



Arbitration CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic, award of 23 June 2014

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football

Termination of employment contract

Applicable law

Just cause

Just cause in cases of non-payment by employer of work performed by employee

Obligation by employer to protect employee's personality

Calculation of compensation under Article 17.1 RSTP

Mitigation of damage

1. For appeal proceedings before the CAS Article R58 of the CAS Code foresees that the federation's regulations take precedence over a choice of law originally taken by the parties. Accordingly the regulations of a federation which has issued a first instance decision challenged in front of CAS also take precedence over a legal system chosen by the parties in an employment contract.
2. According to Article 14 RSTP, both a player and a club may terminate a contract with just cause. Whether just cause exists shall be established in accordance with the merits of each particular case. In cases where the violation of a contract persists for a long time or where many violations are cumulated over a certain period of time, 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.
3. Non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated - constitute just cause for termination of the contract; for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late may not be 'insubstantial' or completely secondary. Secondly, the employee must have given the employer a warning, i.e. the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.

4. It is an employer's obligation to protect the employees' 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 the future career development. The employer has to provide these employees with the activity they have been employed for and for which they are qualified, and he is not authorized to employ them at a different or less interesting position than the one they have been hired for. If the employer breaches this obligation, the employee has the right to immediately terminate the agreement.
5. Article 17 para. 1 RSTP closely follows Article 337b Swiss Code of Obligations which grants the party to an employment contract that is not in breach of the contract a compensation in an amount corresponding to all claims arising out of the employment relationship. This amount is however reduced by everything which the party saved as a consequence of the termination of the employment relationship and which it earned or intentionally failed to earn through other work. The two financial situations shall be compared in order to determine the compensation: the employee's hypothetical financial situation without the employer's breach of contract and the financial situation as it is following the breach of contract.
6. The indemnity due to an employee for breach of contract by the employer cannot be reduced when the acceptance of a new job would compromise the employee's future career. The employee is therefore free to refuse a new job which does not correspond to his capacities and it cannot be said that he has intentionally failed to mitigate his damage by refusing to earn the amount as provided in the refused offer. Specifically, a football player is not obliged to accept an offer made by a club playing in a lower division than the player has been playing in until the breach of contract by his employer; this is irrespective of the fact that with said club of the lower division the player would earn more than with a future employer of a division corresponding to the player's current performance level.

I. PARTIES

1. FC Petrolul Ploiesti (hereinafter the "Club" or the "Appellant") is a football club with its registered office in Ploiesti, Romania. It is affiliated to the Football Federation of Romania ("FFR") and participates in the "Romanian Football Professional League", the highest professional league in Romanian football and the country's primary football competition. The FFR itself is affiliated to the Federation International de Football Association ("FIFA").
2. Mr. Aleksandar Stojmirovic (hereinafter the "Player" or the "Respondent") is a Serbian citizen and a professional football player, born in Kragujevac, Serbia, on 11 December 1982. He is currently registered for the Serbian Football Club "Radnicki 1923" (11 July 2013 until 30 June 2014).

II. FACTUAL BACKGROUND

A. Facts

3. On 1 July 2011, the Appellant signed an employment agreement with the Respondent as from the date of its signing until 30 June 2015 (the “Agreement”). According to section IX of the Agreement, the Respondent was entitled to receive the following amounts:

- EUR 4’500 per month for the period from 01.07.2011 until 30.06.2012 (article 9.2)
- EUR 5’500 per month for the period from 01.07.2012 until 30.06.2013 (article 9.3)
- EUR 6’000 per month for the period from 01.07.2013 until 30.06.2014 (article 9.4)
- EUR 7’000 per month for the period from 01.07.2014 until 30.06.2015 (article 9.5)

All these amounts are due if the Player participates in at least 50% of the official football matches of the Appellant’s first team. In addition, he is entitled to:

- EUR 300 per month in order to pay the rent of an apartment (article 9.10).
4. Article 9.7 of the Agreement states that the Appellant preserves its right to give other money bonuses depending on the performances of the players, like the Appellant, and based on the decisions of its managing board.
5. Article 17.3 of the Agreement states that *“Disputes that outcome from the performance of the subject matter Contract is to be solved in the following procedural schedule*
- 17.3.1: Peaceful manner;*
- 17.3.2: Instituting the dispute before the Courts of the Romanian Football Federation (FRF), Professional Football League (LPF), District Football Association (AJF), according to the case”.*
6. The Appellant paid the March 2012 salary of the Respondent in two instalments: on 20 March and 15 May 2012. The salaries for April, May and June 2012 were not paid and a first reminder to pay such amounts plus a bonus payment was sent from the Respondent to the Appellant on 13 June 2012. Further reminders for paying the outstanding salaries were sent on 18 and 26 June, and 9, 11, 16, 24 and 27 July 2012.
7. In his reminder sent on 13 June 2012, the Respondent rejected the offer made by the Appellant that he could move to the lower ranked team FC Targu Mures for nearly the same payments as agreed on in the Agreement. In his reminder of 18 June 2012, the Respondent further mentioned that on 17 June 2012 he had to leave the apartment as the Appellant was no longer paying his rent as agreed upon in the Agreement.
8. In his reminder sent on 26 June 2012, the Respondent asked the Appellant to send him the training schedule for the next month. Then, two weeks later, in his reminder of 11 July 2012, the Respondent stated that he could no longer participate with the team as he was not getting

the medical care common for a professional football player and therefore, the Appellant was in serious breach of its contractual obligations. The Respondent sent several additional reminders to the Respondent, all of which repeated the Appellant's breaches of the Agreement. On 16 July 2012, the Respondent sent a last reminder demanding that the Respondent pay the outstanding amounts owed and threatened legal proceedings in accordance to FIFA regulations.

9. On 27 July 2012, the Respondent sent his termination notice to the Appellant alleging breach of the Agreement for failure to pay outstanding salaries.
10. On 1 August 2012, the Player signed a new employment contract with the Hungarian club PMFC-Sport Kft., valid as from the date of its signing until 30 June 2013.
11. On 11 July 2013, the Player signed an employment contract with the Serbian club FK Radnicki 1923 Kragujevac for the time period of 11 July 2013 until 30 June 2014.
12. As of 1 July 2014, the Respondent had not signed any employment contract to play professional football, as the Player has been injured since the end of 2013 and the Club FK Radnicki 1923 Kragujevac does not plan to extend his employment contract.

B. Dispute Resolution Chamber of FIFA

13. On 9 September 2012, the Player filed a claim before the Dispute Resolution Chamber of FIFA ("FIFA DRC") claiming that the Appellant had unilaterally breached the Agreement by not paying the amounts due and banning the Player from training. As a consequence, the Player terminated the Agreement with just cause on 27 July 2012 and requested financial compensation for breach of contract.
14. On 24 September 2012, after the Appellant filed a claim against the Player before the Football Professional League Committee on Dispute Resolution ("NDRC of the LPF"), the Player was invited for a hearing on 3 October 2012. However, with letter of 29 September 2012, the Player informed the Appellant that he will not be present at the hearing as he already filed a claim before the FIFA DRC.
15. On 28 March 2013, the Appellant rejected the Player's claim on the basis that a decision rendered by the Romanian Professional League NDRC on 3 October 2012 already decided that the Agreement had been unilaterally terminated by the Respondent with just cause.
16. On 31 July 2013, the FIFA DRC decided that the Player unilaterally terminated the Agreement with just cause and it issued the following decision:

"1. The claim of the Claimant, Aleksandar Stojmirovic, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, FC Petrolul Ploiesti, has to pay to the Claimant within 30 days as from the date of notification of this decision, the amount of EUR 129,074 plus 5% interest p.a. on said amount as of 31 July 2013 until the date of effective payment.

4. *If the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

5. *Any further claim lodged by the Claimant is rejected.*

6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received”.*

17. On 4 November 2013, the reasoning of the FIFA DRC decision was notified to the Parties (hereinafter referred to as the “Decision”) and stated, *inter alia*, the following:

- FIFA DRC is the competent authority to decide on employment-related disputes between a club and a player that have an international dimension; therefore it is competent to decide on the present litigation involving a Serbian player and a Romanian club regarding an alleged breach of the Agreement. However, it acknowledged that the Club contested the competence of FIFA’s deciding bodies on the basis that the NDRC of the LPF had already rendered a decision on the very same matter on 3 October 2012, by means of which it was declared that the employment contract between the Player and the Club was unilaterally terminated by the Club with just cause.
- Due to the fact that the employment agreement between the Player and the Club did not contain any clear reference granting jurisdiction to any specific arbitration body in Romania and even if the contract at the basis of the present dispute would have included such a clear arbitration clause in favour of a national dispute resolution body, the Club was unable to prove that the relevant arbitration body, the NDRC of the LPF, met the minimum procedural standards for independent arbitration tribunals as laid down in the FIFA rules (see para. 8 of the Decision). For this reason the Club’s objection towards the competence of FIFA to deal with the present matter was rejected and FIFA DRC competent to take a decision on the present matter.
- The FIFA DRC stated that whenever a decision is passed by a national body which was not entitled to adjudicate on a specific matter for formal reasons, such decision does not have to be recognized by other competent bodies, *in casu* FIFA’s DRC, and therefore it was not bound in any way by the decision rendered by the NDRC of the LPF.
- The FIFA Regulations on the Status and Transfer of Players (“RSTP”) shall be applicable as to the substance of the matter and as the Player’s claim was lodged on 9 September 2012 the 2010 edition of these Regulations shall apply.
- The Club was no longer interested in the Player’s services by failing to remit his salaries without any valid reason during a considerable amount of time and by explicitly informing him in June 2012 that it no longer needed his services.
- The Player had just cause to unilaterally terminate the employment contract on 27 July 2012 and the Club is liable for the early termination of the Agreement with just cause by the

Player.

- The Player is entitled to receive from the Club an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract according to Article 17 par. 1 of the RSTP.
- During the course of the procedure before the FIFA DRC, the Club paid the outstanding salary payments as of 27 July 2012 and this has been confirmed and acknowledged by the Player.
- In accordance with Article 17 par. 1 of the RSTP and in view of the conclusion of the Agreement until 30 June 2015, the Player's remuneration until July 2012 being fully settled, the basis for the final determination of the amount of compensation shall be EUR 227'000 (i.e. salary plus accommodation expenses as from August 2012 until June 2015).
- The Player signed on 1 August 2012 a new employment agreement as a professional football player with the Hungarian club, PMFC-Sport Kft. for one season (until 30 June 2013) and is entitled to receive a monthly salary of HUF 370'000. The total value of this contract is therefore HUF 4'070'000, which corresponds to EUR 13'926.
- Considering all the above-mentioned arguments and the specificities of the case at hand, the FIFA DRC decided that the Club shall pay the Player the amount of EUR 129'074 as a reasonable and justified amount of compensation for breach of contract. Additionally, the Player shall be entitled to 5% interest *p.a.*, starting on 31 July 2013 until the date of effective payment.

III. PROCEEDINGS BEFORE THE CAS

18. On 20 November 2013, the Appellant filed a statement of appeal against the Respondent regarding the decision of the FIFA DRC dated 31 July 2013 in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In its statement of appeal, the Appellant requested that a Sole Arbitrator be appointed to adjudicate the appeal.
19. On 27 November 2013, the CAS Court Office acknowledged receipt of the Appellant's appeal and set a deadline for the Respondent to confirm whether he agreed to submit this appeal to a Sole Arbitrator and moreover, whether he agreed to proceed in English.
20. On 2 December 2013, the Respondent agreed to submit this appeal to a Sole Arbitrator, as well as handling this procedure in English.
21. On 3 December 2013, the CAS Court Office confirmed that a Sole Arbitrator would be appointed by the President of the CAS Appeals Arbitration Division and that the procedure would be handled in English.
22. On 3 December 2013, the Appellant filed its appeal brief. Beside the following prayers for relief, the Appellant further requested the production of evidence from the Respondent as follows:

“Primarily - ruling de novo

1. To (partially) annul the decision passed on 31 July 2013 by the FIFA Dispute Resolution Chamber.
2. To establish that the Appellant terminated the contract with the Respondent, effective as of 30 June 2012.
3. To rule that the Appellant must not pay any compensation to the Respondent.
4. To order the Respondent to reimburse the unduly received amount of EUR 4,613 as salary from 1 to 26 July 2013 to the Appellant plus interest of 5% per annum as from 20 November 2013 until the date of effective payment.

Alternatively, only if the above under items no. 1 to 4 is rejected

5. To establish that the Appellant terminated the contract with the Respondent, effective as of 30 June 2012.
6. To revise the decision passed on 31 July 2013 by the FIFA Dispute Resolution Chamber so that the compensation due by the Appellant to the Respondent will be based on the guaranteed annual basic income due to the Respondent in the second and third years of his playing contract with the Appellant (i.e. the 2012/2013 and 2013/2014 seasons), that is to say EUR 41,000 [i.e. (EUR 1650 (i.e. 30% of EUR 5,500) \times 12) + (EUR 1,800 (i.e. 30% of EUR 6,000) \times 12)] minus the following amounts:
 - a. EUR 4,613 already paid by the Appellant to the Respondent, on 29 March 2013, in relation to the period from 1 to 26 July 2012;
 - b. The remuneration received by the Respondent under his contract(s) and its/their annex(es) with the Hungarian club, Peci MFC (PMFC-Sport Kft.), from August 2012 to June 2013, but, in any case not less than EUR 13,926; and
 - c. The remuneration received and still due to be received by the Respondent under his contract(s) and its/their annex(es) with the Serbian club, FK Radnicki 1923 - Kragujevac, until June 2015.

More alternatively, only if the above under items no. 5 to 6 is rejected

7. To establish that the Appellant terminated the contract with the Respondent, effective as of 30 June 2012.
8. To revise the decision passed on 31 July 2013 by the FIFA Dispute Resolution Chamber so that the compensation due by the Appellant to the Respondent is reduced to EUR 50,000 based on the unrestricted termination offer made by the Respondent in his letter of 13 June 2012. Since the Appellant already paid the Respondent EUR 19,550 on 29 March 2013, this means that the Appellant is still liable for EUR 30,450 (i.e. EUR 50,000 – EUR 19,550).

In any event

9. To order the Respondent to bear all the costs incurred by the CAS and the arbitrator(s) with the present procedure.

10. To order the Respondent to pay the Appellant a contribution towards its legal and other costs in the amount of CHF 15,000.

As request for production of evidence

The Appellant hereby respectfully asks the Panel to order the Respondent to produce the following documents relevant for the decision-making process, which surely are in the Respondent's possession:

- (i) The contract(s) and its/ their annex(es) concluded by and between the Respondent and the Hungarian club, Pecs MFC (PMFC-Sport Kft.);
 - (ii) The contract(s) and its/ their annex(es) concluded by and between the Respondent and the Serbian club, FK Radnicki 1923 – Kragujevac;
 - (iii) Full extracts from the Respondent's Hungarian and Serbian bank accounts as well as all other pertinent payment documents, including, but not limited to, the Respondent's tax declaration(s) filed with the relevant Tax Authorities, containing information regarding all payments received by the Respondent from Pecs MFC (PMFC-Sport Kft.) and FK Radnicki 1923 – Kragujevac, from August 2012 up to the date of the Panel's order".
23. On 4 December 2013, the CAS Court Office acknowledged receipt of the Appellant's appeal brief and set a deadline of twenty (20) days for the Respondent to file his answer. Regarding the production of evidence requested by the Appellant, the CAS Court Office asked whether the Respondent would voluntarily produce the requested documents, failing which the Sole Arbitrator will decide the issue pursuant to Article R44.3 of the Code.
24. On 9 December 2014, the FIFA renounced its right to participate in this appeal and provided the CAS Court Office with a complete copy of the underlying FIFA DRC decision.
25. On 10 December 2013, the CAS Court Office confirmed having received the advance of costs from the Appellant and therefore set a deadline of twenty (20) days for the Respondent to file its answer in accordance with Article R55 of the Code.
26. On 16 December 2013, the CAS Court Office informed the Parties that the Division President decided to grant an extension of time to file the answer by 7 January 2014.
27. On 17 December 2013, the CAS Court Office informed the Parties that Mr. Bernhard Welten, Attorney-at-Law in Bern, Switzerland, was appointed as Sole Arbitrator in the present matter in accordance with R54 of the Code.
28. On 7 January 2014, the Respondent, after various extensions of time were granted, filed its answer in accordance with Article R55 of the Code and requested the following:

"On these grounds, the Respondent is respectfully asking the Panel of the CAS to pronounce to the following:

- a) To reject all claims by the Appellant entirely;

- b) *To uphold the decision of FIFA, Ref. n. 12-02577/led, dated 4 November 2013, and to declare that the Appellant is obliged to pay towards to the Respondent the amounts as follows:*
- i) *The compensation of EUR 129'074, according to the award by FIFA;*
 - ii) *5 % interest rate p.a. is applicable for the compensation of EUR 129'074 since 31 July 2013 until the day of effective payment, according to the award by FIFA, resp. according to Art. 104 and 339 par. 1 Swiss CO;*
 - iii) *To bear all costs by the Appellant relating to the arbitration proceeding, according to the CAS Code R64.5 and Swiss law CO, Art. 106;*

Alternatively, if the Panel decides to examine the case de novo, the Respondent is respectfully asking the Panel of the CAS to pronounce to the following:

- a) *To reject all claims by the Appellant entirely;*
- b) *To uphold that the Respondent did have just cause to terminate the contract unilaterally, due to unfulfilled financial obligations and inappropriate training conditions, per 27 July 2012;*
- c) *To order to the Appellant to pay the compensation towards to the Respondent, i.e. to consider the full duration of the contract until 30.06.2015, deducting the earnings but not mandatory as from 27.07.2012 until 30.06.2015, in accordance with Swiss law CO, art. 337c, 361 & 362, composed of:*

Compensation (seasons 2012/13 – 2014/15 from 27.07.12-30.06.2015):

a. Season 2012/13	* Rest July salary (27. – 31.07.12)	EUR 887	EUR 887
b. Season 2012/13	11 salaries of (08.12-06.13)	EUR 5'500	EUR 60'500
c. Season 2012/13	12 apartment rents (07.12-06.13)	EUR 300	EUR 3'600
d. Season 2013/14	12 salaries of (07.13-06.14)	EUR 6'000	EUR 72'000
e. Season 2013/14	12 apartment rents (07.13-06.14)	EUR 300	EUR 3'600
f. Season 2014/15	12 salaries of (07.14-06.15)	EUR 7'000	EUR 84'000
g. Season 2014/15	12 apartment rents (07.14-06.15)	EUR 300	<u>EUR 3'600</u>

Compensation Total ***EUR 228'187***

- i) *5% interest rate p.a. for the compensation of EUR 228'187 (under a.-g.) since the date of termination, from 27 July 2012 until the day of effective payment, according to Art. 104 and 339 par. 1 Swiss CO and CAS 2008/1447, 29/08/2008);*
- ii) *To bear all cost by the Appellant relating to the arbitration proceeding, according to the CAS Code R64.5 and Swiss law CO, Art. 106;*
- iii) *To consider an appropriate contribution towards the legal and other costs in this arbitration of the Respondent and to be borne by the Appellant”.*

29. On 10 January 2014, the CAS Court Office acknowledged receipt of the Respondent's answer

and noted that the Respondent filed a counterclaim. It was further noted that such filing of counterclaims after 1 January 2010 is no longer possible (CAS 2010/A/2108) and therefore, the Respondent was invited to inform the CAS Court Office within three (3) days whether he wished to maintain its counterclaim.

30. On 10 January 2014, the Respondent revoked the counterclaim from his answer and noted that the Sole Arbitrator could render his decision based on the Parties' written submissions without a hearing.
31. On 10 January 2014, the Appellant also agreed that the Sole Arbitrator could render his decision based on the Parties' written submissions without a hearing. The Appellant also noted that the Respondent failed to provide the requested evidence with his answer and therefore the amount of damages for outstanding payments, if any at all, should be limited to those due until 1 July 2013.
32. On 14 January 2014, the CAS Court Office requested from FIFA a copy of the complete case file produced by the FIFA DRC.
33. On 27 January 2014, the CAS Court Office informed the Parties that the present matter would be decided solely on the Parties' written submissions pursuant to Article R57 of the CAS Code.
34. On 27 January 2014, the CAS Court Office received the complete case file before the FIFA DRC and such file was forwarded to the Parties on 30 January 2014.
35. On 10 March 2014, the Sole Arbitrator ordered the Respondent to produce a copy of his contract with FC Radnicki 1923 as of 1 July 2013 and, if such contract(s) concluded by 30 June 2014, he was asked to inform the Sole Arbitrator as to his professional plans beginning on 1 July 2014 and to provide any contracts related to this time period. Any other request for the production of any other evidence requested by the Appellant was denied.
36. On 14 March 2014, the Respondent filed a copy of his employment contract with the Serbian club FK Radnicki 1923-Kragujevac, valid as from 11 July 2013 until 30 June 2014, with the CAS Court Office. The Respondent further stated that due to his injury neither an extension of the said contract is planned nor the conclusion of any contract with any other club as from 1 July 2014.
37. On 17 March 2014, the CAS Court Office sent the Parties the Order of Procedure, which was duly signed and returned to the CAS Court Office on 18 March 2014.

IV. ADMISSIBILITY

38. The appeal was filed within the 21-day deadline set by Article 67(1) of the FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fees.
39. It follows that the appeal is admissible.

V. JURISDICTION

40. The jurisdiction of CAS, which is not disputed, derives from Article 67(1) of the FIFA Statutes (2010 edition) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
41. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties (see also para. 23 of the appeal brief of 3 December 2013; para. 4 of the answer of 7 January 2014).
42. It follows, therefore, that CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

43. Article R58 of the Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiary, 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 challenge 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”.

44. Article 66 para. 2 FIFA statutes states:

“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”.

45. Article 18 of the Agreement states:

“18.1 Football Regulations that are applied to this Contract are: Statutes, Rule books, Decisions of FIFA, UEFA, FRF LPF as well as the Decisions of the Management board, according to the case.

18.2 The Club and the Player must adjust with the Statutes, Rule books, Decisions of FIFA, UEFA, FRF, LPF, as well as the Decisions of the Management board, acting by this very list, which represents an integral part of the subject matter Contract, and which is being accepted by the Parties, in their own signature, as obligatory.

18.3 Law on Physical education and sports no. 69/2000 is also being applied to this very Contract, with additional amendments to and supplements of the very same and according to the case, Romanian civil law currently in force”.

46. In view of the above, the Sole Arbitrator considers that the case at hand is governed by FIFA Statutes and Regulations, with Swiss law applicable subsidiarily. The Appellant explicitly admitted that the rules and regulations of FIFA shall apply primarily, with Swiss law applicable subsidiarily (para. 35 of the appeal brief of 3 December 2013). This reasoning was not contested by the Respondent (see para. 81 and para. 96 of the Statement of Defence dated 7 January

2014).

47. In appeal proceedings before the CAS the provision of Article R58 of the Code assumes that the federation's regulations take precedence over a choice of law originally taken by the parties. According thereto the regulations of the federation which has issued the challenged decision also take precedence over a legal system chosen by the parties in the employment contract (HAAS U., *Football Disputes between Players and Clubs before the CAS*, in: BERNASCONI/RIGOZZI (ed.), *Sport Governance, Football Disputes, Doping and CAS Arbitration*, p. 223). Accordingly and due to the fact that none of the Parties referred to Romanian law, the Sole Arbitrator will therefore decide the present matter at stake according to the various FIFA regulations and additionally Swiss law.
48. The case at hand was submitted to FIFA's Dispute Resolution Chamber on 9 September 2012, thus before 1 December 2012, which is the date when the revised FIFA Regulations for Status and Transfer of Players (edition 2012) came into force. Pursuant to Article 26 para. 1 and 2 of the revised Regulations, any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations, *i.e.* the edition 2010. Accordingly the edition 2010 of the FIFA Regulations for Status and Transfer of Players (hereinafter referred to as the "RSTP edition 2010"), as already established by the FIFA Dispute Resolution Chamber in the appealed Decision dated 31 July 2013, shall be applicable.

VII. MERITS

A. The Position of the Club

49. The Appellant's submissions can be summarized, in essence, as follows:
 - The Appellant asserts that the FIFA DRC failed to meet the requirements of Article 14 para. 4 lit. f of the FIFA Procedural Rules since there is no indication of the method and figures used by the DRC to arrive at the amount of EUR 129,074, although the DRC's Decision does discuss some of the criteria listed in Article 17 para. 1 RSTP edition 2010 for determining the amount of compensation owed by the Appellant to the Respondent (see para. 27 of the appeal brief of 3 December 2013).
 - The Agreement was unilaterally terminated by the Appellant without written notice effective as of 30 June 2012, in particular due to the fact that the Respondent was verbally informed by the Appellant that his services were no longer required after 30 June 2012. As a result thereof, the Appellant asserts that its conclusive behaviour as of June 2012 can be interpreted as an early termination of the Agreement. The Respondent could understand from these circumstances that his dismissal was final and that the employment agreement had come to an end, effective as of 30 June 2012.
 - The Respondent is not entitled to any compensation at all for the unilateral termination of the Agreement because he intentionally failed to earn an amount exactly corresponding to the remuneration provided for in the Agreement when he turned the offer down from the

Romanian club FC Targu Mures (see para. 50 of the Appeal Brief dated 3 December 2013).

- The amount of compensation owed, therefore, could only be EUR 22,861 minus the Respondent's remuneration at the Serbian club FK Radnicki 1923 Kragujavac if the Panel effectively comes to the conclusion that the Respondent is entitled to receive any compensation from the Appellant for breach of contract (see para. 77 of the Appeal Brief dated 3 December 2013). This amount was calculated on the basis that the Respondent would not be able to play in at least 50% of the matches of the Appellant's first team and therefore would not be entitled to 100% of his wage but only to 30%. This leads to an amount of EUR 41,400. The Appellant further refers to Article 337c para. 2 of the Swiss Code of Obligations, according to which the employee must permit a set-off against the amount of compensation due in case of a termination of an employment agreement without just cause for what he earned from another employment, or what he has intentionally failed to earn. The remuneration at Pecs MFC (PMFC-Sport Kft.) is allegedly EUR 13,926 and a further income at FK Radnicki 1923 Kragujevac shall be deducted accordingly. Furthermore, the Appellant already paid the Respondent an amount of EUR 4,613 for the period after the termination of the Contract and this amount shall also be deducted.
- The Respondent is precluded from claiming more than EUR 50,000 from the Appellant due to the fact that the Respondent offered a premature termination of the contract for the total amount of EUR 50,000 net to solve this situation amicably.

B. The Position of the Player

50. The Respondent's position can be summarized, in essence, as follows:

- On 27 July 2012, the Club owed him three monthly salaries, as well as salary from 9 July until 26 July 2012, i.e. for more than 17 days, while he had to train alone without a coach. Therefore, the Appellant breached the Agreement unilaterally and without just cause.
- The individual training without a coach and without medical care for more than 17 days consecutively shows that the conditions for a professional player were not appropriate. Due to the abovementioned facts, the Respondent's trust in the Appellant was massively disrupted. Therefore, the continuation of the employment was not reasonable any more.
- The Respondent did have just cause to unilaterally terminate the Agreement in accordance with the applicable regulations of FIFA and Swiss law since there were no valid grounds given for not paying the salaries and the Club, with its intention to terminate the contract prematurely, acted in bad faith. The Appellant is therefore responsible for the consequences of its actions according to Article 1 para. 1 of FIFA's RSTP.

C. The Evaluation of the Merits

(a) *The Agreement*

51. It is uncontested that on 1 July 2011 the Parties signed the Agreement valid as from the date of the signing until 30 June 2015. According to the Agreement, the Respondent is entitled to receive the following amounts:
- EUR 4,500 per month for the period from 1 July 2011 until 30 June 2012, if the Player participates in at least 50 % of the official football matches of the first team (article 9.2);
 - EUR 5,500 per month for the period from 1 July 2012 until 30 June 2013, if the Player participates in at least 50 % of the official football matches of the first team (article 9.3);
 - EUR 6,000 per month for the period from 1 July 2013 until 30 June 2014, if the Player participates in at least 50 % of the official football matches of the first team (article 9.4);
 - EUR 7,000 per month for the period from 1 July 2014 until 30 June 2015, if the Player participates in at least 50 % of the official football matches of the first team (article 9.5);
 - EUR 300 per month in order to pay the rent of an apartment (article 9.10).

(b) *Termination of the Agreement*

52. The Appellant confirmed not having paid the Respondent's salary for the period starting at 1 April 2012 and that it orally informed the Respondent that his services are no longer required after June 2012 and thus deprived the Respondent of his ability to train with the first team of the Club as of 1 July 2012. The Appellant is of the opinion that its conclusive behaviour as of June 2012 can be interpreted as an early termination of the contract. The Respondent could understand from all the circumstances that his dismissal was final and that the contract had come to an end, effective as of 30 June 2012, for which he was orally informed in early June 2012. The Appellant concludes that it unilaterally terminated the contract without written notice, effective as of 30 June 2012.
53. The Sole Arbitrator does not agree with the abovementioned reasoning of the Appellant. The Appellant did not prove that it explicitly terminated the Agreement, it only referred to the abovementioned circumstances of the case at hand. Contrary to the Appellant's assertions from these circumstances, it cannot be established that the Appellant's behaviour had to be interpreted as a termination of the Agreement. The Respondent therefore rightly considered that the Agreement was not yet resolved by either party at the beginning of July 2012. This is corroborated by the fact that the Respondent sent the Appellant several notices in July 2012 in which he stated that the Appellant is seriously violating the terms of the Agreement. The Respondent did not consider the Agreement with the Appellant to be terminated by end of June 2012. The contract was terminated by the Respondent with the letter of 27 July 2012 wherein the Respondent informed the Appellant that he terminated the Agreement with immediate effect and with just cause due to the Appellant's unilateral breach of the Agreement (overdue financial obligations and training conditions).

54. The Sole Arbitrator therefore concludes that the Agreement between the Club and the Player was terminated with immediate effect by the Player with his letter of 27 July 2012.

(c) *Just cause for the termination of the Agreement?*

55. According to Article 13 RSTP edition 2010, a contract between a professional football player and a club may only be terminated upon expiry of the term of the contract or by mutual agreement. Article 14 RSTP states 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.
56. The commentary to Article 14 RSTP states that “... *both a player and a club may terminate a contract with just cause, ... whether just cause exists shall be established in accordance with the merits of each particular case. ... should the violation [of a contract] 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*”. As an example, the commentary states the case that a player is entitled to unilaterally terminate a contract with just cause when he has not been paid his salary for over 3 months, which could therefore endanger the position and existence of the player.
57. According to CAS jurisprudence “*the non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated [...] - constitute ‘just cause’ for termination of the contract [...]; for the employer’s payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer’s obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be ‘insubstantial’ or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer’s attention to the fact that his conduct is not in accordance with the contract*” (see CAS 2006/A/1180, para. 26).
58. In the matter at stake, the overdue payment (April to June 2012) is certainly not insubstantial or completely secondary. Therefore, the first prerequisite according to CAS jurisprudence is established. Furthermore, the Respondent sent a total of 8 reminders to the Appellant requesting the payment of the overdue salaries. Therefore, the second requirement for terminating a contract with just cause is also present in the case at hand. This means that the Respondent generally had the right to terminate the Agreement with just cause based on Article 14 RSTP.
59. The Sole Arbitrator looks at the facts stated by the Parties, particularly that the Player was excluded from training sessions with the Appellant’s first team. Pursuant to Swiss law, and in accordance with CAS jurisprudence “*the employer has the obligation to protect the employees’ personality (Article 328 of the Swiss Code of Obligations). The case law has deduced thereof a right for some categories of employees to be employed, in particular for employees who’s inoccupation can prejudice the future career*

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 authorized to employ them at different or less interesting positions than the one they have been hired for [...]. If the employer breaches this obligation, the employee has the right to immediately terminate the agreement” (see CAS 2005/A/937, para. 8.4.4).

60. The fact that the Respondent was excluded from the training sessions with the Appellant’s first team remained uncontested. The Appellant even informed the Respondent that he did not count on the Respondent’s services anymore and therefore the Appellant was in breach of the Agreement.
61. The behaviour of the Appellant as stated above, *i.e.* the non-payment of salaries from April 2012 onwards and the expulsion of the Respondent from the training with the Appellant’s first team, constitutes a clear breach of contract without just cause. On the contrary, the Respondent’s behaviour did not warrant the termination of the Agreement. The Respondent, therefore, had just cause to terminate the Agreement with immediate effect by way of notice on 27 July 2012.

(d) Calculation of the compensation

62. To determine the consequences of the breach of contract by the Appellant, the Sole Arbitrator refers to Article 17 para. 1 RSTP which states that the party in breach of a contract shall pay compensation to the other party. Therefore, the Respondent is entitled to receive an amount of compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract. The Sole Arbitrator noted that the outstanding remuneration was finally paid by the Appellant during the course of the procedure before FIFA’s DRC. The Appellant confirmed that it transferred to the Respondent the amount of 19,550 EUR on 29 March 2013 for outstanding salaries for April, May and June 2012 and 26 days of July 2012 as well as other amounts.
63. The FIFA DRC granted the Respondent compensation in the amount of EUR 129’074. The Appellant asserted that the FIFA DRC failed to meet the requirements of Article 14 para. 4 lit. f of the FIFA Procedural Rules since there is no indication of the method and figures used by the FIFA DRC to arrive at the amount of EUR 129’074 in its final analysis. Although the Decision does discuss some of the criteria listed in Article 17 para. 1 RSTP.
64. The Decision merely stated that the amount of EUR 227’000, *i.e.* salary plus accommodation expenses as from August 2012 until June 2015, serves as the basis for the final determination of the amount of compensation for breach of contract. It then took into account that the Player signed an employment contract with a football club in Hungary where the Player was entitled to receive an amount corresponding to EUR 13’926 based on the employment contract between the Player and the Hungarian club PMFC-Sport Kft. for the time period August 2012 until 30 June 2013. As the Player has a general obligation to mitigate his damages, such remuneration under the new employment contract shall be taken into account when calculating the amount of compensation for breach of contract. Therefore, the FIFA DRC decided on account of the specificities of the present case that the Appellant shall pay the Respondent the amount of EUR 129’074 as a reasonable and justified amount of compensation for breach of contract in the

matter at hand.

65. Even for the Sole Arbitrator, it is not obvious how the FIFA DRC exactly calculated this compensation. However, this issue can be left open given the Parties' prayers for relief and the Sole Arbitrator's authority in accordance with Article R57 of the CAS Code to render a new decision.
66. Article 17 para. 1 RSTP states that the compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the Player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five (5) years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract), and whether the contractual breach falls within a protected period.
67. According to CAS jurisprudence, the above-mentioned provision of Article 17 para. 1 RSTP closely follows Article 337b Swiss Code of Obligations which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything "*which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work*". The Sole Arbitrator shall compare the two financial situations in order to determine the compensation: the Player's hypothetical financial situation without the Club's breach of contract and the financial situation as it is following the breach of contract by the Appellant.
68. The Sole Arbitrator agrees that in principle the injured party (the Respondent in the case at hand) should be restored in the position in which he would have been if the contract had been properly fulfilled by the Appellant. Therefore, the Player shall be entitled to claim payment of the entire amount stated in the employment agreement, reduced by any payment the Respondent receives or received, respectively intentionally failed to earn from a third party or what he saved as expenses until 30 June 2015 (see CAS 2005/A/866 para. 58).
69. The Sole Arbitrator calculates that the Player is - in principle - entitled to receive an amount of EUR 228'187 according to the terms of the contract between the parties:

Season 2012/13 * rest July salary (27 to 31.07.12)	EUR 887:	EUR 887
Season 2012/13: 11 salaries of (08.12 to 06.13)	EUR 5'500:	EUR 60'500
Season 2012/13: 12 apartment rents (07.12 to 06.13)	EUR 300:	EUR 3'600
Season 2013/14: 12 salaries of (07.13 to 06.14)	EUR 6'000:	EUR 72'000
Season 2013/14: 12 apartment rents (07.13 to 06.14)	EUR 300:	EUR 3'600
Season 2014/15: 12 salaries of (07.14 to 06.15)	EUR 7'000	EUR: 84'000
Season 2014/15: 12 apartment rents (07.14 to 06.15)	EUR 300:	EUR 3'600
Total		EUR 228'187

70. The Appellant's argumentation that the Respondent would not be entitled to 100% of his salary (as he will not play any games for the Appellant's first team anymore) but only to 30% thereof according to the provisions contained in the Agreement (see para. 60 of the appeal brief of 3

December 2013) cannot be followed by the Sole Arbitrator since the Appellant itself prevented the Respondent from playing for its first team with its breach of contract (*see also* KLEINER J., *Der Spielervertrag im Berufsfussball*, Zurich 2013, p. 862).

71. Regarding the housing benefits which have to be considered as a part of the salary paid to the Player, according to the Agreement, the objection raised by the Appellant cannot be followed by the Sole Arbitrator. In CAS 2012/A/2874, para. 145, the panel states that the Player did not receive an amount for costs regarding his housing because such expenses were already covered by the Player's new club. In the present case, the situation is different since the Respondent did not receive any amount for housing costs from his new club(s) as employer.
72. Moreover, the Sole Arbitrator does not agree with the Appellant's argumentation that the Respondent voluntarily and permanently reduced his claim to an amount of EUR 50'000, as this offer was made to find a settlement before introducing any legal remedies and not to limit the Respondent's claim for compensation.

(e) *Reduction of the compensation due to the Respondent?*

73. The Appellant submitted that the Romanian club FC Targu Mures had offered the Player a contract whereby he could earn for the period until 30 June 2015 exactly the same amount as he was entitled to under the contract for that period with the Appellant, but that the Respondent had refused to accept this offer to play for a lower ranked club. At the same time, the Respondent signed an employment contract in Hungary where the salary was much lower than in the contract with the Appellant. The Appellant states that the loss the Respondent suffered was therefore the result of the Respondent's choice and as such, the Respondent, having admitted that he intentionally failed to earn an amount exactly corresponding to the remuneration provided in the contract with the Club, is not entitled to any compensation at all for the Appellant's unilateral termination of the Agreement.
74. According to CAS jurisprudence, the indemnity due to an employee for breach of contract cannot be reduced when the acceptance of a new job would compromise the employee's future career. The employee is therefore free to refuse a new job which does not correspond to his capacities (*see* CAS 2005/A/909, 910, 911 & 912, para. 10.4). Taking into consideration that FC Targu Mures was relegated to the second highest division in Romanian football after the 2011/2012 season while FC Petrolul Ploiesti was still playing in the highest division, the Sole Arbitrator is of the opinion that the Respondent was not obliged to accept the offer from FC Targu Mures as the club is a lower ranked club (second highest division) which could have a negative influence on the Respondent's career as the overall attention given to second division games is certainly lower than to first division games. The Appellant never pretended that the Respondent's quality as a player is not sufficient for the first division in Romania; therefore the Sole Arbitrator is of the opinion that the second highest division in Romania would not correspond to the Respondent's capacities as a player. In analyzing the arguments, the Sole Arbitrator decides that the Player was not obliged to join FC Targu Mures and therefore he has not intentionally failed to earn the amount as provided in the refused offer.
75. The Sole Arbitrator takes into consideration that on 1 August 2012 the Player found new

employment with the Hungarian club PMFC-Sport Kft. where he earned an amount of HUF 4'070'000 until 30 June 2013, corresponding to EUR 13'926 as already correctly established by the FIFA DRC.

76. Furthermore, the Respondent had an employment agreement with the Serbian club FK Radnicki 1923 – Kragujevac for the time period of 11 July 2013 until 30 June 2014 for which the Respondent is entitled to receive the total amount of EUR 29'168 (Serbian Dinars 25,000 per month – corresponding to EUR 214 –, plus special compensation of EUR 1,800 per month and single payments of EUR 3,000 and EUR 2,000). The Sole Arbitrator deducts this amount from the compensation due to the Respondent.
77. In sum, the compensation due to the Respondent amounts to EUR 228'187, corresponding to the value of the Agreement. From this amount, the Sole Arbitrator deducts the payments received by the Respondent from the Hungarian club PMFC-Sport Kft., amounting to EUR 13'926, and the Serbian club FK Radnicki 1923 – Kragujevac, amounting to EUR 29'168. In the Sole Arbitrator's view, the Respondent would therefore be entitled to an amount of EUR 185'093 as compensation for the breach of contract committed by the Appellant. This amount is somewhat higher than the amount awarded by the FIFA DRC. However, as the Respondent did not file an appeal himself against the decision of the FIFA DRC, and a counterclaim is no longer permitted under the Code (and the Respondent revoked his counterclaim by facsimile of 10 January 2014), the Sole Arbitrator cannot decide *ultra petita* and is therefore bound by the amount awarded by the FIFA DRC (*see* CAS 2008/A/1644, para. 22; CAS 2008/A/1518, para. 74). Therefore, the Sole Arbitrator confirms the appealed decision.

VIII. CONCLUSION

78. In conclusion, the Sole Arbitrator finds that:
 - (1) the Club breached the Agreement and therefore the Player had just cause to terminate the Agreement with immediate effect;
 - (2) due to the breach of contract, the Club is obliged to pay to the Player a compensation based on Article 17 RSTP;
 - (3) the Player is entitled to a compensation amount of EUR 129'074 plus 5% interests starting on 31 July 2013 until the date of effective payment, as stated in the decision of the FIFA DRC.
79. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed by FC Petrolul Ploiesti against the Decision dated 31 July 2013 of the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) is dismissed and the appealed decision confirmed.

(...)

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