> *b) fines (deducted from the player's financial rights) amounting to a total of less than 25% of the value of contractual rights during a season;*
>
> *(…)".*

88. In addition, Article 42 (6) of the Disciplinary Regulations of the RFF, in a translation submitted by the Appellant, determines as follows:

> *"Article 42 – Enforcement of other sanctions*
>
> *6. The sanctioning of the players by the clubs for disciplinary offences is made pursuant to these regulations, the clubs' internal regulations and the contract concluded between the player and the club, the applicable sanctions being:*
>
> *a) written warning;*
>
> *b) ban to participate in the team's official and friendly matches and to team training sessions for a period of 1-3 months; during the respective period, the player shall train individually or with another team of the same club under the guidance of a coach appointed by the club and shall abide by the schedule set by the latter;*
>
> *c) sporting fine; the total amount of sporting fines applied by a club to a player cannot exceed 25% of the value of the contractual rights due to him for a competition year.*
>
> *6.1. In order to be valid, the sanctions stipulated in art. 6, let. b) and c), applied to players by the clubs, must by [sic] ratified by the RFF/PFL/CFA/BMFA Disciplinary Committee".*

89. As set out in the above-mentioned provisions, this sanctioning shall be performed under the conditions set out by the *"Internal Regulations of the clubs, and the contract signed by the two parties"*.

90. Under the subsidiary application of Swiss law (Article 8 of the Swiss Civil Code) and Article 12 (3) of the FIFA Rules governing the procedures of the Players' Status Committee and the

Dispute Resolution Chamber (hereinafter the "FIFA Procedural Rules") the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.

91. Thus, the Panel considers that it is upon the Appellant to prove the legal basis and lawfulness of such a penalty. In this respect, the Panel finds that the Appellant failed to substantiate the lawfulness of the fine by failing to provide the internal regulations of the club and/or a contract that contemplates the possibility for the Appellant to impose a monetary fine on the Player. The Panel observes that there is neither a provision in the Contract granting the Appellant the right to sanction the Player for a disciplinary violation, nor was the Panel provided with internal regulations of the club. On this basis, the Panel finds that there was an insufficient legal basis for the imposition of a monetary fine on the Player by the Appellant.

92. As to the possibility to set-off a monetary fine against a player's salary, Article 5.3 and 5.4 of the Contract determines that:

"The club may withhold, out of any sum owed to the Player, any fines or sport penalties in accordance with the regulations of the Romanian Football Association and the Internal Regulations Manual;

The Player shall be informed in accordance with the terms and conditions under the Internal Regulations Manual on any additional financial rights stipulated under section 5.1 and on any amounts withheld in accordance with section 5.3 hereunder".

93. The Panel deems the question whether or not the Appellant was in a position to declare a set-off irrelevant because the Appellant did not substantiate the legal basis for the imposition of the penalty and its amount.

94. Therefore, as there is no legal basis for the imposition of a penalty, the Panel regards the penalty as void. Hence, there is no obligation which would lead to the possibility to declare a set-off.

VIII. CONCLUSION

95. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:

(i) the FIFA Dispute Resolution Chamber had jurisdiction to hear the claim of the Player;

(ii) the Appellant failed to prove that by the Termination Agreement the parties had agreed to release the Appellant from all its financial duties towards the First Respondent under the Contract;

(iii) the Appellant failed to prove that the penalty imposed on the First Respondent in the amount of 25% of the Respondent's contractual remuneration is lawful; therefore the Panel upholds the decision of the FIFA DRC to the extent it considered the penalty to be disproportional and, therefore, void;

(iv) the First Respondent is entitled to outstanding remuneration in the amount of EUR 68'750 plus interests in the amount of 5% per annum as outlined in the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by S.C.S. Fotbal Club CFR 1907 Cluj S.A. against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 28 June 2013 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 28 June 2013 is confirmed.

(…)

5. All further and other claims for relief are dismissed.