Arbitration CAS 2012/A/3026 FC Istra 1961 v. Traore Kalilou Mohamed & Odense Boldklub, award of 18 November 2013

Panel: Mr Mark Hovell (United Kingdom), President; Mr Michele Bernasconi (Switzerland); Mr Lars Halgreen (Denmark)

Football
Employment contract between a player and a club
Interpretation of the wording of the contract

Pursuant to Article 18 of the Swiss Code of Obligations, there is no need to look behind the express contract wording unless uncertainty exists due to *"inexact expressions or designations"*. There is no uncertainty in the wording *"the present Contract shall be automatically renewable for one single and other season"*: it means that the initial contractual term can be extended into only one more year.

I. PARTIES

1. FC Istra 1961 (hereinafter: the "Appellant" or the "Club") is a professional football club with its registered office in Zagreb, Croatia. The Club is registered with the Croatian Football Federation (hereinafter: the "CFF"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: the "FIFA").

2. Traore Kalilou Mohamed (hereinafter: the "First Respondent" or the "Player") is a professional football player. The Player was registered with the Appellant and subsequently with the Second Respondent.

3. Odense Boldklub (hereinafter: the "Second Respondent" or "Odense") is a football club with its registered office in Odense, Denmark. Odense is registered with the Danish Football Union (hereinafter: the "DBU"), which in turn is affiliated to the FIFA.

I. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

5. On 26 August 2008, the Appellant entered into an employment contract with the First Respondent (hereinafter: the "Contract") valid as from 1 July 2008 until 30 June 2009.

6. The Employment Contract contained, *inter alia*, the following relevant terms in article 3, as translated by the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC") in its decision of 17 August 2012 (hereinafter: the "Appealed Decision"):

> *"In case no offer equal to or higher than EUR 500,000 is made to the Club for the Player, the Contract shall be automatically renewed for only one more season and the Player shall then be entitled to a sign-on bonus of EUR 15,000 and to a monthly salary of EUR 4,000".*

7. At the end of the first season, the Contract either automatically continued for a further season or the parties agreed that the Contract be extended for that following season.

8. On 25 May 2010, the Appellant received an offer from the Russian club, FC Khimki, for the amount of EUR 600,000 for the Player. The offer was valid until 25 July 2010.

9. On 27 May 2010, the Player caught a plane back to his home in Mali on a return ticket paid for by the Appellant. The return flight was on 14 June 2010, to arrive back in Zagreb on 15 June 2010.

10. On 15 June 2010, the Appellant issued a decision suspending the Player for the period from 15 June 2010 until further notice as *"the player did not show up on the first call, i.e at the beginning of the preparations and without any justification and reasoning".*

11. On 29 June 2010, the Player signed a three year employment contract with the Second Respondent (hereafter: the "New Contract") valid from 1 July 2010.

12. On 16 December 2010, the main sponsor of the Appellant, Puljanka Grupa d.d., wrote to the Appellant terminating its sponsorship agreement with it.

B. Proceedings before the FIFA Dispute Resolution Chamber

13. On 23 July 2010, the single judge of the FIFA Players' Status Committee rendered a decision granting the registration of the First Respondent with the Second Respondent, on a without prejudice basis to any contractual claim by the Appellant.

14. On 18 November 2010, the Appellant lodged a claim with FIFA against the First Respondent and the Second Respondent (hereafter: "the Respondents"), claiming that the Second Respondent induced the First Respondent to unilaterally terminate the Contract without just cause and claiming the sum of EUR 800,000.

15. On 28 June 2011, FIFA asked the Appellant to specify the parties to the dispute, i.e. the respondent(s) of the claim.

16. On 7 July 2011, the Appellant lodged a revised claim for EUR 1,006,000 on a joint and several liability basis against the Respondents and requested further the imposition on the Second Respondent of a ban from registering new players.

17. On 26 September 2011, the Respondents filed a joint response to FIFA rejecting the claim.

18. On 12 December 2011, the Appellant filed its first submissions with FIFA.

19. On 10 January 2012, the Respondents filed their final submissions with FIFA.

20. On 17 August 2012, the FIFA DRC determined that: *"The Claim of the Claimant, FC Istra 1961, is rejected"*.

21. On 12 November 2012, FIFA sent the grounds for the Appealed Decision to the parties by fax.

II. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 2 December 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter: the "CAS") submitting the following requests for relief:

"…the Appellant claimed from the Respondents the payment of the total amount of EUR 1,006,000, plus interests of 5% p.a. as of 18 November 2010, made of:

- *EUR 600,000 in damages for the breach of contract without just cause;*
- *EUR 100,000 corresponding to lost profits from the unconcluded transfer to FC Khimki;*
- *EUR 106,000 corresponding to all amounts paid by the Appellant to I [First] Respondent during the contract;*
- *EUR 200,000 of lost profits regarding an unconcluded sponsorship agreement;*
- *legal fees.*

The Appellant also requested that II [Second] *Respondent is banned from registering new players for the next two transfer windows, as from the day of the decision".*

23. On 12 December 2012, the Appellant filed its appeal brief. This document contained legal arguments and provided a brief summary of the testimony of two witnesses and was accompanied by 5 factual exhibits, with translations into English. The Appellant challenged the Appealed Decision of the FIFA DRC, submitting the following requests for relief:

"…to annual [sic] *the challenged decision and refer the case back to the Dispute Resolution Chamber, secondarily to issue a new decision by which it will accept the Appellant's claim and oblige the Respondent's to pay the compensation for breach and inducement of breach of the contract with the Appellant as well as impose sporting sanctions on the II* [Second] *Respondent, as requested in the claim".*

24. On 9 January 2013, the Respondents acknowledged receipt of the Statement of Appeal and Appeal Brief and stated that the Answer would be provided by 22 January 2013.

25. On 9 January 2013, the CAS Court Office wrote to the parties in response to the Respondents' correspondence of the same date, noting that the First Respondent had until 10 January 2013 to file his answer and that the Second Respondent had until 22 January 2013. The CAS Court Office noted that the Player had requested an extension to file his answer and invited the Appellant to state its position and provide its comments on the request.

26. On 10 January 2013, the Appellant informed the CAS Court Office that it was *"strongly against"* the extension.

27. On 11 January 2013, the CAS Court Office informed the parties that the issue of the time limit for the Player to file his answer had been submitted to the President of the CAS Appeals Arbitration Division who granted the extension to file the answer.

28. On 22 January 2013, the Respondents attempted to submit their joint answer to the CAS Court Office however the fax was not received, as the Respondents had used an incorrect fax number.

29. On 24 January 2013, the Respondents sent their joint answer to the CAS stating that the CAS Court Office telefax did not respond to the correspondence of 22 January 2013.

30. On 29 January 2013, the CAS Court Office wrote to the parties acknowledging receipt of the correspondence on 24 January 2013 and explained that unless an objection from the Appellant was received within three days of receipt of its letter, the answer would be accepted to the CAS file.

31. On 31 January 2013, the Appellant responded to the CAS Court Office stating that it *"strongly objected"* to the acceptance of the answer.

32. On 1 February 2013, the CAS Court Office informed the parties that the Panel would decide on the admissibility of the Respondents' answer.

33. On 19 March 2013, pursuant to article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Mark A. Hovell, solicitor in Manchester, England as President;
- Mr Michele Bernasconi, attorney-at-law in Zurich and;
- Mr Lars Halgreen, attorney-at-law in Copenhagen, Denmark, as arbitrators.

34. On 22 March 2013, the CAS Court Office, on behalf of the President of the Panel, requested FIFA to provide a copy of its file related to the present matter.

35. On 10 April 2013, FIFA submitted its file to the CAS Court Office which was duly forwarded to the parties on 12 April 2013.

36. On 29 April 2013, the CAS Court Office wrote to the parties informing the same that the Panel deemed that the sending the answer to an incorrect fax number was not an exceptional circumstance under the meaning of Article R56 of the CAS Code of Sports-related Arbitration (hereafter: the "CAS Code") and that in the absence of an agreement from the Appellant, the answer should be excluded from the CAS file.

37. On 29 April 2013, the Panel, in view of a lack of agreement between the parties regarding the holding of a hearing, ordered a second round of written submissions before making its decision on this point. It also requested copies of both the Croatian and French versions of the Contract, and asked that Article 3 of both versions be translated into English.

38. On 3 May 2013, the Respondents, by way of their attorney, provided some of the requested documentation, the requested translations, and confirmed that the Panel should make its decision based on written submissions.

39. On 7 May 2013, the Appellant provided the CAS Court Office with a French and Croatian version of the Contract, and confirmed that it agreed with the translation contained in the appeal brief and on FIFA's case file, but sustained that such translation was however wrongly reproduced within the challenged decision.

40. On 16 May 2013, the CAS Court Office, on behalf of the Panel, sought further clarification from the parties regarding the applicable version of the Contract. The CAS Court Office informed the parties that the Panel decided to instruct independent and professional interpreters to provide it with an English translation of Article 3 of the French version of the Contract.

41. On the same day, the independent interpreter submitted a translation in English of Article 3 of the French version of the Contract, which stated:

"Article 3

The period of validity of the present Contract goes from July 1st, 2008 to June 30th, 2009.

If no offer is made to the club equal or above 500.000,00 euros, the present Contract shall be automatically renewable for one single and other season under the following conditions:

- *15.000,00 euros for the signing bonus;*
- *4.000,00 euros for the monthly salary".*

42. On 17 May 2013, the Appellant provided further explanations regarding the history of the drafting of the Contract.

43. On 24 May 2013, the CAS Court Office informed the parties that the Panel decided to instruct independent and professional interpreters to provide it with an English translation of Article 3 of the Croatian version of the Contract.

44. On 27 May 2013, the independent interpreter submitted a translation in English of Article 3 of the Croatian version of the Contract, which stated:

"Article 3

(1) This contract is hereby concluded for the period commencing on 1 July 2008 and ending on 30 June 2009.

If the CLUB fails to receive an offer of 500,000 (five hundred thousand) euros or more, the contract shall be automatically extended for one or more seasons under the following conditions:

- *15,000 (fifteen thousand) euros net for the contract fee;*
- *4,000 (four thousand) euros monthly compensation".*

45. On 29 May 2013, the CAS Court Office forwarded the independent translations to the parties and invited the Appellant to submit its final position.

46. On 11 June 2013, the Appellant filed its final position.

47. On 25 June 2013, the Respondents submitted their final position.

48. A hearing was held on 5 September 2013 in Lausanne, Switzerland. At the outset of the hearing, the parties confirmed that they did not have any objections as to the constitution and composition of the Panel.

49. In addition to the Panel and Mrs Pauline Pellaux, Counsel to the CAS, the following persons attended the hearing:

a) For the Appellant:
   1) Mr Nikola Badovinac, Counsel;
   2) Mr Albert Fagian, representative of the Appellant; and
   3) Miss Daira Mrazovac, interpreter.

b) For the Respondent: Mr Bo Meller Jensen, Counsel.

50. The Panel heard evidence from the following persons, on behalf of the Appellant, in order of appearance:

1) K.; and
2) M.

51. Each witness heard by the Panel was invited by the President to tell the truth subject to the sanctions of perjury. Each party and the Panel had the opportunity to examine and cross-examine the witnesses. Their evidence is summarised below:

52. K. confirmed that he was the Vice President of the Club at the relevant time. The Club was then in the second division and was looking to bring in players to help them achieve promotion. The Player was introduced to them by a Spanish agent, who was able to secure the transfer of the Player from Morocco for a transfer fee of EUR 100,000. The Player became one of the Club's highest paid players and he was provided with an apartment and other benefits. K. stated that the Club insisted on a 5 year, "multi-annual" agreement, whilst the Player insisted on a stated term of 1 year. The "multi-annual" basis meant that it could be automatically renewed every year, up to the maximum number of times allowed by the CFF, which was 5 years in total. When asked, why the 5 year maximum term was not expressly stated in the Contract, K. submitted that it was unnecessary as the Contract was subject to the Rules of the CFF and FIFA, both of which set the maximum term for a contract at 5 years. K. further explained that it was the will of the parties that if a bigger club made an offer for the Player, then he could leave, but only on the basis the Club received at least EUR 500,000 for his transfer. If no offers were received, the Contract rolled on for the next year and so on. K. confirmed that the Contract was produced in Croatian, but that it was translated for the Player into French. He confirmed that he did not read or speak French himself, and thus he did not check the contents of the French version. He also confirmed that the Player only signed the French version and it was filed with the CFF. There appeared to be some uncertainty as to whose translator was used – the Player's or the Club's. However, the Club paid the translator's invoice. At the end of the first year, as there had been no offers, the Contract ran into its second year. At the end of that year, an offer for EUR 600,000 was made by FC Khimki, yet the Player, who had left to go home to Mali during the closed season on a return plane ticket bought for him by the Club, never returned. He instead signed a contract with Odense.

53. M. was the Club's external legal counsel at the relevant time. He confirmed that the true will of the parties was to enter into a 5 year term. Whilst he conceded it might have been preferable for the Contract to have a 5 year term, instead of the "multi-annual" renewal, he maintained the Player and his agent knew the term was for 5 years in aggregate. Further, as the Contract automatically extended each year, it didn't matter if the 5 years were mentioned or not. When asked why there was only an increase in the Player's remuneration after the first extension, but none for any second, third or fourth extensions as one might expect in a contract, M. said that it was because the Club anticipated a promotion after the first year so it reflected division 1 wages. M. also confirmed that the Player only signed the French version of the contract, although he wanted the Player to sign the Croatian version as well.

M. did not speak or read French, and thus he did not check the contents of the French version.

54. The parties then had ample opportunity to present their case, submit their arguments and answer questions posed by the Panel. Before the hearing was concluded, the parties expressly stated that they did not have any objections with the procedure and that their rights to be heard and treated fairly had been respected.

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

III. SUBMISSIONS OF THE PARTIES

56. The submissions of the Appellant, in essence, may be summarised as follows:

57. In the Appealed Decision, the FIFA DRC incorrectly determined the facts of the case. The FIFA DRC translated the applicable clause of the Contract into English, however the translation is incorrect.

58. The wording of Article 3 is explicit. The French word "autre" means "other, another", which would mean that the Contract shall be automatically renewed for one and other seasons. However, when FIFA DRC used the English translation, it left out that part and stated instead that *"the Contract shall be automatically renewed for only one more season"*.

59. It was not only possible for the Contract to be renewed for one, but for more seasons. In fact, up to a maximum of 5 years. This was based on Article 18 paragraph 2 of FIFA's Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations").

60. In the Appealed Decision, the FIFA DRC also failed to take into account the words *"et autre saison"* which in English means *"for one and other season"*. At the hearing, the Appellant expanded on this point, whilst its primary position was that this was a 5 year, multi-annual agreement, if the French version was binding, then there was the original, first year. After that year, it would be extended *"for one"* more year and then it would be extended again for an *"other season"* – so three years in total. Or 1+1+1, as the Appellant stated. The extension was on better terms when first extended and on no worse terms for the second extension. The Appellant submitted that the Player knew that the Contract was to run for at least 3 seasons, which was why he accepted a return flight home from the Club.

61. The FIFA DRC erroneously interpreted the facts of the case and found that the Contract signed between the Appellant and the First Respondent allows the possibility of only one automatic renewal.

62. The FIFA DRC also failed to evaluate the significance of the offer from the Russian Club in relation to Article 3 of the Contract. The Appellant did have a legitimate interest in the continuation of the Contract, contrary to the finding of the FIFA DRC. This is evidenced by the fact that the Player was suspended when he failed to return from his holiday, and by the fact that the Appellant objected to the issuing of the ITC to the Second Respondent.

63. Initially, the correct provisions of the Contract were as set out in the Croatian version. This was subsequently interpreted and discussed with the First Respondent. Then both the Croatian and French versions were submitted to and verified by the CFF. Therefore, the applicable versions of the Contract are both the Croatian and French versions.

64. It is evident from the English translation of the Croatian version of the Contract that the parties agreed upon an automatic extension of the Contract for one or more seasons. The Appellant submits that it is evident that an error was made in translating the Croatian to the French version of the Contract because the French version provides an automatic extension for only one and the next season. The error does not correspond with the will of the parties when they initially negotiated and drafted the Contract in Croatian. The true intention of the parties was for the Contract to allow an automatic extension again for the 2010/2011 season. This was possible by virtue of the Croatian or French version of the Contract. As such, the Contract was in force when the Respondents concluded the New Contract.

65. It is evident from the statements of K. and M. that the true will of the parties, when entering into the Contract, was engagement for several years or until the Player was transferred to another club for at least EUR 500,000.

66. At the hearing, the Appellant reiterated that an "offer" for the Player had to be a concluded transfer. The rationale behind the clause was that if the Club received EUR 500,000 or more, then the Player could be transferred. The offer had to be concluded into a formal transfer to prevent the Contract from automatically extending.

67. The Appellant based his claim for damages on several factors. It produced a letter from Puljanka Grupa, its sponsor for the last 3 years, terminating the sponsorship agreement between them. The Club alleged that the agreement was terminated because the Player left the Club, thereby the Club lost EUR 200,000. In addition, the Club alleged as loss the EUR 106,000 salaries and wages it had paid the Player for the previous two seasons. Furthermore, it alleged as loss EUR 100,000 for the failed transfer to Khimki. And finally, it alleged EUR 600,000 in damages for the breach of contract without just cause.

68. At the hearing, the Appellant confirmed that it withdrew its request for relief that sporting sanctions be issued against the Second Respondent.

69. As the Respondents' joint Answer was excluded from the CAS file, the submissions of the Respondents contained in the submissions before FIFA, in the second round of submissions and at the hearing before the CAS, in essence, may be summarized as follows:

70. The First Respondent was only familiar with the French version of the Contract, as he does not understand Croatian. Article 3 of the French version of the Contract includes the option for the Contract to be extended by one season only. The Respondents noted that the Appellant and its witnesses acknowledged that only the French version of the Contract was signed by the Player and then registered with the CFF. Further, the Appellant acknowledges the French version of the Contract allows only one extension. The Player rejects the submission that the intention of the parties was for the Contract to be automatically extended for one or more seasons infinitely until the Player was transferred. The Player agreed to the automatic extension for one season only. Further, the Respondents noted that the Player was one of the highest paid players at the Club. If it had not secured promotion to Division 1, then the Club may well have taken advantage of the one year term and let the Player go.

71. At the expiry of the initially agreed Contract period, on 30 June 2009, the Appellant and the First Respondent agreed to extend the Contract for one more season. Thus, the Contract was extended until 30 June 2010. In accordance with Article 3 of the Contract, after the expiration of the second Contract period, no further automatic extension of the Contract was possible. Therefore, the Player was free to sign the New Contract with the Second Respondent valid from 1 July 2010.

72. A further extension of the Contract, after 30 June 2010, on the basis of Article 3 of the Contract is excluded because otherwise the Contract would contravene Article 18 of the FIFA Regulations. If further extensions were possible then the Contract would be indefinite. It is not possible for a club to sign a contract with a rolling expiry and imply a 5 year period.

73. Further, upon receiving an "offer" for the Player prior to the expiration of the Contract, any further automatic extension of the Contract could not be completed. It is expressly stipulated in Article 3 of the Contract that if an offer has been received, as it had been here, then the automatic extension provisions are excluded. If the parties intended to prevent the renewal of the contract due to a "transfer", then it would have said that.

74. As the Contract was due to expire on the 30 June 2010, the Player, in the period for 6 months before the expiry of the Contract, was eligible to enter into negotiations with the Second Respondent in accordance with Article 18.3 of the FIFA Regulations. There were no contractual obligations between the Appellant and the Player after 30 June 2010, so the Player was able to sign the New Contract with the Second Respondent. Thus, the Appellant is not entitled to any compensation.

75. In the alternative, if the Panel determines compensation is due, the Appellant's submission requesting EUR 1,006,000 of compensation is disputed. The Appellant has not provided any documentation to justify any claim for damages or compensation, save for a letter from a sponsor, which also mentions the poor form of the Club. The loss of a sponsor can't be blamed on one player leaving. The Appellant has not provided any other documentation in support of the requested compensation.

IV. ADMISSIBILITY

76. The appeal was filed within the deadline of 21 days set by Article 67(1) FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

77. It follows that the appeal is admissible.

V. JURISDICTION

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

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

VI. APPLICABLE LAW

80. Article R58 of the CAS Code provides the following:

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

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

> *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

82. The parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law. Further, at the hearing, the parties agreed that Article 18 of the Swiss Code of Obligations (hereinafter: "the SCO") applied to this matter:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

The Panel is therefore satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VII. MERITS

A. The Main Issues

83. In view of the above, the main issues to be resolved by the Panel are:

a) Which version of the Contract was the applicable version?
b) Was there any error in the drafting of Article 3 of the Contract?
c) Was the Contract still in effect when the Player signed the New Contract?
d) Did the Second Respondent induce the First Respondent to breach the Contract?
e) If so, what compensation is due to the Appellant?

a. Which version of the Contract was the applicable version?

84. The Panel notes that the Appellant submits that both the French and Croatian versions of the Contract are applicable. As neither spoke the other's language the Contract was prepared initially in Croatian, then translated into French. The Respondent, on the other hand, submits that as he did not speak Croatian he refused to sign that version of the Contract.

85. The Croatian version was only signed by the Appellant. Both parties signed the French version, and it was this version alone that was registered with the CFF. Based upon this evidence, the Panel dismisses the Appellant's submission that both the French and the Croatian version were applicable. The Player did not understand Croatian and thus refused to sign the Croatian version and therefore rejected it and its terms. At the same time, the parties by signing it without any reservations or clauses of priority between various versions accepted the French version and its terms.

b. Was there any error in the drafting of Article 3 of the Contract?

86. The independent translation of Article 3 of the French version of the Contract states:

"Article 3

The period of validity of the present Contract goes from July 1st, 2008 to June 30th, 2009.

If no offer is made to the club equal or above 500.000,00 euros, the present Contract shall be automatically renewable for one single and other season under the following conditions:

- *15.000,00 euros for the signing bonus;*
- *4.000,00 euros for the monthly salary".*

87. The Panel notes that the Appellant submits that this did not reflect the true will or the true intentions of the parties. Rather, according to the Appellant, the parties intended to have a term of one year that automatically extended for the next 4 years after the first, so it remained compliant with the FIFA Regulations regarding the maximum length of a playing contract. The only factor to consider was whether an offer (and by that, an offer that had been accepted – in other words a transfer) had been received in excess of EUR 500,000 from another club for the Player. If it had, then the Player could go to that other club and the Contract would not extend for another year. In the alternative, the Appellant argues that, should the Panel disagree with the need to consider the true will of the parties, then the words *"…for one single and other season…"* results in 1+1+1. In other words, there is the original season, then the Contract is extended for *"one single season"* and then it is extended a third time for an *"other season"*.

88. The Respondent, on the other hand, submits that the wording is clear – there are no "inexact expressions or designations" as required by Article 18 of the SCO. The Contract was for one year, with an option to extend for one more other season, if no offer of EUR 500,000 had been received during the first year. The initial year of the Contract was the 2008/9 season, no offer came in, and it automatically extended into the 2009/10 season.

89. The Panel has already determined that the Respondent rejected the Croatian version of the Contract. This was not by error. The agent and the Player insisted on the Contract being in French and refused to sign the Croatian one – undoubtedly as they could not read/understand Croatian, so they rather understandably wanted to be sure what they were signing. The Club argues that the Croatian version shows the will of the parties, however, the Panel notes that pursuant to Article 18 of the SCO there is no need to look behind the express Contract wording unless uncertainty exists due to "inexact expressions or designations". The Panel notes the wording at the heart of the dispute is: *"…for one single and other season…"*. The Panel finds that wording clear – it means that the initial contractual term of 1 year can be extended into one more year. In making this determination, the Panel also rejects the Appellant's 1+1+1 argument. If that had been the parties' intention, then words such as *"for one single and then another season"* or *"for a second and then a third and final season"* or the like would have been used – the wording here is perfectly clear; it is only one single other season.

90. Moreover, the Panel takes further comfort from a number of other contributing facts that demonstrate that this was the parties' intention: there is only one increase in remuneration after the first year – whilst there is no obligation on a club to increase the basic salary year on year during the term of a contract, where options to extend are exercised, they are commonly accompanied with an increase in salary for the player; if the parties had intended a 5 year term, it would have been simple enough to draft it with that term expressly included and a "buy-out" provision added, so that if an offer in excess of EUR 500,000 came in, the Player would be transferred and the Contract would end; and the Panel also notes that both parties confirmed that the Player was highly paid, especially for a Division 2 club. If the Club's investment in expensive players had not secured promotion, would they then had

wanted to have been bound to expensive players for 4 more years? Based on the evidence submitted, the Panel does therefore not see any reason to review its position even after considering the argument raised by the Appellant, that referred to the acceptance of a return flight ticket as a confirmation of a valid contractual relationship.

91. If there was any uncertainty or "inexact expressions" in Article 3 of the Contract, then, in the Panel's opinion, it would be around what constituted "an offer". There was a written offer received by the Appellant at the end of the 2009/10 season from FC Khimki. Whether that was sufficient to stop the Contract from automatically extending again can be left as moot, as the Panel has already determined the term could only be extended once only.

c. Was the Contract still in effect when the Player signed the New Contract?

92. Due to the conclusion of the Panel that the Contract was only renewable for one further season, the contractual relationship between the parties therefore ended on 30 June 2010 and thus the Player was free to sign with the Second Respondent from the 1 July 2010.

93. Further, as Article 18 of the FIFA Regulations provides that a player is free to negotiate with any club, without getting confirmation, 6 months prior to the expiry of his contract, the Respondent acted in accordance with the FIFA Regulations.

d. Did the Second Respondent induce the First Respondent to breach the Contract?

94. The Panel notes that having reached the above determinations, there was no breach of contract for the Second Respondent to have induced and no damages suffered by the Appellant to compensate.

B. Conclusion

95. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that the French version was the only valid contract between the parties, that the Contract was only renewable for one further season and therefore the Player was free to sign the New Contract with the Second Respondent. As such, the Panel dismisses the appeal and upholds the Appealed Decision in full.

96. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Istra 1961 on 3 December 2012 against the Decision issued on 23 March 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The Decision issued on 17 August 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is upheld.

3. (…).

4. (…).

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