Arbitration CAS 2020/A/6945 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Adrien Daniel Karoly Regattin, award of 24 March 2021

Panel: Prof. Jacopo Tognon (Italy), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Validity of a fine imposed for not providing information on transfer negociations or for poor performance
Non-payment or late payment as just cause of termination
Purpose and functioning of Art. 17 RSTP
Duty to mitigate

1. **A player who has a valid and binding contract can neither be forced to search for a new club nor to inform his current one about eventual negotiations. Thus, a fine shall not be considered valid if it is imposed on that ground. Neither can a fine be inflicted on the basis of an alleged "poor performance" of the player. "Poor performance" is a very subjective concept which cannot be used to impose a fine on players nor to lower their remuneration.**

2. **Non-payment or late payment of the remuneration does in principle constitute just cause for termination of the relevant contract based on the fact that the payment obligation is the main obligation that an employer has towards its employees. In this sense, if a club fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost. Two requirements should be fulfilled when relying on unpaid remuneration as just cause to terminate an employment contract, namely: (i) the outstanding amount may not be "insubstantial" or completely secondary; and (ii) the employee must have given the employer previous warning.**

3. **The purpose of Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP) is to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations. Indeed, both Parties of the contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation. If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 RSTP. The objective calculation shall be based on the principle of the so called "positive interest", meaning that it shall aim at determining an amount which shall put**

the respective party in the position that same party would have been in if the contract had been performed properly. Other criteria can be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

4. The remuneration under a new employment contract shall be taken into account in the calculation of the amount due as compensation for damages, in accordance with the general obligation of a player to mitigate his damages. The duty to mitigate shall be regarded in accordance with the general principle of fairness, which implies that, after a breach by the club, the player must act in good faith and seek for other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him. The duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract.

I. PARTIES

1. Akhisar Belediye Gençlik ve Spor Kulübü Derneği (Akhisar, Turkey) (the "Club" or the "Appellant") is a sports club, affiliated to the Turkish Football Federation ("TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Adrien Daniel Karoly Regattin (the "Player" or the "Respondent") is a professional football player of French nationality.

3. The Appellant and the Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. 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.

5. On 31 August 2018, the Appellant and the Respondent signed an employment agreement (the "Employment Contract") valid until 31 May 2020. Hence, the Employment Contract covered two sporting Seasons.

6. The Employment Contract amounted to EUR 648,000 for the first season and EUR 600,000 for the second season. Plus, the Employment Contract provided for the payment of EUR

1,000 as a rent allowance and EUR 100,000 per season *"as a team/win bonus […] in the minimum guarantee amount"*.

7. According to the Player, on 28 June 2019, he was authorized by the Club to be absent until 10 July 2019.

8. On 17 July 2019, the Player put the Club in default and gave it 15 days to pay him the outstanding remuneration in the total amount of EUR 116,128 composed of partial salaries, part of the guaranteed amount and part of the rent allowance as well, equal to nearly 3 monthly salaries.

9. On 19 July 2019, the Club informed the Player that its board decided to impose a fine on him in the amount of EUR 209,000 based on his poor sporting performances as well as late attendance to the training sessions in early July 2019 and the lack of information to the Club about any of his transfer prospects.

10. On 2 August 2019, in the absence of the requested payments, the Respondent unilaterally terminated the Employment Contract.

B. Proceedings before FIFA Dispute Resolutions Chamber

11. On 4 October 2019, the Respondent lodged a claim against the Club before the FIFA Dispute Resolution Chamber ("FIFA DRC"), requesting the total amount of EUR 952,128. The overall amount was corresponding to:

- *"EUR 267,128 as outstanding remuneration, composed of:*
  - *EUR 25,000 as part of the salary for April 2019;*
  - *EUR 50,000 as the salary for May 2019;*
  - *EUR 150,000 as the salary for July 2019;*
  - *EUR 3,000 as three monthly rent allowances for May, June and July 2019;*
  - *EUR 39,128 as part of guarantee amount.*
- *EUR 550,000 as compensation for breach of contract.*
- *EUR 135,000 as additional compensation, corresponding to three monthly salaries;*
- *interest at a rate of 5% p.a. over the aforementioned amounts, as from the due dates on the outstanding remuneration and as from 2 August 2019 on the compensation as well as on the additional compensation;*
- *to "annul" the fine imposed on him by the Respondent;*
- *costs of the proceedings on the Respondent".*

12. The Club claimed that due to financial hardships linked to the financial loss caused by the relegation from the Super League, the payments of the players were delayed.

13. Therefore, the Appellant - by letter - gave permission to the Player to make transfer negotiations with other clubs. This agreement was signed on 27 May 2019 by both Parties.

14. According to the Appellant, the Parties mutually agreed to terminate the Employment Contract, without costs for the remaining term of the contract, under the condition that the Player would find another club.

15. The FIFA DRC on the one hand held that that the Player had just cause to terminate the contract as the club failed to pay him 3 monthly rent allowances, part of the guaranteed bonus, part of the salary of April 2019 and the full salaries of May and July 2019. On the other hand, it noted the Club's argument that it had no overdue towards the Player due to an agreement signed between the Parties, and a fine imposed on him.

16. The FIFA DRC took under consideration the Club's claim that the Parties, by signing that letter, had agreed to the mutual termination of the contract without any consequence as to compensation on 27 May 2019. However, the FIFA DRC considered that the agreement *"was not a mutual termination agreement, but merely a written authorization for the player to be able to negotiate with other clubs with the purpose of a future transfer"*. The FIFA DRC was of the opinion that the agreement should then be disregarded.

17. With reference to the fine imposed upon the Player, the FIFA DRC recalled *"poor performance is a very subjective concept which cannot be used to impose fines on a player nor to lower a player's remuneration"*. The FIFA DRC also pointed out that *"a player in possession of a valid and binding contract could not be forced to look for a new club and that the fact that said player did not look for a new club nor informed his current club about any possible negotiations with a new club could not be used against the player in the context of imposing a fine"*.

18. Thus, the FIFA DRC deemed that the fine merely aimed to discharge the Club from paying outstanding dues to the Player.

19. As a result, according to the FIFA DRC the fine imposed upon the Player should be disregarded.

20. The FIFA DRC decided that – in the absence of any conclusive proof of payments brought forward by the Club – it had failed to pay to the Player part of the salary of April 2019, the salaries of May 2019, as well as the remaining part of the guaranteed bonus and 2 monthly rental allowances. Moreover, the Chamber sustained that in light of the fact that the Club attempted to set off its existing debt with a fine based on poor performance, the Player *"at the date of termination could have logically lost confidence in the capacities of the Respondent to respect its financial obligations towards him"*.

21. The FIFA DRC determined that the Player had just cause to unilaterally terminate the Employment Contract on 2 August 2019 since the Club failed to remit to the Player, until 2 August 2019, date on which the Claimant terminated the contract, the total amount of EUR 267,128.

22. Additionally, the FIFA DRC was of the view that relying on the general legal principle of *pacta sunt servanda*, the Club is liable to pay to the Player outstanding remuneration in the total amount of EUR 267,128, plus an interest at the rate of 5% p.a. on the respective amounts due as of the day following the day on which said instalments fell due until the date of effective payment.

23. Finally, the FIFA DRC concluded that the Player was also entitled to receive an amount of money from the Club as compensation for the termination of the contract with just cause in addition to any outstanding payments on the basis of the Employment Contract.

24. In application of the relevant provision, the FIFA DRC held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of the contract.

25. In addition, taking into account the Player's request as well as its constant practice in this regard, the FIFA DRC decided that the Club must pay to the Player interest of 5% p.a. on the amount of compensation as of the date of the claim, i.e. 4 October 2019 until the date of effective payment.

26. Furthermore, the FIFA DRC explained that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

27. The FIFA DRC granted a 45-day period as of the moment in which the Player, upon the notification of the FIFA DRC Decision, communicates the relevant bank details to the Club, until a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Club in accordance with Article 24 bis para. 2 and 4 of the FIFA Regulations.

28. The above-mentioned ban would be lifted immediately and prior to its complete serving upon payment of the due amounts.

29. To sum up, on 12 February 2020, the FIFA DRC rendered the following decision (the "FIFA DRC Decision"):

> *"1. The claim of the [Player] is partially accepted.*
>
> *2. The [Club] has to pay to the [Player] outstanding remuneration in the amount of EUR 267,128, plus interest at the rate of 5% p.a. until the date of effective payment, as follows:*
>
> *i. as from 26 April 2019 on the amount of EUR 25,000;*
> *ii. as from 26 May 2019 on the amount of EUR 50,000;*
> *iii. as from 26 July 2019 on the amount of EUR 150,000;*
> *iv. as from 1 June 2019 on the amount of EUR 1,000;*
> *v. as from 1 July 2019 on the amount of EUR 1,000;*

vi. as from 1 August 2019 on the amount of EUR 1,000;
vii. as from 1 June 2019 on the amount of EUR 39,128.

3. The [Club] has to pay to the [Player] compensation for breach of contract in the amount of EUR 550,000, plus interest at the rate of 5% p.a. as from 4 October 2019 until the date of effective payment.

4. Any further claim lodged by the [Player] is rejected.

[…]

7. In the event that the amounts due plus interest in accordance with point 2 and 3 above are not paid by the [Club] within 45 days as from the notification by the [Player] of the relevant bank details to the [Club], the [Club] shall be banned from registering any new players, either nationally or internationally, up until the due amounts plus interest are 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 amounts are paid.

9. In the event that the aforementioned sums plus interest are 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".

30. On 23 March 2020, the Appellant received the grounds of the FIFA DRC Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

31. On 8 April 2020, the Club filed its Statement of Appeal against the Player with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code") challenging the FIFA DRC Decision. In its Statement of Appeal, the Appellant requested a Sole Arbitrator to decide upon the case at stake.

32. On 6 May 2020, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code.

33. On 30 July 2020, it was given notice to the Parties that the matter would be adjudicated by a Sole Arbitrator, Mr Jacopo Tognon, attorney at law in Padova, Italy.

34. On the same day, the CAS Court Office acknowledged receipt of the Appellant's payment of the total of the advance of costs of this procedure and granted the Respondent a 20-day deadline to file his answer.

35. On 17 August 2020, the Respondent filed his Answer. On the same day, the Parties were invited to inform the CAS Court Office, by 24 August 2020, whether they preferred a hearing

to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

36. On 3 September 2020, the CAS Court Office informed the Parties that the hearing was scheduled on 28 October 2020. The hearing was due to take place at the CAS Court Office in Lausanne, Switzerland. However, the Sole Arbitrator reserved the possibility to hold the hearing by video-conference depending on the evolution of the COVID-19 situation.

37. On 1 October 2020, since Turkey was considered as a high-risk country by the Swiss authorities and, accordingly, foreign nationals who wished to enter Switzerland from Turkey would be refused entry, the CAS Court Office informed the Parties that the hearing scheduled on 28 October 2020 would be held via videoconference.

38. On the same date, the CAS Court Office sent the Parties an Order of Procedure.

39. On 1 and 6 October 2020, respectively, the CAS Court Office acknowledge receipt of the Respondent's and the Appellant's signed copies of the Order of Procedure.

B. The hearing

40. The hearing took place on 28 October 2020 by videoconference. Present were, in addition to the Sole Arbitrator and Ms. Delphine Deschenaux-Rochat, Counsel to the CAS:

On behalf of the Appellant:

- Mr Bışar Özbey, Counsel;
- Mr Ögzür Naç, Interpreter and Witness.

On behalf of the Respondent:

- Ms Didem Sunna, Counsel.

41. At the opening of the hearing, both Parties confirmed that they had no objections to the appointed Sole Arbitrator. During the hearing, the Parties made submissions in support of their respective cases.

42. During the hearing, Mr Naç confirmed that he only works for the Club, of which he is an employee. He is also the one who drafted the annexes to the Appeal. Mr Naç explained that he could have never granted leave of absence or anything similar since it was not something among his duties.

43. Finally, Mr Naç concluded by confirming that Exhibit n.6 – hence, the plane ticket – was issued by a travel agency upon the Club's request. He then forwarded the ticket to the Player via phone.

44. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

45. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every argument advanced by the Parties. The Sole Arbitrator has nonetheless carefully considered all the claims made by the Parties, whether or not there is a specific reference to them in the following summary.

A. The Appellant

46. The Appellant's submissions, in essence, may be summarized as follows:

47. The Appellant highlights that at the end of the 2018/2019 season, the Club was relegated from the Super League. Hence, the income of the club significantly diminished. As a result, the Player informed the Appellant that he wanted to leave the Club at the end of the season.

48. Therefore, the Appellant explained that – via a letter dated 27 May 2019 and mutually signed by both Parties – it gave permission to the Player to make transfer negotiations with other clubs.

49. The Appellant claims that FIFA wrongly considered said letter as a mere *"written authorization for the player to be able to negotiate with other clubs with the purpose of a future transfer"*. In fact, the Appellant explains that the letter was a mutual agreement signed by both Parties, and that *"in that Agreement the parties mutually agreed that they will not request any compensation from each other for the remaining term of the Contract",* referring to the Employment Contract.

50. The Club also stresses that the Player never informed the Appellant with regard to the transfer negotiations he had been making and that he turned down all the offers.

51. The Appellant highlights that the Player allegedly arrived at the training sessions 8 days late, and therefore was not only acting unprofessionally but also in bad faith.

52. Furthermore, the Appellant asserts that the Player *"did not show the expected sporting performance"* during the 2018/2019 season and was one the persons to blame for the Club's relation to a lower division.

53. In light of the above, the Appellant states that it righteously imposed a fine of EUR 209,000 upon the Player.

54. The Appellant claims that the Player acted in bad faith when he unilaterally terminated the contract due to the allegedly unpaid receivables. Firstly, he wrongly calculated the amount of outstanding remuneration. Secondly, according to the Appellant, it did not owe any money to the Player as of the date of the written notification. Finally, the Appellant argues that – even

if it were to owe the money to the Player – that did not give him the right to unilaterally terminate the Employment Contract with just cause according to the FIFA Regulations on the Transfers of Players ("FIFA RSTP").

55. The Appellant claims that the *"so-called unpaid receivables was falsely calculated by FIFA DRC"*. It elucidates that the amount of allegedly unpaid receivables was amounting to EUR 112,814 and not to EUR 116,128.

56. Furthermore, since the Appellant imposed a fine of EUR 209,000 upon the Player, that amount was deducted from the alleged receivables. That is why the Appellant claims that as the date of the notification of the Player, the Club did not owe him any money.

57. Moreover, the Appellant asserts that even if the fine was invalid, the *"amount of the receivables of the Respondent as of 17.07.2019 still did not give him the right to unilaterally terminate his Contract with just cause"*. In fact, the Appellant argues that to unilaterally terminate a contract – according to Article 14 bis of the FIFA RSTP – 3 conditions must occur together, and this was not the case at the case at stake. Hence, the unilateral termination made by the Player shall be considered unjust.

58. According to the Appellant, the Player acted in bad faith since he could have sent the notification asking for the allegedly receivables to be paid within 15 days earlier on. On the contrary, he *"deliberately waited until 17.07.2019 to send this notification"*.

59. It is the Appellant's opinion that *"the real intention of the Respondent since the beginning was to receive the 150.000 Euros dated 27.07.2019, then terminate his contract and leave the club. This behaviour was totally in contradiction with the agreement between parties on 27.05.2019 and the Respondent's behaviours since the end of 2018/2019 Season […]"*.

60. The Appellant also claims that the compensation decided by the FIFA DRC is excessive and unfair. Namely, according to the Appellant, the total amount of remaining salaries for the 2019/2020 season was EUR 450,000 and not EUR 550,000 as calculated by the FIFA DRC. The FIFA DRC should not have included the EUR 100,000 bonus, since the *"bonus payments are 'rewards' which are paid because of a specific success, such as match winning. It is not fair and just that the respondent will receive a 'bonus' (reward) payment of 100.000 Euros for 2019/2020 Season, without playing for the Club and without providing any kind of services"*. Finally, the value of the contract signed by the Player with the Major Soccer League team FC Cincinnati must be deducted from the amount of compensation, according to the Appellant.

61. Finally, the Appellant highlights that since the Respondent *"rejected contract offers made by Super League Clubs and chose not to find a club during the whole summer transfer season, he violated his obligation to mitigate his damages"*, *"the income which the Respondent intentionally avoid to get especially between August 2019 and February 2020 shall be deducted from the compensation"*. Additionally, in light of the fact that the Player would no longer provide any service to the Club, an equity deduction shall also be made from the above-mentioned compensation.

62. The Appellant's Requests for Relief contained in the Appeal Brief were as follows:

"• to accept our appeal against the decision of FIFA DRC dated 12 February 2020 and Ref. Nr. 19-01947/sil-iml,

- *to overturn and set aside the abovementioned decision with all its consequences,*
- *to decide that the fine imposed by the Appellant on 12.07.2019 is right and valid;*
- *to decide that the Respondent terminated his contract without just cause,*
- *If it is decided that the Appellant shall pay a compensation;*
    - *the amount of 100.000 Euro team/win bonus for 2019/2020 Season shall not be taken into consideration while determining the amount of compensation,*
    - *the amount of the Respondent's new contract with his new Club and the income which the Respondent intentionally avoid to get shall be deducted from that compensation,*
    - *after the deduction stated above, an equity deduction shall also be made from the compensation,*
- *to condemn the Respondent to pay the costs of the arbitration and also the legal fees and any other expenses of the Appellant in connection with the proceedings".*

B. The Respondent

63. The Respondent's submissions, in essence, may be summarized as follows:

64. The Respondent claims that on 17 July 2019 he requested the Club to proceed with the payment of EUR 116,128 as outstanding salaries and gave the Appellant 15 days to fulfil its obligations. Since – according to the Respondent – the Club *"remained silent, did not respond to the notification and did not make any payment"*, the Player unilaterally terminated the contract on 2 August 2019, with just cause.

65. The Respondent highlights that he *"never gave any written and oral statement refers that he will waive his remunerations arising from 2019/2020 Season and / or waive any compensation arising from 2019/2020 Season".*

66. The Respondent claims that the document dated 27 May 2019 was not signed by the Player. Furthermore, he underlines that the document dated 19 July 2019 defines the document dated 27 May 2019 as a *"permission paper to negotiate with other Clubs and also states that the given permission is set aside, cancelled and void".*

67. The Respondent affirms that the *"allegations that the Player received transfer offers but he deliberately declined them are argumentative and groundless".* Moreover, the Respondent claims that he was given permission until 10 July 2019 to be on leave. In fact, the Player requested the ticket to return to Turkey to the Club and the Club itself issued the ticket dated 11 July 2019. The Player, hence, took the flight and started training the day after.

68. With regard to the fine based on poor performance, the lack of information provided by the Player to the Club with regard to any transfer prospect, and finally the 8-day delay to return to the training, the Respondent stresses that:

(i) *"poor performance is a very subjective concept which cannot be used to impose fines on a player nor to lower player's remunerations";*

(ii) as stated by FIFA DRC, *"a player is possession of a valid and binding contract, could not be forced to look for a new club and that the fact that said player did not look for a new club nor informed his current club about any possible negotiations with a new club could not be used against the player in the context of imposing a fine".*

(iii) he proved that the Player was not late for the season preparations.

69. The Respondent also points out that with reference to the fine, it shall not be used to offset the financial obligations of the Appellant at the date of the default. In fact, the fine was communicated to the Player only 2 days after the payment notification sent by the Respondent was delivered to the Appellant.

70. Furthermore, the Appellant claims that the calculation made by the FIFA DRC with regard to the allowances of the Player is correct. Indeed, he sustains that the *"Appellant wrongly made a calculation on pro-rate basis and argues that the monthly basis salary of the Player is EUR 78,400. Nevertheless, we would like to make reference to Article 14bis/2 of FIFA Regulations on the Status and Transfer of Players which read as: 'For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered […]".* Therefore, since the salaries of the Player were due on a monthly basis, the Appellant should have not brought forward a pro-rata reasoning with reference to the calculation.

71. Moreover, the Respondent claims that the Appellant acted in bad faith by not paying the Player's remuneration, cutting him out of the A team squad and imposing on him a wrongful monetary fine.

72. Hence, according to the Respondent, his termination of the Employment Contract was just in light of the *"substantial and severe breach of the Employment Contract by the Appellant".* Consequently, the Player was in the position to also claim compensation, amounting to EUR 100,000.

73. With reference to the new contract signed with FC Cincinnati, it stipulated that the Player, shall be paid a gross amount of USD 29,166.67 monthly, which corresponds to net USD 17,700, as shown in exhibits 9 and 10 respectively. Hence, the total income of the Player for the 2018/2019 Season – from February 2020 through May 2020 – corresponds to net USD 70,800.

74. The Respondent highlights that *"in case the FC Cincinnati Agreement was taken into consideration by FIFA DRC before meeting date, the amount of USD 70,800 would be deducted from the compensation amount of EUR 550,000".*

75. The Respondent's Requests for Relief contained in the Answer were as follows:

"1. To dismiss the claims of [the Club] in full,

2. To confirm the decision of the FIFA Dispute Resolution Chamber dated 12 February 2020,

3. To condemn [the Club] to the payment of CHF 10.000 in the favour of the Player of the legal expenses incurred;

4. To establish that the costs of the present arbitration procedure shall be borne by the Appellant".

V. JURISDICTION

76. Article R47 of the CAS 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".

77. Article 58 para. 1 of the FIFA Statutes provides as follows:

"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 notification of the decision in question".

78. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

79. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

80. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

"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 notification of the decision in question".

81. The reasons of the Appealed Decision were notified to the Appellant on 23 March 2020 and it filed its Statement of Appeal on 8 April 2020. Therefore, the 21-day deadline to file the appeal was met. The Statement of Appeal complied with the other requirements of Article R48 of the CAS Code.

82. The Sole Arbitrator finds, therefore, the present appeal admissible.

VII. APPLICABLE LAW

83. Article R58 of the CAS Code states as follows:

"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".

84. Article 57 para. 2 of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and, additionally, Swiss law".

85. As a result, the Sole Arbitrator shall decide the present matter according to the relevant FIFA regulations, and more specifically the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), as in force at the relevant time of the dispute, namely the 2019 edition, and Swiss law shall be applied subsidiarily.

VIII. MERITS

86. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:

(a) Which is the legal nature of the agreement dated 27 May 2019?

(b) Did the Player fail to attend the Club's training sessions?

(c) Was the fine imposed by the Club valid?

(d) Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?

(e) If yes, what is the compensation due?

A. Which is the legal nature of the agreement dated 27 May 2019?

87. The Parties on 27 May 2019 signed an agreement that reads as follows:

"Akhisarspor gave permission to the Player to make transfer negotiations with other clubs. If the Player reach [sic] an agreement another club, the Contract between the parties will be mutually terminated. Parties will not request any compensation from each other for the remaining term of the Contract. In this case Akhisarspor will not request any transfer fee from the Club, which the Player reached agreement".

88. The Sole Arbitrator observes that such agreement could not represent a mutual termination agreement. On the contrary, as stated by FIFA DRC is it a written authorization rendered by the Club in favour of the Player according to which the latter could enter into negotiations with other clubs and, in case of termination due to the Player's transfer as a consequence of such negotiations, both the Club and the Player would waive any claim for compensation.

89. As a consequence, it is in the Sole Arbitrator's opinion that the agreement signed between the Parties on 27 May 2019 is of no avail to the proceedings hereof and, thus, it has to be disregarded.

B. Did the Player fail to attend the Club's training sessions?

90. In its Appeal Brief filed before CAS the Appellant submits that: *"The Appellant's A Team started the preparation for the 2019/2020 Season on 3rd of July 2019 in Akhisar. All the Players of the Appellant were invited to be at Akhisar on 3 July 2019. As the Respondent was still the contracted player of the Club at that date, with its letter dated 27.06.2019, the Appellant also invited the Respondent to be ready at Club's facilities on 03.07.2019 at 15:00 pm […] But the Respondent came to Akhisar on 11 July 2019 night (with a delay of 8 days) instead of 3 July 2019 and started trainings as of 12 July 2019".*

91. However, it is noteworthy to observe that according to documentary evidence produced by the Parties, it emerges that the absence of the Player was justified and allowed by the Club. Indeed, even if on 27 June 2019 the Player was invited by the Club to return to Akhisar on 3 July 2019, the Club itself on 28 June 2019 gave the Player permission to be on leave until 10 July 2019.

92. Moreover, upon request of the Player, the Club issued a flight ticket dated 11 July 2019. Therefore, the Respondent was perfectly aware of the fact that the Player could only have started training on 12 July 2019 and not earlier.

93. This circumstance is even confirmed by the witness Mr. Ögzür Naç who during the hearing expressly confirmed to have ordered the tickets from the travel agency and to have sent them to the Player.

94. In light of the foregoing, the Sole Arbitrator finds that the Player cannot be accused of an unjustified non-appearance at or leaving of the working place.

C. Was the fine imposed by the Club valid?

95. On 12 July 2019, the Board of the Appellant decided to impose a fine of EUR 209,000 to the Respondent, which was notified to the latter on 19 July 2019.

96. Such fine was issued due to the following reasons:

(i) The Player came to Akhisar for training 8 days late;

(ii) The Player did not provide the Club with any information regarding transfer negotiations with other clubs;

(iii) The Player did not show the expected sporting performance in 2018/2019 season.

97. As clarified above, the Player returned to Akhisar and started training on 12 July 2019 based on a permission given by the Club on 28 June 2019. Therefore, the fine could not be imposed based on the claim that the Player arrive in Akhisar 8 days late.

98. Moreover, the reasoning made by FIFA DRC in the Appealed Decision according to which a player who has a valid and binding contract could neither be forced to search for a new club nor to inform his current one about eventual negotiations shall be upheld and, thus, a fine shall not be considered valid if it is imposed on that ground.

99. Furthermore, the Sole Arbitrator deems it appropriate to also clarify that a fine cannot be inflicted on the basis of an alleged "poor performance" of the Player. Indeed, in line with the FIFA DRC, it should be recalled that "poor performance" is a very subjective concept which cannot be used to impose a fine on players nor to lower their remuneration.

100. In addition, the evidence offered by the Parties in the present proceedings demonstrated that the Appellant sent to the Player the notice concerning the fine on 19 July 2019 and, thus, only two days after the date in which the latter delivered to the Club the warning letter for outstanding payment.

101. In light of the above, the Sole Arbitrator believes that the fine had the mere purpose of discharging the Club from paying the outstanding dues to the Respondent. In addition, the Appellant did not refer to the principle of proportionality so that it is impossible to understand why this precise amount was due.

102. Therefore, the fine amounting to EUR 209,000 shall be disregarded with respect to the proceedings at stake.

D. Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?

103. Article 13 of the FIFA RSTP defends the principle of contractual stability and it expressly states that *"a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

104. In any event, the principle referred to above may be subject to derogation. Indeed, according to Article 14 of the FIFA RSTP *"a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

105. In this respect the FIFA commentary on the RSTP (2006 edition) reads as follows:

"1. The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.

2. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.

[…]

5. In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

6. On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

106. In addition to the above, Article 14bis of the FIFA RSTP introduced a specific provision of termination of contracts for just cause in case of outstanding salaries. Specifically, such Article reads as follows:

"1. In the case of a club unlawfully failing to pay at least two monthly salaries on their due dates, the player will be deemed to have just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above".

107. Consistent CAS jurisprudence ruled that non-payment or late payment of remuneration by employment does in principle constitute just cause for termination of the relevant contract based on the fact that the payment obligation is the main obligation that an employer has towards its employees. In this sense, if a club *"fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost"* (CAS 2018/A/6605, para. 67; CAS 2016/A/4693, para. 101; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

108. Furthermore, for a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter the chance to remedy and comply with its obligations (CAS 2018/A/6605; CAS 2015/A/4327; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

109. To summarize, CAS jurisprudence have consistently indicated two requirements that should be fulfilled when relying on unpaid remuneration as just cause to terminate an employment contract, namely:

(i) the outstanding amount may not be "insubstantial" or completely secondary; and

(ii) the employee must have given the employer previous warning.

110. The Sole Arbitrator, therefore, has to determine whether the Club's breach of the terms of the Employment Contract was such as to allow the Player to terminate unilaterally and prematurely the employment relationship for just cause.

111. In the present case, the Appellant alleges that the unilateral termination made by the Respondent was unjust. Particularly, the Club stresses that even in case the fine was disregarded the amount of the receivables that the Club owed to the Respondent still did not give the latter the right to terminate the contract with just cause.

112. The allegation made by the Appellant that the Respondent wrongly calculated the amount of the unpaid receivables affirming that the unpaid bonus amounted to EUR 35,814 and not to EUR 39,128 due to certain exchange rate Turkish Liras/Euro is not a matter that will be discussed at this stage.

113. On the date of the notification of the default notice sent by the Player on 17 July 2019, the Appellant had failed to pay the Respondent part of the salary of April 2019, the entire salary of May 2019, the remaining part of the guaranteed bonus and two monthly rental allowances.

114. In this respect, it is worth mentioning that the Club did not answer to such notice of the Player, but only two days later, namely on 19 July 2019, it sent to the Respondent a letter according to which it imposed a fine of the amount of EUR 209,000.

115. The above facts lead the Sole Arbitrator to the conclusion that the issuance of a fine was an attempt made by the Club to set off the existing debts it had towards the Player.

116. In consideration of the above, the Sole Arbitrator holds that the Player had objective reasons to believe that the Club had no intention to fulfil its payment obligations. Indeed, the Player sent a default notice on 17 July 2019 and the Club never contested that it had received said notice. At the date of termination of the contract by the Player (i.e. 2 August 2019), the outstanding dues amounted to EUR 267,128. Nevertheless, the Club provided no explanations to the Player. Furthermore, the Club did not try to contact the Player in order to reach a settlement.

117. In view of the Club's behaviour towards the Player, the Sole Arbitrator finds that the Appellant materially breached the Employment Contract. In fact, under the circumstances set forth above, the Player could not be expected to continue the employment relationship with the Club, and he had no other measures but to terminate the contract due to the loss of trust in the Club's behaviour.

118. Finally, the Club also contends that the Player acted in bad faith alleging that at the end of the 2018/2019 Season the latter informed the Appellant that it would have left the Club. However, the Club did not offer any convincing evidence in support of the alleged bad faith of the Respondent. Therefore, the Sole Arbitrator is of the opinion that the Player could not be accused of bad faith.

119. In conclusion and in consideration of the foregoing, the Sole Arbitrator finds that the Player terminated unilaterally and prematurely the Employment Contract with the Club with just cause.

E. What is the compensation due?

120. After having ascertained that the Club breached the Employment Contract by refusing to timely pay Player's salaries, it shall now be determined the amount of compensation payable by the Appellant to the Respondent. However, before addressing the issue of compensation, the Sole Arbitrator will first address the issue of the outstanding salaries.

a. Outstanding salaries

121. With respect to the outstanding salaries, the FIFA DRC decided that the Club, in accordance with the principle of *pacta sunt servanda*, was liable to pay the Player EUR 267,128, which corresponds to:

- EUR 25,000 as part of the salary for April 2019;
- EUR 50,000 as the salary for May 2019;
- EUR 150,000 as the salary for July 2019;
- EUR 1,000 as the monthly rent allowance for May 2019;
- EUR 1,000 as the monthly rent allowance for June 2019;
- EUR 1,000 as the monthly rent allowance for July 2019;
- EUR 39,128 as part of guarantee amount.

122. The Sole Arbitrator considers that the amount of the unpaid receivables was not wrongly calculated in the Appealed Decision as claimed by the Club. In particular, the guarantee amount indeed amounted to EUR 39,128 as stated in the FIFA DRC Decision.

b. Compensation under Article 17 FIFA RSTP

123. Article 17 of the FIFA RSTP reads as follows:

"1. In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

124. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

125. Indeed, both Parties of the contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth by Article 17 of the RSTP.

126. All the above considered, two basic principles have been recognised in the jurisprudence of CAS and FIFA DRC:

(i) If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 RSTP;

(ii) The objective calculation shall be made by the Tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (editors), "Sport Governance, Football Disputes, Doping and CAS arbitration", Colloquium, 2009, p. 249).

127. Moreover, it is important to underline that other criteria could be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

128. CAS jurisprudence stated that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

129. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the*

interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case" (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, para. 233-240).

130. To sum up, the Sole Arbitrator might negatively consider when a party engages in a conduct, which is in blatant bad faith, or terminates a contract for its own mere interests. On the contrary, he would positively consider the case of a party that has displayed exemplary behaviour throughout the duration of a contract and possibly even when it came the time to end it.

131. As a consequence of the above, it has firstly to be clarified whether the Employment Contract contained a provision according to which the parties agreed a certain amount of compensation to be paid in case of breach of contract. The Sole Arbitrator finds that no compensation clause was included in the Employment Contract and, therefore, such amount payable in favour of the Player shall be determined and calculated in compliance with the parameters set forth under Article 17 of the FIFA RSTP.

132. The FIFA DRC, in order to determine the basis of the amount of compensation to be granted in favour of the Respondent, correctly referred to the remaining value of the Employment Contract up to the original date of termination (i.e. 31 May 2020) with respect to the money that the Player failed to receive due to the early termination of his relationship with the Club.

133. The Appellant, in its Appeal Brief, contested that the remaining salaries of the Respondent for the 2019/2020 Season amounted to EUR 450,000 and not to Euro 550,000 as stated in the Appealed Decision. According to the Appellant, the FIFA DRC *"wrongfully included the 100,000 Euros, which was named as 'team/win bonus payments' for 2019/2020 Season in the contract, into the amount of compensation"*.

134. The Sole Arbitrator is not persuaded by the Appellant's arguments. Indeed, according to the Employment Contract (see point 6 of Additional Benefit section) the amount of Euro 100,000 is a minimum guaranteed amount regardless and irrespective of any success and results achieved by the Club. Thus, such amount shall be considered part of and included in the Player's salary.

135. The remaining salaries and guaranteed bonus of the Respondent for the 2019/2020 season amount, therefore, to EUR 550,000.

c. Duty to mitigate

136. The Sole Arbitrator deems essential to pay attention to both the existing and the new contract. In fact, the remuneration under a new employment contract shall be taken into account in the calculation of the amount due as compensation in accordance with the general obligation of the Player to mitigate his damages.

137. It shall be noted that the Respondent informed FIFA by letter dated 7 February 2020 that he was in the process to be employed by a new football club and actually the Player entered into a new employment relationship by signing a contract with Major League Soccer (MLS) team FC Cincinnati valid from 1 February 2020 until 31 December 2020 with a monthly salary equal to USD 29,166.67 gross.

138. The ending date of the Employment Contract between the Appellant and the Respondent was 31 May 2020 and, thus, all the amounts received by the Player deriving from the new contract with FC Cincinnati until the date of 31 May 2020 shall be considered for the purpose of the calculation of the compensation.

139. The Player, then, received from the new club for the months of February, March, April and May 2020 the total amount of USD 116,666.68 gross, which corresponds to USD 70,800 net, as resulting from the relevant document filed by the Respondent in the proceedings hereof. Such amount shall, therefore, be deducted from the residual value of the contract that was terminated due to the inapplicability of the so-called positive interest.

140. More precisely, the amount of USD 70,800 shall be converted into EURO currency pursuant to the exchange rate applicable at the date of this Award and published by the European National Bank. At the date of issuance of this decision, the correspondence amount in EURO is 58,228.

141. Furthermore, the argument submitted by the Appellant in its Appeal Brief according to which the *"Respondent could have signed a new contract earlier, i.e. in August 2019"* is not persuasive. Pursuant to CAS case law, the duty to mitigate damages shall be regarded in accordance with the general principle of fairness, which implies that, after a breach by the club, the player must act in good faith and seek for other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him (CAS 2018/A/6029; CAS 2016/A/4852; CAS 2016/A/4769; CAS 2016/A/4678). The duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract.

142. In view of the foregoing, the Sole Arbitrator believes that the Appellant has failed to fulfil its burden of proof with regard to the alleged Player's violation of the duty to mitigate his damages, and particularly, the Club failed to demonstrate that the Player deliberately and intentionally decided not to enter into any new contract before February 2020.

143. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Sole Arbitrator considers that the appeal is only partially accepted and the Appellant must pay the outstanding remuneration as well as the total amount as resulting from the difference between EUR 550,000 and the corresponding amount of EUR 58,228 deriving from the conversion of USD 70,800 pursuant to paragraph 140 of the present Award, as compensation for breach of contract. Therefore, for this reason, the Appealed Decision is partially set aside. Given that the Club still owes the Player a total amount of EUR 758,900 (EUR 267,128 + EUR 491,772), the Sole Arbitrator

considers that there is no reason to set aside the transfer ban which will be imposed on the Appellant in case of non-payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Akhisar Belediye Gençlik ve Spor Kulübü Derneği on 8 April 2020 against the decision issued by the FIFA Dispute Resolution Chamber on 12 February 2020 is partially upheld.

2. The decision issued by the FIFA Dispute Resolution Chamber on 12 February 2020 is amended as follows:

   "3. Akhisar Belediye Gençlik ve Spor Kulübu Derneği shall pay Mr. Adrian Karoly Regattin compensation for breach of contract in the amount of EUR 491,772, plus interest at the rate of 5% p.a. as from 4 October 2019 until the date of effective payment".

3. (…).

4. (…).

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