Arbitration CAS 2012/A/2874 Grzegorz Rasiak v. AEL Limassol, award of 31 May 2013

Panel: Mr Efraim Barak (Israel), President; Mr Mark Hovell (United Kingdom); Mr Chris Georghiades (Cyprus)

Football
Termination of the employment contract without just cause
Testimony of a party or a representative of a party
Scope of the appeal proceedings
Specificity of sport regarding the obligation to mitigate the damage

1. **Article R55 of the CAS Code specifically refers only to witnesses and experts and not to parties and thus makes a clear distinction between them. Consequently, a party or a representative of a party is, strictly speaking, not required to provide a statement of its/his expected testimony. However, the testimony of a party in any case may not exceed the scope of the written submissions and has to be restricted to what has been stated before, as stipulated in Article R56 of the CAS Code.**

2. **In reviewing a case in full, a panel cannot go beyond the scope of the previous litigation. It is limited to the issues arising from the challenged decision. New claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible. However, claims that could, for legitimate reasons, not have been advanced in the previous litigation, but were likely to have been claimed in the absence of such legitimate reasons at that time, do fall under the *de novo* competence of CAS panels and should hence be considered as admissible.**

3. **The principle that a party suffering from a breach of contract has a general obligation to mitigate his damages goes two ways. On the one hand, the mitigated amount shall be deducted from the amount used as the basis to calculate the compensation due. However, on the other hand, the fact that the party suffering from the breach was able to mitigate his damages is a fact that should be considered to the benefit of the party suffering from the breach in light of the "specificity of sport".**

I. PARTIES

1. Mr Grzegorz Rasiak (hereinafter: the "Appellant" or the "Player") is a professional football player of Polish nationality. The Player is currently registered with the Polish football club Lechia Gdansk. Previously the Player played for the Polish club Jagiellonia Bialystok, a club with which he signed a contract after the termination of the employment contract that he had with AEL Limassol. The Player has made numerous appearances for the Polish national team.

2. AEL Limassol (hereinafter: the "Respondent" or the "Club") is a football club with its registered office in Limassol, Cyprus. The Club is registered with the Cyprus Football Association (hereinafter: the "CFA"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: the "FIFA").

II. FACTUAL BACKGROUND

A. Background Facts

3. 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.

4. On 20 August 2010, the Player and the Club signed an employment contract (hereinafter: the "Employment Contract") for a period of two football seasons, *i.e.* until 31 May 2012.

5. The Employment Contract contains, *inter alia*, the following relevant terms:

> *"3) The [Player] shall be entitled to receive net as salary:*
>
> *A. For the period 2010 - 2011 the total amount of €150,000.00 (One hundred and fifty thousand Euro), in (10) ten monthly equal installments [sic] of €15,000.00 (Fifteen thousand Euro) starting from the 01/09/2010 and ending 01/06/2011.*
>
> *B. For the period 2011 - 2012 the total amount of €150,000.00 (One hundred and fifty thousand Euro), in (10) ten monthly equal installments [sic] of €15,000.00 (Fifteen thousand Euro) starting from the 01/09/2011 and ending 01/06/2012.*
>
> *(…)*
>
> *6) The [Club] has the right and shall pay all the [Player's] emoluments in the manner specified herein with a grace period of 90 (ninety) days".*

6. On 21 August 2010, the parties signed a supplementary agreement (hereinafter: the "Supplementary Agreement") for the same period of time, *i.e.* until 31 May 2012.

7. The Supplementary Agreement contains, *inter alia*, the following relevant terms:

"3) The [Player] shall be entitled to receive net as salary:

A. For the period 2010 - 2011 the total amount of €125,000.00 (One hundred and twenty five thousand Euro), in (10) ten monthly equal installments [sic] of €12,500.00 (Twelve thousand and five hundred Euro) starting from the 01/09/2010 and ending 01/06/2011.

B. For the period 2011 - 2012 the total amount of €125,000.00 (One hundred and twenty five thousand Euro), in (10) ten monthly equal installments [sic] of €12,500.00 (Twelve thousand and five hundred Euro) starting from the 01/09/2011 and ending 01/06/2012.

(…)

6) In addition to the salary the [Player] shall be entitled to receive the following benefits:

(a) The total extra amount of €18,000.00 (Eighteen thousand Euro) for a house in twelve equal monthly instalments of €1,500.00 (One thousand five hundred Euro) for each period, starting on 01/09 and ending on 31/08. (…)

(e) €100,000.00 (One hundred thousand Euro) net as bonus if the team gains the first position at the end of the Championship.

(f) €50,000.00 (Fifty thousand Euro) net as bonus if the team wins the Cup and participate at UEFA Europa League,

Or

(g) €30,000.00 (Thirty thousand Euro) net as bonus if the team will be entitled to play at UEFA Europa League.

(h) €150,000.00 (One hundred and fifty thousand Euro) net if the team will be entitled to play in the Group Stage of the UEFA Champions League.

(i) €100,000.00 (One hundred thousand Euro) net if the team will be entitled to play in the Group Stage of the UEFA Europa League.

(j) €500 (Five hundred Euro) net for each point is gained in the regular season of the championship with the [Player's] participation. A participation is stated when the player will start in first eleven or will play 30 (thirty) minutes for substitute".

8. Both agreements (hereinafter jointly referred to as: the "Employment Contracts") contain clauses according to which *"the* [Club] *has the right and shall pay all the* [Player's] *emoluments in the manner specified herein with a grace period of 90 (ninety) days"* (cf. article 6 and 7 respectively) and *"The* [Club] *shall be obliged to deduct and pay on behalf of the* [Player] *his income Tax Obligation and Social Insurance Contributions"* (cf. article 4).

9. On 20 April 2011, the Club terminated the Employment Contracts with immediate effect and a fine of EUR 3,000.00 was imposed on the Player, allegedly *"(…) because between 20-31/03/2011 though he was asked repeatedly by the Committee of the Club to visit the offices and sign some necessary and very important papers according to UEFA's demands, he refused repeatedly to do so, without any excuse"*. Furthermore, the Club stated that *"he answered in unprofessionally and inappropriate way to his Coach and to the person of the Committee that asked from him repeatedly to visit the offices of the Club"*. The Club considered this to be a breach of article 5(a) and 10 of the Employment Contracts and that, pursuant to article 11(a) and (b) of the Employment Contracts, the Club had the right to terminate the Employment Contracts after a notice was sent to the Player.

Consequently, the Club informed the Player that *"after the breach of the above articles and after many oral and written notices given to you, we proceed to the termination of your* [Employment Contracts]*"*.

10. On 2 May 2011, the Player notified the Club of his disagreement with the termination by the Club pointing out that the Club's action constitutes an unlawful termination of the Employment Contracts.

11. On or about 3 May 2011, according to the Player, his agent, […] (hereinafter: the "Player's Agent") arrived to Limassol in order to meet with the Club and to attempt to resolve the situation. At the occasion of the meeting, the Club allegedly made an oral offer to terminate the Employment Contracts in exchange for the Club paying the remaining part of the salaries due for the sporting season 2010/2011 to the Player.

12. On 6 May 2011, the representatives of the Player replied to the offer of the Club in writing, declining the offer and expressing that the Player was committed to continue performance of the Employment Contracts.

13. On 22 June and 4 July 2011, the representatives of the Player sent communications to the Club requesting the Club to inform the Player of the schedule of preparations for the following season and insisting on performance of the duties under the Employment Contracts. The communications contained a warning to the Club that if it did not adhere to the obligations under the Employment Contracts, such behaviour would constitute a breach of the Employment Contracts in force and would be assessed as a unilateral termination of contract without just cause.

14. This correspondence remained unanswered by the Club.

B. Proceedings before the FIFA Dispute Resolution Chamber

15. On 21 July 2011, the Player lodged a claim against the Club in front of FIFA, maintaining that the Club terminated the employment contract without just cause. In light of this claim, the Player asked to be awarded payment of outstanding remuneration and compensation for breach of contract as follows:

    a. EUR 45,000.00 as unpaid salaries according to the Employment Contract for the sporting season 2010/2011;

    b. EUR 150,000.00 salaries for the sporting season 2011/2012 lost to the Player due to the unlawful termination of the Employment Contract;

    c. EUR 62,500.00 as unpaid salaries according to the Supplementary Agreement for the sporting season 2010/2011;

    d. EUR 125,000.00 salaries for the sporting season 2011/2012 lost to the Player due to the unlawful termination of the Supplementary Agreement;

    e. EUR 19,500.00 housing benefits unpaid or lost to the Player due to the unlawful termination of the Supplementary Agreement;

f. EUR 8,500.00 as unpaid bonuses under the Supplementary Agreement for the sporting season 2010/2011;

g. EUR 8,500.00 as bonuses lost to the Player due to the unlawful termination of the Supplementary Agreement;

h. EUR 87,000.00 as compensation for the termination of contract during the protected period and the Player remaining without any salary for the period of 3 months.

i. The total amount of compensation due to the Player for the termination of contract without just cause is therefore EUR 506,000.00.

j. Decide that interest of 5% *p.a.* is due on each of the outstanding amounts as of the day following the day on which such remuneration had fallen due.

k. Decide that sporting sanctions in the form of a ban on registering any new players, either nationally or internationally, for two registration periods must be imposed on AEL Limassol.

16. As it became evident to the Player that the Club maintained its position that the agreement was terminated, the Player allegedly continued searching for a football club with which he could resume his career. In this respect, on 25 July 2011, the Player travelled to London in order to have a trial with the English football club Charlton Athletic. The Player bore the costs of this trip, which finally did not result in a contract.

17. On 27 September 2011, the Player entered into an employment contract with the Polish football club Jagiellonia Bialystok for a period of two football seasons, *i.e.* until 30 June 2013. In accordance with the terms of the contract, the Player was allegedly entitled to receive a monthly salary of PLN (Polish Zloty) 29,000.00 (allegedly equivalent to EUR 6,341.83 on the date the contract was concluded) for the 2011/2012 season and PLN 44,000.00 (equivalent to EUR 9,628.00) for the 2012-2103 season. It was however agreed that no remuneration was payable to the Player before FIFA authorized the registration.

18. On 5 October 2011, due to the pending dispute between the Player and the Club and because the transfer window was not open at the relevant time, FIFA refused the registration of the Player with his new Polish club.

19. On 2 November 2011, due to FIFA not authorising the registration of the Player with Jagiellonia Bialystok, they decided to mutually terminate the contract entered into on 27 September 2011.

20. On 11 November 2011, the Club filed its answer to the merits of the Player's claim. The Club maintained that the FIFA DRC lacked competence as the Club filed a lawsuit with the competent civil court in Limassol, Cyprus, and that the competence of the FIFA was blocked due to this *lis pendens*. Subsidiary, the Club requested the FIFA DRC to dismiss the Player's claim in full.

21. On 24 November 2011, the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC") issued a preliminary decision in the dispute between the parties, stating that:

"prima facie, it appears to be plausible to consider that the termination of the [Employment Contracts] *between the* [Player] *and the* [Club] *occurred without just cause".*

22. On 25 November 2011, upon receiving the approval of FIFA for the registration, assumingly due to the content of the preliminary decision of the FIFA DRC, the Player and Jagiellonia Bialystok entered into a new employment contract valid as of the date of signing until 30 June 2013. The employment contract determined, *inter alia*, that the Player would be entitled to a monthly salary of PLN 28,500.00 net for the 2011/2012 season and of PLN 36,000.00 net for the 2012/2013 season. The club would also provide the Player with accommodation and help in providing schools for his children as well as possible bonuses for sports achievements, the amounts and dates of which were to be determined at the discretion of the Polish club.

23. On 1 March 2012, the FIFA DRC rendered its final decision (hereinafter: the "Appealed Decision") with, *inter alia*, the following operative part:

1. The claim of the [Player] *is admissible.*

2. The claim of the [Player] *is partially accepted.*

3. The [Club] *has to pay to the* [Player]*, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 61,000.00 net, plus 5% interest p.a. (…)*

4. The [Club] *has to pay to the* [Player] *compensation for breach of contract amounting to EUR 145,000.00 within 30 days as from the date of notification of this decision. (…)*

5. In the event that the amounts due to the [Player] *in accordance with the above-mentioned numbers 2. and 3. are not paid by the* [Club] *within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

24. During the FIFA proceedings it was in dispute whether the FIFA DRC was competent to deal with the present case, as, according to the Club, it had lodged a claim against the Player in front of the Limassol District Court regarding the termination of the Employment Contracts and compensation, before the FIFA proceedings commenced. During the FIFA proceedings it was also disputed by the parties whether the Club had just cause to unilaterally terminate the Employment Contracts with the Player. As FIFA found itself competent to deal with this dispute and decided that the Club had no just cause to prematurely unilaterally terminate the Employment Contracts with the Player and since the Club did not file an independent appeal with CAS against the Appealed Decision, these issues cannot and will not be dealt with by this Panel. The findings and decisions of the FIFA DRC regarding these two issues are therefore final and binding and therefore will not be discussed in the present appeal proceedings. Therefore, for the sake of these proceedings, the competence of the FIFA DRC is undisputed as well as the fact that the Club terminated the agreement with the Player without just cause.

25. On 9 July 2012, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:

- After having come to the conclusion that the Club did not have just cause to prematurely and unilaterally terminate the Employment Contract with the Player, the FIFA DRC, *inter alia*, considered the following in respect of the outstanding salary to be paid to the Player by the Club:

- *"(…) the Chamber concluded that, whereas the* [Club] *appears to have remitted the* [Player's] *salary within the contractual 90 days' grace period, the* [Club] *failed to prove that it had indeed paid the* [Player's] *salaries falling due on 1 April 2011, i.e. EUR 15,000.00 net, on the basis of the* [Employment Contract] *and as from 1 February 2011 until 1 April 2011, i.e. totalling EUR 37,500.00 net, in accordance with the* [Supplementary Agreement] *when it unilaterally terminated the contracts on 20 April 2011.*

- *In addition, the Chamber established that the* [Club] *failed to submit any evidence that it had paid the amount of EUR 8,500.00 to the* [Player] *relating to bonuses for matches played during the 2010-11 season (…)"* and that it was, *"(…) in fact, not contested that the* [Player] *actually participated in those matches (…)*

- *As regards the* [Player's] *claim relating to the estimated loss of EUR 8,500.00 for bonuses for the 2011-12 season, the members of the Chamber stressed that the payment and the amount of such bonuses are linked to matches to be played in the future, i.e. after the termination of the relevant contracts, and, therefore, are fully hypothetical. Consequently, the Chamber accepted the* [Club's] *argument in this respect and decided to reject such claim.*

- *Furthermore, the Chamber highlighted that it could not take into consideration the fine of EUR 3,000.00, since it was imposed upon the* [Player] *by means of the pertinent letter of termination only and no evidence of any disciplinary proceedings against the* [Player] *was presented by the* [Club] *in this connection.*

- *(…) the Chamber rejected the* [Club's] *argument and established that the amounts claimed to be outstanding by the* [Player] *were payable net.*

- *(…) Consequently, the Chamber decided that, in virtue of the principle of pacta sunt servanda, the* [Club] *is liable to pay the amount of EUR 61,000.00 net to the* [Player] *for services rendered prior to the termination of the pertinent contracts".*

- In respect of the compensation to be paid to the Player by the Club for unilateral breach of contract without just cause the FIFA DRC considered the following:

- *"The members of the Chamber assured themselves that no* […] *compensation clause was included in the employment contracts at the basis of the matter at stake".*

- In the application of article 17 of the FIFA Regulations and *"in accordance with the contracts signed by the* [Player] *and the* [Club]*, which were to run for thirteen months more, i.e. until 31 May*

2012, after the breach of contract occurred, the [Player] *was to receive remuneration amounting to EUR 349,500.00. Consequently, the Chamber concluded that the amount of EUR 349,500.00 serves as the basis for the final determination of the amount of compensation for breach of contract".*

- The FIFA DRC considered that the Player had concluded a new employment contract with the Polish club Jagiellonia Bialystok and that *"(…) the value of the new employment contract concluded between the* [Player] *and Jagiellonia Bialystok for the period as from December 2011 until 31 May 2012 appears to amount to EUR 40,260.00"*, and that *"such remuneration under the new employment contract(s) shall be taken into account in the calculation of the amount of compensation for breach of contract.*

- *Referring to other objective criteria to be taken into account, what is legitimate under art. 17 par. 1 of the Regulations, the Chamber was eager to point out that the* [Player]*, albeit having formally protested against the termination of the* [Employment Contracts]*, appears to have returned to Poland immediately after the termination of the employment relationship with the* [Club]. *In addition, the Chamber took into account that during the execution of the* [Employment Contracts]*, bearing in mind the contractual 90 days' grace period though, the* [Club] *appears to have fulfilled its financial obligations towards the* [Player]. *The members of the Chamber deemed that they had to take these circumstances into consideration in the calculation of the amount of compensation for breach of contract.*

- *Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided to partially accept the* [Player's] *claim and that the* [Club] *must pay the amount of EUR 145,000.00, which was considered reasonable and proportionate as compensation for breach of contract in the specific case at hand".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 30 July 2012, the Player filed a statement of appeal, accompanied by 4 exhibits, with the Court of Arbitration for Sport (hereinafter: the "CAS"). In this submission the Appellant nominated Mr Mark Hovell, solicitor in Manchester, England, as arbitrator.

27. On 7 August 2012, the Club and FIFA were provided with a copy of the statement of appeal.

28. On 9 August 2012, the Respondent nominated Dr Chris Georghiades, attorney-at-law in Limassol, Cyprus, as arbitrator.

29. On 9 August 2012, the Appellant filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 8 legal exhibits, 21 factual exhibits, 4 witness statements and a statement from the Appellant himself, with translations into English. The Appellant challenged the Appealed Decision of the FIFA DRC, submitting the following requests for relief:

"1) Set aside the decision of the FIFA Dispute Resolution Chamber in the dispute between Mr. Grzegorz Rasiak and AEL Limassol in so far as the calculation of the compensation for breach of contract is concerned

2) Decide that compensation for breach of contract by AEL Limassol is due

3) Calculate the compensation in accordance with the principles of Article 17 of the FIFA Regulations on the Status and Transfer of Players and additionally Swiss law.

4) Decide that the following amounts are due as compensation:

- ***EUR 408,000.00** for salaries unpaid or lost as a result of the breach*
- ***EUR 799.00** for flight tickets paid by Mr Rasiak*
- ***EUR 17,000.00** for points bonuses unpaid or lost as a result of the breach*
- ***EUR 100,000.00** for the bonus of winning the Cyprus championship lost as a result of the breach*
- ***EUR 318,000.00** for the value of the additional year of contract foreseen in clause 16 of the Employment Agreement lost as a result of the breach*
- *An amount to be evaluated at the discretion of the Panel for other contractual rights lost by Mr. Rasiak as a result of the breach*
- ***EUR 385.13** for flight tickets paid my [sic] Mr. Rasiak during his search for new employment after the breach*
- ***EUR 12,649.61** for legal costs incurred by Mr. Rasiak during the FIFA proceedings*
- *Alternatively, in so far as compensation is awarded for the sporting seasons 2011/2012 and 2012/2013 **EUR 196,871.24 as the minimum amount** due for future earnings lost by Mr. Rasiak as a result of the termination*
- *An amount decided at the discretion of the Panel for future earnings lost by Mr. Rasiak after the sporting season 2012/2013*
- ***EUR 174,000.00 as the minimum amount** due as compensation based on the objective criteria of the case and the specificity of sport in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players.*

5) Decide that all of the amounts ordered are due as net of any and all deductions such as taxes and that AEL Limassol shall be liable to gross up any payments in order to cover for any tax liabilities incurred by Mr. Rasiak.

6) Decide that interest of 5% p.a. is due on each of the outstanding amounts as of the day following the day on which such remuneration had fallen due until the date of payment

7) Award Appellant any other amounts of compensation and any further or other relief as the Panel sees fit

8) Decide that Respondent must bear all the costs of the present arbitration

9) Decide that AEL Limassol must make a contribution towards the legal costs of Mr. Rasiak incurred in the present proceedings in the amount of EUR 30,000.00".

30. On 10 August 2012, the Appellant filed two additional witness statements of witnesses that were already listed in his appeal brief. The CAS Court Office informed the Appellant that, pursuant to Article R56 of the CAS Code, his correspondence would be forwarded to the Panel, once constituted, for its considerations and directions.

31. On 17 August 2012, FIFA informed the CAS Court Office that it renounced its right to a possible intervention in the present arbitration proceedings.

32. On 7 September 2012, the Respondent filed its answer, with 3 exhibits and translations into English, whereby it requested CAS to decide the following:

    a) "Reject the Appellant's Appeal with expenses and fees which will burden the Appellant.

    b) Render a decision that the unilateral termination made on the 20/04/2011 was with just cause".

33. On 25 October 2012, although it did not wish to intervene in the present arbitration procedure, FIFA deemed it appropriate to provide CAS with the following technical statement:

    "(…) we wish to mention that in view of the absence of any appeal lodged by the club of the reference against the relevant decision of the Dispute Resolution Chamber (DRC), in combination with the fact that no counter appeal is possible before CAS and was therefore, correctly, not lodged by the Cypriot club, any question regarding the competence of the DRC or in relation with the alleged lis pendens lato sensu cannot be considered any more. In fact, by not appealing against the decision at stake, the Cypriot club has recognised the decision of the DRC insofar as the question of jurisdiction and the amounts payable are concerned. In view of the above, the only matter that the relevant Panel may address is the substance of the contractual breach and the pertinent consequences on the basis of the prayers for relief of the Appellant".

34. On 30 October 2012, pursuant to article R54 of the CAS Code, and on behalf of the 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 Efraim Barak, attorney-at-law in Tel Aviv, Israel, as President;
    - Mr Mark A. Hovell, solicitor in Manchester, England, and;
    - Dr Chris Georghiades, attorney-at-law in Limassol, Cyprus, as arbitrators.

35. On 21 November 2012, 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.

36. On 5 December 2012, the Appellant provided the names of the persons that would attend the hearing on 27 February 2013. The Appellant only made reference to two of the six witnesses listed in its appeal brief and argued that he noted that the Respondent did not contest the content of the witness statements filed. The Appellant therefore considered that the witness statements could be accepted on file as uncontested and that it was therefore not necessary to hear the witnesses in person. However, in case the Panel should wish to hear any of the other four witnesses in person, he could make the necessary arrangements for the witnesses to be heard via telephone conference and awaited instructions in this regard.

37. On 13 December 2012, the CAS Court Office, on behalf of the Panel, advised the parties that the witness statements submitted by the Appellant on 10 August 2012 were accepted as a matter of admissibility. Furthermore, the Respondent was invited to indicate whether it would like to interrogate the four witnesses not called to the hearing by the Appellant. Finally, the parties were informed that, irrespective of the Respondent's position on this issue, it would be for the Appellant to decide whether he wishes the Panel to hear the witnesses and to interrogate them at the hearing, taking into consideration that if the Appellant would decide that these witnesses, or any one of them, are not heard, the Panel may totally disregard the written testimonies.

38. On 7 January 2013, the Respondent provided the names of the persons that would attend the hearing on 27 February 2013 and informed the Panel that it would like to interrogate all four witnesses not called to the hearing by the Appellant on the content of their statements.

39. On 12 February 2013, the Appellant confirmed that all witnesses would be available to be heard by teleconference.

40. On 20 February 2013, on behalf of the Panel, the CAS Court Office requested the Counsel for the Respondent to clarify the position of Mr Christoforos Florou and Mrs Muria Georgiou who were listed as persons intended to attend the hearing and to inform the Panel whether it wished to call Mr Michalis Charalambous at the hearing and reminded the Respondent to take into consideration that if it would decide not to hear this witness, the Panel may totally disregard the written testimonies.

41. Also on 20 February 2013, the Respondent clarified that Mr Christoforos Florou and Mrs Muria Georgiou would act as Counsel for the Respondent and that Mr Christoforos Florou would act as a translator from Greek to English and vice versa. The Respondent also informed that Mr Michalis Kafkalias would be attending the hearing and that Mr Michalis Charalambous would be available to be heard by teleconference.

42. On 21 February 2013, the Panel requested the Appellant to comment on the Respondent's request that Mr Florou, being one of the counsel for the Respondent, would act also as translator during the hearing.

43. On 22 February 2013, the Respondent informed the Panel that Mr Michalis Kafkalias would not be attending the hearing but would be available to be heard by teleconference.

44. Also on 22 February 2013, the Appellant objected to the Respondent's intention that Mr Florou would act as a translator as neither the Appellant, nor his Counsel, speak Greek and would therefore be unable to verify the accuracy of the translation and that it found that a counsel acting for a party is not capable of acting objectively as an interpreter and has a notable opportunity to influence the content of the testimony of the witnesses for whom he is interpreting.

45. On 22 and 25 February respectively, the parties returned duly signed copies of the Order of Procedure.

46. On 25 February 2013, on behalf of the Panel, the CAS Court Office informed the parties that the Panel had decided that Mr Florou, acting as counsel for the Respondent, would not be allowed to translate from Greek to English. Although the Panel emphasised that this should not be interpreted as a lack of confidence in Mr Florou's integrity, the Panel reminded the Respondent that an interpreter should be uninterested and independent from the hiring party.

47. On 25 February 2013, the Appellant objected to the Respondent's intention to hear Mr Michalis Kafkalias as a witness, as Mr Kafkalias had not been named as a witness for Respondent in the written submissions as required by Article R55 of the CAS Code. The Respondent's written submissions neither contain a witness statement, nor a brief summary of the expected testimony of the witness and the Appellant consequently could not have any knowledge of the content of the testimony this witness would be expected to give.

48. A hearing was held on 27 February 2013 in Lausanne, Switzerland. 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.

49. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, and Mr Dennis Koolaard, Ad hoc Clerk, the following persons attended the hearing:

a) For the Appellant:
   1) Mr Pekka Albert Aho, Counsel;
   2) Mr Vittorio Rigo, Counsel;
   3) Mr Grzegorz Rasiak, Appellant.

b) For the Respondent:
   1) Mr Christoforos Florou, Counsel;
   2) Mr Lysandros Lysandrou, Counsel;
   3) Mrs Muria Georgiou, Counsel.

50. The Panel heard evidence from the following persons in order of appearance:

1) Mr Chris Powell, Manager of Charlton Athletic FC (by teleconference);
2) Mr Nick Hammond, Director of football of Reading FC (by teleconference);
3) Mr Wil van Megen, Legal Counsel at FIFPro (in person);
4) […], the Player's Agent (in person);
5) Mr Grzegorz Rasiak, Appellant (in person);
6) Mr Michalis Kafkalias, General Manager of the Respondent at the time the contractual relationship between the parties was terminated (by teleconference).

51. Although the Appellant intended to call as witnesses Mr Brian McDermott, Manager of Reading FC, and Mr Brendan Rodgers, Manager of Liverpool FC, and the Respondent

intended to call as witness Mr Michalis Charalambous, Vice-President and Team Manager of the Respondent, and arrangements were made by the Panel and CAS to hear them via tele-conference, during the hearing the parties jointly agreed not to call these witnesses.

52. Each witness and expert heard by the Panel was invited by its 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/experts. The parties then had ample opportunity to present their case, submit their arguments and answer to the questions posed by the Panel.

53. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected.

54. The Panel confirms that it carefully heard and took into account in its discussion 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.

IV. SUBMISSIONS OF THE PARTIES

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

- In substance, the Player has suffered losses arising from the termination without just cause of his Employment Contracts in the form of remuneration lost on four accounts: (a) remuneration under the Employment Contracts lost by the Player; (b) reduced remuneration under his new employment contract; (c) expenses incurred due to the dispute and in finding alternative employment, and; (d) damage to his career suffered due to the early termination of contract without just cause within the protected period.

- The Player is of the opinion that the FIFA DRC has miscalculated the amounts due to him under the Employment Contracts. The Player maintains that, pursuant to article 337(c) of the Swiss Code of Obligations and consistent CAS jurisprudence, that in case of unilateral breach of contract without just cause by a club, the player is entitled to receive all the amounts which would have been payable if the contract would have been fulfilled. In this respect, the Player asserts to be entitled to an amount of fixed remuneration during the entire contractual period with the Club of EUR 408,000.00.

- In the Appealed Decision, the FIFA DRC has refused compensation based on the various bonuses contained in the Employment Contracts for the period after the termination without just cause took place, describing them as "fully hypothetical". The Appellant fails to see why the party in breach should escape the obligation to pay compensation for certain contractually agreed amounts because the exact amount due, had no breach occurred, cannot be established with absolute certainty because the contract was not performed by the party in breach and refers to article 156 of the Swiss Code of Obligations in this respect. The Player therefore asks: (a) to be compensated for having bought certain flight tickets for EUR 799.00 by himself, whereas these would normally have been bought by the Club; (b) to be entitled to an amount of EUR

8,500.00 for unpaid match bonuses during the 2010/2011 season and to be entitled to the same amount for the 2011/2012 season, *i.e.* a total amount of EUR 17,000.00; (c) as the Club won the Cypriot First Division championship in the season 2011/2012, in light of article 6(e) of the Supplementary Agreement the Player is entitled to a bonus of EUR 100,000.00; (d) due to the fulfillment of article 16 of the Employment Agreement, the contract was automatically extended until the end of the 2012/2013 season and accordingly an additional compensation of EUR 318,000.00 is due, and; (e) at the time of writing the appeal brief it was not yet sure if the Club would qualify for the UEFA Champions League, or the UEFA Europa League, the Club however requested the Panel to consider the bonuses set out in article 6 of the Supplementary Agreement in evaluating the remuneration due.

- In respect of the new contract the Player signed with the Polish club Jagiellonia Bialystok, the Player is of the opinion that not the full remuneration earned with this club should be deducted from the total compensation he was entitled to receive from the Club. The Player asserts that the Club's actions have affected his career prospects and that this damage must be compensated in accordance with article 17 of the FIFA Regulations, mainly due to three circumstances: (a) the Club's refusal to let the Player participate to train with the first team and to maintain his fitness; (b) the termination and the effects produced therewith by the FIFA Regulations; (c) the actions of the Club during the FIFA proceedings resulted in a delay to FIFA's approval of the Player's registration with Jagiellonia Bialystok. In order to provide a starting point for the calculations, the Player considers the amount of EUR 196,871.24 (difference between the fixed remuneration of the Player under the Employment Contracts (EUR 293,000.00) and that under the new contract of the Player with Jagiellonia Bialystok (EUR 96,128.76)) should be the minimum amount awarded as compensation if the Panel considers that the contract was not automatically extended until the end of the 2012/2013 season.

- According to the Player, the FIFA DRC miscalculated the amount received by the Player from Jagiellonia Bialystok, as it used a wrong exchange rate to convert the amount of Polish Zloty into Euro. Furthermore, the Player is of the opinion that should the amounts earned by a player from a third club be deducted from the compensation payable by the club in breach, clubs terminating contracts of football players would invariably end up saving money by terminating contracts without just cause as opposed to honouring the agreements entered into. Therefore, no deduction from the compensation payable should be made based on the fact that the Player has mitigated his damages in the present case.

- As a result of the termination of his contract by the Club, the Player was forced to lodge a claim for breach of contract with FIFA and the Player thus made certain costs. In searching new employment the Player had a trial with the English club Charlton Athletic and thus he had incurred the costs of paying the flights from Poznan to London (EUR 385.13) and requests to be compensated for the costs incurred. Additionally, the Player requests that the amount of EUR 12,649.61 of legal costs

incurred during the FIFA proceedings be ordered payable by the Club under the title of costs incurred as a result of the breach of contract.

- Finally, the Player makes reference to three additional objective criteria explicitly named in article 17 of the FIFA Regulations: (a) whether the breach falls within the protected period; (b) the time remaining on the existing contract, and; (c) the specificity of sport. The Player requests these criteria to be taken into account by the Panel and that they shall be considered as aggravating circumstances. In light of the application of the objective criteria and the specificity of sport, the Player submits that a special indemnity must be awarded in accordance with CAS jurisprudence and considers an amount equaling six months salaries to be fair, *i.e.* EUR 174,000.00.

- According to the Player, since the Club served the "termination letter" to the Player on 20 April 2011, interests on all amounts ordered as compensation are therefore due as from 21 April 2011. Finally, the Player submits that the behavior of the parties in the present case necessitates that all of the costs of the proceedings must be borne by the Club and that the legal costs of the Player are compensated in their full amount, *i.e.* EUR 30,000.00.

56. The submissions of the Club, in essence, may be summarized as follows:

- The Club is of the opinion that the Player's requests are unrealistic and with no legal basis and that in case the termination of the Employment Contracts by the Club is considered to be a breach of contract, the Appealed Decision is correct, justified and legally recognized.

- In respect of the bonus of EUR 100,000.00 for winning the Cypriot Championship in the season 2011/2012, the Club is of the opinion that the Player has no right to claim these amounts since he did not in any way contribute and/or participate in this title.

- The same applies for the bonus of EUR 17,000.00 for the points obtained by the Club during the course of the Employment Contracts. It is clear that the Player was not competing for the Club during the 2011/2012 season.

- Regarding the claim of EUR 318,000.00 in respect of the 2012/2013 season the Club is of the opinion that the criteria for the automatic extension were not complied with as the Player did not score any goals for the Club during the 2010/2011 season.

- The amount of EUR 408,000.00 for unpaid salaries or loss of income resulting from the termination of the Employment Contracts by the Club is already taken into account by the FIFA DRC in §37 of the Appealed Decision.

- The Club points out that in the proceedings before the FIFA DRC, the Player requested a total amount of EUR 506,000.00 and in the present appeal proceedings requests a total amount of EUR 843,799.00, an amount which is considered by the Club as inadmissible and unjustified.

- The Club maintains that the Player has no right to claim for the entire amount due for the 2011/2012 season pursuant to the Employment Contracts as the Player did nothing to find another team after the breach and to reduce his damages. Therefore, the FIFA DRC was correct in rendering a decision according to which the Club had to pay to the Player the amount of EUR 145,000.00 in compensation.

- Without prejudice to the above, the Club believes that the FIFA DRC ought to accept the legality of the termination of the employment contracts for the following reasons: (a) the Club proceeded to the filing of a lawsuit against the Player through the District Court of Limassol, and, erroneously, the FIFA DRC held that the court procedure did not commence; (b) the FIFA DRC did not take into consideration that the Court Summons were filed before the Player had filed its claim before the committee of FIFA, and; (c) the FIFA DRC erroneously did not take into consideration the termination made to the Player by the Club which was legal and made according to article 11(a) and (b) provided by the Employment Contract. Besides the termination letter dated 20 April 2011, the Club had sent, formerly, two letters to the Player, which were provided to the FIFA DRC attached to the Club's reply that was sent to FIFA. Furthermore, the Club believes that according to article 11 of the Employment Contract, a warning notice was not necessary since the Player had committed an act of serious misconduct.

V. ADMISSIBILITY

57. 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.

58. It follows that the appeal is admissible.

VI. JURISDICTION

59. 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.

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

VII. APPLICABLE LAW

61. 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".

62. The Panel notes that article 62(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".

63. The parties agreed to the application of the various regulations of FIFA and subsidiary to the application of Swiss law. 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.

VIII. PRELIMINARY ISSUES

A. The testimony of Mr Michalis Kafkalias

64. By letter dated 25 February 2013, the Player objected to the Club's intention to hear Mr Michalis Kafkalias as a witness because Mr Kafkalias had not been named as a witness for the Club in the written submissions as required by Article R55 of the CAS Code.

65. The Player maintained that the Club's written submissions neither contained a witness statement, nor a brief summary of the expected testimony of the witness and the Player consequently could not have any knowledge of the content of the testimony this witness would be expected to give.

66. At the outset of the hearing, the parties were invited to comment on the Panel's preliminary understanding that Mr Kafkalias was not a witness in the sense of Article R55 of the CAS Code, but a party as he was the General Manager of the Club at the time the contractual relationship between the parties was terminated.

67. The Player maintained that it could not prepare to interrogate Mr Kafkalias as it did not have any information about the content of his testimony. The Player mainly expressed to be concerned that Mr Kafkalias would testify about new facts that were not mentioned in the written submissions of the Club. Consequently, the Player maintained its objection to hearing Mr Kafkalias

68. The Club argued that Mr Kafkalias was the General Manager of the Club and as such a representative of the Club and thus a party. The Club insisted to hear Mr Kafkalias

69. After deliberating about the issue, the Panel decided to allow the testimony of Mr Kafkalias and informed the parties during the hearing that the reasons for such decision would be incorporated in the final award.

70. The Panel noted that Article R55 of the CAS Code reads as follows:

"(…) the Respondent shall submit to the CAS an answer containing:

- *(…);*
- *any exhibits or specification of other evidence upon which the Respondent intends to rely;*
- *the name(s) of any witnesses, including a brief summary of their expected testimony; the witness statements, if any, shall be filed together with the answer, unless the President of the Panel decides otherwise;*
- *the name(s) of any experts, stating their area of expertise, whom he intends to call and state any other evidentiary measures which he requests".*

71. The Panel observed that Article R55 of the CAS Code specifically refers only to witnesses and experts and not to parties and thus makes a clear distinction between them. Consequently, the Panel finds that a party or a representative of a party is, strictly speaking, not required to provide a statement of its/his expected testimony. However, the Panel emphasises that the testimony of a party in any case may not exceed the scope of the written submissions; the testimony would have to be restricted to what has been stated before, as stipulated in Article R56 of the CAS Code.

72. Consequently, the Panel decided to dismiss the Player's objection and allowed the testimony of Mr Kafkalias

B. The scope of the appeal proceedings

73. Also at the outset of the hearing, the Panel drew the attention of the parties to the scope of the appeal proceedings. The Panel informed the parties that it understood from the file that the Player's requests for relief in front of CAS are wider than his requests for relief in front of the FIFA DRC. The Panel invited the parties to comment on this issue in their pleadings.

74. In its appeal brief the Player maintained that due to the fact that the Appealed Decision gives a rather limited amount of information concerning the calculation applied and that the Player is therefore not in the position to present an extensive analysis of the factors considered by the FIFA DRC. The Player therefore relies on the *de novo* principle expressed in Article R57 of the CAS Code and requests a new decision based on the requests presented herewith as far as the amount of compensation is concerned.

75. The Player further argued that the claim in front of FIFA was filed in July 2011 and that this claim had to be lodged in order for the Player to be able to be registered with a new club. At that time the Player, obviously, could not see into the future, it was hard to predict that the Club would win the Cypriot championship in the 2011/2012 season.

76. Finally, the Player argued that it is general CAS jurisprudence that claims may be modified, even between a statement of appeal and an appeal brief and that there is therefore no reason why the additional claims shall be considered inadmissible.

77. The Club expressed the opinion that the amounts requested by the Player in his requests for relief are excessive and not in line with article 17 of the FIFA Regulations. In front of the FIFA DRC, the Player did not claim any amounts related to the 2012/2013 season and the Club finds that the Player is not entitled to any bonuses over the 2011/2012 season as these bonuses are fully hypothetical.

78. Furthermore, the Club sustained that the Player does not have the right to claim for more compensation than he claimed before the FIFA DRC. The Club is of the opinion that now the Player is challenging the Appealed Decision, no additional compensation may be requested. Consequently, the Player's additional claims have to be dismissed as inadmissible and unjustified according to the Club.

79. The Panel noted that the Player claimed for a total amount of EUR 506,000.00 in front of the FIFA DRC and is currently requesting CAS to award him a total amount of at least EUR 1,030,833.74.

80. The Panel notes that Article R57 of the CAS Code determines the following:

"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

81. CAS jurisprudence shows that in reviewing a case in full, a Panel cannot go beyond the scope of the previous litigation. It is limited to the issues arising from the challenged decision (CAS 2007/A/1396 & 1402 at § 46, with further references to: CAS 2008/A/1478, CAS 2007/A/1294, TAS 2007/A/1433, TAS 2002/A/415 & 426). Although it is true that claims maintained in a statement of appeal may be amended in an appeal brief, such amended claims may however not go beyond the scope and the amount of the previous litigation that resulted in the Appealed Decision. Maintaining any other opinion will not only be against the basic principles of the scope of an appeal, but will blur the clear distinction that should be strictly kept between appeal arbitrations and ordinary arbitrations when such an ordinary arbitration clause exists.

82. Nevertheless, in an appeal in which the case is heard *de novo* one exception to this basic principle may exists when a party in the previous proceedings claimed amounts that he was entitled to receive from the other party in the framework of contractual or other relations, however such entitlement in full, or part of it, is conditional upon the actual materialization of a certain clear and undisputed condition (such as, in a football case, winning the championship or the Cup etc.) and the condition was indeed fulfilled while the previous proceedings were pending and the fulfilment of the condition itself (as opposed to the entitlement to receive the payment because of the materialization of the condition) is not disputed. This is even more so when in the previous proceedings a lump sum amount is claimed in respect of compensation for the termination of the agreement without just cause. In such cases, this amount, that was conditional upon the materialization of a condition, may be considered within the compensation for the termination of the contract when the materialization of the condition was not disputed by the other party.

83. In light of the above, the Panel finds that, in principle, it is limited to the scope of the previous litigation. New claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible. However, the Panel finds that claims that could, for legitimate reasons, not have been advanced in the previous litigation, but were likely to have been claimed in the absence of such legitimate reasons at that time, do fall under the *de novo* competence of CAS Panels and should hence be considered as admissible.

84. Consequently, the Panel will assess the "new" claims advanced by the Player only in appeal and decide whether these individual claims fall under the *de novo* competence of a CAS Panel together with the merits of the case below.

IX. MERITS

A. The Main Issues

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

a) When did the Club unilaterally terminate the Employment Contracts without just cause?

b) Did any remuneration remain outstanding to the Player over the period before the unilateral breach of contract by the Club?

c) When would the Employment Contracts have expired should the Club not have terminated them prematurely?

d) What amount of damages did the Player objectively incur due to the undisputed unilateral breach of contract by the Club?

e) Is any amount to be awarded under the "specificity of sport"?

f) Are the awarded amounts net or gross?

g) Is any interest due?

a. When did the Club unilaterally terminate the Employment Contracts without just cause?

86. The Player confirmed to have received a termination letter from the Club on 20 April 2011, however, he did not consider the employment relationship with the Club to have terminated at that time. After the termination letter was sent, the Player's Agent headed over to Cyprus to try and find an amicable solution for the arisen dispute between the Player and the Club. The Player maintained that as the parties attempted to negotiate a mutual termination of the Employment Contracts after the termination letter was sent, they had not effectively been terminated yet.

87. The Club is of the opinion that the Employment Contracts were effectively terminated with immediate effect when it sent the Player the termination letter dated 20 April 2011.

88. The Panel notes that the termination letter determined, *inter alia*, the following:

> *"(…) after the breach of the above articles and after many oral and written notices given to you, we proceed to the termination of your* [Employment Contracts]*".*

89. The Panel finds that through this termination letter the Club unequivocally terminated the Employment Contracts with the Player with immediate effect and that the employment relationship between the parties therefore came to an end on 20 April 2011. Although negotiations took place between the parties after the termination letter was issued, the fact remains that the negotiations finally did not lead to a settlement and that as a result the consequences stipulated in the termination letter entered into effect on the date the termination letter was sent, *i.e.* 20 April 2011.

b. Did any remuneration remain outstanding to the Player over the period before the unilateral breach of contract by the Club?

i. Outstanding salaries under the Employment Contracts

90. The Player is of the opinion that in the Appealed Decision the FIFA DRC miscalculated the amounts due to him under the Employment Contracts. The Player maintains that, pursuant to article 337(c) of the Swiss Code of Obligations and consistent CAS jurisprudence, that in case of unilateral breach of contract without just cause by a club, the player is entitled to receive all the amounts which would have been payable if the contract would have been fulfilled.

91. The Player considers that the effects of the principle of *pacta sunt servanda* do not cease upon a party unilaterally terminating a contract without just cause and therefore does not make a distinction between salaries already outstanding at the time of the breach and amounts payable thereafter. In this respect, the Player asserts to be entitled to an amount of fixed remuneration during the entire contractual period with the Club of EUR 586,000.00 and because he had received only EUR 178,000.00 (EUR 105,000.00 under the Employment Contract + EUR 62,500.00 under the Supplementary Agreement + EUR 10,500.00 as housing benefits), he was still entitled to EUR 408,000.00.

92. In respect of the amount of EUR 586,000.00 referred to by the Player, the Panel deems it important to emphasise that this amount included the Player's request for housing allowance in an amount of EUR 36,000.00. The Panel deems it important to assess the salaries and the housing allowance separately from each other as housing allowance is intended to cover actual expenses regarding housing, while salaries have to be paid without any further conditions.

93. Consequently, the Panel considers that the Player claims salaries in an amount of EUR 382,500.00 (EUR 550,000.00 – 167,500.00) and requests to be awarded housing allowance in an amount of EUR 25,500.00 (EUR 36,000.00 – EUR 10,500.00).

94. During the hearing, the Club asserted that it had unilaterally terminated the Employment Contracts without just cause on 20 April 2011. As a consequence, the Club adhered with the

Appealed Decision that an amount of EUR 61,000.00 was outstanding at the moment the Employment Contracts were breached.

95. The Panel noted that article 337(c) of the Swiss Code of Obligations determines the following:

"Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration".

96. The Panel noted that the FIFA DRC made a distinction in its Appealed Decision between the outstanding remuneration at the moment of breach and the compensation to be awarded to the Player due to the unilateral breach of contract by the Club.

97. The Panel adheres to the Player's position, according to which the effects of the principle of *pacta sunt servanda* do not cease upon a party unilaterally terminating a contract, however, the Panel is not convinced why this should lead to the conclusion that no distinction should be made. When the termination of a contract without just cause is established, the remuneration that should have been paid until the termination date is due and should be paid, unless specific circumstances arise. However, and unless the parties have agreed on a legitimate liquidated compensation, when calculating the compensation for the breach of contract this compensation must compensate for the damage caused by the breach. This calculation, even in the case of labour relations, will mainly consider the residual amounts of the salaries for the original period of the contract and may be effected by other facts and circumstances. Therefore, the above-mentioned distinction is indeed important. Consequently, the Panel confirms the distinction made by the FIFA DRC and will first assess whether any payments remained outstanding over the period before the unilateral breach of the Employment Contracts by the Club.

98. The Panel noted that the FIFA DRC determined that the Player received his last salary under the Employment Contract on 31 March 2011 and that this represented his salary for January and February 2011. In addition, the FIFA DRC determined that the Player received his last salary under the Supplementary Agreement on 11 March 2011 and that this represented his salary for December 2010. These facts remained undisputed in the present appeal proceedings.

99. The FIFA DRC further decided that the Player's outstanding salary under the Employment Contract covered the month of March 2011, *i.e.* EUR 15,000.00. As to the outstanding salaries under the Supplementary Agreement the FIFA DRC determined that the Player was entitled to the salary of January, February and March 2011, *i.e.* EUR 37,500.00.

100. The Panel noted that the FIFA DRC thus did not consider the Player's salaries of April 2011 under the Employment Contracts as outstanding. The Panel disagrees with the Appealed Decision in this respect and finds that the Player is entitled to a *pro rata* part of his April 2011 salaries. As the Employment Contracts were terminated on 20 April 2011, the Player is

entitled to EUR 10,000.00 (EUR 15,000.00 x 2/3) under the Employment Agreement and EUR 8,333.33 (EUR 12,500.00 x 2/3) under the Supplementary Agreement.

101. Consequently, the Panel finds that the total amount of outstanding salaries under the Employment Contracts until the breach is **EUR 70,833.33** (EUR 15,000.00 + EUR 37,500.00 + EUR 10,000.00 + EUR 8,333.33) and that the Club should pay this amount to the Player.

ii. Outstanding bonus payments under the Employment Contracts

102. The Panel noted that the FIFA DRC awarded an amount of EUR 8,500.00 to the Player for match bonuses over the 2010/2011 season. The FIFA DRC argued that *"the Chamber established that the* [Club] *failed to submit any evidence that it had paid the amount of EUR 8,500 to the* [Player] *relating to bonuses for matches played during the 2010-2011 season (…)"* and that it was *"in fact not contested that the* [Player] *actually participated in those matches (…)"*.

103. The Player maintains that during the 2010/2011 season, he participated for at least 30 minutes in 11 league games. These games resulted in 4 wins, 5 draws and 2 losses for a total of 17 points gained by the Club. The amount due is therefore EUR 8,500.00 (17 x EUR 500.00).

104. Article 6(j) of the Supplementary Agreement reads as follows:

"In addition to the salary the [Player] shall be entitled to receive the following benefits:

(j) €500 (Five hundred Euro) net for each point is gained in the regular season for the championship with the [Player's] participation. A participation is stated when the player will start in first eleven or will play 30 (thirty) minutes for substitute".

105. The Panel noted that the Player already claimed to be compensated with this amount in the proceedings before the FIFA DRC. As this claim fell within the scope of the previous litigation it is admissible in the present appeal proceedings.

106. In light of the fact that the Club does not dispute its obligation to pay this amount, and during the hearing actually admitted having to pay this amount to the Player, the Panel finds that the Player is indeed entitled to an amount of **EUR 8,500.00** for match bonuses over the 2010/2011 season. Whether the Player is also entitled to match bonuses over the 2011/2012 season will be assessed below.

iii. Outstanding housing allowance under the Employment Contracts

107. As mentioned *supra*, the Panel noted that the Player requested to be awarded housing allowance in a total amount of EUR 28,500.00.

108. Article 6(a) of the Supplementary Agreement determines the following:

"In addition to the salary the [Player] shall be entitled to receive the following benefits:

(a) The total extra amount of €18000 (Eighteen thousand Euro) for a house in twelve equal instalments of €1500 (One thousand five hundred Euro) for each period, starting on 01/09 and ending on 31/08".

109. The Panel noted that, in the Appealed Decision, the FIFA DRC took the issue of the housing allowance into account in determining the total compensation to be paid to the Player due to the breach of the Employment Contracts by the Club, but not in determining the outstanding payments at the moment of breach.

110. The Player argued that the last housing allowance he received from the Club corresponded to the month of February 2011 and thus only received housing allowance for a period from August 2010 until February 2011, *i.e.* seven months.

111. The Club did not put forward any specific position in this respect.

112. The Panel finds that in the absence of any objection from the Club and considering that the Player already claimed this amount in the proceedings before the FIFA DRC, the housing allowance to be paid by the Club until 20 April 2011 are due to the Player.

113. Considering that the Player did not receive any housing allowance for March and 20 days of April 2011, on 20 April 2011, the Player was entitled to housing allowance in an amount of **EUR 2,500.00** (EUR 1,500.00 + EUR 1,000.00 (EUR 1,500.00 x 2/3)). Whether the Player is also entitled to housing allowance after the moment of breach will be assessed below.

114. Consequently, the Player is entitled to outstanding payments up until the date of unilateral breach of contract by the Club on 20 April 2011 in a total amount of **EUR 81,833.33** (EUR 70,833,33 + EUR 8,500.00 + EUR 2,500.00), with interest accruing as of the respective due dates which will be set out below (cf. §221-229).

c. When would the Employment Contracts have expired should the Club not have terminated them prematurely?

115. Although the Employment Contracts clearly stipulate that they would normally expire on 31 May 2012, article 16 of the Employment Contract reads as follows:

"Furthermore both parties agree accept and understand that if the Club manages to gain first position at the end of the championship and wins the Cyprus Championship in any of the two seasons (2010-11 or 2011-12) and the player has scored at least 20 goals in regular season and play offs in that season, or if the player manages to score at least 20 goals in regular season and play offs in season 2011-12, then this agreement is extended for one more year with same terms plus euro 25000 (twenty five thousands euro) as additional salary for season 2012-2013 [sic]*".*

116. The Player is of the opinion that article 16 of the Employment Contract implies that the contract would be extended under the following conditions:

A) "The Club wins the Cyprus championship in the season 2010/2011 and [the Player] *scores 20 goals during the season.*

B) The Club wins the Cyprus championship in the season 2011/2012 and [the Player] *scores 20 goals during the season.*

C) [The Player] *scores 20 goals during the season 2011/2012".*

117. The Player maintains that if this clause is read in accordance with the misleading wording, the additional condition of the Player scoring 20 goals expressed in point B above would have no independent meaning. If the contractual extension would in any case result from the Player scoring 20 goals in the 2011/2012 season, there would be no sense whatsoever in writing as a separate condition that the contract would be extended in the event that the Club wins the championship and the Player scores 20 goals in that season. The Player therefore considers that the correct interpretation of article 16 of the Employment Contract is that the contract would have to be extended in the event that the Club won the Cyprus championship in the season 2011/2012 regardless of how many goals the Player scored during the season.

118. The Club argues that it was in no way committed to the Player for the 2012/2013 season. The question that has to be raised at this point is if the Player has scored 20 goals during the football season 2010/2011. The answer is that the Player has not scored any goal during the 2010/2011 season. As a consequence, the Club finds that the Employment Contracts were not automatically extended.

119. The Panel refers to the second preliminary issue discussed *supra* (cf. §73-84) and noted that the Player did not use this argument in the proceedings before the FIFA DRC and that this issue therefore, in principle, falls outside the scope of the present litigation.

120. Furthermore, the Panel is of the opinion that the reasoning brought forward by the Player in this respect should be rejected. The plain meaning of article 16 of the Employment Contract (although indeed it could have been better drafted) is that the Employment Contracts would be extended in case the Club would win the Cyprus Championship and, in addition, the Player scored 20 goals during that season or if he scored 20 goals even if the Club did not win the Championship. The Panel also finds it important to note that this condition involves in any case a personal performance of the Player (scoring 20 goals) and therefore cannot be considered for the sake of the distinction that was explained *supra* (cf. §82), as a clear and undisputed condition. This condition also differs from the condition of winning the championship (entitling the Player to a bonus) that is dealt with *supra* (cf. §82), since the winning of the championship is a clear condition that is not, *per se*, related to the actual performance or personal achievements of the Player.

121. Consequently, the Panel finds that the Employment Contracts were not extended for another season and that they expired on 31 May 2012. The Panel therefore disregards all the Player's claims based on the alleged potential extension of the Employment Contracts.

d. What amount of damages did the Player objectively incur due to the undisputed unilateral breach of contract by the Club?

122. Having established the due amounts to the Player at the moment of the unilateral breach and that the Employment Contracts would normally have expired on 31 May 2012, the Panel will now proceed to assess the consequences of the unilateral termination without just cause by the Club.

123. The Panel notes that in the absence of any contractual provision determining the consequences of unilateral breach, article 17(1) of the 2010 version of the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations") determines the financial 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".

124. The Player maintains that according to the jurisprudence of CAS in matters pertaining to article 17 of the FIFA Regulations, Swiss law is additionally applicable with regard to the calculation of the compensation due. In that respect, the Player refers to article 42 of the Swiss Code of Obligations.

125. Furthermore, the Player contemplates that there is ample CAS jurisprudence concerning the interpretation as well as the application of article 17 of the FIFA Regulations. The values pertaining to the principle of Maintenance of Contractual Stability expressed in Chapter IV of the FIFA Regulations and the principle with regard to calculating compensation have been described in CAS 2008/A/1519-1520 and TAS 2005/A/902.

126. The Club did not put forward any position regarding the interpretation of article 17 FIFA Regulations. The Club did however dispute certain individual claims for compensation of the Player and these arguments will be considered together with the assessment of the Player's individual claims below.

127. The Panel noted that article 42 of the Swiss Code of Obligations determines the following:

"1. Any person claiming damages must prove that loss or damage occurred.

2. Where the exact value of the loss or damage cannot be quantified, the court shall estimate the value at its discretion in the light of the normal course of events and the steps taken by the injured party.

(…)".

128. The Panel reiterates previous CAS jurisprudence which established that the purpose of article 17 of the FIFA Regulations 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 a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, § 80, with further references to: CAS 2005/A/876, p. 17: *"[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, § 90; CAS 2007/A/1359, § 92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, § 6.37).

129. In respect of the calculation of compensation in accordance with article 17 of the FIFA Regulations and the application of the principle of "positive interest", the Panel follows the framework as set out by a previous CAS Panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *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. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations"* (CAS 2008/A/1519-1520, at § 80 et seq.).

130. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, and together with the scope of the

proceedings determined *supra* (cf. §73-84), the Panel will now proceed to assess the Player's objective damages one by one below, before applying the discretion of the Panel in adjusting this total amount of objective damages.

i. The Salary

131. As set out above, the Player claims salaries in an amount of EUR 382,500.00 under the Employment Contracts. However in claiming this amount the Player did not make a distinction between the salaries that were due before the breach of the contract and the residual salaries that are to be considered as part of the compensation for the breach of the contract. In light of the fact that the Panel already awarded salaries in an amount of EUR 70,833.33, the Panel considers that such amount should be deducted from the Player's initial claim for salary, leading to a remaining claim for salaries as part of the compensation for the breach of contract in an amount of EUR 311,666.67 (EUR 382,500.00 – EUR 70,833.33). The accuracy of this amount is also demonstrated by the following calculation: should the Employment Contract not have been terminated by the Club, the Player would normally have been entitled to 10 days of salary over April 2011 (EUR 5,000.00), the salaries of May 2011 (EUR 15,000.00) and salaries over the full 2011/2012 season (EUR 150,000.00), *i.e.* EUR 170,000.00. Under the Supplementary Agreement the Player would normally have been entitled to 10 days of salary over April 2011 (EUR 4,166.67), the salaries over May 2011 (EUR 12,500.00) and salaries over the full 2011/2012 season (EUR 125,000.00), *i.e.* 141,666.67. In total thus EUR 311,666.67.

132. The Player is of the opinion that the jurisprudence of CAS regarding the amounts payable by a club which has terminated the contract of a player without just cause is consistent and unequivocal; the player is entitled to receive all the amounts which would have been payable if the contract would have been fulfilled by the club. The Player therefore submits that all the amounts which would have been payable in the event the Employment Contracts would have been properly performed by the Club are due as compensation.

133. In this respect it is the Club's position that the Player has no right to claim the total remaining salaries as such. The Player did not do anything to find another team or to reduce his damages and/or losses. The Player had sufficient time, from April 2011 until the beginning of the 2011/2012 season to find a new team. The Player should at least have found a team that was willing to pay him half of the salary he earned with the Club. Consequently, the Club finds that the Appealed Decision was correct in ordering the Club to pay to the Player an amount of EUR 145,000.00 as compensation.

134. The Panel noted that it remained undisputed between the parties that on 25 November 2011 the Player had entered into a new employment contract with the Polish club Jagiellonia Bialystok, valid as from the date of signature until 30 June 2013, and that he was entitled to receive a net monthly salary of Polish Zloty (PLN) 28,500.00.

135. The FIFA DRC took this monthly salary into account in its Appealed Decision by multiplying the salary by six months, leading to an amount of EUR 40,260.00. The FIFA DRC apparently

deducted this amount from the amount considered to be the basis for calculating the compensation.

136. The Player finds that the FIFA DRC incorrectly calculated the amount of EUR 40,260.00 as, applying the exchange rate in force at the time of entering into the contract, he only earned EUR 38,050.98 with Jagiellonia Bialystok until 30 June 2012.

137. The Club did not put forward any specific position in this respect.

138. The Panel finds that, in principle, the remuneration the Player earned with Jagiellonia Bialystok during the remaining contractual term of the Employment Contracts should be deducted from the amount the Player would have earned with the Club should the Club have properly performed the Employment Contracts. Whether the Player should have done more to mitigate his damages and whether this should be a reason to reduce the amount of compensation to be awarded to the Player, as alleged by the Club, is a subjective element and will be assessed below in the part of the Award dealing with the "specificity of sport".

139. Regarding the alleged incorrect calculation of the amount the Player earned with Jagiellonia Bialystok, the Panel finds that in the absence of any contradicting position from the Club the amount of EUR 38,050.98 shall be taken into account.

140. In view of the above, the compensation to be paid by the Club to the Player in respect of loss of salaries as part of the compensation for the breach of the Employment Contracts is reduced and mitigated with the salary the Player earned with Jagiellonia Bialystok during the remaining term of the Employment Contracts, to an amount of EUR 273,615.69 (EUR 311,666.67 – EUR 38,050.98).

ii. Housing benefits

141. As mentioned *supra*, the Panel noted that the Player requested to be awarded housing allowance in a total amount of EUR 28,500.00. Since the Panel has already awarded an amount of EUR 2,500.00 for housing allowance until the moment the Club breached the Employment Contracts, the Panel will therefore proceed to assess whether the Player is entitled to the remaining amount of EUR 26,000.00.

142. Article 6(a) of the Supplementary Agreement determines the following:

"In addition to the salary the [Player] shall be entitled to receive the following benefits:

(a) The total extra amount of €18000 (Eighteen thousand Euro) for a house in twelve equal instalments of €1500 (One thousand five hundred Euro) for each period, starting on 01/09 and ending on 31/08".

143. The Panel noted that the Player already claimed this amount in the proceedings before the FIFA DRC, and that the claim is therefore admissible.

144. Although the Club did not put forward any specific position in this respect, the Panel finds that the claim for housing allowance as compensation for the breach of contract by the Club can only be partially accepted.

145. The Panel deems it important to emphasise that the housing benefits are not a salary, but that the housing benefits are intended to cover actual and real expenses of the Player in respect of his housing. The Panel noted that the Player left Cyprus on 11 June 2011 and that it was confirmed by the Player during the hearing that the Polish club Jaggielonia Bialystok arranged a hotel for the Player as from September 2011. As from the moment Jaggielonia Bialystok covered these expenses for the Player, the Player did not incur any further costs regarding his housing.

146. Consequently, the Player would in principle be entitled to receive an additional amount of compensation to cover the housing benefits until the moment Jaggielonia Bialystok incurred these expenses, *i.e.* as from September 2011. However, the Player did not bring any evidence as to who covered the Player's housing expenses in the period between the moment the Player left Cyprus and the moment Jagiellonia Bialystok incurred the housing expenses of the Player. Subsequently, the Panel is of the opinion that the Player did not meet his burden of proof and did not convince the Panel that the Player incurred any housing costs in this period and can therefore only award the Player with compensation for his housing benefits up until the moment he left Cyprus.

147. As the Player left Cyprus on 11 June 2011, the Panel finds that the Player is entitled to receive compensation for housing benefits in an amount corresponding to 10 days of April 2011, May 2011 and 11 days of June 2011, *i.e.* EUR 2,550.00 (EUR 500.00 + EUR 1,500.00 + EUR 550.00).

iii. Flight tickets

148. The Player finds that pursuant to article 6 of the Supplementary Agreement, he was entitled to *"two family air tickets to his country for each period"*. When the Player left Cyprus on 11 June 2011 for the vacation period following the 2010/2011 season, the Player purchased air tickets for his entire family at his own expense and provided evidence in this respect. The Player therefore considers that he is entitled to receive an amount of EUR 799.00 as compensation.

149. The Club did not put forward any position in this respect.

150. The Panel notes that this amount was not claimed before the FIFA DRC and thus, as a separate element of damage, this claim was brought forward for the first time in these CAS proceedings, without any valid justification. It therefore exceeds the scope of the appeal and is thus inadmissible.

iv. Points bonuses

151. The Player argues that pursuant to article 6(j) of the Supplementary Agreement, he was entitled to *"€500 (Five hundred Euro) net for each point is gained in the regular season of the championship*

with the [Player's] *participation. A participation is stated when the player will start in first eleven or will play 30 (thirty) minutes for substitute".*

152. As far as the 2011/2012 season is concerned, the Player finds that the exact amount of bonuses payable which were lost by the Player due to the unlawful termination of the Employment Contracts by the Club cannot be established with certainty. However, a reasonable method of approximation is to consider the bonuses accrued during the previous season and expect that approximately the same amount would have been accrued also in the following season. Consequently, the Player considers to be entitled to the amount of EUR 8,500.00 as bonuses for the 2011/2012 season lost due to the breach of contract by the Club.

153. The Club maintains that the Player was not part of the team during the 2011/2012 season. The Employment Contracts were terminated on 20 April 2011 and the 2011/2012 season began the first week of September 2011 and ended in the first week of May 2012. It is therefore clear that the Player was not competing in the team of the Club during the 2011/2012 season.

154. The Panel noted that the Player already requested to be compensated for bonuses lost due to the unilateral termination of contract without just cause by the Club in an amount of EUR 8,500.00 in the proceedings before the FIFA DRC, this claim therefore falls inside the scope of the previous litigation and is therefore admissible.

155. The Panel noted that article 156 of the Swiss Code of Obligations reads as follows:

"A condition is deemed to be fulfilled if its occurrence has been prevented by one party acting in bad faith".

156. Should the Club not have terminated the Employment Contracts, the Player would likely have played a number of matches in the 2011/2012 season and considering that the Club won the championship in this season it is also likely that the Club would have won quite some points in these matches. In the opinion of the majority of the Panel, by requesting the same amount for the 2011/2012 season as he received over the 2010/2011 season, the Player sufficiently substantiated that such claim is reasonable.

157. By breaching the Employment Contracts, the Club clearly acted in bad faith towards the Player and the majority of the Panel considers it obvious that should the breach not have occurred, the condition for receiving match bonuses would likely have been fulfilled by the Player. With reference to article 42(2) of the Swiss Code of Obligations, the majority of the Panel deems it just and fair to award the Player an amount of EUR 8,500.00 as compensation for points bonuses over the 2011/2012 season.

v. Bonus for winning the Cypriot championship

158. The Player claims that he is entitled to an amount of EUR 100,000.00 because the Club won the Cypriot first division championship in the 2011/2012 season and because article 6(e) of the Supplementary Agreement made reference to the following bonus: *"EUR 100000 (One hundred thousand Euro) net as bonus if the team gains the first position at the end of the Championship".*

159. The Player further argues that there are no additional conditions imposed for the bonus to become payable. The Player would have been entitled to the bonus even if he would not have played a single game for the Club during the 2011/2012 season.

160. The Club contends that the Player has no right to claim these amounts since he did not in any way contribute to this championship. The Player was not part of the team during the 2011/2012 season. During this specific football season, it is a fact admitted by the Player himself that he played for the Polish club Jagiellonia Bialystok.

161. The Panel noted that the Player did not claim bonuses for winning the Cypriot championship in an amount of EUR 100,000.00 in front of the FIFA DRC. However, as already well explained *supra* (cf. §82), the Panel finds that the Player could not have brought this claim during the proceedings before the FIFA DRC as it was unknown to the Player that the Club would win the Cypriot championship in the 2011/2012 season when he initiated the proceedings. However, the condition which would entitle the Player to receive this bonus was materialized while the proceedings were still pending at the FIFA DRC (in-between the communication of the Appealed Decision without grounds and the date that the grounds were communicated to the parties). Moreover, the fact that the Club won the championship is of course undisputed and thus the condition which in this case is clear and is totally unrelated to any specific personal performance of the Player was established in a way that entitles the Player to this amount as part of the damages caused to the Player by the Club in breaching the Employment Contracts.

162. The majority of the Panel finds that the consequences of article 6(e) of the Supplementary Agreement are triggered if the Club would win the Cypriot championship in either the 2010/2011 or the 2011/2012 season. A substantial contribution of the Player to obtaining such championship is not required. The Club's arguments in this respect are therefore rejected.

163. Consequently, the majority of the Panel deems it just and fair that the Club should pay this amount of EUR 100,000.00 to the Player as part of the compensation for the breach of the Employment Contracts by the Club.

vi. Bonuses for qualifying for European competitions

164. Article 6 of the Supplementary Agreement further contained the following bonuses for team performance:

> *(g) "€30000 (Thirty thousand Euro) net as bonus if the team will be entitled to play at UEFA Europa League.*
>
> *(h) €150000 (One hundred and fifty thousand Euro) net if the team will be entitled to play in the Group Stage of the UEFA Champions League.*
>
> *(i) €100000 (One hundred thousand Euro) net if the team will be entitled to play in the Group Stage of the UEFA Europa League".*

165. The Player argues that because the Club won the Cypriot championship in the 2011/2012 season, it was entitled to participate in the qualifying rounds for the UEFA Champions League during the 2012/2013 season. However, as the qualifying rounds of the European competitions were yet to be completed at the time of writing, it was unknown whether the Club would finally qualify for any of the competitions. As it was uncertain whether the Club would qualify, the Player only made a note of the bonuses and the additional value they bring to the Employment Contracts for the Panel to take into account upon evaluating the remuneration element in accordance with article 17 of the FIFA Regulations and requested compensation accordingly.

166. The Panel noted that the Player did not specifically request to be compensated by the Club for this reason in the proceedings before the FIFA DRC. Therefore, and in light of the basic principle already explained in this award in respect of the scope of the appeal *supra* (cf. §73-84), this claim should be dismissed as it is inadmissible and does not fall within the possible "*de novo*" exception to this rule.

167. In this respect, the Panel would like to clarify that this claim differs from the claim in resect of the bonus for winning the championship in the 2011/2012 season because the wining of the championship occurred during the 2011/2012 season when the Employment Contracts would still be in force if they would not have been breached by the Club as decided *supra* (cf. §82), and thus the Player was found by this Panel to be entitled to this bonus, while the Club finally qualified for the Group Stage of the UEFA Europa League only in the 2012/2013 season. Consequently, the qualification of the Club for any European competition fell outside the contractual term which is considered relevant for the calculation of the compensation and cannot be taken into consideration by this Panel. For the same reason, this "possible" bonus cannot be taken into account in evaluating the compensation due to the Player pursuant to article 17 of the FIFA Regulations. Consequently, the Panel finds that this claim should be dismissed.

vii. Costs incurred in finding new employment

168. During his search for new employment, the Player had a trial with the English football club Charlton Athletic in an attempt to convince the club to offer him a contract. The Player incurred the costs of the trial by way of having to pay for the flights between Poznan, Poland and London, United Kingdom. These costs were incurred solely due to the necessity to find new employment as a result of the early termination of his employment with the Club. The Player therefore maintains to be entitled to receive compensation for the costs incurred in the amount of the costs of the flight tickets, totalling to an amount of EUR 385.13.

169. The Club did not put forward any position in this respect.

170. The Panel notes that this amount was not claimed before the FIFA DRC and was brought forward for the first time in the CAS proceedings, it thus exceeds the scope of the appeal and is thus inadmissible.

viii. Legal costs of the proceedings before the FIFA DRC

171. The Player argues that he incurred certain costs to a) receive the amounts due as compensation and (b) to obtain the ability to be registered with his new club arising directly from the termination of the Employment Contracts without just cause by the Club. The Player therefore maintains to be entitled to be compensated with an amount of EUR 12,649.61 as legal costs incurred during the proceedings before FIFA.

172. The Club did not put forward any position in this respect.

173. The Panel finds that this claim of the Player is inadmissible as it was brought for the first time in these appeal proceedings. As opposed to the claim of the bonus that was not certain at the moment the Player brought his case to FIFA, the fact that he incurred or is about to incur legal costs in respect of the proceedings at FIFA was clearly known to the Player when he submitted the claim at FIFA, and still the Player did not claim to be compensated for his legal costs in the previous litigation, *i.e.* the proceedings before the FIFA DRC. Therefore, the Panel finds this claim inadmissible.

174. Consequently, summing up all the individual claims of the Player assessed above, the Panel finds that the Player has substantiated the following objective damages due to the unilateral termination of the Employment Contracts without just cause by the Club and must be compensated as follows: The loss of salaries under the remaining term of the Employment Contracts (EUR 273,615.69), points bonuses over the 2011/2012 season (EUR 8,500.00), bonus for winning the Cypriot championship in the 2011/2012 season (EUR 100,000.00).

175. Hence, the Panel finds that the Club, in principle, has to reimburse to the Player an additional amount of compensation of EUR 382,115.69 for the damages incurred by him due to the breach of the Employment Contracts by the Club.

e. Is any amount to be awarded under the "specificity of sport"?

176. Above, the Panel considered all objective damages incurred by the Player. Below, the Panel will assess whether there are any reasons that should lead the Panel to decide that such amount should be amended in light of the Panel's discretion in adjusting such amount pursuant to the "specificity of sport".

177. The Player referred the Panel to the objective criteria specifically named in article 17.1 of the FIFA Regulations to be taken into account in determining the compensation to be paid by the party in breach, namely: (a) whether the breach falls within the protected period; (b) the time remaining on the existing contract; and (c) the specificity of sport.

178. The Player maintains to be at a loss to explain why the FIFA DRC did not impose a sporting sanction on the Club due to the unilateral termination of the Employment Contracts without just cause during the protected period. However, the Player finds that it is not in his interest to challenge the Appealed Decision as far as the sporting sanctions are concerned. The Player only wishes the CAS to uphold the rights protected by the universal legal principle of *pacta*

sunt servanda, as well as article 17 of the FIFA Regulations and receive compensation for the damages he has suffered as a result of the breach by the Club.

179. Whether the breach falls within the protected period is listed as one of the criteria to be considered in applying article 17 of the FIFA Regulations. The Player referred the Panel to CAS jurisprudence according to which, allegedly, termination of contract within the protected period has been consistently viewed as an aggravating factor and considered as a particularly serious form of unlawful behaviour. Although such aggravating factor has lead a former CAS Panel to multiply the losses suffered with a factor of 2.5 based on a document issued by FIFA to calculate compensation in cases of breach of contract, in view of the fact that subsequent CAS Panels have found that the document is not binding and decided not to follow the principles contained therein, the Player stops short of requesting the Panel to multiply the losses suffered by the Player with a factor of 2.5. Nevertheless, the Player submits that the aggravating factor of terminating the Employment Contracts during the protected period and the particular serious form of unlawful behaviour of the Club are to be taken into account by the Panel.

180. The Player argues that under similar circumstances, previous CAS Panels have awarded additional compensation to the injured party and that the applicable principles are described in CAS 2008/A/1519-1520:

"(…) the specific circumstances of a case may lead a Panel to increase the amount of the compensation, by letting itself inspire, mutatis mutandis, by the concept of fair and just indemnity foreseen in the art. 337c para. 3 and art. 337d para. 1 Swiss Code of Obligations, without applying the strict quantitative limits foreseen in such rules. (…)".

181. The Player finds that the present case is littered with what CAS jurisprudence describes as aggravating factors and therefore submits that a special indemnity must be awarded in accordance with this CAS jurisprudence and considers that the minimum amount due in application of the objective criteria and the specificity of sport in the present case is the amount equalling six months salaries, *i.e.* EUR 174,000.00 (6 x EUR 29,000).

182. In this respect it is the Club's position that the Player has no right to claim the total remaining salaries as such. The Player did not do anything to find another team or to reduce his damages and/or losses. The Player had sufficient time, from April 2011 until the beginning of the 2011/2012 season to find a new team. The Player should at least have found a team that was willing to pay him half of the salary he earned with the Club. Consequently, the Club finds that the Appealed Decision was correct in ordering the Club to pay to the Player an amount of EUR 145,000.00 as compensation.

183. The Panel adheres to the reasoning of a previous CAS Panel in CAS 2007/A/1358, where it considered the following about the "specificity of sport":

"(…) The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching

therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football".

184. The Panel noted that in the proceedings before the FIFA DRC, the Player only claimed to be awarded with three months' salary in respect of the specificity of sport, *i.e.* EUR 87,000.00 (3 x EUR 29,000.00). The Panel considers itself limited by the scope of the previous litigation and deems the claim of the Player in this respect inadmissible insofar as it supersedes the claim before the FIFA DRC. In addition, as already determined *supra* (cf. §92), the Panel does not consider the housing benefits as salary. Consequently, the salary of the Player with the Club was only EUR 27,500.00 per month.

185. On the other side, the Club deems that the FIFA DRC correctly used its discretion to mitigate the compensation to be paid by the Club to an amount of EUR 145,000.00.

186. In light of the contradicting positions of the parties, the Panel will assess the different issues raised and will decide whether it feels the objective amount of damages of EUR 382,115.69 is just and fair or whether this amount should be reduced or increased in light of the "specificity of sport".

i. The Club's refusal to let the Player train with the first team and to maintain his fitness

187. The Player considers it trite that top-level football players need to be in excellent physical condition in order to practice their profession. By refusing access to training and the facilities of the Club, the Club weakened the Player's abilities to practice his profession. The weakened physical condition of the Player, in turn, meant that it was more difficult for him to find a new club and earn remuneration for his services. In fact, one potential club (*i.e.* the English club Charlton Athletic) has made it publicly clear that the lack of fitness of the Player has led to the club not offering the Player a contract. In addition, the Player maintains that, pursuant to article 328 of the Swiss Code of Obligations, an employer has an obligation to protect the personality of its employees. The Swiss Federal Tribunal (SFT 28 April 2011, 4A_53/2011) has derived from this provision the right for certain categories of employees, whose inoccupation can prejudice the future career development, to be engaged in the practice of the profession for which they have been employed. Professional athletes have been expressly considered as such a category.

188. During the hearing the Club argued that the player missed only 10 to 15 days of training and that in such a limited period ones physical condition does not reduce.

189. The Panel noted that the Player was no longer permitted to participate in the training of the Club as from the date of termination of the Employment Contracts by the Club, *i.e.* 20 April 2011. During the hearing it was confirmed by both the Player and the Player's Agent that when the Player's Agent arrived to Cyprus around 3 May 2011, the Player was permitted to train with the Club again for a period of about 5 days. Afterwards, the Player was again not allowed to train with the Club. It further remained undisputed by the parties that the Player returned to Poland with his family on 11 June 2012.

190. The Panel in principle adheres to the position of the Player that not allowing a player to participate in the training sessions of a club could lead to a violation of the player's personality rights.

191. However, due to the fact that the Player only missed a relative small number of training sessions with the Club, the Panel finds that in the present case the Player's personality rights were not infringed. In the opinion of the Panel, missing a small number of training sessions does not lead to a lack of fitness to such an extent that this would be the sole reason for a club not to offer a contract to a player. This is corroborated by the fact that, at the occasion of the hearing, Mr Chris Powell, witness called by the Player, confirmed that no contract was offered to the Player by the English football club Charlton Athletic due to his lack of fitness, but also because Charlton Athletic was aware of the contractual dispute between the Club and the Player and that it was uncomfortable with the consequences this could have for Charlton Athletic.

192. The Panel finds that the above did not directly lead to additional damages to the Player. It also did not lead the Panel to conclude that the Player would be exempted from being required to mitigate his damages after the unilateral breach of contract by the Club. Subsequently, these circumstances did not convince the Panel to exercise its discretion to adjust the total amount of compensation to be paid to the Player pursuant to the "specificity of sport".

ii. The difficulty of players finding new clubs after a breach of contract

193. The Player is of the opinion that a termination of contract without just cause leaves a football player in a dire position to find new employment as a result of the provisions contained in article 17 of the FIFA Regulations, as confirmed by Mr Wil van Megen, expert called by the Player, in his expert report.

194. In short, the position of Mr van Megen can be summarised as follows. In accordance with article 17(2) of the FIFA Regulations, the new club of a player is jointly and severally liable for the payment of compensation independently of any other factors, such as being found to have induced the breach. When a contractual dispute has arisen between a player and a club, it is impossible to determine with certainty which party has breached the contract before the competent dispute resolution body finally resolves the dispute. Any new club considering employing a player whose contract has been terminated without a mutual agreement therefore has to take into account the risk that the player in question is found to have breached the contract. This would subject both the new club and the player to the consequences set out in article 17 of the FIFA Regulations: (1) liability to pay an unforeseeable amount of money to the old club of the player; (2) the player being unable to play competitive matches for the new club for a period of 4 to 6 months; (3) the club being potentially transfer banned for two registration periods; (4) difficulties in obtaining the right to register the player and the resulting inability to use his services.

195. In addition, the Player maintained that FIFA would not permit his registration with a new club prior to a decision of FIFA regarding the legality of the termination of the contract. In

the present case, this decision was finally a *prima facie* decision dated 24 November 2011. Only after this decision it became possible for the Player to register with a new club.

196. The Player maintains that, as evidenced by the facts of the present matter, he had difficulties in finding new employment after the termination of contract by the Club. Under the difficult circumstances in finding a new club, the Player was forced to accept a lower remuneration for his services and that the Club must compensate him for this.

197. During the hearing the Club maintained that these arguments cannot be used against it, as it is not responsible for the system put in force by FIFA.

198. The Panel finds that the Player was indeed not free to find new employment with another club due to his contractual dispute with the Club. Until the FIFA DRC rendered its *prima facia* decision, FIFA would not permit the Player to be registered with a new club. In addition, the consequences of the contractual dispute were unclear for any clubs interested in acquiring the services of the Player; possible consequences of a contractual dispute are a strong deterrent for new clubs interested in the services of a player.

199. The Player filed his claim with FIFA on 21 July 2011. On 24 November 2011 the FIFA DRC issued a *prima facie* decision in the dispute between the parties, stating that:

"prima facie, it appears to be plausible to consider that the termination of the [Employment Contracts] *between the* [Player] *and the* [Club] *occurred without just cause".*

200. Although this *prima facia* decision of the FIFA DRC reduced the risk of any new clubs interested in the services of the Player to be jointly liable for the compensation to be paid by the Player in case the Club would have had just cause to terminate the Employment Contracts, the Panel finds that the pending contractual dispute still made the Player less attractive for new clubs as it was only a *prima facie* decision.

201. Despite this unfavourable position, the Player found new employment with Jagiellonia Bialystok on 25 November 2011. The Panel finds that the fact that the Player earned considerable less salary with this Polish club compared to his previous salary with the Club cannot be held against the Player due to the uncertainties deriving from the contractual dispute.

202. As the FIFA DRC finally found the Club to have unilaterally terminated the Employment Contracts without just cause in the Appealed Decision, the Panel finds that the Club should bear the consequences from the damages incurred by the Player. The Panel is of the opinion that it cannot be held against the Player that he could not immediately mitigate his damages because FIFA would not register him for any new club pending the contractual dispute and due to the uncertainty deriving from the contractual dispute. By signing a new employment contract with Jagiellonia Bialystok on 25 November 2011, the Player did what could have been reasonably expected from him in mitigating his damages.

203. The Panel will therefore take these circumstances into account to the advantage of the Player in deciding whether the amount of objective damages incurred by the Player should be adjusted in light of the "specificity of sport".

iii. The Player's return to Poland

204. In the Appealed Decision, the FIFA DRC determined the following regarding the compensation to be awarded to the Player for the unilateral breach of contract by the Club:

> *"Referring to other objective criteria to be taken into account, what is legitimate under art. 17 par. 1 of the Regulations, the Chamber was eager to point out that the player, albeit having formally protested against the termination of the* [Employment Contracts]*, appears to have returned to Poland immediately after the termination of the employment relationship with the* [Club]. *In addition, the Chamber took into account that during the execution of the contracts, bearing in mind the contractual period 90 days' grace period though, the* [Club] *appears to have fulfilled its financial obligations towards the* [Player]. *The members of the Chamber deemed that they had to take these circumstances into consideration in the calculation of the amount of compensation for breach of contract.*
>
> *Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided to partially accept the* [Player's] *claim and that the* [Club] *must pay the amount of EUR 145,000, which was considered as reasonable and proportionate as compensation for breach of contract in the specific case at hand".*

205. The Player maintains that he returned to Poland on 11 June 2011, one month and 21 days after the termination letter dated 20 April 2011 was sent by the Club. The Player returned to his home country at a time when the football season in Cyprus was over and all of the players were scheduled to be on vacation. Before leaving the country and during his vacation, the Player reaffirmed his commitment to continuing his employment relationship with the Club despite the circumstances. The Player therefore considers that reducing the compensation due based on the fact that he went home for the vacation period is nothing short of a gross injustice. The same can be said for the second premise of the reduction, the fact that the Club allegedly was only three months late in paying the salaries of the Player during the contract period and did not breach the agreement earlier.

206. The Club contemplates that the Appealed Decision is correct, justified and legally recognized.

207. The Panel finds that the Player did what could have been reasonably expected from a player in his position. The Player did not leave immediately after the termination of the Employment Contracts by the Club. To the contrary, the Player asked his Agent to come to Cyprus to try and resolve the dispute with the Club. Only several weeks after the termination letter was sent, the Player left Cyprus during the vacation period when all the players of the Club had vacation. And even then the Player tried to keep in touch with the Club by asking it when he would be required to start with the preparations for the new season.

208. The Panel adheres to the position of the Player that it cannot be held against him that he left to Poland during the vacation period. In this respect the FIFA DRC erred and this should not

have been a reason for the FIFA DRC to reduce the compensation awarded to the Player. The Panel finds however that this is also not an independent reason why the amount of objective damages as calculated above should be increased.

iv. The mitigation

209. As mentioned above, the Player finds that the salary he earned with Jagiellonia Bialystok should play no role in calculating the compensation based on article 17 of the FIFA Regulations as any reduction of the compensation would run directly contrary to the principles concerning maintenance of contractual stability. If such amounts were to be deducted, clubs breaching contracts of football players would invariably end up saving money by terminating contracts. Considering the principle of contractual stability, the Player submits that no deduction from the compensation payable should be made based on the fact that the Player has mitigated his damages in the present case. Considering that the amounts earned by the Player as remuneration for work performed for a third party will in any case be considered to benefit either the injured party performing the work or the party who has violated the FIFA Regulations, the only question is: to which party the benefit of the remuneration earned by the player is assigned?

210. In this respect it is the Club's position that the Player has no right to claim the total remaining salaries as such. The Player did not do anything to find another team or to reduce his damages and/or losses. The Player had sufficient time, from April 2011 until the beginning of the 2011/2012 season to find a new team. The Player should at least have found a team that was willing to pay him half of the salary he earned with the Club. Consequently, the Club finds that the Appealed Decision was correct in ordering the Club to pay to the Player an amount of EUR 145,000.00 as compensation.

211. The Panel finds that a party suffering from a breach of contract has a general obligation to mitigate his damages. This principle is also applicable to the Player in the present matter. The Panel finds that this principle goes two ways. On the one hand, the mitigated amount shall be deducted from the amount used as the basis to calculate the compensation due (cf. §131-140). Insofar as a player was able to mitigate his damages, he did not suffer damages. Consequently, pursuant to the principle of positive interest, the party in breach shall not compensate the mitigated amount as this would lead to unjust enrichment of the party suffering from the breach. However, on the other hand, the Panel finds that the fact that the party suffering from the breach was able to mitigate his damages is a fact that should be considered to the benefit of the party suffering from the breach in light of the "specificity of sport".

v. The losses suffered by the Player due to the unilateral termination by the Club

212. The Player argues that in light of the above-mentioned circumstances reducing the appeal of hiring him, he was not able to maintain his level of income or continue playing football at the same level of competition. Instead, in order to secure employment after the termination of his previous contracts, the Player had to accept a two-year contract with a significantly lower remuneration to what was paid by his previous employer and at a club playing in a lower level championship. The Player wants to be compensated for this loss of profit.

213. The Club did not put forward any specific position in this respect.

214. The Panel noted that the Player did not maintain this claim in the proceedings before the FIFA DRC. As a consequence, the Panel finds that this request for relief should be rejected as a matter of admissibility.

215. However, should the claim have been considered admissible by the Panel, *quod non*, still the Panel does not agree with the position expressed by the Player. Although it is true that the Player earned a lower salary with Jagiellonia Bialystok as he was supposed to earn with the Club in the 2011/2012 season, only the salary the Player effectively earned with the Polish club is deducted from the compensation requested by the Player. Thus, in effect, the salary the Player earned with Jagiellonia Bialystok is added up to the salary the Player would have earned with the Club should the Club have properly performed the Employment Contracts. Subsequently, the Player was not put in a worse position as he would have been should the Employment Contracts have been properly performed by the Club.

216. In light of the above, the Panel finds that there were indeed several aggravating circumstances in the termination of the Employment Contracts without just cause by the Club. The Panel noted that the Employment Contracts were indeed terminated during the protected period. The breach occurred in the middle of the season, although the Panel also took into account that the termination was effectuated not long before the end of the 2010/2011 season. The Panel furthermore took into account that the breach had indirect consequences for the Player's family. The Panel did not give particular weight to the Player's allegation that the breach had negative consequences for his fitness and that he was therefore not able to find a new club in a short period, as the breach occurred shortly before the end of the 2010/2011 season. The Panel took into account the position expressed by the expert called by the Player regarding the general difficulty of players to find a new club if they are involved in a dispute regarding a unilateral breach of contract. The Panel took into account that the Player's Agent came to Cyprus to try and find an amicable solution with the Club. The Panel took into account that during the hearing Mr Michalis Kafkalias, witness called by the Club, admitted *"the Club unilaterally terminated too many employment contracts with players of the Club at the end of the 2010/2011 season"*. Finally, the Panel also took into account that the Club in fact dragged the Player into filing a claim with FIFA by terminating the Employment Contracts without just cause.

217. In light of the above-mentioned aggravating circumstances and pursuant to the "specificity of sport", the Panel deems it appropriate to award the Player an additional amount of compensation equal to three months' salary, *i.e.* EUR 82,500.00 (3 x EUR 27,500.00).

218. Adding the amount awarded as compensation in light of the "specificity of sport" (*i.e.* EUR 82,500.00) to the objective damages incurred by the Player due to the breach of the Employment Contracts by the Club (*i.e.* EUR 382,115.69), the total compensation to be paid by the Club to the Player is EUR 464,615.69.

f. Are the awarded amounts net or gross?

219. The Panel noted that the amounts awarded to the Player in the Appealed Decision were net amounts. Although it was in dispute before the FIFA DRC whether the amounts should be paid as net or gross, in light of the fact that the FIFA DRC decided that the amounts were to be considered as net amounts and since the Club did not file an independent appeal against the Appealed Decision, the Panel finds that the decision of the FIFA DRC in this respect should be confirmed and the amounts awarded to the Player are net amounts. Therefore, the Club should bear any tax consequences in respect of the awarded amount and be responsible to pay any such tax.

220. However, the Panel is aware that certain countries have different tax rates for salaries and compensation. As the Player is the person that will be taxed by the tax authorities, the Panel deems it important to emphasise that in case that the taxes will be paid to the tax authorities by the Player himself, the Club shall be liable to reimburse the Player with the taxes paid.

g. Is any interest due?

221. In his requests for relief, the Player requested the Panel to *"[d]ecide that interest of 5% p.a. is due on each of the outstanding amounts as of the day following the day on which such remuneration had fallen due until the date of payment"* and maintained in the reasoning of his appeal brief that based to article 339 of the Swiss Code of Obligations *"[i]nterests on all amounts ordered as compensation is therefore due as from 21 April 2011"*.

222. The Club did not put forward any specific position in this respect.

223. Pursuant to article 104(1) of the Swiss Code of Obligations, unless otherwise provided for in the contract, legal interest due for a debtor in default of payment of a pecuniary debt must pay default interest of 5% *per annum*, even where a lower rate of interest was stipulated by the contract.

224. The Panel finds that in the absence of any contractual provision in the Employment Contracts determining the default interest rate if a party is in default of payment of a pecuniary debt, the standard rate of 5% *per annum* shall apply.

225. The Panel recalls that the Employment Contracts contain a clause determining that *"the Club has the right and shall pay all the* [Player's] *emoluments in the manner specified herein with a grace period of 90 (ninety) days"*. The salaries corresponding to the months before the breach therefore fell due only 90 days after the initial due date, *i.e.* after the breach.

226. As the FIFA DRC decided accordingly, the Panel confirms the Appealed Decision insofar as it sets out the interest payable towards the Player over the amounts due up until the breach. The interest to be paid according to the Appealed Decision is as follows:

a) 5% p.a. as of 1 July 2011 on the amount of EUR 15,000.00;
b) 5% p.a. as of 1 May 2011 on the amount of EUR 12,500.00;
c) 5% p.a. as of 1 June 2011 on the amount of EUR 12,500.00;
d) 5% p.a. as of 1 July 2011 on the amount of EUR 12,500.00;
e) 5% p.a. as of 1 August 2011 on the amount of EUR 8,500.00.

227. In addition, the Panel finds that interest shall also be paid over the partial salaries of the month of April 2011 (cf. §101) and over the housing benefits (cf. §113). Consequently, the following interest should also be paid to the Player by the Club, taking into account the same 90 day period of grace:

f) 5% p.a. as of 1 August 2011 on the amount of EUR 10,000.00;
g) 5% p.a. as of 1 August 2011 on the amount of EUR 8,333.33;
h) 5% p.a. as of 1 July 2011 on the amount of EUR 1,500.00;
i) 5% p.a. as of 1 August 2011 on the amount EUR 1,000.00.

228. As to the compensation, the Panel notes that according to article 339(1) of the Swiss Code of Obligations when the employment relationship ends, all claims arising therefrom fall due. Even an unlawful, premature termination does terminate the contractual relationship *ex nunc* (CAS 2008/A/1519-1520, § 185). According to Swiss jurisprudence and doctrine, in case of a claim for compensation for a premature, unjustified termination of an employment agreement, interests shall start to accrue immediately, *i.e.* as per the day of the termination of the agreement, without any reminder being necessary (CAS 2008/A/1519-1520, § 185, with further references to: Decision of the Swiss Federal Tribunal of 4 May 2005, in re *X c/ Y,* Case no. 4C.67/2005, publ. in: *ARV 2005, p. 251*, consid. 2; Decision of the Swiss Federal Tribunal of 29 March 2006, Case no. 4C.414/2005, consid. 6; decision of the Tribunal Cantonal du Canton de Vaud of 20 February 1980, publ. in: *JAR 1981, p. 168 et seq*., consid. IV, referring to art. 108 para. 1 of the Swiss Code of Obligations; STAEHELIN, *Zurcher Kommentar*, *op. cit*.,art. 339 N 12; STREIFF/VON KAENEL, *Arbeitsvertrag*, *op. cit*., art. 339 N 2; PORTMANN, *Basler Kommentar*, *op. cit*., art. 339 N 2, referring to art. 102 para. 2 of the Swiss Code of Obligations; WYLER, *Droit du travail*, *op. cit*., at fn 2197. Also the panel in CAS 2006/A/1061, N 48, followed this jurisprudence).

229. Since the Employment Contracts were terminated by the Club on 20 April 2011, the amount of compensation awarded by this Panel for the objective damages incurred by the Player due to the unilateral termination without just cause of the Employment Contracts by the Club (*i.e.* EUR 382,115.69) and the amount awarded under the "specificity of sport" (*i.e.* EUR 82,500.00), fell due on this date. However, as requested by the Player, the interest shall start to accrue as of the day following the day on which it fell due, *i.e.* as of 21 April 2011.

B. Conclusion

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

a) The Club unilaterally terminated the Employment Contracts without just cause on 20 April 2011.
b) The Player is entitled to outstanding payments in a total amount of EUR 81,833.33 at the moment the Employment Contracts were terminated without just cause by the Club.
c) Should the Club not have terminated the Employment Contracts prematurely, the contracts would have expired on 31 May 2012.
d) The Player is entitled to an amount of EUR 382,115.69 as compensation for objective damages incurred due to the breach of the Employment Contracts by the Club.
e) In light of the aggravating circumstances of the breach by the Club and the "specificity of sport", the Player is entitled to an additional amount of compensation equal to three months salary under the Employment Contracts, *i.e.* EUR 82,500.00.
f) All the amounts awarded to the Player are net amounts.
g) Over the payments that remained outstanding on 20 April 2011, the Club shall pay interest as of the dates these payments fell due. Interest over the amounts awarded as compensation for the breach of the Employment Contracts accrued as of 21 April 2011.

231. 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 Mr Grzegorz Rasiak on 30 July 2012 against the Decision issued on 23 March 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

2. The Decision issued on 23 March 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is set aside.

3. AEL Limassol is ordered to pay to Mr Grzegorz Rasiak a net amount of EUR 81,833.33 (eighty-one thousand eight hundred thirty-three Euro and thirty-three cents) for outstanding payments owed by AEL Limassol to Mr Grzegorz Rasiak from the period 1 January 2011 to 20 April 2011, with interest accruing as follows:

a) 5% p.a. as of 1 July 2011 on the amount of EUR 15,000.00;
b) 5% p.a. as of 1 August 2011 on the amount of EUR 10,000.00;
c) 5% p.a. as of 1 May 2011 on the amount of EUR 12,500.00;
d) 5% p.a. as of 1 June 2011 on the amount of EUR 12,500.00;
e) 5% p.a. as of 1 July 2011 on the amount of EUR 12,500.00;
f) 5% p.a. as of 1 August 2011 on the amount of EUR 8,333.33;
g) 5% p.a. as of 1 August 2011 on the amount of EUR 8,500.00;
h) 5% p.a. as of 1 July 2011 on the amount of EUR 1,500.00;
i) 5% p.a. as of 1 August 2011 on the amount EUR 1,000.00.

4. AEL Limassol is ordered to pay to Mr Grzegorz Rasiak a net amount of EUR 464,615.69 (four hundred sixty-four thousand six hundred and fifteen Euro and sixty nine cents) as compensation for the unilateral breach of contract by AEL Limassol, with 5% interest *p.a.* accruing as of 21 April 2011.

5. (…).

6. (…).

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