



Arbitration CAS 2020/A/7156 FC Astana v. Laszlo Kleinheisler & NK Osijek S.D.D., consent award of 27 January 2021

Panel: Mr José María Alonso Puig (Spain), President; Mr Michele Bernasconi (Switzerland); Mr Gareth Farrelly (United Kingdom)

Football

Termination of the employment contract

Authority of a CAS panel to issue a consent award

Duty of the CAS panel to verify the bona fide nature of the settlement agreement

- 1. Under Swiss law, a court of arbitration has authority to issue an award embodying the terms of the parties' settlement if the parties agree to a termination of their dispute in this manner. The panel's ratification of the settlement reached and its incorporation into a consent award serves the purpose of enabling the enforcement of their agreement. In addition, in accordance with Article R56 of the CAS Code, within an appeal procedure "*Any settlement may be embodied in an arbitral award rendered by consent of the parties*".**
- 2. The CAS panel shall verify the *bona fide* nature of the settlement agreement, to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the settlement agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.**

I. THE PARTIES

1. FC Astana (the "Appellant" or "Astana") is a Kazakh professional football club with its registered office in Nur-Sultan, Kazakhstan. The Appellant is a member of the Kazakhstan Football Federation.
2. Laszlo Kleinheisler (the "First Respondent" or the "Player") is a Hungarian professional football player born on 8 April 1994.
3. NK Osijek S.D.D. (the "Second Respondent" or the "Osijek") is a Croatian professional football club with its registered office in Osijek, Croatia. The Second Respondent is a member of the Football Federation of Croatia.
4. The Appellant, the First Respondent and the Second Respondent will hereinafter be referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute.

A. The contractual relations between the Parties

6. On 1 July 2017, Astana and the Player concluded an employment contract valid as from the date of its signature until 30 June 2018 (the "Employment Contract"). The Player was entitled to receive a net monthly salary of EUR 40,500 and a one-time "encouragement fee" of EUR 100,000 under the Employment Contract.
7. On 19 March 2018, Astana and the Player signed an addendum for the purpose of extending the Employment Contract until 30 June 2021 (the "Addendum"). The Addendum established that a further "encouragement fee" of EUR 100,000 shall be paid "*no later than September 01, 2018*" (the "Encouragement Fee").
8. On 28 November 2018, the Player sent a warning letter to Astana requesting the payment within 8 days from the reception of the letter.
9. On 21 December 2018, the Player sent a legal notice to Astana (the "Legal Notice") informing that if the payment of the Encouragement Fee was not completed within 15 days from the reception of the Legal Notice, the Player "*will terminate [the] Employment Contract with immediate effect*". The last day of the deadline was 9 January 2019.
10. On 10 January 2019, the Player sent a termination notice to Astana informing that the Employment Contract was terminated (the "Termination Notice").
11. On 11 January 2019, the Player and Osijek concluded an employment contract valid as from the date of signature until 30 June 2022 (the "Osijek Contract"). The Player was entitled to receive a net monthly salary of EUR 10,000.
12. On 14 February 2019, the Single Judge of the Players' Status Committee passed a decision granting a provisional registration of the Player with Osijek.
13. Between 12 April 2019 and 22 May 2019, the Parties discussed a settlement offer in order to resolve the dispute amicably. No settlement was reached by the Parties.

B. Proceedings before the FIFA Dispute Resolution Chamber

14. On 17 September 2019, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting to condemn the Appellant to pay him the amount of EUR 915,000.

15. On 25 February 2020, and after Astana provided its response concerning the claim filed by the Player, the FIFA DRC rendered the Decision of the Dispute Resolution Chamber (the “Appealed Decision”), with the following operative part:

- “1. The claim of the Claimant/ Counter-Respondent 1, Mr Laszlo Kleinheisler, is partially accepted.*
- 2. The Respondent/ Counter-Claimant, Football Club Astana, has to pay to the Claimant/ Counter-Respondent 1 compensation for breach of contract in the amount of EUR 940,500.*
- 3. Any further claim lodged by the Claimant/ Counter-Respondent 1 is rejected.*
- 4. The counter-claim lodged by the Respondent/ Counter-Claimant is rejected.*
- 5. The Claimant / Counter-Respondent 1 is directed to inform the Respondent / Counter-Claimant, immediately and directly [...] of the relevant bank account to which the Respondent / Counter-Claimant must pay the amount mentioned under point 2. above.*

[...]

- 7. In the event that the amount due in accordance with point 2. above is not paid by the Respondent/ Counter-Claimant within 45 days as from the notification by the Claimant / Counter-Respondent 1 of the relevant bank details to the Respondent/ Counter-Claimant, the Respondent / Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*
- 8. The ban mentioned in point 7. above will be lifted immediately and prior to its complete serving, once the due amount is paid.*
- 9. In the event that the aforementioned sum is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision”.*

16. On 19 May 2020, the grounds of the Appealed Decision were notified to the Parties.

III. PROCEEDINGS BEFORE THE CAS

17. On 5 June 2020, the Appellant filed the Statement of Appeal against the First Respondent and the Second Respondent with respect to the Appealed Decision at the Court of Arbitration for Sport (the “CAS”) pursuant to Article R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the “CAS Code”).
18. On 15 June 2020, the Appellant filed the Appeal Brief in accordance with Article R51 of the CAS Code, wherein it stated the facts and legal arguments on which the appeal is based, together with the documents and evidences upon which it intended to rely.

19. On 13 August 2020, the CAS notified, on behalf of the Deputy President of the CAS Appeals Arbitration Division and further to Article R54 of the CAS Code, that the Panel appointed to hear this case was constituted as follows:

President: Mr José María Alonso Puig, Attorney-at-Law, Madrid, Spain

Arbitrators: Mr Michele Bernasconi, Attorney-at-Law, Zurich, Switzerland
Mr Gareth Farrelly, Attorney-at-Law, Liverpool, United Kingdom
20. On 18 August 2020, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code, highlighting the facts and its legal submissions on the matter. It also annexed the documents it intended to rely on in support of its defence.
21. On 19 August 2020, the First Respondent also filed his Answer and the documents he intended to rely on in accordance with Article R55 of the CAS Code, stating the facts and legal arguments on which its defence is based.
22. On the same date, the CAS invited the Parties to inform whether they preferred that a hearing was held. The CAS also noted that the Second Respondent had already advised within its Answer that it considered unnecessary to hold a hearing.
23. On 25 August 2020, the Appellant requested to hold a hearing in this case.
24. On 26 August 2020, the First Respondent informed that he considered unnecessary to hold a hearing. In addition, the First Respondent requested to hold the hearing by videoconference in the event that the Panel finally decided to hold it.
25. On 9 September 2020, the Parties were informed that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing.
26. On 22 September 2020, the CAS informed the Parties that Mr Luis Bravo Abolafia, Attorney-at-Law in Madrid, Spain, had been appointed as *ad hoc* Clerk.
27. On 6 November 2020, the Order of Procedure was sent to the Parties, which was duly signed by them. By signing the Order of Procedure, the Parties confirmed their agreement that the hearing was held by videoconference.
28. On 26 November 2020, the hearing was held via videoconference on agreement of all the Parties.
29. At the beginning of the hearing, the Parties informed the Panel that they had reached a preliminary agreement. At the request of the Parties, the Panel adjourned the hearing. On the same day, the Parties confirmed to the Panel that they had reached a full settlement and they requested the Panel to issue a consent award.
30. On 27 November 2020, the Parties sent the settlement agreement duly signed to the Panel.

IV. CAS JURISDICTION

31. Article R47 of the CAS Code states that “[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.
32. Article 58 of the FIFA Statutes provides for the jurisdiction of the CAS in the following terms: “Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.
33. The jurisdiction of the CAS was not contested by either Party. Besides, the Parties agreed to sign the Order of Procedure where the jurisdiction of the CAS was confirmed.
34. The Panel, therefore, confirms that the CAS has jurisdiction to render this Consent Award.

V. ADMISSIBILITY

35. The Appellant complied with the 21-day deadline under Article 58 (1) of the FIFA Statutes to file its Statement of Appeal before CAS, and otherwise complied with the requirements of Articles R48 and R51 of the Code.
36. It follows that the appeal is admissible.

VI. THE SETTLEMENT AGREEMENT

37. On 26 November 2020 the Parties reached a settlement agreement (the “Settlement Agreement”), which has been voluntarily submitted by the Parties to the Panel, and which has been confirmed to represent their agreement containing a complete, comprehensive and final resolution of their dispute. The Settlement Agreement reads as follows:

*** Quote ***

“26 November 2020

SETTLEMENT AGREEMENT

in the case

CAS 2020/A/7156 FC Astana v. Laszlo Kleinheisler & NK Osijek S.D.D.

between

the Football Club “Astana”, Kazakhstan

(“Appellant”)

represented by Mr Mikhail Prokopets, Attorney at Law, of SILA International Lawyers, 26 Leninskaya Sloboda St Bld. 2, RU-115280 Moscow, Russia

Mr. Laszlo Kleinheisler, Hungary

(“1st Respondent”)

represented by Dr. Gregor Reiter, Attorney at Law, of Reiter & Kemmeries Rechtsanwälte, Hörder Burgstr. 18, 44236 Dortmund, Germany

Football Club NK Osijek S.D.D., Croatia

(“2nd Respondent”)

represented by Mr. Davor Radić, Attorney at Law, of Radić & Radić d.o.o., Hrvatske mornarice 1i, 21000 Split, Croatia

Preamble:

The Appellant is a professional football player club from Kazakhstan. The 1st Respondent is a Hungarian professional football player, who was under contract with the Appellant until January 10th, 2019. The 2nd Respondent is the current employer of the 1st Respondent. The parties are in dispute about the termination of the employment contract between the Appellant and the 1st Respondent conducted by the 1st Respondent on January 10, 2019. The 1st Respondent has brought a claim forward against the Appellant amounting to € 915,000,00, whereas the Appellant has brought a counterclaim against the 1st and 2nd respondent amounting to € 3,726,694,00. The Dispute Resolution Chamber (“DRC”) of FIFA has under the case number 19-01834/dri in total dismissed the claim of the Appellant and has partially accepted the claim of the 1st Respondent. The Appellant appealed the DRC decision and the parties are currently engaged in an Appeal Process pending before the Court of Arbitration of Sport (“CAS”) in Lausanne, Switzerland.

The parties wish to settle this dispute once and for all under the following terms:

1.

The Appellant consents to owing an amount of € 800,000,00 net (in words: Euros Eight Hundred Thousand) to the 1st Respondent, which will be paid in three installments as follows:

a)

The first installment of € 150,000 (in words: Euros One Hundred and Fifty Thousand) is due to be paid immediately, but no later than by December 1st, 2020.

b)

The second installment of € 325,000 (in words: Euros Three Hundred and Twenty-Five Thousand) is due to be paid on April 15th, 2021.

c)

The third and final installment of € 325,000 (in words: Euros Three Hundred and Twenty-Five Thousand) is due to be paid on June 15th, 2021.

2.

The 1st Respondent will instruct the Appellant in writing in regards to the account in which to receive the aforementioned payments. If the Appellant will not receive such a written instruction prior to the due date, the Appellant will make the payments to the following account of the 1st Respondent: [...].

3.

Should the Appellant be in default with one of the above-mentioned payments for more than three banking days, the remaining amount becomes due immediately.

4.

[...].

5.

The Appellant waives all its claims against the 1st Respondent and the 2nd Respondent especially but not limited to the counterclaim brought forward during the DRC proceedings, whether due or not due, whether known or unknown.

6.

[...].

7.

[...].

8.

This Settlement Agreement settles the aforementioned dispute between the parties once and for all.

9.

The Parties hereby request the CAS to include the present Settlement Agreement in a Consent Award, confirming all the above terms [...]

VII. ENDORSEMENT OF THE SETTLEMENT AGREEMENT

38. Under Swiss law, a court of arbitration has authority to issue an award embodying the terms of the parties' settlement if the parties agree, as the Parties to this procedure did, to a termination of their dispute in this manner. The Panel's ratification of the settlement reached and its incorporation into this consent award serves the purpose of enabling the enforcement of their agreement.
39. In addition, in accordance with Article R56 of the CAS Code, within an appeal procedure "*Any settlement may be embodied in an arbitral award rendered by consent of the parties*". The Parties have requested the Panel to ratify and incorporate the Settlement Agreement reproduced above into a Consent Award.
40. The Panel shall verify the *bona fide* nature of the Settlement Agreement, to ensure that the will of the Parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
41. After reviewing the terms of the Settlement Agreement, the Panel finds no ground to object or to disapprove the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the present dispute.
42. In view of the above, the present Consent Award terminates the arbitration procedure CAS 2020/A/7156 FC Astana v. Lazslo Kleinheisler & NK Osijek S.D.D. in the terms established in the Settlement Agreement and those detailed below.
43. The above conclusion, finally, makes it unnecessary for the Panel to consider any other requests submitted by the Parties within this procedure. Therefore, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Panel, with the consent of the Parties, hereby ratifies the Settlement Agreement executed by the Football Club Astana, Mr. Laszlo Kleinheisler and NK Osijek S.D.D. on 26 November 2020 and incorporates its terms into this consent award.
2. The terms of the Settlement Agreement dated 26 November 2020 replace the Decision of the Single of the Judge Dispute Resolution Chamber passed on 25 February 2020, which is left without effect.
3. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement executed by the Parties on 26 November 2020.
4. (...).
5. (...).
6. All other and further claims or prayers for relief are dismissed.