Arbitration CAS 2013/A/3309 FC Dynamo Kyiv v. Gerson Alencar de Lima Júnior & SC Braga, award of 22 January 2015

Panel: Prof. Petros Mavroidis (Greece), President; Mr François Klein (France); Mr Ian Forrester QC (Great Britain)

Football
Termination of a contract of employment between a player and a club without just cause
New evidence and new request for relief
Due process
Just cause to terminate a contract
Compensation due in case of early termination
Legal interest due for late payment
Joint liability of the new club in case of premature termination of the contract by the player

1. **According to Article R56 para. 1 of the CAS Code, where the parties either agreed with the production of a document filed by one of them or left it up to the panel to decide whether it should be admitted, the panel can decide to allow this additional submission. On the other hand, a party's application to amend its prayers for relief shall be dismissed where that party failed to establish that its request was justified by the presence of exceptional circumstances or could not have been made at an earlier stage of the procedure.**

2. **If none of the parties has ever suggested during the proceedings before the judging body that an employment agreement may be invalid, the findings of the judging body regarding the validity of that employment agreement certainly do not respect the parties' due process rights. One of the fundamental rights guaranteed by this principle is that the judging body must render its ruling only on the grounds that the parties had the opportunity to discuss. In other words, the judging body must not base its decision on a provision or legal consideration which has not been discussed during the proceedings and which the parties could not have suspected to be relevant.**

3. **There is just cause to unilaterally and prematurely terminate a contract where 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. Where none of the two prerequisites are met and where the player never demonstrated how the underpayments affected his situation to a point where he could not be expected to remain in a contractual relationship with the club, the player does not have a just cause to unilaterally and prematurely terminate the employment contract.**

4. By terminating prematurely a contract of employment, a player does not allow his employer to amortize the cost of its investment, thereby causing a financial damage to the club. According to Article 17 RSTP, the amount of fees and expenses paid or incurred by the club, and in particular those expenses made to obtain the player, is an objective element that must be taken in consideration. Article 17 par. 1 RSTP requires those expenses to be amortised over the whole term of the contract. This, independently on whether the club has amortized the expenditures in such a linear way or not.

5. Under Swiss law, unless otherwise provided for in the contract, the legal interest due for late payment is of 5% p.a. Regarding the *dies a quo* for the interest and according to Article 339 par. 1 of the Swiss Code of Obligations, all claims arising from an employment relationship fall due upon its termination. Even an unlawful, premature termination does put an end to the contractual relationship *ex nunc*.

6. According to Article 17 para. 4, second sentence, RSTP, unless established to the contrary, any club signing a professional who has terminated his contract without just cause is presumed to have induced that professional to commit a breach. As a consequence and in combination with Article 17 para. 2 RSTP, the new club is jointly and severally liable for the payment of the compensation, regardless of any involvement or inducement of the player to breach his contract.

I. PARTIES

1. Football Club Dynamo Kyiv (hereinafter the "Appellant") is a football club with its registered office in Kiev, Ukraine. It is a member of the Football Federation of Ukraine, itself affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA") since 1992.

2. Mr Gerson Alencar de Lima Júnior (hereinafter the "Player") is a professional football player. He was born on 13 June 1985 and is of Brazilian nationality.

3. Sporting Clube de Braga – Futebol Sad (hereinafter "SC Braga") is a football club with its registered office in Braga, Portugal. It is a member of the Portuguese Football Federation (Federação Portuguesa de Futebol - hereinafter "FPF"), which has been affiliated to the FIFA since 1923.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings and evidence will be made, where

relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it deems necessary to explain its reasoning. In doing that, the Panel has ensured that it has adhered to its due process obligation, and has thus not prejudiced the rights of the Parties to the dispute.

B. The contractual relationship between the Appellant and the Player

5. During the 2008-2009 football season, the Player was contracted as a professional football player by the Brazilian football club Cruzeiro Esporte Clube.

6. On 10 August 2009, Cruzeiro Esporte Clube contractually accepted to transfer the Player to the Appellant for a sum of EUR 2,200,000. According to the terms of the transfer agreement, which was signed by the Player, the Appellant was also *"responsible for any payments under the solidarity mechanism according to the FIFA Regulations for the Status and Transfer of Players in favour of Third clubs"*. It is undisputed that the Appellant paid the transfer fee as well as contributions related to the solidarity mechanism to an amount of EUR 36,881.

7. On the same date, the Appellant signed with the Player an employment contract (hereinafter the "Employment Agreement"). It was a fix-term agreement for five years, effective from 10 August 2009 until 9 August 2014. This document reads as follows in pertinent part (translated from Russian into English by the Appellant):

- Art. 2.1. The Player *"shall commit labour obligations in the position of a football player of a football team of the Club. The Player shall assume obligations – to use all his efforts and sporting skills for the interests of the Club, to undertake all possible actions for the support and growth of prestige of the Club, not to undertake any acts/actions or in-actions/ which could either damage the Club or create a threat of that"*.
- Article 3.1: *"The Club shall pay the Player a salary monthly in the amount, determined in Art. 1 of the Annex 1 to this Contract"*.
- Article 3.2: *"Payment of the Salary to the Player in accordance with the Art. 1 of the Annex 1 is based on the Order/instruction issued by the Club (…)"*.
- Article 4.4: *"In case of non-fulfillment or not proper fulfillment of the obligations set forth in this Contract the Parties shall bear responsibility in accordance with the current legislation of Ukraine and the present Contract; the Club shall be entitled to apply sanctions according to the Statutes of the Club, Regulations and Rules of the PL, PFL of Ukraine, FFU, UEFA and FIFA"*.
- Article 5.1: *"(…) Non-fulfillment or improper fulfillment of the obligations stipulated in the present Contract either by the Club or by the Player shall result dissolving of the present Contract ahead of time in accordance with the decision of the Club's President, General director, Board, Coaching council, taken at its meeting which is held, if necessary, on expiry of 15 calendar days after notification of the guilty party"*.
- Article 5.2: *"Legal relations, not settled by the present Contact, shall be regulated by the norms of the current Labour legislation of Ukraine, the Statutes and Regulations of the Club, PFL of Ukraine, FFU, UEFA and FIFA, with extracts and amendments set by the terms of the present contract"*.

- Article 5.5: *"The Annexes are integral part of this Contract. An Annex to the present Contract is valid if signed bilaterally by Parties of the present Contract or their authorized representatives".*

8. The same day, the Player signed with the company "Newport Management Ltd" (hereinafter the "Company") a document entitled *"Agreement to the contract between Mr. Gerson Alencar de Lima Junior and Football Club Dynamo Kyiv Ltd"*, whereby they agreed on *"salary and bonus payment, as well as application of the penalty sanctions"*. Of interest to the present proceedings are the following contractual provisions:

- Article 1: *"The Company undertakes to pay the salary divided into 11 equal monthly payments in the total amount of 500 000 (…) US dollars per year. Besides, a single signing fee of 50 000 (…) US dollars, shall be paid to the Player (…)".*

- Article 2: *"The Company undertakes to pay bonuses for wins amounting up to 100% of the following amounts:*

  I. In the matches of the National Football Championship of Ukraine:

  In accordance with bonus amount determined for the match.

  II. For the final first place in the National Championship of Ukraine. *(…)*

  III. For the winning of the Ukrainian Cup competition. *(…)*

  IV. For qualification to the next round of the European Cup competitions, for winning in the UEFA Champions League and UEFA Cup *(…)"*

- Article 4: *"The Company shall provide the player with service apartments".*

- Article 6: *"In addition to the established general penalty sanctions applied to the players of the club for violations of labor discipline the following penalty sanctions shall be applied to the Player:*

  - *for absence of the player in the disposition of the team: penalty in amount of 20 000 (…) US dollars for every missed day (including for every incomplete day);*

  - *(…);*

  - *for unauthorized leaving/departure from the team training and/or residential ground: penalty in amount of 50 000 (…) US dollars per each case;*

  - *for non-compliance/non-observance of the instructions of the coaches of the club or the club management: penalty in amount of 20 000 (…) US dollars per each;*

  - *for unsporting behavior before, during or after the matches and/or trainings of the team: penalty in amount of 10 000 US dollars per each case".*

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

9. It is undisputed that, between the beginning of the Employment Agreement (i.e. 10 August 2009) until January 2011, the Player's salaries were fully paid.

10. In January 2011 (according to the Player) and in March 2011 (according to the Appellant), the Player was relegated in the Appellant's reserve team.

11. According to the Appellant and the corroborating evidence given by several of its witnesses during the hearing before the Court of Arbitration for Sport (hereinafter the "CAS"), a number of internal disciplinary proceedings were initiated against the Player:

- On 22 April 2011, the Player refused to follow his coach's instructions and behaved in an unsportsmanlike way towards his team members. An order for a reprimand was issued to the Player.

- On 18 May 2011, the Player *"refused to partake in the away reserve professional teams' match FC Illichivets vs. FC Dynamo Kyiv without any good reasons and in spite of imperative order of the Club"*. A penalty of USD 25,000 was imposed upon the Player.

  According to the evidence submitted by the Appellant, a translator was required to inform the Player of the disciplinary sanction taken against him and to make him sign a receipt for it, which he refused to do.

- On 20 June 2011, the Player returned from his vacations 4 days later than authorized. According to the evidence filed by the Appellant, the Player was asked to provide a written explanation for the delayed arrival, but failed to comply with the request. A penalty of USD 5,000 was imposed upon the Player.

  In this case as well, the Player refused to sign the document indicating the amount of penalty that had been allegedly handed to him by the Appellant's translator.

12. The Player contests having ever been notified of any decision in connection with disciplinary proceedings initiated against him. He contends that he *"was never delivered any note of guilty and less over got the chance to formally defend himself from any alleged disciplinary infringement of which he is accused"*.

13. At the hearing before the CAS, the Player claimed that his relationship with the Appellant's staff or the other team members had always been good and based on mutual respect. He also affirmed that he had fully performed his contractual obligations and thoroughly followed the instructions given to him, namely by his various coaches.

14. An overpayment of salary was made by the Appellant in January 2011, whereas underpayments occurred for the months of February, March and May 2011. The Player claims that no overpayment occurred, since the money additional to the contractually agreed monthly salary corresponded to bonuses, which he was entitled to receive anyway. The Player further claimed that the Appellant failed to pay for the accommodation allowance for the months of May, June and July 2011.

15. The Appellant and the Player disagree on the day and circumstances that led the Player to complain for the first time about the alleged underpayments of his wages:

- At the hearing before the CAS, the Player confirmed that he would periodically make sure that his salary was duly paid. However, it is only during the month of July 2011 that he decided to ask Mr Anatoly Volk, the Appellant's international affairs manager, for explanations regarding the partial payment of his salaries.

  According to the Player, the two men had meetings, which were not attended by anyone else and which took place before 28 July 2011. After this date, there has not been any other meeting.

  At the hearing before the CAS, the Player was asked why he waited until July 2011 to complain about the various underpayments. He answered that everybody in the football community knew that a notice could only be served at the end of a three-month period following late payment.

- According to the Appellant, the Player has never complained to anyone about any late payment before the notices for payment, served on 28 July, respectively, on 8 August 2011.

16. On 28 July 2011, the Player's attorney, Mr Gonçalo Almeida, sent the following notice to the Appellant:

"(…) However, despite the fact that the player has always remained at your club's entire service, a considerable part of his salaries of February, March and May 2011, as well as his accommodation allowance for May, June and July 2011, remain outstanding to date, currently totalizing ***USD 66,432.00*** *(…), as follows:*

MONTH	***SALARY***	***OUTSTANDING AMOUNT***
February 2011	***USD 45,454.54***	***USD 15,000.00***
March 2011	***USD 45,454.54***	***USD 20,432.00***
May 2011	***USD 45,454.54***	***USD 25,000.00***
Accommodations (May, June and July 2011)		***USD 6,000.00***
	TOTAL DEBT	***USD 66,432.00***

For the sake of completeness, please take note that your club has already been previously directly informed by the player, for several times, about the aforementioned contractual breaches.

In light of all the above, acting on behalf of our client, we kindly ask your club to proceed with the payment of the aforementioned debt, amounting to USD 66,432.00 (…) until ***Thursday, 4 August 2011, at the latest****, by means of a bank transfer into the following account: (…)*

Please take note that in case your club fails to pay the aforementioned outstanding amounts within the previously granted deadline, Mr. Gerson Alencar de Lima Junior shall be forced to and ***will immediately and unilaterally terminate his employment contract with your club with just cause****, consequently reverting to the Dispute Resolution Chamber of the [FIFA], without any further notice, in order to defend his legitimate interests.*

Finally, we wish to underline the fact that the player truly wishes to continue at your club's service (as long as within a sporting and personal healthy working environment) and avoid any legal procedure before FIFA, which would certainly not dignify the name of your institution".

17. On 4 August 2011, the Appellant gave a written explanation to the Player's attorney as regards the alleged late payments:

- EUR 15,000 were withheld from the Player's wages of February 2011 because this amount had been erroneously paid together with the salary of January 2011.
- The partial payment of the wages for the month of March 2011 was the result of a mistake on the part of the Appellant, which undertook to pay the outstanding amount together with the next Player's salary.
- As regards the salary for May 2011, USD 25,000 were indeed deducted from the Player's salary for payment of the penalty imposed upon him following his refusal to play in an away game.
- *"The allowance for the service accommodation for this quarter of June/July/August 2011 will be provided to the player in due course".*

18. On 4 August 2011 and according to the Appellant, a meeting was held between its representatives (namely a translator, Mr Anatoly Volk, Mrs Victoria Kiptenko, the Appellant's international affairs senior manager) and the Player to discuss the claims raised in the notice of 28 July 2011. The meeting went well and, at its conclusion, the Appellant's representatives were left with the impression that the dispute had been resolved.

19. According to the Player, a meeting was never held on 4 August 2011.

20. On 8 August 2011, Mr Gonçalo Almeida sent a second notice to the Appellant, whereby he refuted the fact that there was an overpayment made in January 2011, as the amounts paid constituted the monthly salary as well as the outstanding match bonuses. He also contested the right of the Appellant to withhold any sum for the payment of penalties, which were unfounded, as no disciplinary proceedings had ever been initiated against the Player. Under these circumstances, he urged the Appellant to pay to the Player USD 66,432 on or before 11 August 2011. Mr Gonçalo Almeida informed the Appellant that if it failed *"to pay the aforementioned outstanding amounts within the previously granted deadline, Mr. Gerson Alencar de Lima Junior, regretfully, shall be forced to and will immediately and unilaterally terminate his employment contract with your club with just cause,* ***without any further notice****, consequently reverting to the Dispute Resolution Chamber of the [FIFA]".*

21. On 11 August 2011, the Appellant acknowledged receipt of the second notice and made reference to the meeting it had with the Player on 4 August 2011, during which it *"checked with the player all pending issues and agreed the procedure of settlement"*. It also confirmed that *"all payments due to [the Player] will be paid only under his personal written instructions concerning the bank details"*.

22. On 12 August 2011, the Player notified in writing the Appellant of the fact that he was putting an end to their contractual relationship with immediate effect.

23. On 15 August 2011, the Appellant expressed its surprise at the Player's resignation. It made reference to the meeting held on 4 August 2011, during which the Appellant reiterated the position expressed in its letter of 4 August 2011. It confirmed that the outstanding amount due for March had been transferred on 15 August 2011 and reminded the Player that *"as agreed during the (…) meeting, [he] had to contact the team administrator, Mr. Kashpur, in order to receive the requested allowance in due course"*. Under these circumstances, the Appellant was of the opinion that there was no just cause for the Player to unilaterally terminate the Employment Agreement and insisted *"on [the Player's] soonest return to the club in order to continue fulfilling [his] contractual obligations"*.

24. It is undisputed that on 16 August 2011, the Player received USD 60,606.61, corresponding to *"USD 20.059.61 regarding the March salary + USD 40,447.00 (his [salary for July] minus USD 5,000.00 for the fine imposed on him on 5 July 2011 on grounds of him arriving late from vacation)"*. The payment made by the Appellant in August 2011, reduced the outstanding amount due for March from USD 20,432 to USD 432, which was eventually paid to the Player in Gryvnas, the national currency.

D. The contract signed between the Player and SC Braga

25. On several occasion, SC Braga approached the Appellant in order to obtain the Player's services. It made various offers on 30 May, 31 May, 1 June, 8 June, 1 July and 2 August 2011:

- Offer of 31 May 2011: *"free loan transfer for the period of 01 (one) sportive season with the option of a definitive transfer in the end of the loan, with the fixed transfer fee of 1 million Euros"*.
- Offer of 8 June 2011: *"Loan transfer of the player, for one season, for the fee of 300.000 [USD], with the option for the definitive transfer fixed in the fee of 1.950.000 [USD]"*.
- Alternatively: *"Definitive transfer of the player with the following conditions: a) 50% of the economic rights of the player for the fee of 750.000 [USD]. b) Option for the acquisition of the remaining 50% of the economic rights of the player for the fee of 1.5 Million [USD]"*.
- Offer of 1 July 2011: *"a) Definitive transfer of the player (…) with the following conditions: a) 50% of the economic rights of the player for the fee of 1 Million Euros. b) Option for the acquisition of the remaining 50% of the economic rights of the player for the fee of 1.5 Million Euros"*.
- Offer of 2 August 2011: *"SC Braga intends to acquire the sportive rights of the athlete and 50% of the economic rights, by the amount of 750.000 € [payable in three instalments, i.e. EUR 250,000 on 31 July 2012, 2013, 2014]. SC Braga is also the right to acquire the remaining 50% of the economic rights of the athlete, against the payment to [the Appellant] of the amount of 1.500.000.00€"*.

26. In its submissions, SC Braga explained its substantially less interesting offer of August 2011 by its deteriorating financial situation.

27. No agreement was ever reached between the two clubs.

28. At the hearing before the CAS, the Player as well as his agent, Mr Allison Garcia Costa, testified that they had never had any contact with SC Braga before the termination of the Employment Agreement. According to them, the first discussions between SC Braga and the Player occurred as the latter left the Appellant to fly back home to Brazil. Incidentally, SC Braga's agent, Mr Jorge Baidek, found out that the Player had a layover in Lisbon, Portugal and took advantage of the situation to arrange for a meeting between the Respondents.

29. On 18 August 2011, the Player signed an employment contract with SC Braga. It was a fix-term agreement, for three years, effective from the date of signature until 30 June 2014.

30. On 20 August 2011 and before registering the Player with the FPF, SC Braga communicated to the Appellant its decision to contract the Player. In particular, SC Braga stated the following:

"According to the information that we have, the facts are:

a) The player resigned his labour contract with your club for missing salaries.

b) FIFA was informed about it and for sure a legal dispute between parties will start.

So, in our opinion, and due to the termination of the labour contract between [the Player] and [the Appellant], it means that on the present time SC Braga is unable to buy [from the Appellant] any sportive or economic right of [the Player] (…). [In] the present time there is no contract between the [Appellant] and [the Player] and due to that, we can't agree with the conditions that you present for the transfer of the player".

31. On 23 August 2011, the Appellant informed SC Braga of the fact that the Employment Agreement was still binding and valid and that the Player was not a free agent.

32. It undisputed that the Player has never received any salary from SC Braga and has never joined the latter's team. It is the Player's case that SC Braga unlawfully declared its contract with him as null and void. The Player was left unemployed until he signed an employment contract with the Brazilian club Esporte Club Primavera, on 10 January 2012, valid until 10 January 2014.

E. Proceedings before the FIFA Dispute Resolution Chamber

33. On 16 September 2011, the Player initiated proceedings with the FIFA Dispute Resolution Chamber (hereinafter the "DRC") to order the Appellant to pay in his favour an amount of USD 107,583.57 corresponding to the outstanding salaries as well as USD 1,454,545.50 as compensation for the unilateral termination of the Employment Agreement without just cause.

34. The Appellant filed a counter-claim against the Player, requesting to be awarded the total amount of EUR 1,342,128.60 plus 5 % p.a. as from 12 August 2011, corresponding to the non-amortised part of the transfer fee (i.e. EUR 2,200,000) and of the contributions related to the solidarity mechanism (i.e. EUR 36,881).

35. In a decision dated 27 February 2013, the DRC held that *"the employment contract concluded between the [Player] and the [Appellant] at the heart of the dispute did not provide for any financial terms [and] did not contain any financial obligations whatsoever between the [Player] and the [Appellant]. (…) Thereupon, the [DRC] focused its attention to the contract concluded between the [Player] and the Company which, in the present matter, was considered to be the only document effectively containing financial obligations. In this respect, the [DRC] noted that this agreement to the contract was not signed by the [Appellant], but only by the Company and the [Player]. What is more, article 1 of the said agreement clearly stated that the [Player's] salary was to be paid by the Company. In addition, the payment receipts provided by the [Player] effectively confirmed that it was indeed the Company paying the [Player] and not the club itself"*. As a consequence, the DRC found that the Player's claim was to be dismissed as it was directed against the wrong party. In the opinion of the DRC, the Player's claim should have been filed against the Company *"which was the entity responsible for the payments"* of his salaries.

36. The DRC also rejected the Appellant's counter-claim as *"no reciprocal exchange of obligations existed between the club and the player. Since, in accordance with the employment contract, the [Appellant] had no financial obligations whatsoever towards the [Player], the latter could not be considered bound by the employment contract (…). The [DRC] deemed that a club cannot discharge its financial obligations by means of a private company and then on the other hand benefit from the possible and eventual disrespect of the relevant obligations by said company"*.

37. These findings made it unnecessary for the DRC to address other issues, in relation namely with SC Braga, which was an intervening party in the proceedings initiated with FIFA.

38. As a result, on 27 February 2013, the DRC decided the following:

"1. The Claim of the [Player], Gerson Alencar de Lima Júnior is rejected.

2. The Claim of the [Appellant], FC Dynamo Kyiv, is rejected".

39. On 9 August 2013, the Parties were notified of the decision issued by the DRC (hereinafter the "Appealed Decision").

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

40. The Player challenged the Appealed Decision before the CAS. The case was recorded under CAS 2013/A/3307 but was terminated as the Player eventually withdrew his appeal.

41. On 30 August 2013, the Appellant filed its statement of appeal with the CAS.

42. On 5 September 2013, the CAS Court Office acknowledged receipt of the Appellant's statement of appeal, of its payment of the CAS Court Office fee and took note of its nomination of Mr François Klein as arbitrator. The CAS Court Office also invited the Respondents to jointly nominate an arbitrator.

43. On 5 September 2013, the Appellant asked for a time-extension to file its appeal brief, which was granted as the Respondents failed to submit any comment in this regard within the given deadline by the CAS Court Office.

44. On 20 September 2013, the Respondents were given a final deadline to nominate a joint arbitrator, which they failed to do.

45. On 23 September 2013 and within the granted time extension, the Appellant lodged its appeal brief, which contains a statement of the facts and legal arguments accompanied by supporting documents.

46. Both the Player and SC Braga asked a time extension to file their respective answer, which was granted following the Appellant's approval.

47. SC Braga and the Player filed their answer on 30 October, respectively on 1 November 2013.

48. On 8 November 2013, the Parties were invited to inform the CAS Court Office on or before 15 November 2013 whether their preference was for a hearing to be held.

49. On 15 November 2013, the Appellant confirmed that it wished for a hearing to be held in the present procedure. The same day, SC Braga informed the CAS Court Office that it *"does not oppose to a hearing"*.

50. On 21 November 2013, the CAS Court Office observed that the Player had not stated his position with reference to the holding of a hearing and invited him to make his determination known on or before 22 November 2013, which he failed to do.

51. On 28 November 2013, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr François Klein and Mr Ian Forrester, arbitrators.

52. On 16 January 2014 and on behalf of the Panel, the CAS Court Office required from the Parties additional procedural and evidentiary measures.

53. On 17 January 2014, the CAS Court Office invited the Parties to address the following questions:

"1. Was there a valid employment contract between the player and Dynamo Kyiv? If there was no such contract in existence, is there any matter as to which the Panel needs to rule?

2. Assuming that there was such a valid contract, did the player have just cause to unilaterally terminate his contract?

3. Assuming that the player did not have such just cause to terminate a valid contract, should Dynamo Kyiv be entitled to compensation? And if yes, how much?

4. Alternatively, assuming that the player did have such just cause to terminate, should the player be entitled to compensation? And if yes, how much?

5. Did SC de Braga induce the player to commit a breach of contract?

6. If yes, should SC de Braga be held jointly and severally liable with the player?"

54. The Appellant as well as SC Braga answered the above questions on 31 January 2014 whereas the Player made his position known with a letter dated 7 February 2014.

55. On 12 February and 13 February 2014, the Appellant and the Respondents respectively sent to the CAS Court Office a duly signed copy of the order of procedure.

56. The Panel decided to hold a hearing, which was scheduled, after repeated requests for postponement by the parties, for 14 July 2014, with the agreement of all the Parties to the present proceedings.

57. The hearing was held on 5 May 2014 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Christopher Singer, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

58. The following persons attended the hearing:

- The Appellant was represented by its attorneys, Mrs Olga Zhukovska and Mrs Anna Bordiugova, assisted by Mr Andrei Dolgov, interpreter.
- The Player was present and accompanied by his counsels, Mr Gonçalo Almeida and Mr Luis Correia Dias, assisted by an interpreter.
- SC Braga was represented by its attorneys, Mr João Pedro Costa Carvalho and Mr António Simões.

59. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the constitution and composition of the Panel. The Panel heard evidence from the following persons, who were examined and cross-examined by the Parties, as well as questioned by the Panel:

- Mr Anatoly Volk, Appellant's international affairs manager;
- Mrs Soia Krupka, Appellant's former head of human resources;
- Mrs Victoria Kiptenko, Appellant's international affairs senior manager;
- Mr Alyaksandr Khatskevich, Appellant's former coach of the reserve team;
- Mr Allison Garcia Costa, the Player's agent;
- Mr Pedro Costa, director of SC Braga's human resources department;
- Mr Pedro Pereira, main secretary of SC Braga's football department.

60. Only the first two witnesses were present, whereas the others were heard via video-conference, with the agreement of the President of the Panel and pursuant to article R44.2 par. 4 of the Code of Sports-related Arbitration (hereinafter "the Code").

61. Each person heard was invited by the President of the Panel to tell the truth subject to the consequences provided by Swiss law.

62. After the Parties' closing arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

63. The Appellant submitted the following requests for relief:

"Considering the above hereby we request the CAS:

1. *To cancel the contested FIFA DRC decision.*
2. *To issue a new decision, by which to establish that Mr. Gerson Alencar de Lima Junior "Magrao" had terminated his Contract with the Appellant – FC Dynamo Kyiv – unilaterally without just cause.*
3. *To hold both Respondents (…) jointly and severally liable for unilateral premature termination of the Contract without just cause.*
4. *To apply appropriate sanctions set by the Article 17 of the FIFA Regulations on the Status and Transfer of Players and establish financial compensation to be paid to FC Dynamo Kyiv jointly and severally by the Respondents in the sum of EUR 3,592,128.60 plus 5% interest rate per annum as of the date of Contract termination, i.e. 12 August, 2011.*
5. *To request from the FIFA DRC the case file ref. no. 11-02785/apa.*
6. *To attach to the record of the present case the file of the case CAS 2012/O/2809 Furmshein Properties S.A. v. SC de Braga Futebol SAD on the ground as set forth in para. 168 of the Appeal Brief.*
7. *To call the following witnesses (…)".*

64. The Appellant's submissions, in essence, may be summarized as follows:

- The Employment Agreement is a valid contract and both the Appellant and the Player were bound by it.
- The DRC rejected the Appellant's as well as the Player's respective claim because of the *"alleged absence of the financial relationship between the Club and the Player"*. Such a finding is contrary a) to the facts, b) to the Appellant's and to the Player's position and c) to the Parties' right to be heard as the *"alleged absence of the financial relationship between the Club and the Player"* has never been an issue raised by any of the Parties during the proceedings before the DRC.
- The Appellant and the Company are bound by a specific agreement, whereby the Appellant *"assigns to the company the execution of the Club's obligations to pay salary (bonuses and other remuneration) which shall arise from or be related to the Employment contract to be concluded with the Player". "The Civil Code of Ukraine in article 528 clearly provides for such legal construction".*

- In any event, and in spite of the fact that some of the rights and obligations deriving from the Employment Agreement were appropriately assigned to the Company, the Appellant remained liable for all possible late payments of the Player's salaries.
- The Player had no just cause to unilaterally terminate the Employment Agreement with immediate effect. The Appellant had always carried out its obligations timely and exhaustively, with the exception of the payment of the salary for March 2011. For this month, the Appellant erroneously paid half of the remuneration but was made aware of its mistake for the first time on 28 July 2011, when it received the Player's notice. On 15 August 2011, i.e. within a reasonable timeframe, the Appellant rectified its mistake and paid to the Player all the outstanding amounts.
- The *"Player took advantage of the actual one single instance of accidental non-compliance with the Contract by the Club by intentionally not bringing it to the attention of the Club for three months and adding a number of artificial allegations and thus tried in bad faith to create a picture of a "just cause" for termination of the Contract in order to justify his entering into contract with FC Braga and in addition to create grounds for compensation in the sum no less than USD 1,454,545.00".*
- The Player terminated the labour relationship without complying with the procedure provided for under article 5.1 of the Employment Agreement, which governs the premature termination of the contract in the presence of *"Non-fulfilment or improper fulfilment of the obligations stipulated in the present Contract either by the Club or by the Player".*
- As the Player unilaterally and prematurely terminated the Employment Agreement without just cause, the Appellant is entitled to compensation.
- SC Braga is jointly and severally liable for the payment of the compensation due to the Appellant.

B. The Answers

a) The Player

65. In his answer, the Player submitted the following requests for relief:

"In view of all the above factual and legal arguments, the First Respondent hereby requests the Panel to:

1. Entirely reject the appeal;

2. Establish that the Appellant has unlawfully and abusively breached the parties' employment contract without just cause;

3. Establish that the First Respondent has unilaterally terminated his employment contract with the Appellant with just cause;

***Subsidiary**: Despite absolutely rejecting such scenario and simply raising it out of precaution, the First Respondent deems that in case just cause is not granted to him, not only the claimed amounts are extremely excessive (since the Appellant clearly contributed to the end of the parties' contractual relationship) and should therefore be drastically reduced, but also that the Second Respondent should be considered jointly and severally liable to substitute him in any payment that may be allocated to the Appellant, following Art. 17 Par. 2 of the FIFA Regulations on the Status and Transfers of Players.*

4. *Condemn the Appellant, as the sole responsible for the present procedure, to bear the entire procedural costs;*

5. *Condemn the Appellant to contribute towards the expenses incurred by the First Respondent (e.g. accommodation, travel expenses, interpreter fees and, above all, legal fees), in a minimum amount of CHF 30.000,00 (thirty thousand Swiss Francs)".*

66. The Player's submissions may, in essence, be summarized as follows:

- The Employment Agreement is valid and binding upon the Appellant and the Player.
- The Player had always complied with his contractual obligations as well as with the instructions given to him by the Appellant's coaches or representatives.
- The Player had never been subjected to any internal disciplinary procedure. Any statement to the contrary is false. In this regard, the Player *"was never delivered any note of guilty and less over got the chance to formally defend himself from any of the alleged disciplinary infringement of which he is accused, within any proper/formal disciplinary procedure"*. The Appellant is trying to cover its numerous contractual breaches with falsified evidence.
- The Appellant *"failed to pay to [the Player] considerable parts of his salaries of February 2011, March 2011, May 2011, all of his entire salary of July 2011, 11 (eleven) days of work in August 2011 and the accommodation allowance for May, June and July 2011"*.
- Before he terminated the Employment Agreement, the Player had served two formal notices on the Appellant. Both times, the Player emphasised that he wished to continue working with the Appellant but would nevertheless terminate the Employment Agreement, should the outstanding amounts not be paid within the reasonable time limits laid down in the notices.
- Given the *"A. persistent and severe nature of unlawful contractual non-compliances by the Appellant with its contractual obligations towards the player; B. Long period of alleged breaches; C. Intentional nature of such breaches; D. Severe damages for the player"*, the latter not only was entitled to prematurely and immediately terminate the Employment Agreement but also did not have any other option.
- The Respondents signed a valid labour contract on 18 August 2011, effective until 30 June 2014. Despite *"being valid and binding to both parties, such contract was never respected by [SC Braga], the reason why a labor dispute is still unsolved"*.

b) SC Braga

67. In its answer, SC Braga submitted the following requests for relief:

"The Respondent SC Braga respectfully requests the CAS to:

i) Maintain the decision of the FIFA DRC;

ii) Refuse the appeal filed by FC Dynamo Kyiv in its entirety;

iii) Order FC Dynamo Kyiv to pay the full amount of the CAS arbitration costs;

iv) Order FC Dynamo Kyiv to pay a significant contribution towards the legal costs and other related expenses of SC Braga, at least in the amount 30,000.00 CHF".

68. SC Braga's submissions may, in essence, be summarized as follows:

- The findings of the DRC are correct and its decision must be confirmed.
- SC Braga has never induced the Player to prematurely terminate the Employment Agreement with the Appellant. *"It is true that the SC Braga in the end of the season 2010/2011 tried to transfer the player; however no agreement was reached with the Appellant. (…) Immediately, the transfer was put aside and forgotten".*
- SC Braga has never entered into a valid employment relationship with the Player. The entry into force of the employment contract signed with the Player was conditional upon some formal requirements, which were never met by the Player. Indeed, *"SC Braga advised the player that it could only proceed with an agreement once the player provided proof to support his declaration that he had terminated his contract with the Appellant with just cause and that he had commenced proceedings before FIFA to receive compensation and secure an ITC".* The Player has never handed over to SC Braga the requested documents establishing that he was a free agent. Under these circumstances, and in view of the Player's lack of transparency regarding his professional status, SC Braga informed the Player on 25 August 2011 that it was putting an end to the negotiation regarding his employment and *"considered that to be the end of the matter".*

V. APPLICABLE LAW

69. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

70. Article R58 of the Code indicates how the Panel must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *"applicable regulations"* to the *"rules of law chosen by the parties"*, which are only applicable *"subsidiarily"*. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Panel the obligation to resolve the matter pursuant to the regulations of the relevant *"federation, association or sports-related body"*. Should this body of norms leave a lacuna, it would be filled by the *"rules of law chosen by the parties"* i.e *"the norms of the current Labour legislation of Ukraine, the Statutes and Regulations or the Club, PFL of Ukraine, FFU, UEFA and FIFA, with extracts and amendments set by the terms of the present contract"* (see Article 5.2 of the Employment Agreement).

71. The case at hand was submitted to the DRC on 16 September 2011, hence after 1 October 2010 and 1 August 2011, which are the dates when, respectively, the revised Regulations for Status and Transfer of Players (2010 edition) (hereinafter "RSTP") and the FIFA Statutes (2011

edition) came into force. These are the editions of the rules and regulations under which the case shall be assessed (see article 26 par. 1 and 2 RSTP and 83 of the FIFA Statutes).

72. According to Article 62 par. 2 of the FIFA Statutes, 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"*.

73. Therefore, in the present case and with respect to the applicable substantive law, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply to the extent warranted. *"Subsidiarily"* only, Ukrainian law is applicable.

VI. ADMISSIBILITY

74. The appeal is admissible as the Appellant submitted it within the deadline provided by article R49 of the Code as well as by the Appealed Decision. It complies with all the other requirements set forth in Article R48 of the Code.

VII. JURISDICTION

75. The jurisdiction of the CAS, which is not disputed, derives from Articles 62 et seq. of the FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.

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

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

VIII. PROCEDURAL ISSUE – NEW EVIDENCE AND NEW REQUEST FOR RELIEF

78. The following new documents were produced after the exchange of the Parties' original written submissions:

- On 2 May 2014, SC Braga filed a document emanating from the *"Joint Arbitration Commission Collective Working Contract of Professional Football Players"*.
- At the hearing, the Appellant filed a copy of its opening statement.

79. At the hearing, the Appellant also submitted an amended request for relief to seek a contribution towards its legal fees and other expenses incurred in connection with the proceeding.

80. Article R56 par. 1 of the Code provides as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to

produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

81. Regarding the new document filed by SC Braga, both the Appellant and the Player either agreed with its production or left it up to the Panel to decide whether it should be admitted. Under these circumstances, the Panel decided to allow this additional submission. For the same reason, it decided to accept the written copy of the Appellant's opening statement, which was handed to the Respondents' counsels, who took it without raising any objection.

82. The Panel dismisses the Appellant's application to amend its prayers for relief as the Appellant failed to establish that its request a) was justified by the presence of exceptional circumstances or b) could not have been made at an earlier stage of the procedure.

IX. MERITS

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

A. Was there a valid employment contract between the Appellant and the Player?

B. Did the Player have a just cause to unilaterally and prematurely terminate the Employment Agreement?

C. Is the Appellant entitled to any compensation? If yes, how much?

D. Is SC BRAGA jointly and severally liable for the payment of the compensation?

A. Was there a valid employment contract between the Appellant and the Player?

84. As regards the Appellant's claim of compensation for early termination without just cause, the DRC found that the Employment Agreement did not bind the Player as *"no reciprocal exchange of obligations existed between the club and the player"*. In particular, the DRC held that the Player could not be expected to perform his obligations since *"in accordance with the employment contract, [the Appellant] had no financial obligations whatsoever towards the [Player]"*. The DRC *"deemed that a club cannot discharge its financial obligations by means of a private company and then on the other hand benefit from the possible and eventual disrespect of the relevant obligations by said company"*.

85. The DRC rejected the Player's claim against the Appellant as it should have been directed against the Company *"which was the entity responsible for the payments"* of his salaries.

86. From the outset, the findings of the DRC appear to be flawed, as there is no explanation as to what *"reciprocal exchange of obligations"* existed between the Player and the Company. It is unquestionable that the Player carried out the work assigned to him in the sole interest of the Appellant and not of the Company. As there was no employment relationship between the Company and the Player, the DRC did not clarify on what ground a) the Company could have directed a claim against the Player, should the latter fail to work properly or b) the Player could have directed a claim against the Company.

87. As a preliminary remark, the Panel observes that it is undisputed by the Parties that none of them has ever suggested during the proceedings before the DRC that the Employment Agreement may be invalid. Under these circumstances, the findings of the DRC certainly did not respect the Parties' due process rights. One of the fundamental rights guaranteed by this principle is that the judging body must render its ruling only on the grounds that the parties had the opportunity to discuss. In other words, the judging body must not base its decision on a provision or legal consideration which has not been discussed during the proceedings and which the parties could not have suspected to be relevant (see COCCIA M., The jurisprudence of the Swiss Federal Tribunal on challenges against CAS awards, in CAS Bulletin 2/2013, page 14).

88. An employment relationship is characterized by the fact that a person will carry out work in return for a salary from the other party.

89. The DRC held that the Employment Agreement was invalid as it *"did not contain any financial obligations between the [Appellant] and the [Player]"*. This finding appears to be inconsistent with:

- the wording of the said contract. Pursuant to Article 3.1 *"The Club shall pay the Player a salary monthly in the amount, determined in Art. 1 of the Annex 1 to this Contract"*. Article 3.2 states that *"Payment of the Salary to the Player in accordance with the Art. 1 of the Annex 1 is based on the Order/ instruction issued by the Club (…)"*. These provisions clearly charge the Appellant with the responsibility to pay the Player's wages. The fact that the details of the Player's remuneration are outlined in another document is irrelevant and, actually, quite common in the world of sport.
- the intention of the Appellant and of the Player. They both consider the Employment Agreement as valid and binding. The constituent element of a contract is the consent of the parties to it. In the present case, both the Appellant and the Player agree that they were bound by a labour relationship and behaved accordingly. It was also their intention to be bound by the "Agreement to the contract between Mr. Gerson Alencar de Lima Junior and Football Club Dynamo Kyiv Ltd", as they both directed their claims against each other based on this document.
- the Parties' actions. Whether the Employment Agreement did, indeed, *"not contain any financial obligations between the [Appellant] and the [Player]"* is irrelevant as the liability of the Appellant to pay the Player's wages was confirmed subsequently through conclusive acts from which the "financial obligations" can be clearly inferred. It is undisputed that until January 2011, the Player's wages were fully paid in exchange for his services to the Appellant. Whenever there would be an issue about the payment of the salary, the Player would hold the Appellant accountable for it. Likewise, the Appellant did not try to escape liability by arguing that the Employment Agreement was invalid. On the contrary, it was the Appellant's case that the Player did not respect his obligations deriving from this contract.
- the actual registration of the Player with the Appellant.

90. Article 5.5 of the Employment Agreement does indeed establish that the *"Annexes are integral part of this Contract. An Annex to the present Contract is valid if signed bilaterally by Parties of the present Contract"*. It is undeniable that the *"Agreement to the contract between Mr. Gerson Alencar de Lima Junior*

and Football Club Dynamo Kyiv Ltd" was only signed by the Player and by the Company and not by the Appellant. However, in view of the Appellant and the Player's conclusive acts (as described here above), the simultaneity between the signature of the Employment Agreement and the contract between the Player and the Company, the title as well as purpose of this second agreement, the Panel finds that the *"Agreement to the contract between Mr. Gerson Alencar de Lima Junior and Football Club Dynamo Kyiv Ltd"* is an integral part of the Employment Agreement as provided by its Article 5.5.

91. In light of the above considerations, the Panel finds that the Employment Agreement was valid and binding and that the Appellant was liable for the payment of the Player's wages as described in the *"Agreement to the contract between Mr. Gerson Alencar de Lima Junior and Football Club Dynamo Kyiv Ltd"*.

92. The above conclusion makes it unnecessary for the Panel to consider the actual relationship between the Appellant and the Company or between the Player and the Company.

B. Did the Player have a just cause to unilaterally and prematurely terminate the Employment Agreement?

93. As already exposed, all the Parties to the present proceeding assessed the issue related to the existence of a just cause according to the FIFA Regulations.

94. According to Article 14 RSTP *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*. This provision is substantially identical to Article 14 of the RSTP edition 2005.

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

> *"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2 The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. The following examples explain the application of this norm.*
>
> *3 Example 1: A player has not been paid his salary for over 3 months. Despite having informed the dub of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existenæ of the player concerned.*
>
> *4 Example 2: player A, employed by club X, has displayed an uncooperative attitude ever since his arrival at the club. He does not follow the directives given by the coach, he regularly argues with his team-mates and often fights with them. One day, after the coach informs him that he has not been called up for the*

next championship fixture, the player leaves the club and does not appear for training on the following days. After two weeks of unjustified absence from training, the club decides to terminate the player's contract. The player's uncooperative attitude towards the club and his team-mates would certainly justify sanctions being imposed on the player in accordance with the club's internal regulations. The sanctions should, however, (at least in the beginning) be a reprimand or a fine. The club would only be justified in terminating the contract with the player with just cause if the player's attitude continued, together with the player disappearing without a valid reason and without the express permission of the club.

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

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

96. In a footnote, the FIFA commentary on the RSTP establishes that the above examples are based on simplified decisions of the DRC and that under *"normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract".*

97. The Player claims that the Employment Agreement was validly terminated because there were just causes. According to him, given the *"A. persistent and severe nature of unlawful contractual non-compliances by the Appellant with its contractual obligations towards the player; B. Long period of alleged breaches; C. Intentional nature of such breaches; D Severe damages for the player"*, the latter had a just cause to prematurely and immediately terminate the Employment Agreement. The Player claims that under the specific circumstances of the case, he only had to serve one formal notice but chose to send two as a sign of his good faith and of his genuine intention to remain at the Appellant's services.

98. The Appellant contends that the only delayed payment was related to the salary of March 2011 and that it was informed about it, for the first time, on 28 July 2011. According to the Appellant, all the other claims of the Player were invented to create a false picture of just cause.

a) As regards the overpayment of January 2011 and the underpayment of February 2011

99. It is undisputed that for the month of January 2011, the Player received his monthly salary, increased by USD 15,000 and for the month of February 2011, the Player received his monthly salary, less USD 15,000.

100. The Appellant claims that it mistakenly paid the Player's salary in Euros instead of in US Dollars. The difference of exchange rate amounts to exactly USD 15,000, i.e. the amount withheld from the Player's remuneration for February 2011. According to the Appellant, the Player was indeed granted a bonus, but it was only of USD 3,000. In support of its submission, the Appellant filed:

- An order dated 1 February 2011, whereby the President of the Appellant confirmed that the Player should receive USD 3,000 for his *"participation of the team in the matches of the group stage of UEFA Europa League 2010/2011 and on the basis of the appropriate submission of the coaching staff of the team".*

- A bank statement, dated 4 February 2011, according to which EUR 38,014 (corresponding to USD 53,036.41) were paid *"in favour of [the Player] Ref. Salary and bonus – Jan 2011"*.
- A bank statement, dated 9 February 2011, according to which USD 10,051.43 were paid in favour of *"Popolnenie PC USD (…) Reference (…) [the Player] Salary Jan. 2011"*.

101. The Player contends that the additional USD 15,000 was in fact a bonus paid in relation with games in which he took part. His allegations were supported by the following documents:

- A list of nine games in which the Player took part between July and November 2010. According to this document, the legitimacy and origin of which is not established, the Player was entitled to bonuses in a total amount of USD 33,500. The USD 15,000 were in fact the remaining part of the bonuses due to him.
- The two bank statements filed by the Appellant. The Player highlighted the fact that both payments were made at a different date. According to the Player, it is unlikely for a club to pay a monthly salary in two instalments, several days apart. For the Player, it is a clear proof that both payments are of different nature, one being related to bonuses and the other to the salary.

102. The Panel observes that, at the moment of the payment of the bonus, the Player was not yet relegated in the Appellant's reserve team. It is also undisputed that during the second half of 2010, the Player took part in numerous games with the Appellant's main team. Under these circumstances, a bonus of USD 3,000 seems rather small, in particular for a player paid USD 500,000 per year.

103. Moreover, the conditions governing the game's bonus system are not detailed anywhere. The granting of rewards is apparently left to the discretion of the Appellant. In this regard, the order dated 1 February 2011 awarding a USD 3,000 bonus gives absolutely no details as to how the amount was assessed. Finally, the Appellant could have easily supported its case by a) either explaining the game's bonus system or b) providing a comparative list of all the bonuses paid to the Player's team members, supporting its allegations. The Appellant failed to do so.

104. Finally, it appears – and the Appellant does not contend otherwise – that the withholding of USD 15,000 from the Player's salary of February had never been explained before 4 August 2011. It seems to the Panel very unusual for an employer to deduct such a large amount from an employee's wage, without any warning or clarification.

105. Based on the foregoing, the Panel finds that the Player's position is more convincing than the Appellant's and, therefore, holds that the Appellant failed to pay to the Player USD 15,000 in February 2011.

b) As regards the wages for March and April 2011

106. It is undisputed that for the month of March 2011, the Player only received half of his salary whereas the wage of April 2011 was fully paid.

107. The Appellant acknowledged that the underpayment was due to a mistake on its part but realised it only on 28 July 2011, when it was served the first notice. The due amount was paid on 16 August 2011.

108. The Panel sees no reason not to believe the Appellant.

c) As regards the wages for May, June, July and August 2011

109. The following facts are undisputed:

- For the month of May 2011, USD 25,000 were deducted from the Player's salary.
- For the month of June 2011, the Player received his monthly salary.
- In June 2011, the Player returned from vacations four days later than authorized.
- On 16 August 2011, the Player received USD 60,606.61, corresponding to *"USD 20.059.61 regarding the March salary + USD 40,447.00 (his [salary for July] minus USD 5,000.00 for the fine imposed on him on 5 July 2011 on grounds of him arriving late from vacation)"*. In its appeal brief, the Appellant does not object that USD 5,007.54 was actually withheld from the Player's salary for July 2011.
- For the 11 first days of August 2011, the Appellant refused to pay the salary as the Player left the club without just cause. In its appeal brief, the Appellant does not object that USD 16,129.03 was actually withheld from the Player's salary for August 2011.
- The alleged disciplinary sanctions imposed upon the Player have never been notified to him by registered mail.
- The Appellant did not pay for the Player's rent for the months of May, June and July 2011.
- Between 12 and 15 August 2011, the Player left the Appellant's premises and never returned.

110. It is the Appellant's claim that the financial penalties imposed upon the Player were deserved and justified. In support of its submissions, the Appellant filed a number of internal documents. Several members of the Appellant's staff also testified as to the Player's questionable attitude. Apparently, all the orders imposing a penalty upon the Player were communicated to the Player by the Appellant's translator but the Player has never formally acknowledged receipt of these documents.

111. Conversely, the Player denies any misbehaviour and/or having ever been notified any decision in connection with disciplinary proceedings initiated against him. He stated that his relationships with the Appellant's employees or the other team members had always been good and based on mutual respect. He also affirmed that he had fully performed his contractual obligations and respectfully followed the instructions given to him, namely by his various coaches.

112. While the Appellant's witnesses were consistent throughout the hearing, they are nevertheless employees of the Club. Under these circumstances, the probative value of their statements or

testimonies should not outweigh the Player's own evidence and, therefore, the dispute on this score, e.g. regarding the alleged misbehaviour of the Player, boils down to a matter of one's word against the other's. The Panel did not feel that it had to attach particular weight to the verbal allegations of both Parties though, since it could rely on much safer grounds to reach its final conclusions, as explained in what follows.

113. The Appellant's and the Player's failure to act diligently added confusion to the situation and they must both take responsibility for it. On the one hand, in the face of the persistent refusal of the Player to sign the receipt acknowledging the imposition of a penalty, the Appellant should have notified its internal disciplinary resolutions by registered letters. It would have allowed the Appellant to establish the proof of delivery of its decisions to the Player. On the other hand, the Player told the members of the Panel that he would periodically make sure that his salary was duly paid. Under these circumstances and in view of the amounts withheld, he cannot reasonably pretend that he did not notice the underpayments. Had the Player immediately reacted to the delayed payments, he could have easily established his case, i.e. the partial payments of his wages were not related to disciplinary measures taken against him.

114. In other words, the Panel finds that both the Appellant and the Player put themselves in the vulnerable position of not being able to prove their respective case. In any event, it appears that the Panel does not need to seek the truth to resolve the object of the present dispute, i.e. whether the Player prematurely and unilaterally terminated the Employment Agreement with just cause. We explain why in the following paragraphs.

115. As a matter of fact, whereas Article 6 of the *"Agreement to the contract between Mr. Gerson Alenar de Lima Junior and Football Club Dynamo Kyiv Ltd"* establishes a sanctioning regime, allowing the Appellant to impose financial penalties upon the Player, this contractual provision does not entitle the Appellant to withhold fines imposed from the Player's salary. In addition, there is no indication that the decisions to sanction the Player were final and in force. In this regard and according to the Appellant's own submission, it appears that the Player could have challenged the penalty in front of an appeal body *("If the person who has been subjected to internal labour disciplinary sanction disagrees with such, he can fully realize the right for competitive dispute resolution by applying such sanction to the court"*). But for this, the Player should have been notified of the financial penalties, which the Appellant failed to establish that it had done. The fact that the penalties had not been implemented is further supported by the fact that the Appellant's letter of 15 August 2011 makes reference to the meeting allegedly held on 4 August 2011, during which the Player was informed that the *"financial sanction of 25000 USD (…) could be settled only during [his] personal meeting with the club president"*.

116. Based on the foregoing, the Panel finds that the Appellant failed to establish its right to withhold amounts corresponding to penalties imposed for alleged misbehaviour from the Player's salary for the months of May and July 2011.

117. As regards the salary of August 2011, the Appellant conceded that it refused to pay for it, given the unilateral and premature termination of the Employment Agreement by the Player. Nevertheless, the Panel finds that the Player is entitled to his salary for the number of days he served as the Appellant's employee, i.e. from 1 to 11 August 2011.

d) As regards the accommodation costs for May, June, July 2011

118. According to Article 4 of the *"Agreement to the contract between Mr. Gerson Alencar de Lima Junior and Football Club Dynamo Kyiv Ltd", "The Company shall provide the player with service apartments"*.

119. On 4 August 2011, in its answer to the first notice, the Appellant confirmed that *"the allowance for the service accommodation for the quarter of June/July/August 2011 will be provided to the player in due course"*. On 15 August 2011, the Appellant confirmed again that *"as agreed during the [meeting of 4 August 2011] you had to contact the team administrator, Mr. Kashpur, in order to receive the requested allowance in due course"*.

120. In its appeal brief, the Appellant explained that payments of the rent were made on a quarterly basis. *"Also relevant payments were made in cash by the club administrator Mr. Kashpur to the Player as long as the latter rented apartment personally, and under his own explanations it was more convenient for him to receive according sums in cash and pay them in cash on the territory of Ukraine as required by the owner of the apartment according to the nature of the relevant legal relationship of the apartment rent"*.

121. In the present case, the Player failed to establish a) that he actually paid for the rents related to the months of May, June and July 2011, b) that he actually was living in his own apartment and c) that, prior to the notice, he had asked Mr Kashpur to pay for the rent. In particular, he did not file a copy of the rental lease or a copy of payment confirmation issued by the owner of the apartment. He also did not ascertain that Mr Kashpur would pay him a lump sum amount of USD 2,000 without any receipt issued by the owner or that this sum corresponds to the monthly amount paid for the previous quarters.

122. Under these circumstances, the Player failed to establish the well-founded nature of his claim, which must therefore be dismissed without further consideration.

e) Conclusion

123. At the hearing before the CAS, the Player confirmed that he would periodically make sure that his salary was duly paid. However, it is only during the month of July 2011 that he decided to ask Mr Anatoly Volk for explanations regarding the partial payment of his salaries.

124. During the same hearing, Mr Volk testified that he did not discuss the matter at stake with the Player before the meeting held on 4 August 2011.

125. The first notice for payment was served on 28 July 2011. At that moment, the outstanding amounts were the following ones:

Underpayment of February 2011:	USD 15,000.00
Underpayment of March 2011:	USD 20,432.00
Underpayment of May 2011:	USD 25,000.00
Total	**USD 60,432.00**

126. On 28 July 2011, the wages for the months of July and August 2011 had not yet fallen due.

127. It has been established that the underpayment of March 2011 was the consequence of a mistake and the difference (at least most of it) was transferred to the Player's account on 16 August 2011.

128. Regarding the underpayments of February and May 2011, the Appellant failed to establish to the comfortable satisfaction of the Panel either the erroneous overpayment of January 2011 or the enforceability of the internal penalties imposed upon the Player. However, in view of the Appellant's submissions and of the evidence on record, the Panel has no difficulty to find that the Appellant genuinely believed that it was entitled to withhold the litigious amounts. At least, the Panel found that the Appellant's explanations were plausible, and were not the result of an arbitrary decision, with a contentious purpose in mind. The Player did not prove otherwise or give another motive for the Appellant to fail to pay the wages in a timely manner. In addition, he has never claimed that his employer was not loyal to him or unsupportive of his needs.

129. What is striking is that the Player has admittedly never asked for an explanation until July 2011, i.e. more than 4 months after the first underpayment. In April 2011, the outstanding amounts totalled USD 15,432 and in June USD 60,432 without triggering any reaction whatsoever from the Player. Had the latter immediately inquired into the late or partial wages payment, the situation would have been radically different and things would have certainly not gotten to the point they did. Apparently that was not what the Player was trying to achieve.

130. As a matter of fact, the Player's attitude is somewhat inconsistent and contradictory. On the one hand, he claims that given the *"A. persistent and severe nature of unlawful contractual non-complianæs by the Appellant with its contractual obligations towards the player; B. Long period of alleged breaches; C. Intentional nature of such breaches; D. Severe damages for the player"*, he was entitled to prematurely and immediately terminate the Employment Agreement. Moreover, at the hearing during the CAS, his counsel repeatedly submitted that the amounts withheld *"were not peanuts"*. Nevertheless, the Player remained silent and completely passive during more than four months after the first underpayment.

131. At the hearing before the CAS, the Player confirmed that he waited until July 2011 to complain for the first time about the various underpayments because it is widely acknowledged by the football community that a notice can only be served at the end of a three-month period following a late payment. The Player's position seems to be a clear reference to example 1 of the FIFA commentary on the RSTP (edition 2005 - commentary ad. Article 14, page 39) and suggests that he was not looking for an explanation but rather was waiting to meet the requirements of an immediate termination of the employment relationship with just cause. This is furthermore confirmed by the fact that the Player has never tried to settle the various issues directly with the Appellant before it served a notice for payment. The fact that the Player's intention was to leave the Appellant is also endorsed by the fact that he signed an employment contract with SC Braga on 18 August 2011, i.e. less than a week after he put an end to the Employment Agreement with immediate effect.

132. In any event and unlike the example shown in the FIFA commentary on the RSTP (edition 2005), it appears that the withholding or non-payment of salaries by the Appellant did not exceed three months. Much more, a couple weeks after it was made aware of its mistake related

to the salary for March 2011, the Appellant transferred the outstanding amount to the Player, reducing the litigious amounts withheld from USD 60,432.00 to USD 40,372.39 (USD 60,432 – USD 20,059.61); i.e. less than a month worth of salary.

133. The Panel endorses the position articulated by a CAS panel in the matter CAS 2006/A/1180 issued on 24 April 2007:

"[The] non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); 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 also CAS 2005/A/893 […]; CAS 2006/A/1100 […] marg. no. 8.2.5 et seq.)".

134. In the present case none of the two prerequisites mentioned in this decisions were met. Not only did the Appellant not fail to comply with a major part of its payment obligation, but the Player waited four months before he sent his first warning, giving his employer seven days to settle the outstanding debts. This deadline is not in compliance with the procedure contractually agreed under Article 5.1 of the Employment Agreement and seems inversely proportional to the long months during which the Player did not make any complaints regarding the late payment of his salaries. In addition the Player has never demonstrated how the underpayments affected his situation to a point where he could not be expected to remain in a contractual relationship with the Appellant.

135. In light of the above consideration, the Panel finds that the Player did not have a just cause to unilaterally and prematurely terminate the Employment Agreement.

C. Is the Appellant entitled to any compensation? If yes, how much?

136. The party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract. The situation is governed by Article 17 RSTP (see FIFA commentary on the RSTP (edition 2005), ad. Article 14, N. 6, page 40 and footnote n°63).

137. Article 17 par. 1 of the RSTP reads as follows:

"17 Consequences of terminating a contract without just cause

The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, 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 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".

138. In view of the facts of the present dispute, the Panel refers in particular to the findings of another recent CAS case with regard to the above Article 17 and to the principles outlined therein. The case in question is CAS 2008/A/1519 & CAS 2008/A/1520 (hereinafter "CAS 2008/A/1519-1520"), in which the CAS insisted namely on the following points:

- The termination of a contract without just cause is a serious violation of the obligation to respect an existing contract and triggers the consequences set out in Article 17 par. 1 RSTP.
- The purpose of Article 17 RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player. This, because contractual stability is crucial for the well functioning of the international football. The deterrent effect of Article 17 RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met, and the risk to have to pay a compensation for the damage caused by the breach or the unjustified termination.
- As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur.
- By asking the judging authorities to duly consider a whole series of elements, including such a wide concept like *"sport specificity"*, and asking the judging authority to even consider *"any other objective criteria"*, the authors of Article 17 RSTP achieved a balanced system according to which the judging body has on one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable. At the end, however, the calculation made by the judging authority shall be not only just and fair, but also transparent and comprehensible.

139. It has been established that the Player terminated the contract without just cause and must take responsibility for it.

140. In its request for relief, the Appellant asks the Panel to *"apply appropriate sanctions set by the Artide 17 of the FIFA Regulations on the Status and Transfer of Players and establish financial compensation to be*

paid to FC Dynamo Kyiv jointly and severally by the Respondents in the sum of EUR 3,592,128.60 plus 5% interest rate per annum as of the date of Contract termination, i.e. 12 August, 2011".

141. The amount of EUR 3,592,128.60 consists of:

–	Non-amortized expenses incurred by the Appellant to acquire the Player's services:	EUR 1,342,128.60
–	The missed transfer fee:	EUR 2,250,000.00
	Total	**EUR 3,592,128.60**

a) The non-amortized part of the transfer payments

142. According to Article 17 RSTP, the amount of fees and expenses paid or incurred by the Appellant, and in particular those expenses made to obtain the Player, is an objective element that must be taken in consideration. Article 17 par. 1 RSTP requires those expenses to be amortised over the whole term of the contract. This, independently on whether the club has amortized the expenditures in such a linear way or not (CAS 2008/A/1519-1520; par. 126).

143. In order to obtain the Player's services, the Appellant accepted to pay a transfer fee of EUR 2,200,000 as well as contributions related to the solidarity mechanism in an amount of EUR 36,881. The payment of those amounts is not disputed.

144. As no other charges, fees, expenses have been submitted in relation with the acquisition of the Player, the non-amortised fees and expenses must be calculated on the amount of EUR 2,236,881.00. The Parties signed a fix-term agreement for five years. The contract was terminated without just cause by the Player exactly two years after the beginning of the labour relationship. As a result, by terminating prematurely the Employment Agreement, the Player did not allow the Appellant to amortize the cost of its investment, thereby causing a financial damage to the club of EUR 1,342,128.60 (EUR 2,236,881 ./. 5 x 3).

b) Lost earnings – the missed transfer fee

145. Through the unjustified termination of the employment relationship by a player, a club like any other employer loses the value of the services of the employee. The value of the services of a player at a given point of time may be lower, higher or equal to the one when the player had started to play for a club.

146. Against such a background, when a transfer of a player is carried out on the basis of a valid transfer agreement between two clubs, the amount of the transfer fee is likely to represent the value in exchange of which the transferring club was willing to waive its rights as employer and to renounce to the services of the player.

147. In the present matter, it is undisputed that SC Braga approached the Appellant in order to acquire the Player's services. It made various offers on 30 May, 31 May, 1 June, 8 June, 1 July and 2 August 2011.

148. The Appellant based its claim related to its lost profit exclusively on SC Braga's last offer. Under these circumstances, the Panel has no reason to depart from the Appellant's position by considering another parameter to assess the "lost earnings issue".

149. The issue to be addressed is whether the Appellant has suffered a loss of profits, because it was deprived of the opportunity to receive a transfer fee from SC Braga, as a consequence of the premature and unjustified termination of the Employment Agreement.

150. The last offer made by SC Braga was the following: *"SC Braga intends to acquire the sportive rights of the athlete and 50% of the economic rights, by the amount of 750.000 € [payable in three instalments, i.e. EUR 250,000 on 31 July 2012, 2013, 2014]. SC Braga is also the right to acquire the remaining 50% of the economic rights of the athlete, against the payment to [the Appellant] of the amount of 1.500.000.00€".*

151. In the matter at hand, SC Braga abruptly withdrew from the negotiations with the Appellant and signed an employment contract directly with the Player. Under these circumstances, the Panel has no difficulty to find that the loss of a possible transfer fee equals the amount which SC Braga was willing to pay before it hired the Player. In the present case, SC Braga was prepared to make a two-phased offer. In the first stage, a fix payment of EUR 750,000 was to be made. In a second stage, SC Braga was entitled to exercise an option in order to *"acquire the remaining 50% of the economic rights of the athlete, against the payment to [the Appellant] of the amount of 1.500.000.00€".* As the exercise of such an option is, by nature, uncertain and gives to the option-holder the right – and not the obligation – to buy the underlying asset at a specified time, the Panel holds that the loss suffered by the Appellant corresponds exclusively to the amount specified in the first stage of the offer, i.e. EUR 750,000.

152. The Appellant did not provide any evidence of further financial damages suffered by it in connection with the unilateral termination of the Employment Agreement by the Player.

153. As a result, it appears that the amount that SC Braga was willing to pay in order to acquire the Player's services (EUR 750,000) was much lower than the Appellant's non-amortized part of the costs it incurred to hire the Player (EUR 1,342,128.60). Had the Appellant and SC Braga reached an agreement and had the Player been transferred on a proper basis to SC Braga, the transfer fee that the Appellant would have received from SC Braga would have not covered the non-amortized part of its initial investment.

154. In other words, the Player's early and unjustified termination of the Employment Agreement places the Appellant in an actually more favourable economical position. With the Player's unjustified departure, the Appellant did not have to pay a yearly salary of USD 500,000 and benefit in kind to an employee with behaviour issues (he was the subject of several internal disciplinary proceedings) and with disappointing football skills (the Player was relegated in the Appellant's reserve team).

155. Based on the above findings, the Panel holds that there was no loss of earnings resulting from the unjustified termination of the Employment Agreement by the Player.

c) Conclusion

156. It has been established that the Player was entitled to the following amounts, which remain unpaid to date:

Underpayment for the month of February 2011:	USD 15,000.00
Underpayment for the month of May 2011:	USD 25,000.00
Underpayment for the month of July 2011:	USD 5,007.54
Underpayment for the month of August 2011:	USD 16,129.03
Total	**USD 61,136.57**

157. Likewise, the Panel held that the compensation to be awarded to the Appellant equals to the non-amortized part of the expenses it incurred in order to obtain the Player's services, i.e. EUR 1,342,128.60.

158. The Player's unpaid wages are expressed in USD dollars whereas the Appellant's compensation is expressed in Euro. The Player terminated the Employment Agreement without just cause on 12 August 2011. On that day, the official exchange rate, as determined by the European Central Bank, was 1 USD = EUR 0,701754 (see www.fxrop.com, which is a reliable currency converter according to the Swiss Federal Tribunal, ATF 135 III 88, consid. 4.1).

159. USD 61,136.57 correspond to EUR 42,902.90, which must be deducted from the compensation to which the Appellant is entitled and which, therefore, is reduced to EUR 1,299,225,70 (= EUR 1,342,128.60 – EUR 42,902.90).

160. Finally, with respect to the payment of the compensation to which it is entitled, the Appellant has requested the application of an interest rate of 5% p.a., starting on 12 August 2011.

161. The Panel observes that the Appellant did not submit any FIFA provision dealing with the payment of interests. As a consequence, the Panel has to address this issue in all of its aspects pursuant to Swiss law, which is applicable subsidiarily.

162. Under Swiss law, unless otherwise provided for in the contract, the legal interest due for late payment is of 5% p.a. (Article 104 par. 1 of the Swiss Code of Obligations).

163. Regarding the *dies a quo* for the interest and according to Article 339 par. 1 of the Swiss Code of Obligations, all claims arising from the employment relationship fall due upon its termination. Even an unlawful, premature termination does put an end to the contractual relationship *ex nunc*. Therefore, as the termination of the Employment Agreement by the Player occurred on 12 August 2011, the claim of the Appellant on compensation for premature termination without just cause became due on that date. This is consistent with CAS Jurisprudence (CAS 2008/A/1519-1520, par. 182 et seq.).

164. Based on the foregoing, the Panel found that the Appellant was entitled to the payment of EUR 1,299,225.70, with 5 % interest p.a. as of 12 August 2011 until the effective date of payment.

D. Is SC BRAGA jointly and severally liable for the payment of the compensation?

165. According to Article 17 par. 2 RSTP, *"Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties".*

166. Article 17 par. 4, second sentence RSTP states that it *"shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach".*

167. As a consequence, the new club is indeed jointly and severally liable for the payment of the compensation, regardless of any involvement or inducement of the player to breach his contract. In the present case, the Player and SC Braga signed a labour contract on 18 August 2011, which was not subject to any suspensive condition. SC Braga did not rebut in any manner the presumption contained in Article 17 RSTP.

168. In view of the above, the Panel does not need to determine whether the Player entered into negotiations with SC Braga on or before the day he unilaterally terminated the Employment Agreement with the Appellant.

169. Therefore, the Panel confirms the joint and several liability of SC Braga towards the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 August 2013 by Football Club Dynamo Kyiv against the decision of the FIFA DRC dated 27 February 2013 is partially upheld.

2. The decision of the FIFA DRC dated 27 February 2013 is partially reformed in the sense that Mr Gerson Alencar de Lima Júnior is ordered to pay to Football Club Dynamo Kyiv an amount of EUR 1,299,225.70, with 5 % interest p.a. as of 12 August 2011 until the effective date of payment.

3. Sporting Clube de Braga – Futebol Sad is jointly and severally liable for the payment of the aforementioned amount.

4. (…).

5. (…).

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