Arbitration CAS 2006/A/1137 Cruzeiro Esporte Clube v. Fédération Internationale de Football Association (FIFA) & PFC Krilja Sovetov, award of 29 June 2007

Panel: Mr Chris Georghiades (Cyprus), President; Mr Stephan Netzle (Switzerland); Mr Rui Botica Santos (Portugal)

Football
Unilateral termination of the employment contract without just cause during the protected period
Admissibility of the appeal
Joint responsibility of the club for the payment of the compensation imposed upon the player
Inducement by the club to terminate the employment contract

1. **It is not a mandatory requirement to split the appeal in two parts, i.e. a statement of appeal and an appeal brief. In case an appellant presents exhaustively his position with complete facts and legal arguments in the statement of appeal, it would lead to a shocking result to consider his appeal as withdrawn only because the appellant did not perform any other procedural act within the term specified in article R51 par. 1 of the CAS Code, which must be applied with some degree of flexibility and without excessive formalism. Another interpretation of article R51 par. 1 would violate respectively the appellant's fundamental right to be heard and the right to a hearing.**

2. **When the requirements of article 14 par. 3 of the Regulations governing the application of the FIFA Regulations are met, the "new club" shall be deemed jointly responsible for the payment of the amount of compensation for breach of contract. This provision does not provide for any other condition; therefore, whether the "new club" has actively taken part in or induced the termination of the contract is not relevant.**

3. **The presumption of inducement by the "new club" to terminate the employment contract is rebuttable. If the "new club" can demonstrate that it has not induced such a breach of contract, no sporting sanction can be imposed to it.**

Cruzeiro Esporte Clube is a football club with its registered office in Belo Horizonte, Brazil ("the Appellant"). It is a member of the Confederação Brasileira de Futebol ("CBF"), which has been affiliated to the Fédération Internationale de Football Association ("FIFA") since 1923.

PFC Krilja Sovetov is a football club with its registered office in Samara, Russia ("the Respondent" or "the Club"). It is a member of the Football Union of Russia ("RFU"), itself affiliated to the FIFA.

M.P. ("the player") is a professional football player. He is born on 25 July 1979 and is of Brazilian nationality. He currently plays with the Brazilian Clube de Regatas Flamengo and is a registered member of the CBF.

During the 2003-2004 season, M.P. played as a professional for FC Spartak Moskova.

On 25 December 2003, FC Spartak-Moskova contractually accepted to transfer M.P. to PFC Krilja Sovetov for the sum of USD 1,800,000, which was paid in the course of the year 2004.

On 1 February 2004, M.P. signed with PFC Krilja Sovetov a first labour agreement, which is actually the standard contract form of the RFU. It contains the description of each party's respective obligations and its main characteristics can be summarised as follows:

- It is a fix-term agreement for three years, effective from 1 February 2004 until 1 February 2007.
- The player contractually obliged himself notably to *"place at the Club's disposal his entire athletic potential"* (article 1.2.2), *"abstain from any actions which may damage the Club's interests or impair his ability to perform his obligations under the present Contract in good faith"* (article 1.2.4), *"on instructions from the Chief Coach or other coaches, make appearances in games played by the Club, and also to attend practices, meetings, conferences, play analyses and the like, take exchange training courses and come to stay at the recreation and training facilities, that is, take part in all events organized by the Club"* (article 2.1.1), *"implicitly comply with (…) the general instructions and directives concerning the procedure of trips, meetings and the like"* (article 2.1.5), *"travel together with the rest of the football team, both in Russia and abroad, unquestioningly accepting the routes and the means of transportation selected by the Club"* (article 2.1.6), *"abstain from playing on any other football teams without prior written consent of the Club; from taking part in any other sports events and also from entering into negotiations on employment on another team (by another club), except in cases provided for in the «Status and Procedure for Transfer of Football Players» Regulations"* (article 2.1.7).
- Among other obligations, PFC Krilja Sovetov agreed to pay *"in a timely manner"* to the player a monthly salary of USD 10,000.

M.P. and PFC Krilja Sovetov signed another contract dated 4 February 2004, which reads in pertinent part (as translated into English by PFC Krilja Sovetov):

> *"Clause One – By this contract the Assignee will pay for sign fee to professional athlete M.P., the amount of*
>
> *- 200.000 USD on February 4, 2004*
>
> *- 50.000 USD on July 31, 2004*
>
> *Clause Two – The Assignee shall assure the athlete the following conditions:*
>
> *a) House, transportation to go the training and go back, medical and dental care, 2 plane tickets for the athlete and a companion for the route Vitoria/Moscou/Vitoria.*
>
> *b) The athlete shall execute a (3) Three-years agreement, covering a monthly salary of Thirty thousand US Dollars (US$ 30.000) Net.*
>
> *Clause Four – The parties hereby elect Federation International Football Association (FIFA), to settle any doubts and solve any conflict originated herefrom".*

The first monthly salary received by M.P. was paid in April 2004. Since then, USD°30,000 were paid every month, with the exception of the salary of June, which was paid in August, together with the salary of July. During the same period, the Player received his sign-on fee of USD 250,000.

The salary of September 2004 was paid to M.P. in cash between 4 and 8 February 2005. It was the last monthly wage received by the player from PFC Krilja Sovetov. Regarding the late payment of the salary of September 2004, the club submitted that the USD 30,000 were about to be paid when the player suddenly and without notice left for Brazil in October 2004. When the player came back in November 2004, he did not stay long enough for PFC Krilja Sovetov to make the necessary arrangements in order to gather the said sum.

As a matter of fact, on 18 October 2004, M.P. left Russia to fly to Brazil, allegedly to visit his sick mother. He presented himself to his employer on 4 November 2004. On 8 November 2004, the player left again for Brazil and did not join his team-mates until 16 February 2005 at a pre-season camp organised by PFC Krilja Sovetov in Valencia, Spain. Later on, the player requested to be authorised to fly to Brazil for family reasons. PFC Krilja Sovetov accepted this request for a period of two days only. On 7 March 2005, M.P. left Spain and never went back to Russia.

On 10 March 2005, M.P. notified in writing PFC Krilja Sovetov of the fact that he unilaterally terminated their contractual relationship. The termination letter reads notably as follows:

> *"Considering wage payment delays alone lead to an unbearable situation, for the player is unable to make his living in normal conditions, the reiterated non-compliance on the club's side and the non-fulfilment of the promises made provokes a situation of breach of confidence, an essential element in the relationship between employer and employee.*
>
> *Thus, considering that the club has failed to pay wages for October, November, December, January and February, totalling five months of wages in arrears, with no forecast of payment, and failed to reimburse the air fare from Brazil to Europe, we hereby declare the player's contract with F.C. Krilia Sovetov terminated due to contractual non-compliance, which characterized just cause.*
>
> *Therefore, on this date we communicate to FIFA the termination of the work contract by just cause.*
>
> *With no harm to the already configured termination by just cause, the player requires the full payment of the five months of wages in arrears, plus the amount of US$ 1,200, which amounts to US$ 151,200, within five days of the receipt of this letter".*

On 10 April 2005, M.P. signed a new contract with the Appellant. His monthly salary was of BRL 17,500, which, at the time, was equivalent to about USD 6,770.

In letters addressed to the FIFA on 20 and 27 April 2005, PFC Krilja Sovetov affirmed that it had learned through the media that M.P. had entered into an employment contract with the Appellant despite the fact that the contract of February 2004 was still in force. In particular, PFC Krilja Sovetov insisted on the violation by the player of his contractual obligations and confirmed its intention to claim for compensation. PFC Krilja Sovetov requested FIFA's *"urgent intervention in verifying the authenticity of this information and to protect the rights of* [PFC Krilja Sovetov] *in accordance with the FIFA Regulations for the Status and Transfer of Players".*

On 26 April 2005, the CBF requested from the RFU the issue of the player's International Transfer Certificate. By fax dated 3 May 2005, PFC Krilja Sovetov confirmed to the RFU that it was opposed to the request of the CBF and stated that:

> *"1) the player's employment contract has not expired;*
>
> *2) early termination of the player's employment contract was not mutually agreed; and*
>
> *3) a contractual dispute exists".*

Between the end of April and May 2005, the dispute, which arose between M.P. and PFC Krilja Sovetov, was formally submitted to the FIFA Dispute Resolution Chamber. On 25 May 2005, the Single Judge of the Players' Status Committee authorized the CBF *"to provisionally register the player M.P. for its affiliated club Cruzeiro Esporte Clube, with immediate effect".*

On 23 March 2006, the FIFA Dispute Resolution Chamber (the "DRC") passed a decision with regard to the claim presented by PFC Krilja Sovetov against M.P. and the Appellant.

Regarding M.P., the FIFA DRC reached the conclusion that the player was fully responsible for the breach of the contract passed with PFC Krilja Sovetov. It took into consideration the fact that the player was absent from PFC Krilja Sovetov from 18 October 2004 to 17 February 2005, with the exception of a few days from 4 November to 8 November 2004. According to the FIFA DRC, the player failed to prove that his absence was justified and/or authorized by his employer. Consequently, PFC Krilja Sovetov had good reasons justifying the non-payment of the salaries of the player.

Regarding the Appellant, the FIFA DRC:

- decided that *"in accordance with article 14 par. 3 of the Regulations governing the Application of the Regulations for the Status and Transfer of Players, the new club of the player, i.e. Cruzeiro, shall be deemed jointly responsible for the payment of the amount of compensation the player has to pay, if the afore-mentioned amount is not paid to Krilja within one month of notification of the present decision";*
- concluded that a sports sanction must be imposed upon Cruzeiro Esporte Clube, since it did not provide any evidence or sufficient explanation contradicting the presumption contained in article 23 par. 2 lit. (c) of the FIFA Regulations for the Status and Transfer of Players, edition 2001, according to which a club seeking to register a player who has unilaterally breached a contract during the so-called protected period will be presumed to have induced a breach of contract.

As a result, the FIFA DRC decided the following:

"1. The claim of the Russian club Krilja Sovetov is partially accepted.

2. The Brazilian player M.P. is ordered to pay USD 2,040,000 to the club Krilja Sovetov ***within 30 days*** *as of notification of the present decision.*

3. The Brazilian club Cruzeiro Esporte Clube Belo Horizonte is jointly responsible for the payment of the above-mentioned amount if the same is not paid within one month of notification of the present decision.

4. If the aforementioned amount is not paid within the stated deadline, an interest rate of 5 % per year shall apply,

as from expiry of the stated deadline.

5. *A restriction of four months on his eligibility to play in official matches is imposed on the player M.P. This sanction shall take effect from the start of the first season of the player's current club following the notification of the present decision.*

6. *The Brazilian club Cruzeiro Esporte Clube Belo Horizonte is banned from registering any new player, either nationally or internationally, until the expiry of the second transfer period following the notifcation of this decision.*

7. *In the event that the player M.P. or the club Cruzeiro Esporte Clube Belo Horizonte do not comply with the present decision, the matter shall be submitted to FIFA's Disciplinay Committee, so that the necessary disciplinary sanctions may be imposed.*

8. *Any further request of the club Krilja Sovetov is rejected.*

9. *All requests of the player M.P. against the club Krilja Sovetov are rejected.*

10. *The Club Krilja Sovetov is directed to inform the player M.P. and the club Cruzeiro Esporte Clube Belo Horizonte immediately of the account number to which the remittance is to be made (…).*

11. *According to art. 60 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receiving notification of this decision".*

Cruzeiro Esporte Clube and M.P. were notified by fax dated 18 July 2006 of the decision issued by the FIFA DRC.

On 28 July and 31 July 2006, Cruzeiro Esporte Clube and M.P. each challenged the decision of the FIFA DRC with separate statements of appeal filed with the Court of Arbitration for Sport ("CAS").

As a result, two arbitration proceedings were initiated: CAS 2006/A/1137 Cruzeiro Esporte Clube v. FIFA & PFC Krilja Sovetov and CAS 2006/A/1141 M.P. v. FIFA & PFC Krilja Sovetov.

The Respondents as well as M.P. accepted the suggestion of the CAS court office to join the cases.

Conversely, by fax dated 28 September 2006, Cruzeiro Esporte Clube confirmed to the CAS court office that it did not agree to have both procedures be joined. It explained that it *"acknowledges that its appeal is directly connected with M.P.'s appeal and the outcome of the latter case is condition precedent for the decision on CRUZEIRO'S case. For such reason, CRUZEIRO understands that the cases shall be dealt separately, and M.P.'s appeal must necessarily be judged prior to CRUZEIRO'S".*

In the absence of mutual consent of all the parties involved, the cases were not joined.

On 29 June 2007 the CAS ruled as follows regarding M.P.'s appeal dated 31 July 2006:

"1. The appeal is partially upheld.

2. The decision issued on 23 March 2006 by the FIFA Dispute Resolution Chamber is annulled.

3. M.P. is ordered to pay to PFC Krilja Sovetov the amount of USD 1,058,000 (one million and fifty eight thousand US dollars), plus interest at 5% (five percent) as from 18 August 2006.

4. *A restriction of four months on the Player's eligibility to play in official matches is imposed. This sanction shall take effect from the beginning of the first season of the Player's current club following the notification of the present decision.*

5. *The costs of the arbitration, to be determined by the CAS Court Office, shall be borne by M.P., FIFA and PFC Krilja Sovetov in equal shares.*

6. *Each party shall bear its own legal and other costs incurred in connection with this arbitration.*

7. *All other claims and counterclaims are dismissed".*

In essence, the Panel considered the following:

- M.P. was not authorised by PFC Krilja Sovetov to leave the club except for five days in October 2004, five days in November 2004, the annual vacation period, which ran from 13 November 2004 to 4 January 2005 and for two days in March 2005. In all other cases, the player extended his absence without any authorisation or just cause. In addition, the player did not establish whether the said authorised absences were granted with pay.
- M.P. did not have a just cause to terminate the labour contract concluded with PFC Krilja Sovetov, notably for the following reasons:
  -- On the one hand, he had not demonstrated that he made any complaint regarding the late payment of his salaries nor how it affected his situation to a point where he could not be expected to remain in a contractual relationship with PFC Krilja Sovetov. In particular, he did not explain why the payments of the salaries could not be considered as made *"in a timely manner"* as provided by the labour contract dated 1 February 2004 and therefore how the club did not comply with its obligations.
  -- On the other hand, the Panel dismissed the player's argument according to which PFC Krilja Sovetov had not paid any salary for the services rendered by him since October 2004. The Panel was of the view that obligations under a labour contract are reciprocal in that they are binding on the parties only so long as both sides continue to comply with them. A major violation by one side will release the other side from all further duty to abide by that obligation. Therefore, in a situation where the player was in a default situation himself, the Panel ruled that it was proper for PFC Krilja Sovetov to withhold the payment of overdue salaries, at least until the situation was settled. This led to the result that the withholding or non-payment of salaries by the club, even if the amounts exceeded three months, did not entitle the player to terminate the contract unilaterally.
- Regarding the financial compensation, the Panel noted that PFC Krilja Sovetov paid USD 1,800,000 to FC Spartak Moskova in order to conclude with the player a 3-year labour agreement. By terminating prematurely the labour contract, the player did not allow the club to amortize the cost of its investment, causing therefore a financial damage to PFC Krilja Sovetov. In the view of the club's declarations and the external manifestation of its intention, the Panel was of the opinion that the period of non-amortisation begun upon the effective end of the labour agreement in March 2005 and lasted, therefore, 23 months. As a result the financial damage amounts to USD 1,150,000 (USD 1,800,000 / 36 months x 23). The Respondents did not provide any evidence of further financial damages suffered by PFC Krilja Sovetov in connection with the unilateral termination of the labour contract by the player. Consequently, the Panel decided that

PFC Krilja Sovetov is only entitled to the compensation with regard to the non-amortization of the transfer fee, which amounts up to USD 1,150,000, from which must be deducted the three months and 2 days of pending wages. In other words, the damage incurred by PFC Krilja Sovetov is USD 1,058,000.

- With regard to the interest and in the absence of a specific contractual clause, the Panel could only apply the legal interest due pursuant to Art. 104 of the Swiss Code of Obligations. As a consequence, the interest of 5% shall be calculated as of 18 August 2006.

On 28 July 2006, Cruzeiro Esporte Clube filed a statement of appeal with the CAS and challenged the decision of the FIFA DRC, submitting the following request for relief:

> *"CRUZEIRO contests PFC KRILJA SOVETOV, which requested FIFA to apply sportive sanctions as well as to consider CRUZEIRO jointly liable for the payment of the indemnification supposedly due by M.P. to KRILJA in connection with the unilateral breach of his employment contract with the Russian club.*
>
> *(…)*
>
> *The acceptance of KRILJA'S request and understanding by the Dispute Resolution Chamber, according to which CRUZEIRO should be jointly liable together with M.P. for the payment of indemnification due to the Russian club in connection with a supposed inducement to the breach of the player's contract, is not legally sustained, and will be properly evidenced to the CAS.*
>
> *The same applies to the decision of the Dispute Resolution Chamber to impose sportive sanctions to CRUZEIRO and ban the Club from registering any new player, either nationally or internationally, until the expiry of the second transfer period following the notification of this decision".*

No appeal brief was filed with the CAS within the time limit provided by article R51 of the Code of Sports-related Arbitration (hereinafter referred to as the "Code").

On 9 October 2006, FIFA filed an answer, with the following request for relief:

> *"4.1. In conclusion, we request that the present appeal be deemed withdrawn, or subsidiary, rejected as to the substance, and that the decision taken by the Dispute Resolution Chamber on 23 March 2006 be confirmed in its entirety.*
>
> *4.2. Furthermore, all costs related to the present procedure as well as the legal expenses of the [FIFA] shall be borne by the Appellant.*
>
> *4.3. Such allocation of the costs should be maintained even in the unlikely event of the CAS accepting the present appeal".*

On 9 October 2006, PFC Krilja Sovetov filed an answer, with the following request for relief:

> *"In the view of the above, the Respondent respectfully asks the Panel:*
>
> *1) to establish that the Appeal Brief has not been filed in accordance with Article R51 of the Code of Sport-related Arbitration;*
>
> *2) to rule that the Appeal shall be deemed withdrawn;*

In the event that the above is not accepted:

1) to reject the Appeal lodged by the Appellant;

2) to establish that the Appellant is jointly and severally liable with the Player for the payment of the amount of compensation decided in the procedure CAS/A/1141, if the Player will not pay this sum within one month time limit to the Respondent;

3) to impose sporting sanctions on the Appellant for inducement to breach of contract in accordance with Art. 23(2)(c) of the Regulations;

4) to condemn the Appellant as the only responsible of this trial, to the payment in the favour of the Respondent of the legal expenses incurred;

5) to establish that the costs of the arbitration procedure shall be borne by the Appellant as the only responsible of this trial."

Together with the statement of appeal, the Appellant filed an application for a stay of the decision issued by the FIFA DRC on 23 mars 2006.

On 17 August 2006, the Deputy President of the CAS Appeals Arbitration Division allowed the application by the Appellant to stay the said decision of the FIFA DRC.

A hearing was held on 27 February 2007 at the CAS headquarters in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 60 ff. of the FIFA Statutes and article R47 of the Code of Sport-related arbitration (the "Code"). It is further confirmed by the order of procedure duly signed by the parties.

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

3. Under article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

Applicable law

4. 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".

5. Article 59 par. 2 of the FIFA Statutes provides: *"The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss law".*

6. In the present matter, the Panel is of the opinion that the parties have not agreed on the application of any particular law. The Panel is comforted in its position by the fact that, in their respective submissions, the parties refer exclusively to FIFA's regulations. Therefore, subject to the primacy of applicable FIFA's regulations, Swiss law shall apply complementarily.

Admissibility

7. The Respondents allege that the Appellant filed its appeal brief on 15 September 2006, which is long after the expiry of the 10-day time limit set in article R51 of the Code. Since the appeal brief was lodged late, the appeal shall be deemed withdrawn.

8. Article R48 of the Code provides the following:

"The Appellant shall submit to the CAS a statement of appeal containing:
- *the name and full address of the Respondent;*
- *a copy of the decision appealed against;*
- *the Appellant's request for relief;*
- *the appointment of the arbitrator chosen by the Appellant from the CAS list, unless the parties have agreed to a Panel composed of a sole arbitrator;*
- *if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- *a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to the CAS.*

Upon filing the statement, the Appellant shall pay the Court Office fee provided for under Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office shall grant once only a short deadline to the Appellant to complete his statement, failing which it shall be deemed withdrawn".

9. Article R51 par. 1 of the Code reads as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely, failing which the appeal shall be deemed withdrawn".

10. The appeal was filed within the deadline provided by the FIFA Statutes and stated in the decision issued by the FIFA DRC on 23 March 2006. It complied with all other requirements of article R48 and of R51 of the Code. In particular, it included a copy of the Appellant's application to stay the execution of the said decision. This 12-page long document contains a statement of the facts and legal arguments accompanied by several supporting exhibits.

11. In other words, it appears that the appeal lodged in a timely manner was sufficient to be treated as a statement of appeal and as an appeal brief satisfying the minimum conditions of articles R48 and R51 par.1 of the Code. It is not a mandatory requirement to split the appeal in two parts, i.e. a statement of appeal and an appeal brief. It is for the benefit of the Appellant to be able to first lodge a statement of appeal and then to have at least 10 more days to supplement its arguments with additional reasons, information or other means. In the case an Appellant is particularly diligent and presents exhaustively his position with complete facts and legal arguments in the statement of appeal, it would lead to a shocking result to consider his appeal as withdrawn only because the Appellant did not perform any other procedural act within the term specified in article R51 par. 1 of the Code. Accordingly and in the present case, the Panel has recognised that article R51 par. 1 must be applied with some degree of flexibility and without excessive formalism. Another interpretation of article R51 par. 1 of the Code would violate respectively the Appellant's fundamental right to be heard and the right to a hearing.

12. It follows that the appeal is admissible.

13. Based on article R56 of the Code and in the absence of exceptional circumstances, the document presented by the Appellant on 15 September 2006 must be excluded from the proceedings.

Merits

14. On 29 June 2007, the CAS ruled that M.P. terminated without just cause or sporting just cause the employment contract which he entered into with PFC Krilja Sovetov in the beginning of February 2004 (CAS 2006/A/1141 M.P. v. FIFA & PFC Krilja Sovetov). It imposed a penalty of suspension and an award of compensation.

15. The main issues to be decided upon are:

    a) Did M.P. terminate the employment contract during the so-called protected period? If so, is the Appellant jointly responsible for the payment of the compensation imposed upon the player?

    b) Did the Appellant induce the player to terminate his contract with PFC Krilja Sovetov?

A. Did M.P. terminate the employment contract during the so-called protected period? If so, is the Appellant jointly responsible for the payment of the compensation imposed upon the player?

a) In General

16. As already exposed, the present dispute is primarily governed by the FIFA Regulations. The case was submitted to the FIFA DRC prior to 1 July 2005. Therefore, and in accordance with article 26 par. 1 of the revised Regulations for the Status and Transfer of Players (edition 2005) and the FIFA Circular Letter No 995 dated 23 September 2005, the previous Regulations for the Status and Transfer of Players (edition 2001) (the "FIFA Regulations") shall govern the decision of this dispute.

17. Article 21 par. 1 of the FIFA Regulations provides the following:

"1(a) In the case of all contracts signed up to the player's 28th birthday: if there is unilateral breach without just cause or sporting just cause during the first 3 years, sports sanctions shall be applied and compensation payable.

(b) In the case of contracts signed after the 28th birthday, the same principles shall apply but only during the first 2 years.

(c) In the cases cited in the preceding two paragraphs, unilateral breach of contract without just cause is prohibited during the season".

18. Article 14 of the Regulations governing the application of the FIFA Regulations reads as follows:

"1 The party responsible for a breach of contract is obliged to pay the sum of compensation determined pursuant to Art. 42 of the FIFA Regulations for the Status and Transfer of Players within one month of notification of the relevant decision of the Dispute Resolution Chamber.

2 (…)

3 If a player is registered for a new club and has not paid a sum of compensation within the one month time limit referred to above, the new club shall be deemed jointly responsible for payment of the amount of compensation.

4 If the new club has not paid the sum of compensation within one month of having become jointly responsible with the player pursuant to the previous paragraph, disciplinary measures may be imposed by the FIFA Players' Status Committee, pursuant to Art. 34 of the FIFA Statutes. Appeals against these measures may be lodged to the Arbitration Tribunal for Football (TAF)".

b) In particular

19. In the case at hand, M.P., who was born in 1979, signed with PFC Krilja Sovetov a labour agreement for a fixed term, namely from 1 February 2004 to 1 February 2007. He unilaterally terminated the said contract without just cause or sporting just cause on 10 March 2005, that is during the protected period provided by article 21 par. 1 litt. a) of the FIFA Regulations.

20. On 10 April 2005, M.P. signed a new contract with the Appellant. On 25 May 2005, the Single Judge of the Players' Status Committee authorized the CBF *"to provisionally register the player M.P. for its affiliated club Cruzeiro Esporte Clube, with immediate effect"*.

21. On 29 June 2007, the CAS ordered M.P. *"to pay to PFC Krilja Sovetov the amount of USD 1,058,000 (one million and fifty eight thousand US dollars), plus interest at 5% (five percent) as from 18 August 2006"* (CAS 2006/A/1141 M.P. v. FIFA & PFC Krilja Sovetov).

22. In the view of the above, it appears that the requirements of article 14 par. 3 of the Regulations governing the application of the FIFA Regulations are met:

- The contract with PFC Krilja Sovetov was terminated during the protected period.
- The player in breach was registered with the new club, i.e. Cruzeiro Esporte Clube.
- The player has not paid the sum of compensation within one month of notification of the decision of the FIFA DRC on 18 July 2006. The Panel observes that it is only on 31 August 2006 that the Deputy President of the CAS Appeals Arbitration Division allowed the application by M.P. to stay the decision issued on 23 March 2006 by the FIFA DRC. On 31 August 2006, i.e. more than a month after the notification of the said decision, the player had not paid any compensation to PFC Krilja Sovetov.

23. Article 14 par. 3 of the Regulations governing the application of the FIFA Regulations does not provide for any other condition regarding the fact that the "new club" shall be deemed jointly responsible for the payment of the amount of compensation. Whether the "new club" has actively taken part in or induced the termination of the contract is not relevant. This is expressly confirmed by the FIFA Circular Letter No 769 of 24 August 2001, page 13, according to which *"If a player is responsible for the breach, and has not paid the compensation awarded by the Chamber within one month, the new club (whether or not it is found to have induced the breach) shall be deemed jointly responsible for payment of the compensation award. Again, if this new club has not paid the compensation amount within one month after having become jointly responsible with the player, the new club may also be subject to disciplinary measures from the Players Status Committee"*.

24. In the view of the above and the clear text of the applicable regulations, the Panel concludes that the Appellant is jointly and severally liable for the payment of the amount of USD 1,058,000 (CAS 2006/A/1075).

B. Did the Appellant induce the player to terminate his contract with PFC Krilja Sovetov?

a) In general

25. Article 23 par. 2 litt. a) and c) of the FIFA Regulations provides the following:

"In the case of the club breaching a contract or inducing such a breach:

a) If the breach occurs at the end of the first or second year of the contract, the sanction shall be a ban on registering any new player, either nationally or internationally, until the expiry of the second transfer period following the date on which the breach became effective. In all cases, no restriction for unilateral breach of contract shall exceed a period of 12 months following the breach or inducement of the breach.

(…)

c) A club seeking to register a player who has unilaterally breached a contract during the periods defined in Art. 21.1 will be presumed to have induced a breach of contract".

b) In particular

26. The Appellant contests having induced the breach of contract. It argues that it first heard about M.P. a few weeks after the latter had terminated the labour agreement with PFC Krilja Sovetov. Furthermore, it is the player who spontaneously offered his services to the Appellant. The contract passed between the player and the Appellant is dated 10 April 2005, that is one month after the termination of the employment agreement with the player's former club. In the new contract, the player expressly declared (as translated into English by the Appellant) *"he is the only and exclusive owner of his federative and economic rights, being such rights free to be negotiated, without any prevention, of any nature"*.

27. Both Respondents claim that the arguments of the Appellant do not reverse the presumption of culpability provided by article 23 of the FIFA Regulations. The fact that the Appellant and the player signed a contract on 10 April 2005 is not relevant. It is very likely that the negotiations between the parties took several weeks. There is no reason not to think that the said negotiations did not start before 10 March 2005. According to the Respondents, the fact that the player presented himself as a free player, available to negotiate with any team of his interest is also not relevant. The Appellant was negligent when it *"did not estimate it necessary to enquire with* [PFC Krilja Sovetov] *in order to learn about the status of the Player. Getting the information that* [PFC Krilja Sovetov] *was still contractually bound was very easy, by using the usual diligence that all football clubs should use while signing on a player"*.

28. In the present case, the Panel considers as decisive the fact that, while M.P. was playing with PFC Krilja Sovetov, he was entitled to a monthly wage of USD 30,000, a house, transportation, medical/dental care and 2 airplane tickets for him and a companion for the route Vitoria/Moscou/Vitoria. Despite all those significant advantages, the player accepted to join a new club, which offered him only the equivalent of USD 6'770 per month. In the Panel's opinion, the player was eager to leave PFC Krilja Sovetov at any cost. He unilaterally terminated the contract with the latter club, accepting to expose himself to legal proceedings, financial and sportive sanctions. By doing so, he also renounced to possible sign-on fees. Under such circumstances, it seems very unlikely that the Appellant's offer was so appealing that it triggered the termination of the contract between M.P. and PFC Krilja Sovetov. This is actually supported by the player's attitude, who obviously did not want to play with the latter club, starting October 2004.

29. In other words, the Panel has no difficulty to believe the Appellant when it asserts that it entered into negotiations with the player only after the latter had terminated his contract with PFC Krilja Sovetov. As a result, the Panel comes to the conclusion that the Appellant was not in a position to have induced the breach of contract. The conditions of article 23 par. 2 litt. a) and c) of the FIFA Regulations are not met and no sporting sanction can be imposed upon the Appellant.

30. The Panel agrees that the Appellant was quite negligent by signing a new employment contract with M.P. without contacting PFC Krilja Sovetov in order to clarify the situation. By doing so, Cruzeiro Esporte Clube accepted the risk to be jointly liable for important financial compensations, which is actually the case.

The Court of Arbitration for Sport rules that:

1. The appeal is partially upheld.

2. The decision issued on 23 March 2006 by the FIFA Dispute Resolution Chamber is annulled.

3. Cruzeiro Esporte Clube is held jointly and severally liable with M.P. for the payment to PFC Krilja Sovetov of the amount of USD 1,058,000 (one million and fifty eight thousand US dollars), plus interest at 5% (five percent) as from 18 August 2006.

4. (…).

5. (…).

6. All other claims and counterclaims are dismissed.