Arbitration CAS 2011/A/2584 Laszlo Sepsi v. FC Timisoara, award of 25 January 2012

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player for outstanding salaries
Limits in the CAS' power of review based on Article R57 of the CAS Code
Application of the 75% test according to the RSTP RFF (2010 edition)
Interpretation of Article 18.10 of the RSTP RFF

1. **Parties may not bring in appeal new submissions or submissions which go beyond the scope of the ones submitted before the prior instance. In other words, a CAS panel cannot consider a request for relief that had not been before the previous instance. Furthermore, it is outside the scope of review of a CAS panel to consider a claim for sporting sanctions in the absence to the procedure of the sporting federation competent to issue the sanctions.**

2. **Article 18.10 of the Regulations on the Status and Transfer of Football Players of the RFF (RSTP RFF) is to be used by judging bodies where one party is claiming the other has breached the contract and is seeking confirmation that the contract can be terminated, with just cause. The provision then gives a further test for the judging body to apply – has the player received 75% of the sums due to him so far that season or not? If he has, then the club is to be ordered by the judging body to make good the arrears within 5 days, but the contract survives and continues. If not, then the contract is to be terminated with just cause. The RSTP RFF (2010 edition) is silent on the issue of the time when the 75% test is to be applied. Although not with express retrospective effect, the 2011 edition directs the judging body to look at the position as at the date of the original complaint.**

3. **The wording of Article 18.10 RSTP RFF refers to *"evidence-taking"* and *"the committee shall issue a decision"* which implies that in Romania it is not possible for a player to simply walk away from a contract, he has to apply to the National Dispute Resolution Chamber, who will look at the appropriate facts and evidence and then issue a decision that the contract has been terminated or not, as the case may be.**

I. THE PARTIES

1. Mr Laszlo Sepsi (hereinafter referred to as the "Player" or the "Appellant") is a professional football Player from Bucharest in Romania.

2. FC Timisoara (hereinafter referred to as the "Club" or as the "Respondent") is a football club with its registered office in Timisoara, Romania. It is a member of the Romanian Football Federation (hereinafter referred to as the "RFF" or "FRF") and plays in Liga II of the Romanian Liga Profesionista de Fotbal (hereinafter referred to as the "LPF"). The Club's full corporate name is SC Fotbal Club Timisoara SA.

II. BACKGROUND FACTS

3. On 12 February 2010, the Player signed a labour contract with the Club for the period from 1 January 2010 until 31 December 2014 reference number 602/12.02.2010 (hereinafter referred to as the "Contract"). For the purposes of this matter, the relevant clauses are:

4.1.2 The Player has *"…the right to receive the pay due and other money entitlements agreed by the parties"*.

4.4.2 The Club is obliged *"…to provide the Player with accommodation in the amount of 400 Euros/month"*.

4.4.3 The Club is obliged *"…to provide the Player with meals during the development of the agreement"*.

10.1 *"For his activity during the agreement, after the medical exam and the favourable consent of the certified physician the Player shall be paid as follows:*

- *For the period between 01.01.2010 – 30.06.2010 he will encash the net amount of 150,000 (one hundred fifty thousand) Euros, paid up in monthly instalments of 25,000 (twenty-five thousand) Euros*
- *For the period between 01.07.2010 – 30.06.2011 he will encash the net amount of 220,000 (two hundred twenty thousand) Euros, paid up in monthly instalments of 18,333 (eighteen thousand three hundred thirty three) Euros*
- *For the period between 01.07.2011 – 30.06.2012 he will encash the net amount of 240,000 (two hundred forty thousand) Euros, paid up in monthly instalments of 20,000 (twenty thousand) Euros*
- *For the period between 01.07.2012 – 30.06.2013 he will encash the net amount of 260,000 (two hundred sixty thousand) Euros, paid up in monthly instalments of 21,667 (twenty one thousand six hundred sixty-seven) Euros*
- *For the period between 01.07.2013 – 30.06.2014 he will encash the net amount of 280,000 (two hundred eighty thousand) Euros, paid up in monthly instalments of 23,333 (twenty three thousand three hundred thirty three) Euros*
- *For the period between 01.07.2014 – 31.12.2014 he will encash the net amount of 150,000 (one hundred fifty thousand) Euros, paid up in monthly instalments of 25,000 (twenty-five thousand) Euros"*.

10.4 *"All the amounts stipulated under the contract will be paid in monthly instalments not later than the 25th of each month, at the leu-euro exchange rate of the NBR from the payment date"*.

18.1 *"The applicable law is the Romanian Law"*.

18.2 *"…all disputes arising from or in connection with this agreement shall be governed…in accordance with the Romanian legislation in force and with the sports statutes and regulations".*

19.2 *"The parties shall make every effort, in good faith, to settle in an amicable manner any dispute arising from or in connection with this agreement. If this is not possible, the dispute will be submitted for settlement to the courts for sports-related disputes of RFF and/or LPF".*

4. On 1 July 2010, the 2010/11 season of Liga I of the LPF started.

5. In November 2010 the Club issued a statement to the Player listing the amounts due to the Player, the amounts paid and the amounts outstanding. At that stage the Club stated, although disputed by the Player, it owed him EUR 70,332.

6. On 9 December 2010 the Player sent, through his attorneys, a "first notification of default" to the Club requesting the immediate payment of the outstanding wages and other benefits, in the sum of EUR 100,969.63 and RON 20,040.

7. On 10 December 2010 the Club invited the Player and his attorneys to a meeting at its premises on 13 December 2010. The meeting took place with Mr Gheorghe Chivorchian and Mr Stanciu of the Club.

8. On 14 December 2010 the Club's legal counsel sent minutes of the meeting and a repayment proposal to the Player's attorneys. On the same date the Player's attorneys replied declining the Club's proposal to pay by the outstanding amounts 31 January 2011. The Player's attorneys requested the payments within 24 hours.

9. On 15 December 2010 the Club paid 214.465 RON (EUR 50,017.49) to the Player, approximately half of what he claimed as outstanding at that time.

10. On 16 December 2010 the Player's attorneys sent a fax to the Club informing them of their intention to start legal proceedings in order to terminate the Contract.

11. On 16 December 2010 the Player's attorneys lodged a claim before the National Dispute Resolution Chamber (sometimes referred to as the Settlement Litigation Board) of the LPF (hereinafter referred to as the "NDRC") stating that the Club was in default in making the payments under the Contract to the Player. The Player specifically claimed the following:

    1. *"The cancellation for a cause, due to the defendant's fault, of the Service Supply Agreement no. 602/12.02.2010 regarding the activity of the professional football player, recorded with LPF under no. 193/12.02.2010.*

    2. *To compel the defendant to pay the amounts of EUR 50,952.14, RON equivalent, at the exchange rate value of the National Bank of Romania, on the effective payment day, that is RON 20,040 representing the financial rights due to the plaintiff on the grounds of the Service Supply Agreement no. 602/12.02.2010, amounts owed by the date of 25.11.2010, calculated related to monthly instalments established by the parties in the agreement, outstanding on the 25th of each month, as follows:*

- *EUR 50,952.14 = EUR 46,552.14 (representing the outstanding remuneration on the grounds of the agreement) + EUR 4,400 (representing the accommodation rights established by the agreement);*

- *RON 20,040, representing the rights for food, established by the agreement, calculated according to art. 13 paragraph 7 of the Regulation regarding the Statute and Transfer of Football Players*

3. *To compel the defendant to pay the outstanding financial rights devolving upon the plaintiff for the period contained between 25.11.2010 and the date when the decision for ruling the cancellation of the Service Supply Agreement no. 602/12.02.2010 regarding the activity of the professional football player is declared final, amount to be computed depending on the monthly instalments established by the parties in the agreement, outstanding on the 25th of each month.*

4. *To compel the defendant to pay recover of damages consisting of legal interest related to payment delays and to the debit owed on the moment this application was lodged, cumulated by the settlement of this application.*

5. *To compel the defendant to pay the trial expenses".*

12. On 7 January 2011 the Player's attorneys filed a detailed breakdown of the monies received by the Player, the amounts outstanding and the amount of days that the payment were outstanding to demonstrate that at that time many payments had been over 60 days late and that the Player had only received 45.5% of the sums due to him.

13. On 18 January 2011 the NDRC held an initial hearing in relation to the dispute.

14. On 19 January 2011 the Player's attorneys sent a fax to the NDRC requesting information regarding the members appointed to the NDRC panel.

15. On 25 January 2011 the NDRC held the second hearing on the matter.

16. On 26 January 2011 the Player's attorneys sent a second fax to the NDRC regarding the constitution of the panel.

17. On 1 February 2011 the NDRC held a third hearing at which the NDRC stated it wanted a forensic accountant's review of the Contract and the payments made and due.

18. On 3 February 2011 the legal representative of the Player sent a third fax to the NDRC reiterating the requests contained in the previous fax correspondence concerning the constitution of the NDRC.

19. On 11 February 2011 the attorneys sent a fourth and fifth fax to the NDRC regarding the previous requests.

20. On 15 February 2011 the NDRC sent a fax to the parties regarding the aim and scope of the "accountancy expertise" each must appoint. In particular, they had to instruct the accountants

to report the position as at the present date.

21. On 23 February 2011 the Player's attorneys sent a sixth fax regarding the previous requests for information. On the same date the attorneys sent a fax to the NDRC informing them of the *"pressures he was receiving from the Club's officials"*. Further the attorneys sent a fax to the Romanian Association of Amateur and Professional Footballers (hereinafter referred to as "AFAN") regarding the make up of the panel of the NDRC.

22. On 28 February 2011 AFAN replied stating that *"none of the members of the Commission for the Settlement of Litigators within Professional Football League has been assigned by AFAN to represent the interests of professional footballers"*.

23. On 7 March 2011 the Player's attorneys filed their "accounting expertise" prepared by Florean Mariana as at 22 February 2010.

24. Thereafter, the Player's attorneys sent many more faxes to the NDRC again requesting information regarding the constitution of the NDRC, copies of minutes of the hearings, the issuance of a decision and stating their position that any accountant's report should show the position as at the date of the original complaint.

25. On 12 May 2011 the Player sent a fax to the Club requesting the payment of the outstanding monies, claiming at this stage EUR 63,296.20 and RON 29,100.

26. On 21 May 2011, the final game of the 2010/11 Season is played. The sporting year finished on 30 June 2011.

27. On 7 June 2011 the NDRC issued the decision (hereinafter referred to as the "First Decision"). It ordered the Club to pay the sums of EUR 36,533.43 and RON 1,680 to the Player within 5 days, failing which the Contract would be considered terminated. The First Decision was notified to the parties on 16 June 2011.

28. On 16 June 2011 the Club paid the sum of EUR 67,700 to the Player.

29. On 20 June 2011 the Player filed an appeal against the First Decision.

30. On 21 July 2011 the Club paid a further sum of EUR 88,520 to the Player. At this stage the Club was up to date with sums due to the Player.

31. On 21 July 2011, the appeal was heard by the Appeal Committee of the LPF and on 4 August 2011 that body issued its decision (hereinafter referred to as the "Appealed Decision"). The Appealed Decision was notified to the Player on 15 September 2011. The Appealed Decision stated as follows:

"The rejection of the appeal submitted by the Player Sepsi Laszlo against ruling number 447/7.06.2011 of the LSB of the PFL, considered ungrounded.

The rejection of the claim to compel SC FC Timisoara SA to pay the procedure fee, considered ungrounded.

Indefeasible. Enforceable.

With the possibility of appeal before CAS within 21 days from the notification".

This was a majority decision of 3 of the Appeal Committee members, with the minority of 2 members in favour of the Player's appeal.

III. PROCEEDINGS BEFORE THE CAS

III.1 THE APPEAL

32. On 30 September 2011, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereafter "the CAS"). He challenged the above mentioned Appealed Decision, submitting the following request for relief:

1. *"To adopt an award by means of which the decision number 43 of August 4, 2011 adopted by the Appeal Committee of the Romanian Professional Football League (LPF) is set aside.*
2. *To accept the Appellant's request to early terminate with just cause of the Contract number 602/12.02.2010 concluded with FC Fotbal Club Timisoara SA, by the Club's fault.*
3. *To condemn the Respondent with the payment of 81,489 Euro, representing the outstanding salaries up-to-date.*
4. *To condemn the Respondent with the payment of a compensation for the breach of contract, equivalent to the remuneration and other benefits agreed with the Appellant, for the remaining period of the Contract number 602/12.02.2010, thus until December 31, 2014.*
5. *To condemn the Respondent with the sporting sanctions set forth in the applicable Regulations and therefore, ban the Club from registering any new players, either nationally or internationally for two registration periods.*
6. *To condemn the Respondent to pay the payment of the whole CAS administration costs and the Panel fees.*
7. *To fix a sum, to be paid by the Respondent to the Appellant, in order to pay its defence fees and cost in the sum of 40,000 CHF".*

33. On 14 October 2011, the Appellant filed his Appeal Brief. Within this, certain of the prayers for relief were modified, as follows:

"3. To condemn the Respondent with the payment of 75,143.53 Euro, representing the outstanding salaries up-to-date.

4. To condemn the Respondent with the payment of 870,000 Euro as compensation for the breach of contract, equivalent to the remuneration and other benefits agreed with the Appellant, for the remaining period of the Contract number 602/12.02.2010, thus until December 31, 2014".

III.2 THE ANSWER

34. On 6 December 2011, the Respondent filed its Answer, with the following request for relief:

a. *"To reject de* [the] *appeal declared by Mr Laszlo Sepsi,*

b. *to maintain de* [the] *decision number 43 of 4 August 2011 adopted by the Appeal Commission of the Romanian Professional Football League,*

c. *to reject the demand of the Appellant concerning the request to early terminate with just cause of the contract number 602/12.02.2010 concluded with our club and also to reject the demand concerning the ban from registering any new players for two registration periods,*

d. *to reject the demand of the Appellant concerning the payment of 75.143,53 EUR and 38.280 RON,*

e. *to reject the demand of the Appellant concerning the payment of 870.000 EUR as compensation,*

f. *to reject the demand of the Appellant concerning the payment of 40,000 CHF as defence fees,*

g. *to establish that the costs of the arbitration procedure and the legal expenses shall be borne by the Respondent".*

35. At the hearing, the Respondent clarified a "typo" in its final prayer, requesting that the Sole Arbitrator *"establish that the costs of the arbitration procedure and the legal expenses shall be borne by the Appellant".*

III.3 ADDITIONAL PROCEEDINGS

36. In his Appeal Brief, the Appellant requested that the procedure be dealt with on an expedited basis in accordance with Article R44.4 of the Code of Sports-related Arbitration (hereinafter referred to as "the Code"). On 24 October 2011, the Respondent stated that it did not consent to an expedited procedure.

37. After some debate regarding the nominations and number of arbitrators, the Deputy President of the CAS Appeals Arbitration Division deemed to appoint a sole arbitrator on 1 December 2011, in accordance with Article R50 of the Code.

38. The Appellant initially requested that the Sole Arbitrator consider the matter on the papers alone; whilst the Respondent requested a hearing. The Sole Arbitrator determined to convene a hearing in order to hear the parties and to clarify certain submissions.

39. On 4 January 2012, the Sole Arbitrator directed both parties to provide an English version of any Romanian Law that they intended to rely upon at the hearing. Additionally, the Order of Procedure was sent to the parties, both of which duly returned it signed and accepted.

40. On 10 January 2012, the Appellant filed an English version of the Romanian Law it intended to rely upon at the hearing.

III.4 SUMMARY OF SUBMISSIONS

41. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

III.4.1 Appellant

42. The Appellant's submissions, in essence, may be summarised as follows:

a) That at all material times the Respondent has shown disregard to its contractual obligations. In particular, the Contract provides at Article X, paragraph 10.1 the remuneration due to the Player. This clause gives *"a clear and unambiguous obligation for the Club"* to make payment of the salaries to the Player. Further that Article X, paragraph 10.4 states that all the amounts under the Contract will be paid in monthly instalments no later than the 25th of each month. Therefore the Player was entitled to claim his salaries on the 25th of each month

b) The Appellant had just cause to unilaterally terminate the Contract. Further in the event that the Sole Arbitrator should take the view that the Respondent has unilaterally terminated the Contract by not fulfilling its financial obligations with the Player, it should be determined that the Respondent had no just cause to do so.

c) The Regulations on the Status and Transfer of Football Players of the RFF (hereinafter referred to as the "RSTP RFF") are applicable to the parties. Article 18.10 of the RSTP RFF provides the right for either party to request the early termination of the Contract:

"Players and clubs can invoke just cause and sporting just cause for the unilateral termination of the contracts for the following reasons:

a) Players

...

They have not been paid their contractual rights for a period exceeding 60 days from the day they fell due. In cases of unilateral termination at the Players' initiative due to the non payment of the contractual rights within 60 days from their due date, if from the evidence-taking it results that the player has received minimum 75% of the contractual rights due for the respective on-going season, the committee shall issue a decision obliging the club to pay the due amounts within 5 days from the communication of the decision. In the event of non payment within the abovementioned 5 day-period, the contractual relations between the club and the player shall cease from the date of the issuance of the decision ascertaining the non fulfilment of the payment obligations".

d) In December 2010 the Club acknowledged that there were arrears of salaries and informed the Player that the salaries would not be paid as the Club was experiencing financial difficulties. The Player submits that this is not a valid reason to deny payment therefore the Respondent was in breach of Contract. Despite the Club and the Player meeting to attempt to resolve the breach, the repayment proposal was unacceptable and refused. The subsequent payment by the Club on 15 December 2010 was for less than half of the then outstanding sums.

e) The Player submits that at that time of the original claim to the NDRC there was the existence of "just cause" to request the termination of the Contract in accordance with Article 18.10 of RSTP RFF; and that the Sole Arbitrator is being asked to confirm that the Player's request to terminate the Contract should be granted.

f) The Player has lost all confidence in the Club's capacity to fulfil its contractual obligations.

g) The Player argued that the First Decision and the Appealed Decision wrongly considered that in order to ascertain the existence of "just cause" is provided by Article 18.10 of the RSTP RFF, it had to be taken into account the situation up to the date of the hearings and not the situation existing at the moment the Player invoked the early termination with "just cause" by lodging the claim. As the Appellant put it, *"an ulterior compliance by the club of the financial obligations, does not affect the right of the Player to early terminate the contract with "just cause" when both conditions of Article 18.10 are met"*.

h) The previous instances interpretation is wrong and contrary not only to the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the "FIFA Regulations") but also against the provisions RSTP RFF, the Labor Code of Romania and ultimately of the fundamental rights unlimited as protected by the Romanian constitution and the European Convention on Human Rights.

i) The Player's interpretation of Article 18.10 of the RSTP RFF has been confirmed by the CAS Award 2010/A/2289 and was supported by the minority of the Appeal Committee of the LPF.

j) The accountant's report that was provided to the NDRC demonstrated that even at that stage of the proceedings, the Respondent had only paid 72% of the sums due to the Appellant, so even if the Appellant was wrong and the time for applying the 75% test was at the closure of the pleadings, the NDRC still should have determined that the Contract should be terminated with just cause, as the arrears were also over 60 days old.

k) In addition, by analogy, the Appellant noted that Article 14 of the FIFA Regulations provides *"a contract may be terminated by the party without consequences of any kind (either payment of compensation or imposition of sporting sanction) where there is just cause"*.

l) The Player referred to both FIFA and CAS jurisprudence that has stated that the obligations to make payments of salaries as being the main and primal obligation of a

club towards its players. That jurisprudence has explicitly pointed out that persistent delays and default of payments of the player's salaries constitutes a severe breach of the club's obligations allowing the player in such cases to invoke *"just cause"* in order to terminate the contractual relationship with no consequences whatsoever for the latter. The Player referred to the CAS decision in CAS 2006/A/1180 to support his arguments.

m) The Player argued that Article 18.10 of the RSTP RFF develops Article 14 of the FIFA Regulations by including the first condition of a delay exceeding 60 days from the due date for payment. Further that Article 18.10 provides the second condition, that the just cause can only be utilised if less than 75% of the outstanding contractual rights for the season in question have been paid (hereinafter referred to as "the 75% test"). Article 18.3 of the RSTP RFF provides that:

"The ascertainment of the ending of the contractual relationships as a result of a unilateral termination is done by the competent committee of FRF/LPF respectively".

n) Therefore the Player is fully entitled to unilaterally terminate the contract with just cause whenever the NDRC ascertains that there has been a delay existing of 60 days from the due date of payment; and less than 75% of the outstanding contractual rights for the season in question have been paid at the moment the Player requests the early termination of the contract. There is no choice or discretion for the NDRC.

o) The Player argued that Article 18.10 of the RSTP RFF is in accordance with the specific Romanian laws and labor regulations. Article 12 of the RSTP RFF confirms that *"the rights and obligations…are similar to those arising from an employment contract…";* that Articles 41 and 42 of the Romanian Constitution set out the principles of *"freedom of work"*; and that Article 81.1 and 81.8 of the Romanian Labor Code allow an employee to end with immediate effect an employment contract in the event the employer does not respect his contractual obligations. At the hearing, the Player stated that he did not terminate with immediate effect, instead he followed the RSTP RFF and applied to the NDRC to terminate the Contract. To date the Player has continued to honour his part of the Contract pending the decision he seeks to terminate the Contract with just cause.

p) The Player submits that the mandate given by the RSTP RFF to the NDRC is limited to ascertaining the early termination of the contract to qualify it as being either with just cause or without just cause and therefore implementing the consequences. The Appeal Decision has obliged the Player to continue the contractual relationship with the Club which is contrary to the FIFA Regulations and the RSTP RFF and constitutes a violation of his fundamental rights and liberties as set forth in the Romanian Constitution and Labor Code, and ultimately granted by article 4 of the European Convention of Human Rights.

q) The Appellant states that the NDRC and the Appeal Committee had to confirm just cause if the 2 conditions of Article 18.10 of RSTP RFF were met. The position is different under Articles 18.11 and 18.12 of the RSTP RFF. These were relevant in other cases of non-payment where the arrears were not for 60 days or where the player had

received more than 75% of sums due to him at that time, but the Player still requested the termination of the contract. Under those Articles, the NDRC and Appeal Committee analyse each case and reach a decision. Only those articles gave any discretion to the NDRC or Appeal Committee.

r) At the time the Player filed the Appeal Brief in the amount of EUR 71,143.51, corresponding to salaries and accommodation for the months June, July, August and September 2011 and 38,280 RON corresponding to the meals compensation for the whole contractual period, remained outstanding. At the hearing, the Player's attorneys submitted that he had not been paid for 7 months now totalling EUR 136,343; the Player stated it was 5 months of arrears.

s) The Player additionally argued that in accordance with Article 18.9.1 a) of the RSTP RFF sporting sanctions and compensation should be imposed on the Club and awarded to the Player respectively. The compensation should be *"the total amount of the financial rights that the player is entitled to up the expiry of the contract, except for the game and objective bonuses"*. The Appellant calculated this to be the sum of EUR 870,000 as at the date of the Appeal Brief, but stated at the hearing that this sum had reduced to EUR 810,000, as the arrears had increased by a like amount as the claim for compensation had decreased by.

t) The Appellant submitted that this was not an amendment to his prayers for relief, as the total claimed had not changed.

u) The Appellant referred to Article 18.9.1 a) of the RSTP RFF which makes no mention of any deductions or duty to mitigate on the part of the Player, just for the Club to pay the total balance of the Contract as compensation.

v) The Appellant claimed legal interest on all sums claimed pursuant to Article 34.15 of the RSTP RFF, which stated:

"Parties can demand interests…after the issuance of the award in the first instance".

The Appellant submitted that the rate of interest was to be found in Romanian Law, the Government Ordinance no. 9/2000 and was 20% less than the monetary policy rate of the National Bank of Romania from time to time.

w) In addition, the Appellant complained that the NDRC and the Appeal Committee had denied the Player the most basic procedural rights by refusing to give the Player a copy of the minutes and video recording of the hearings and prolonging the procedures to the Respondent's advantage to avoid transfer windows. At the hearing, the Player alleged that the procedure before the NDRC should have taken 2 weeks; it merely had to determine if there were arrears older than 60 days and if the Player had received less than 75% of sums due to him at that time. Instead, more than a year later the matter was before the CAS. This was the reason for the Appellant having to issue civil proceedings too. However, as soon as they were issued, the NDRC delivered its decision

and the civil proceedings were withdrawn.

x) Finally, the Appellant also complained that the Respondent has mistreated the Player further than just the non-payments by excluding him from the first team, not guaranteeing training conditions and making threats towards him.

III.4.2 Respondent

43. The submissions of the Respondent may be summarised as follows:

a) In accordance with the Contract, the Club has attempted to reach an amicable solution with the Player. There was a meeting with the Player's attorneys, but they failed to provide a power of attorney to demonstrate they were duly authorised to represent the Player. The Player himself did not seek an amicable solution.

b) At the hearing, the Respondent submitted that the Appellant had shown *"bad will"* by issuing proceedings in the Romanian Civil Courts, instead of allowing the NDRC to deal with the complaint.

c) The obligations to pay monthly remuneration (pursuant to Article X of the Contract), to provide accommodation rights (at the rate of EUR 400 per month) and to provide food rights (at the rate of 60 RON per day) were all acknowledged by the Club.

d) The Club submitted that from January to November 2010, the Player should have received EUR 241,665 for remuneration, EUR 4,400 for accommodation rights and RON 20,040 for his food rights. The Player claimed he had only received EUR 195,112.86; as such when the Player brought his action, he was due EUR 50,952.14 and RON 20,040.

e) The Respondent submitted throughout the proceedings many documents including payment orders, statement of accounts, financial statements, declarations for the Player for the period in which he has lived in the Club's hotel, a copy of the decision of the Club by which the Player has been punished for the failure of compliance with the teams objectives in the Season 2009/2010 and copies of the Rules of internal order of the Club for the Season 2009/2010. This resulted in the NDRC directing both parties to produce an accountant's report of exactly was outstanding.

f) The difference between the two accountants' reports as submitted to the NDRC is due to the fact that the expert appointed by the Club took into consideration a sanction applied to the Player in the amount of EUR 9,250 for the failure of complying with the performance objectives for the season 2009/2010 whilst the expert appointed by the Player did not take the sanction into consideration. These reports detailed the position as at 25 February 2011.

g) After the accountant's report the Respondent made two payments to the Appellant of EUR 22,518.33 and EUR 813.24. In addition, the monthly remuneration, accommodation and food rights feel due for March 2011.

h) On 7 June 2011, the NDRC determined that at the closing of the debates the amounts due and owing to the Player were EUR 36,533.43 and RON 1680. The Club was ordered to settle this within 5 days, which it duly did.

i) The NDRC correctly determined the position at the closing of the debates, rather than at the date of the claim *"because a fair solution had to contain also the payments done during the trial and also the obligations became due in the same time period"*.

j) Allowing the parties to conclude the covenants they've entered into promotes *"contractual stability"*, so if a party has fulfilled all its obligations, it should not be possible to terminate. Effectively, any breach had been remedied.

k) Whilst the Respondent acknowledged that the 2011/12 edition of the RSTP RFF confirmed that the 75% test was to be as at the date of the complaint, the 2010 edition was silent on the point. The latest edition did not have retrospective effect. The Respondent disputed the Appellant's claim to any further sums that might have fallen due for payment under the Contract after the closure of the debates before the Appeal Committee. Any such claim would be a separate matter to be referred to the NDRC.

l) The Respondent also argued that it should not pay legal interest and that the NDRC was correct in denying this head of claim stating that the right does not exist within the RSTP RFF. This is a sporting dispute and as such commercial Romanian Law is not applicable.

m) With regard to Article 18.10 of RSTP RFF, the second condition had not been met. The Player had received more than 75% of the sums contractual due to him for the sporting season 2010-11. He was due EUR 172,985.32 at the closing of the debates and had received all but EUR 36,944.37. In accordance with article 18.10, the NDRC gave the Club the further period of 5 days in which to settle this sum.

n) Article 18.12 of the RSTP RFF only provides the general possibility to choose between *"the continuity of the contractual relations or to ask their continuation (pursuant to the conditions provided by the Article 18.10 of the Regulations on the Status and Transfer of Players) and not a distinct hypothesis of termination as the Player has alleged"*. The Article gave the power to the NDRC to determine whether the late payments were sufficient to terminate the Contract and it decided not to terminate the Contract.

o) The Appealed Decision confirmed that the amount of EUR 67,700 had been paid by the Club to the Player during the period 31 May 2010 to 10 June 2011. This represented a settlement of the sums ordered by the NDRC and sums accrued

during that period. In July 2011 a further payment of EUR 88,520 was made to the Player and pursuant to the Contract, thus settling all arrears for that sporting season.

p) Therefore, at the time of the appeal hearing, the Appeal Committee was correct to take into consideration the obligations due and payments made during the procedure and not to simply looking at whether the obligations of a party have been fulfilled at the time for the commencement of the claim. Any other solution *"would not be fair"*.

q) The Respondent acknowledged that the delay in certain contractual obligations could result in termination of the contract; the late payment should not always lead to the early termination of the contract. That is the *"hardest sanction"*. The bodies hearing the dispute have to determine if the right to claim just cause exist, then if it does, to listen to the merits, the debates, and then to reach its decision. The Appeal Board determined that *"under the specified conditions, the sanction of the club with the termination of the covenant concluded with the player is disproportionately big sanction as for the contractual infringement done by the club"*.

r) By bringing all arrears up to date, the Club has shown its intentions to continue with the contractual relationship with the Player.

s) At the hearing, the Respondent submitted that any non payments under the Contract after the date of the Appeal Committee hearing were not relevant to this procedure. A separate complaint would need to be made by the Appellant to the NDRC. In addition, there was no proof of what was due as at the date of the hearing. The Player had stated it was 5 months; his attorneys submitted it was 7 months.

t) Finally, the Respondent noted that the Appealed Decision was correct in its interpretation that Article 18.12 of the RSTP RFF can only be utilised in accordance with Article 18.10 of the said regulations and not separately.

u) In conclusion, the Appealed Decision should be upheld.

III.5 THE HEARING AND POST-HEARING OBSERVATIONS

44. The hearing was convened on 11 January 2012 at the CAS premises in Lausanne, Switzerland. The Appellant did not raise any objection as to the appointment of the Sole Arbitrator, however the Respondent stated its preference for a Panel to deal with the matter, but acknowledged at the hearing that the decision had already been taken by the Deputy President and the matter was being dealt with by a single arbitrator. The Respondent confirmed it had no objection to the Sole Arbitrator per se. At the hearing, the Sole Arbitrator was assisted by Mrs Pauline Pellaux, CAS Counsel.

45. The Appellant was not personally present but his attorneys called for him to be heard by telephone.

46. The Respondent was present and represented by its internal counsel, Mr Miclea Florin Cristian.

47. At the hearing, the Respondent's representative stated that, as he had been travelling to the hearing, he had not received a copy of the Appellant's filing of 10 January 2012. A copy was provided to him and, as the Appellant confirmed that it contained no new references to Romanian Law, it was accepted at the hearing.

48. The Appellant also produced a schedule which he claimed demonstrated the current position of arrears of payments under the Contract. The Respondent objected to this late filing and requested the Sole Arbitrator not to accept its production and to deem it inadmissible. The Sole Arbitrator allowed it to the file, but allowed the Appellant until the close of business on 13 January 2012 to inform the CAS Court Office and the Appellant of any payments that the Club had made that were not shown on the schedule and to raise any other objections with its contents.

49. The Player was heard by telephone and the Sole Arbitrator and the Respondent had the opportunity to examine him.

50. After the parties' final arguments, the Sole Arbitrator closed the hearing and announced that the award would be rendered in due course. Upon closure, the parties expressly stated that they did not have any objection in respect of their right to be heard and confirmed they had been treated equally in these arbitration proceedings.

51. By letter of 11 January 2012, the CAS Court Office reminded the Respondent that it was granted the opportunity to file until the close of business on 13 January 2012 observations limited to the schedule produced by the Appellant at the hearing and also allowed it to file observations related to the award *CAS 2010/A/2289* that was referred to several times by the Appellant and was enclosed to the Club's attention.

52. By letter of 13 January 2011, the Respondent reiterated its objections to the consideration by the Sole Arbitrator of claims related to events posterior to the Appealed Decision and underlined some differences between the present case and the case related to the procedure CAS 2010/A/2289.

53. On 23 and 24 January 2012, the Respondent submitted a document that would demonstrate that it paid additional remuneration to the Appellant, while a copy of the bank transfer was attached it was not clear how much money had been transferred.

54. On 24 January 2012, the Appellant objected to the admission of this new document, he neither confirmed nor denied that he had received any further payment.

55. The Sole Arbitrator determined that the submissions by the Respondent of 23 and 24 January 2012 were deemed inadmissible by letter of 25 January 2012.

IV. DISCUSSION

IV.1 CAS JURISDICTION

56. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

57. The Appellant stated that Article 36.17 of the RSTP RFF provides:

"Decisions of the Appeal Committee of RFF/LPF are definitive and enforceable internally from the day of their pronunciation and can be only be challenged before the Court of Arbitration for Sport within 21 days from their communication".

58. The Respondent stated that under Articles 56.3 of the RFF Statutes:

"The decisions awarded by the Appeal Commission of the Romanian Football Federation may be appeal[ed] *at the Court of Arbitration for Sports of Lausanne".*

59. The Sole Arbitrator noted that the jurisdiction of the CAS was not therefore disputed by the parties. Further the jurisdiction of the CAS was confirmed by the Order of Procedure signed by both parties.

60. Under Art. R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the Appealed Decision.

IV.2 APPLICABLE LAW

61. Article R58 of the 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 Appellant submitted that the Article XVIII of the Contract states that the applicable law is Romanian law. It states that disputes shall be determined by such legislation, together with the sports statutes and regulations. Both parties agreed that the RSTP RFF (2010 edition) are applicable to the present dispute.

63. The Respondent argued that Romanian Law had no application in this procedure. This is a sporting procedure, so there is no place for Romanian Law.

64. The Sole Arbitrator noted that both parties had made references within their written submissions to the FIFA Regulations and that the Respondent also argued Swiss Law was applicable.

65. Regarding the issue at hand, the Sole Arbitrator noted that both parties to the Contract have their residence and registered office, respectively, in Romania; also, the "Federation" in the sense of Article R58 of the Code is domiciled in Romania; and the Contract expressly provides for Romanian Law be applicable. Therefore, the Sole Arbitrator decided that in order to resolve the dispute, the rules and regulations of the RFF and LPF (predominantly the RSTP RFF) shall govern primarily, with Romanian Law applying in the event that the interpretation of the RFF and LPF rules and regulations is required, which is in accordance with article 18 of the Contract.

66. As Romanian Law is a foreign law, its context has to be evidenced. Pursuant to Article 16 para. 2 of PILA. In the event the interpretation of the rules and regulations of the RFF and LPF is required, if necessary, the principles of *Lex Sportiva* and Swiss Law shall apply complementarily in conjunction with the consequences of a termination with just cause.

67. Finally, the FIFA Statutes and Regulations are also applicable insofar as evoked by the rules and regulations of RFF and LPF.

IV.3 ADMISSIBILITY

68. The Appeal was filed within the deadline provided by Article R49 of the Code. The Appellant complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court office fee.

69. Further, according to Article 36.17 of the RSTP RFF:-

"Decisions of the Appeal Committee of RFF/LPF are irrevocable internally from the day of their pronunciation and can be challenged before the Court of Arbitration for Sport according to the provisions set forth in the RFF Statutes".

70. In accordance with Article 57.4 of the RFF Statutes:-

"The appeal shall be submitted to CAS within 21 days from the receipt of the decision".

The Appealed Decision was received on 15 September 2011 and the Statement of Appeal filed with the CAS Court Office on 30 September 2011, therefore it follows that the Appeal was filed within the prescribed time limits.

71. At the hearing, the Respondent challenged the admissibility of the Appellant's prayer for relief to be awarded any sums due under the Contract that fell due after the date of the Appealed Decision.

72. The Sole Arbitrator also noted his power under Article 186(1) of the Private International

Law Act (hereinafter referred to as "PILA") to decide upon his own jurisdiction. This extends to questions of the scope of the procedure at hand.

73. Whilst the Respondent only took issue with the claim for the sums that accrued after the date of the Appealed Decision, the Sole Arbitrator determined to address two further issues *ex officio,* namely:

(a) whether the Appellant's claim for compensation equivalent to the sums remaining under the Contract should be entertained if this claim was made for the first time in the Appeal Brief and was not made before the NDRC or the Appeal Committee; and

(b) whether the Appellant's claim for sporting sanctions to be issued against the Respondent could be made in the absence of the RFF as a party to this procedure.

74. The Sole Arbitrator determined that these three issues did not render the Appeal inadmissible, but rather had the potential to limit the scope of the relief that could be granted by the Sole Arbitrator. The Sole Arbitrator here followed the CAS jurisprudence in previous decisions, including the award issued in the case *CAS 2010/A/2289*.

IV.4 THE SCOPE

75. The Appellant had claimed before the NDRC the amounts due as at 25 November 2010 (the last monthly payment date under the Contract) and had also requested:

"… the outstanding financial rights … for the period contained between 25.11.2010 and the date when the decision for ruling the cancellation of [the Contract] … *is declared final, amount to be computed depending on the monthly instalments established by the parties in the agreement, outstanding on the 25th of each month".*

76. The Sole Arbitrator notes in the Appealed Decision the ruling was that the Contract was not to be cancelled. The scope of this Appeal, pursuant to Article R57 of the Code is to confirm the Appealed Decision or to *"…issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. Should the Sole Arbitrator determine that there was just cause and allow the cancellation or termination of the Contract, then, as the Appellant has consistently claimed the arrears of remuneration due under the Contract up to the date of any termination, to allow this prayer for relief would be consistent with the powers available to the Appeal Committee and within the scope of this proceeding. The Sole Arbitrator determines that the basis of the claim remained the same through the entire appeal process (from the NDRC, to the Appeal Committee to the CAS) and that the argumentation remained in line with his original appeal. As such, this is not a supplementation of argument as envisaged by Article R56 of the Code, rather an updating of the root of the original claim of the Player, consistently argued throughout these proceedings.

77. At the hearing, the Sole Arbitrator requested both parties to address the issues stated in paragraph 73 above. On the first issue, the Appellant stated that it had requested the NDRC to award compensation, yet it directed the Sole Arbitrator to the same claim requesting the arrears as at the date of termination. The Appellant also referred to Article 18.9.1a) of RSTP

RFF which provided for compensation to be paid to the Player in the event the Club terminate without just cause. On the second issue, the Appellant also referred to Article 18.9.1a) of the RSTP RFF, which provides for sporting sanctions. The Appellant also referred to the case CAS 2010/A/2289 which he stated was similar to this one and in which the CAS award resulted in sporting sanctions against the club concerned. The Article states:

"18.9.1 If the unilateral termination without just cause of the contract occurs during the protected period, unless the contract stipulates otherwise, the party found to be in breach of contract shall be sanctioned as follows:-

a) the club: with a ban from transferring any players as assignee for the two next transfer periods. The club shall pay to the player a compensation representing the total amount of financial rights that the player is entitled to up to the expiry of the contract, except for the game and objective bonuses".

The Respondent made no submissions on these points at the hearing.

78. The Sole Arbitrator notes that the Appellant in its original letter of complaint to the NDRC dated 16 December 2010 did not refer to Article 18.9.1 a) as the basis for claiming compensation in the event his request to terminate the Contract with just cause was granted. The claim it makes (that set out at paragraph 75 above) is, in the opinion of the Sole Arbitrator, requesting any arrears that have accrued between the last date the Appellant could demonstrate there were arrears (being 25 November 2010) and the date a final decision was taken on the merits as to whether the Contract could be terminated by the Player with just cause. It is not requesting compensation for the balance of the Contract. The issue is not whether Article 18.9.1a) deals with a termination "without just cause", where here the Appellant is requesting he terminates the Contract with "just cause", as the Sole Arbitrator would follow previous CAS jurisprudence and academic opinions on that point, which allow compensation from a party if it terminates without just cause or provides the situation that results in the other party terminating with just cause (such as *CAS 2005/A/876*). The issue is whether this is a new request for relief that was not before the bodies resulting in the Appealed Decision.

79. The Sole Arbitrator noted that the Appealed decision was a majority decision. The minority did state their opinion that the grounds to allow the termination by the Player for just cause had been met, but was silent as to any financial relief they would have awarded. On balance, the Sole Arbitrator does not believe he can consider a request for relief that had not been before the NDRC or the Appeal Committee, and therefore the scope of this procedure is to determine whether the Appeal Committee came to the correct decision regarding the Appellant's claim to terminate the Contract with just cause and, if so, to award any arrears as at that date, but not to consider what compensation the Appellant might be due. That would have to be dealt with by the NDRC under a specific claim pursuant to article 18.9.1a) of RSTP RFF, if such a claim can still be pursued.

80. The Sole Arbitrator is further comforted by the wording of Article 34.15 of RSTP RFF, which would not have allowed the Appellant to change or add to his prayer for relief between the NDRC and the Appeal Committee:

"The quality of the parties, the initial cause or the object of the initial summons cannot be changed during the settlement of appeal and neither can be made another request".

Further the Sole Arbitrator notes a similar stance was taken in *TAS 2010/A/2054* where the panel determined:

"… en application du principe selon lequel les conclusions des parties ne peuvent tendre à faire juger en appel des conclusions plus étendues ou des conclusions nouvelles que celles présentées en première instance, cette dernière conclusion doit être déclarée irrecevable".

81. Turning lastly to the issue of sporting sanctions. The Sole Arbitrator notes the position taken by the CAS panel in the case CAS 2010/A/2289, which the Appellant referred to in his Appeal Brief. That panel differentiated between the "disciplinary" aspects of a decision from a sporting federation and the "contractual" aspects. It noted that the player and the club both had an interest in the contractual aspects, but it was the sporting federation and the club alone that had any interest in the disciplinary sanctions. The player had no interest in the disciplinary sanctions. The panel stated:

"Based on the foregoing, the scope of the present appeal proceedings is limited to the "contractual level" of the case and the requests for relief filed by the Appellant which aim at annulling the disciplinary sanctions passed by FIFA with the Decision shall be rejected for lack of standing to be sued of the Player (see Michele Bernarsconi, Michel Huber, Die Anfechtung von Vereinsbeschlüssen: zue Frage der Gültigkeit statutarischer Fristbestimmungen, in: Zeitschrift für Sport und Recht 2004, p. 269, translated into CAS Newsletter n°3, p.9)".

82. The Sole Arbitrator agrees with that approach. In addition, the Sole Arbitrator notes the only reason the case CAS 2010/A/2289 resulted in sporting sanctions was because the judging body at the previous instance had awarded the same and that the appeal to the CAS was rejected. That CAS panel had not awarded sporting sanctions and had determined that it was outside of its scope so to do.

IV.5 THE MERITS

83. The Sole Arbitrator noted there were certain facts and submissions that the parties were in agreement over or were not contested. The main ones were that the Respondent was late in making payments under the Contract to the Player on more than one occasion; that the sums determined as due and owing at the date of the Appellant's complaint to the NDRC, at the time of the First Decision and at the time of the Appealed Decision were as stated above; and that the Player fulfilled his principle duties of playing and training, under the Contract.

84. However, the principle difference between the parties surrounds the date upon which the NDRC and the Appeal Committee should apply the 75% test. The Appellant believes that Article 18.10 RSTP RFF directs the judging body to see if the Player has received more or less than 75% of the sums due to him that season, at the date of the complaint; whereas the Respondent believes the position at the closure of all arguments is the appropriate time.

85. The Sole Arbitrator noted other issues and, as such, the Sole Arbitrator had to determine the following:

(a) Were there any procedural irregularities or unfairness during the NDRC or Appeals Committee procedures and if so, what is the affect?

(b) Was there a breach of contract and how should it have been dealt with? At what date should the issue of "just cause" be considered?

(c) What is the effect of the Player continuing to play?

(d) If it is determined the Contract has been terminated with "just cause" what are the consequences?

(e) Any other prayers for relief?

(a) Procedures before NDRC and Appeals Committee

86. The Appellant was highly critical of the NDRC – its constitution, for a lack of AFAN nominees; the lack of response to his requests for minutes of hearings and the like; and for the delay in reaching a decision, which was forced by the issuance of civil proceedings by the Player.

87. In addition, the Appellant criticised the Appeal Committee for the delay taken to reach its decision. Together, the Appellant believes that these delays have resulted in him having to remain at the Club for a year longer than he wished, experiencing constant breaches of the Contract.

88. The Sole Arbitrator notes that any defects in the constitution and procedure of the NDRC appeared to have been cured on appeal by the Appeal Committee. There were AFAN nominees on that Committee and the Appealed Decision was a thorough decision, with a minority view expressed.

89. The Sole Arbitrator noted that the RFF and LPF were not parties to this procedure, so were not in a position to respond to these allegations. As such, the Sole Arbitrator need not respond either, save to say, it is not unreasonable for a judging body to direct the parties to provide expert accountancy opinions and that this matter was dealt with pursuant to Article R57 of the Code on a *de novo* basis, which cures any procedural defects in previous instances, but, of course cannot cure any delays there might have been.

(b) Breach of Contract

90. The Sole Arbitrator notes that the Respondent had not made regular payments under the Contract and was therefore in *prima facie* breach of its terms. As such, the Sole Arbitrator next reviewed the provisions of both Article 18.10 and of the combination of Articles 18.11 and 18.12 of the RSTP RFF. Both are to be used by judging bodies where one party (here the

Player) is claiming the other has breached the contract and is seeking confirmation that the contract can be terminated, with just cause. However, if the breaches are severe enough (whereby the arrears are over 60 days old) then Article 18.10 is to be utilised; if not, then Articles 18.11 and 18.12. The former then gives a further test for the judging body to apply – has the player received 75% of the sums due to him so far that season or not? If he has, then the club is to be ordered by the judging body to make good the arrears within 5 days, but the contract survives and continues. If not, then the contract is to be terminated with just cause. The judging authority has a discretion as to what to order under Articles 18.11 and 18.12. In the opinion of the Sole Arbitrator, no such discretion applies under Article 18.10.

91. In this case and on these facts, the Sole Arbitrator notes that the applicable regulation to consider is Article 18.10 of RSTP RFF.

(c) Applicable date

92. In this matter, there is no dispute that there were arrears that were more than 60 days old at the date of the complaint to the NDRC, on 16 December 2010. It was not contested by the Respondent that at that time the Player had only received 45.5% of the sums due to him in the 2010/11 season.

93. The Respondent argued that both the NDRC and the Appeal Committee were correct in applying the 75% test at the closure of their respective proceedings and at those times the Player had received more than 75% of the sums due, so the First Decision was correct. It gave the Club 5 days to pay the arrears, which it did. As such, the Contract remained in force. Further, the Appealed Decision was correct, as no sums were due at that stage at all.

94. The Appellant noted that even if that was the correct date, the accountancy evidence it put before the NDRC demonstrated that only 72% of due sums had been received by the Player. The Sole Arbitrator notes that the report of the accountant appointed by the Respondent was not produced to rebut that; but that in the First Decision and in the Appealed Decision (by the majority) it was determined that the 75% test had not been fulfilled.

95. The Sole Arbitrator notes that the RSTP RFF (2010 edition) is silent on the issue of the time when the 75% test is to be applied. He also notes both parties confirmed that, whilst perhaps not with express retrospective effect, the 2011 edition now directs the judging body to look at the position as at the date of the original complaint. There is logic in that, as if the Player had simply walked away and claimed the breach by the Club was sufficient to entitle him to terminate with just cause, yet the Club disagreed, it could bring a claim for unjustified breach of Contract by the Player and the facts and evidence any judging body would look at would by those at the time of the alleged breach/termination.

96. The Sole Arbitrator determines that the correct date for applying the 75% test is at the date of the original complaint, 16 December 2010.

(d) Effect of Player continuing to play

97. The Player, when being examined at the hearing confirmed that he respected the RSTP RFF and the Contract, and therefore had remained at the Club fulfilling his obligations under the Contract pending a final decision on whether the Contract could be determined with just cause for the breaches of the Club. The Sole Arbitrator noted that the wording of Article 18.10 RSTP RFF referred to *"evidence-taking"* and *"the committee shall issue a decision"* which implied that in Romania it is not possible for a player to simply walk away from a contract, he has to apply to the NDRC, who will look at the appropriate facts and evidence and then issue a decision that the contract has been terminated or not, as the case may be. This position is confirmed by Article 18.3 of the RSTP RFF.

98. The Player, through his attorneys continued to complain to the RFF and LPF about the Club's breaches that occurred before the original complaint and have complained about on-going breaches ever since.

99. The Sole Arbitrator is satisfied that there has been no acceptance, express or implied, by the Player of the breaches, nor any waiver of his rights. He has merely continued to follow the process contained in the rules and regulations of the RFF and LPF.

(e) Conclusions and consequences

100. The Sole Arbitrator notes that neither party disputes there were arrears of remuneration due under the Contract exceeding 60 days at the time of the original complaint by the Player to the NDRC; that at that time, being the correct time to make such an assessment, less than 75% of the sums due to the Player for the 2010/11 season had been paid to him; as such, the NDRC had no choice but to terminate the Contract with just cause, which it failed to do. The Appeal Committee should have corrected the First Decision on appeal, but the majority did not. The Sole Arbitrator therefore allows that part of the Appellant's appeal and confirms that the Contract is now terminated by the Player, as a result of the breaches of the Club that the Player complained about.

101. The Sole Arbitrator has already limited the scope of the matter at hand to the "contractual" requests initially made before the NDRC, so is unable to make any award relating to compensation for breach of the Contract after this date. It is a matter for the Appellant to take back to the NDRC, if he is able. However, the Appellant has always maintained a claim for any arrears at the date of termination. At the hearing, the Appellant stated the current position was EUR 136,343 (for remuneration and accommodation) and RON 43,800 (for his food allowance).The Respondent was given time after the hearing, but before this decision was made, to confirm or object to this amount. In its letter of 13 January 2012 it did neither. The Sole Arbitrator could see from the Appellant's schedule that it corresponded with the Contract and, as the Respondent did not challenge it or state that additional payments had been made that were not on such schedule, so there is no reason for the Sole Arbitrator not to follow it. Therefore the Sole Arbitrator awards the Appellant the sum of EUR 136,343 and RON 43,800 as arrears of remuneration and other sums up to the date of termination of the Contract. In the event that the Player has received some payment after 13 January 2012 and

prior to the issuing of this award as such sum shall be deemed a payment on account of the sum hereby awarded.

102. The final issue for the Sole Arbitrator to deal with is whether interest should be due on the arrears. The Respondent stated that as a sporting dispute, Romanian Law is not applicable. The Appellant directed the Sole Arbitrator to Article 34.15 of RSTP RFF which stated *"…the parties can demand interests…"* As these regulations were silent on the rate to apply, the Appellant referred to the Government Ordinance 9/2000.

103. The Sole Arbitrator noted that since the original complaint was filed by the Appellant, certain payments had been made by the Respondent. Even if these were applied to the oldest arrears first, the Appellant was not clear in his submissions on which dates he was claiming which rates of interest from and to and on which sums. The Sole Arbitrator notes it is for the parties to provide sufficient evidence to maintain their claims. In this instance the Sole Arbitrator determines that even if the Appellant had a right to claim interest, he has not come up to the standard of proof to enable the Sole Arbitrator to arrive at a decision and, as such, no interest is awarded.

(f) Other Prayers for Relief

104. The Sole Arbitrator determines that following the above conclusions, it makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the parties to the CAS. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Laszlo Sepsi on 30 September 2011 against the decision of the Appeal Committee of the Romanian Professional Football League dated 4 August 2011 is partially allowed and the decision is set aside and replaced by this decision.

2. FC Timisoara shall pay Mr Laszlo Sepsi the sum of EUR 136,343 (for arrears of remuneration and accommodation benefits) and RON 43,800 (for arrears of food allowance) less any payment made between 13 January 2012 and today.

(…)

5. All other or further claims are dismissed.