Arbitration CAS 2018/A/5945 Maxim Astafiev v. FC Mordovia & Football Union of Russia (FUR), award of 28 June 2019

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

Football
Employment-related dispute
Choice of place of arbitration and PILA
Choice of law
Article R58 CAS Code
Failure of a party to participate in the proceedings
Failure to comply with order to produce documents and adverse inference
Principle of burden of proof
Burden of proof by club for alleged salary payment

1. **The choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act (PILA) is the relevant arbitration rule of law for an arbitration held in Switzerland. Article 176 para. 1 PILA provides that the provisions of Chapter 12 PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland. As CAS has its seat in Lausanne, Switzerland, the PILA is applicable provided the other prerequisites mentioned above are fulfilled.**

2. **Article 187 para. 1 of the PILA provides – *inter alia* – that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*. The choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate a dispute according to the CAS Code, the parties submit themselves to the conflict-of-law rules contained in the Code, in particular to Article R58.**

3. **Article R58 of the Code indicates how to determine the substantive rules/laws to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *"applicable regulations"* to the *"rules of law chosen by the parties"*, which are only applicable *"subsidiarily"*. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies the obligation to resolve the matter pursuant to the regulations of the relevant *"federation, association or sports-related body"*. Should this body of norms leave a *lacuna*, it would be filled by the *"rules of law chosen by the parties"*.**

4. It is well established in commercial arbitration that the failure of one party to participate in the proceedings cannot be taken as acquiescence in the other party's claims or allegations. Therefore, even if a party fails to take part in the arbitral procedure, the tribunal must proceed to determine the facts of the case. Similarly, Article R55 para. 2 of the Code provides that (even) if *"the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award"*. Accordingly, also in arbitration under the rules of the Code, despite the failure of one party to participate in the proceedings, the Panel must proceed to determine the facts of the case.

5. Pursuant to Article R44.3 in connection with Article R57.3 of the Code, the Panel may at any time order the production of additional documents if it deems it appropriate to supplement the presentations of the parties. Further, it is generally accepted in international arbitration that if a party refuses to comply with a production order without a reasonable excuse, the Panel may infer that such documents would be adverse to the interests of said party and that the party may have something to hide.

6. Facts pleaded have to be proven by the party who derives rights from these facts, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. Hence, any party wishing to prevail on a disputed issue must discharge its burden of proof, *i.e.* must provide evidence of the facts on which its claim has been based. In order to fulfil its burden of proof, a party must provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. If these requirements are complied with, the party has fulfilled its burden and the burden of proof is transferred to the other party.

7. As an employer, a club has all the pertinent evidence in its hand to prove all payments made to its employee and therefore provide an explanation for all payments that can be retraced and recalculated based on a given contract. If, based on the documentation a club, upon order by the Panel, had produced regarding alleged payments of salaries, it remains unclear which payments were made in which period and for which obligation under the employment contract, the club failed to prove payment. Furthermore, and according to the concept of burden of proof, the club bears the risk if the payment of the amounts owed remains unproven. If *e.g.* the club, without any excuse, fails to produce the evidence it had been ordered to produce, in accordance with generally accepted principles of international arbitration, the Panel may infer that the full documentation regarding all payments made to the Player during his employment would be adverse to the interests of the club, *i.e.* would show that the club in fact did not pay the salaries in question.

I. PARTIES

1. Mr Maxim Astafiev (the "Player" or the "Appellant") is a Russian professional football player formerly employed by the Non-Commercial Partnership Football club "Mordovia".

2. Non-Commercial Partnership Football club "Mordovia" (the "First Respondent" or the "Club") is a Russian professional football club. It is affiliated to the Football Union of Russia which is, in turn, affiliated to the Fédération Internationale de Football Association ("FIFA").

3. The Football Union of Russia (the "Second Respondent" or the "FUR") is a Russian public sports organization and is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence available to him in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the award will be referred to in the following paragraphs.

5. On 6 June 2016, the Player and the Club entered into an employment contract valid until 31 May 2018 (the "Contract").

6. The Agreement contained, *inter alia*, the following terms:

"Article 7. Payment for Labor

7.1. The Employee's monthly salary shall be set in the amount of 460 000 (four hundred sixty thousand) rubles, not including compensatory, incentive and social payments.

7.2. By the decision of the Employer, the Employee may be paid a bonus for win in the match in the amount of up 100 000 (one hundred thousand) rubles and up to 50 000 (five hundred thousand [sic]*) rubles in case of a draw.*

7.3. The Employer is obliged to pay the Employee money in the amount of 250 000 (two hundred fifty thousand) rubles in case of achieving by the Employee a bonus in the amount of 5 (five) points during the FONBET – Russian football Championship among the teams of the FNL clubs and Russian football Cup of 2016-2017, 2017-2018 seasons. In this case, achieving of the points is conducted according to the following rules: a goal shall be 1 point, a scoring pass shall be 1 point, a foal resulted in gained penalty shall be 1 point.

7.4. The Employer when entering into the Contract is obliged to pay the Employee by May 31, 2018 money in the amount of 3 450 000 (three million four hundred and fifty thousand) rubles in the following order:

- 862 500 (eight hundred sixty thousand and five hundred) rubles by November 1, 2016;

- 862 500 (eight hundred sixty thousand and five hundred) rubles by March 1, 2017;

- 862 500 (eight hundred sixty thousand and five hundred) rubles by September 5, 2017;

- 862 500 (eight hundred sixty thousand and five hundred) rubles by March 1, 2018;"

7. The Contract between the Player and the Club was terminated on 31 May 2018.

B. Proceedings before the FUR Dispute Resolution Chamber

8. On 19 July 2018, the Player lodged a claim against the Club before the FUR Dispute Resolution Chamber (the "FUR DRC"). He requested, *inter alia*, the payment of three installments of the remuneration according to Article 7.4. of the Contract.

9. On 9 August 2018, the FUR DRC issued its decision (the "Appealed Decision") and considered, in essence, the following: The FUR DRC partially upheld the claim regarding the remuneration according to Article 7.4. of the Contract. Specifically, it condemned the Club to pay the fourth installment in the total amount of RUB 862'500 to the Player. The FUR DRC dismissed, however, the Player's claim regarding the second and third installment in the amount of RUB 1'725'000. It held that the Club had submitted satisfactory evidence showing that the Club paid the second and the third installment according to Article 7.4. of the Contract. The FUR DRC specified that the evidence filed shows that the payments regarding monthly salary exceeded the amounts owed and that these overpayments of salary covered the second and third installment. Subsequently, the FUR DRC established that the Player had failed to explain which other debts should have been covered by this overpayment except for the second and third installment.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 24 September 2018, the Appellant filed his statement of appeal against the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2017 edition) (the "Code"). The Appellant requested that the case shall be submitted to a sole arbitrator.

11. In accordance with Article R51 of the Code, the Appellant filed his appeal brief on 3 October 2018.

12. On 8 October 2018, the CAS Court Office initiated an appeal procedure under the reference CAS 2018/A/5945 Maxim Astafiev v. FC Mordovia & Football Union of Russia and invited

the Club and FUR to inform the CAS Court Office within five days of receipt of this letter, whether they agree to the appointment of a sole arbitrator. The letter by the CAS Court Office was couriered to the Club and FUR. The DHL report confirmed that the letter was delivered via courier to the Club on 10 October 2018 and to FUR on 9 October 2018.

13. Pursuant to Article R55 of the Code, the CAS Court Office acknowledged the receipt of the Appellant's appeal brief on 11 October 2018 and invited the Club and FUR to submit to the CAS Court Office an answer within twenty days. This letter by the CAS Court Office was couriered to the Club and FUR. The DHL report confirmed that the letter was delivered via courier to the Club on 15 October 2018 and to FUR on 12 October 2018.

14. In the absence of any answer regarding the appointment of a sole arbitrator and in accordance with Article R50 of the Code, the CAS Court Office informed the parties on 17 October 2018 that the President of the CAS Appeals Arbitration Division, or her Deputy, will decide whether to appoint a sole arbitrator to the case.

15. On 13 November 2018, and in the absence of an answer by either of the Respondents, the CAS Court Office informed the parties that the Respondents' deadline to file an answer had expired on 1 and 4 November 2018, respectively. Further it informed the parties that in light of Article R55 of the Code, the Panel may nevertheless proceed with the arbitration and deliver an award. The parties were invited to inform the CAS Court Office by 20 November 2018 whether they prefer a hearing to be held in the matter or for the Panel/Sole Arbitrator to issue an award based solely on the parties' written submissions.

16. On 17 November 2018, the Appellant requested that the Panel/Sole Arbitrator shall issue an award based solely on the parties' written submissions. In the absence of any answer of the Club and FUR, the CAS Court Office informed the parties on 22 November 2018 that it will be for the Panel/Sole Arbitrator, once constituted, to decide whether to hold a hearing in accordance with Article R57 of the Code.

17. In addition, the Club and FUR were invited to indicate until 27 November 2018, whether they intent to pay their share of the advances of costs that will be requested to the parties in application of Article R64.2 of the Code. In the absence of any answer within the prescribed deadline and pursuant to Article R50 of the Code, the parties were advised that it is for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators, taking into account the circumstances of the case.

18. On 21 February 2019, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitrations Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Dr. Marco Balmelli, Attorney-at-Law in Basel, Switzerland.

19. On 19 March 2019, the CAS Court Office informed the parties on behalf of the Sole Arbitrator that he deems himself sufficiently well-informed to decide this case based solely on the parties' written submissions, without the need to hold a hearing. The CAS Court Office noted that

pursuant to Article R55.2 of the Code, the Sole Arbitrator may proceed with the arbitration and deliver an award even if the Club and FUR failed to submit their response. Therefore, the CAS Court Office issued an Order of Procedure on behalf of the Sole Arbitrator. The parties were requested to sign and return a copy of the Order of Procedure to the CAS Court Office by 26 March 2019.

20. This letter was e-mailed and faxed to the Club and FUR. The e-mails were not returned and at no point has the CAS Court Office received a note of delivery failure. The fax-status returned regarding the fax sent to the Club and FUR was positive.

21. On 20 March 2019, the Appellant returned the signed Order of Procedure. The Club and FUR did not return a signed Order of Procedure but did not raise any objections to its content either.

22. On 8 April 2019, and in accordance with Article R44.3 and Article R57.3 of the Code, the Sole Arbitrator ordered the production of additional documents by the Club. The Sole Arbitrator set a deadline of ten days as of receipt of the order. This order was delivered via email and courier to the Club on 11 April 2019. The Club failed to produce the requested documents in the set deadline, and at any time later.

IV. SUBMISSIONS OF THE PARTIES

23. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference has been made in what immediately follows. The parties' written submissions and the content of the Appealed Decision were all taken into consideration.

A. Appellant

24. The Appellant filed the following prayers for relief:

1. "To change the FUR's DRC decision No 153-O-18 of August 09, 2018 in terms of the amount of the money remuneration, envisaged in cl. 7.4. of the Labor Contract of June 6, 2016

and render an award, declaring that

2. To condemn Non-Commercial Partnership Football club "Mordovia" to pay Mr. Maxim Astafiev the money remuneration, envisaged in cl. 7.4 of the Labor Contract of June 6, 2016, in the amount of 2 587 500 (two million five hundred and eighty-seven thousand five hundred) Russian rubles.

3. To condemn Non-Commercial Partnership Football club "Mordovia" and the Football Union of Russia to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators, or, more generally, the final amount of the costs of arbitration as per Article R64.4 of the Code of Sports-related Arbitration (edition 2017).

4. To condemn Non-Commercial Partnership Football club "Mordovia" and the Football Union of Russia to pay wholly any expenses, connected to the arbitration proceeding, and to pay Mr. Maxim Astafiev wholly all his expenses connected to this proceeding, including the costs of legal services and the costs of the services of the interpreters".

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

- Based on Russian labor law, the Club as employer is obliged to provide its employee with a pay slip, in which the employer is obliged to specify the amount of the salary paid to the employee as well as the amount of the salary due to be paid. The right to receive pay slips serves the purpose of informing the employee of his outstanding salary entitlements against the employer.

- The Club issued a pay slip for the period from January 2018 to May 2018 (the "Pay Slip"). This Pay Slip shows that the Club owes the Player RUB 2'362'500 as *"Payment according to the Labor Contract"* in addition to the fixed official salary of RUB 2'300'000 and a bonus of RUB 160'934. The Pay Slip further shows the deductions made by the Club based on already effected payments. The Club lists one payment of October 2017 in the amount of RUB 1'897'752.30 in the deduction column. However, the Club did not deduct this payment from the amounts owed and calculated the total amount owed to the Player *"to the end of the period (net)"*: RUB 3'335'988 after taxes.

- In consequence, the Club declared in the Pay Slip by the end of May 2018 that it owes the Player the second, the third and the fourth installment according to the Contract and that the payments made by the Club before May 2018 were not issued to set off these installments. The FUR DRC did not consider the Pay Slip in its decision without providing any reasons and legal grounds for the non-consideration of the Play Slip as evidence.

- For the period of 6 June 2016 to 31 December 2017, the Club did not issue a single pay slip to the Player, which would have specified the payments made by the Club. The FUR DRC ordered the Club to provide all the documents related to the payment of salary to the Player for the entire period of his work. The Club refused to provide these documents. The FUR DRC did not take into account the refusal of the Club to produce these documents but considered that the Player failed himself to verify the accuracy of the calculation of his claim and the purpose of certain payments made by the Club. In consequence, the Player was not even provided the opportunity to do so because the Club only provided incomplete, irregular and illogical documentation of the payments issued. Hence, the FUR DRC imposed the burden of proving the payments made by the Club in violation Article 24 para. 4 of the FUR Regulations on disputes resolution (the "FUR Regulations") upon the Player.

- In addition, the Player argues that the Club paid additional bonuses based on verbal agreements and general custom within the Club. Even if the Player was not entitled to such other bonuses, the Club would only be entitled to offset these payments with other

debts based on Russian labor law if it proved that these payments were based on an accounting error, which it did not.

B. Respondents

26. The Club and FUR did not submit any answer or prayers for relief and did not participate in the present arbitration proceedings, despite having been duly given the opportunity to do so by the CAS Court Office, in accordance with Article R55 of the Code.

27. Despite the silence of the Respondents, in accordance with Article R44.5 of the CAS Code, the Sole Arbitrator deemed himself sufficiently informed in order to proceed with the arbitration and deliver an award.

V. JURISDICTION

28. The jurisdiction of the CAS – which is not disputed by the parties – derives from:

Article 47 of the FUR Statutes which provides:

"[…] 3. In accordance with the specific provisions of FIFA Statutes, UEFA Statutes and FUR Statutes any appeal against final and legally binding decisions passed by FIFA, UEFA and RFU may be heard by the CAS. […]".

Article 53 of the FUR Regulations which provides:

"[…] 2. The Committee's or the DRC's decision, made on the cases stipulated in subparagraphs "b", "c", "d", "e", "f" of the paragraph 1, article 13 of the present Regulations, can be appealed only to the Court of Arbitration for Sports (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days from receipt of the full text of the decision of the Committee or the DRC, by both parties".

and Article R47 of the Code which provides:

"An 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".

29. Therefore, the Sole Arbitrator considers that CAS is competent to decide this case.

VI. ADMISSIBILITY

30. Article R49 of the 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

31. The Appealed Decision was notified to the Appellant on 4 September 2018. The statement of appeal was filed on 24 September 2018, *i.e.* within the deadline of 21 days set by Article 53 para. 2 of the FUR Regulations and Article R49 of the Code. The appeal brief was filed in due time. The appeal further complied with all other requirements of Articles R48 and R51 of the Code, including the payment of the CAS Court Office fee. Therefore, the appeal is admissible.

VII. APPLICABLE LAW

32. It is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act ("PILA") is the relevant arbitration rule of law for an arbitration held in Switzerland (DUTOIT B., Droit international privé suisse, Commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P-Y., in: Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad Article 186 PILA). Article 176 para. 1 PILA provides that the provisions of Chapter 12 PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

33. CAS has its seat in Lausanne, Switzerland. Therefore, the PILA is applicable. Article 187 para. 1 of the PILA provides – *inter alia* – that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate the present dispute according to the Code, the parties have submitted themselves to the conflict-of-law rules contained therein, in particular to Article R58 of the Code (CAS 2008/A/1705 para. 9 and references; CAS 2008/A/1639, para. 21 and references).

34. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

35. Article R58 of the Code indicates how the Sole Arbitrator must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *"applicable regulations"* to the *"rules of law chosen by the parties",* which are only applicable *"subsidiarily"*. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Sole Arbitrator the obligation to resolve the matter pursuant to the regulations of the relevant *"federation, association or sports-related body"*. Should this body of norms leave a *lacuna*, it would be filled by the *"rules of law chosen by the parties"*.

36. According to the Contract, the parties agreed that:

> *3.2. "The Employee has the rights and responsibilities in accordance with the labor legislation and other normative legal acts of the Russian Federation containing employment and labor laws, collective agreements, agreements, as well as local normative acts, adopted by the Employer taking into consideration the norms of the FUR, regulatory documents of FIFA, UEFA and the FUR".*
>
> *4.2. "The Employer has the rights and responsibilities in accordance with the labor legislation and other normative legal acts of the Russian Federation containing employment and labor laws, collective agreements, agreements, as well as local normative acts, adopted by the Employer taking into consideration the norms of the FUR, regulatory documents of FIFA, UEFA and the FUR".*

37. Therefore, the Sole Arbitrator deems it appropriate to apply the FUR Regulations and, on a subsidiary basis, Russian law to the dispute.

VIII. PRELIMINARY REMARKS

38. The Club and FUR failed to participate in this arbitration and did not submit an answer to the appeal brief nor any other written submission. With respect to such a situation, Article R55 para. 2 of the Code states the following:

> *"If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award".*

39. Based on this provision, the failure of the Club and FUR to participate in the arbitration has no direct effect on the jurisdiction of the Sole Arbitrator. The Sole Arbitrator therefore proceeded with the arbitration notwithstanding the Club's and FUR's refusal to take part in the proceedings.

40. In commercial arbitration, leading authorities stress that the failure of one party to participate in the proceedings cannot be taken as acquiescence in the other party's claims or allegations. Therefore, even if a party fails to take part in the arbitral procedure, the tribunal must proceed to determine the facts of the case (BÜHLER/WEBSTER, Hand-book of ICC Arbitration, 3rd ed., London 2014, paras. 6-119 et seq.; CRAIG/PARK/PAULSSON, Annotated Guide to the 1998 ICC Arbitration Rules, Paris 1998, page 62). The Sole Arbitrator holds that these principles must also apply to this arbitration.

41. Furthermore, pursuant to Article R44.3 in connection with Article R57.3 of the Code, the Sole Arbitrator may at any time order the production of additional documents if he deems it appropriate to supplement the presentations of the parties. Further, it is generally accepted in international arbitration that if a party refuses to comply with a production order without a reasonable excuse, the arbitral tribunal may infer that such documents would be adverse to the interests of said party and that the party may have something to hide (Article 9(5) of the IBA Rules on the Taking of Evidence in International Arbitration; CAS 2015/A/3883, para. 64).

42. The Sole Arbitrator holds that these principles must also apply to this arbitration and communicated this to the Club and FUR with his request for the production of documents dated 8 April 2019.

IX. MERITS

A. Scope of the proceeding

43. The Sole Arbitrator establishes that the payment of the remuneration according to Article 7.4. of the Contract is in dispute. According to this clause, the Club was obliged to pay the following:

- RUB 862'500 by 1 November 2016 (the "first installment");
- RUB 862'500 by 1 March 2017 (the "second installment");
- RUB 862'500 by 5 September 2017 (the "third installment");
- RUB 862'500 by 1 March 2018 (the "fourth installment").

44. The Club does not contest that the Player was entitled to such payments according to the Contract. It is further undisputed by the Player that the Club paid the first installment. In addition, the FUR DRC recognized that the Club did not pay the fourth installment. The Club did not appeal against the Appealed Decision.

45. With respect to the second and the third installment in the total amount of RUB 1'725'000, the FUR DRC held that the Club proved the payment of these installments by submitting three bank payment orders. In his appeal, the Player contests receipt of the second and third installment. The Sole Arbitrator shall therefore decide if the Club is obliged to pay not only the fourth but also the second and third installment (*i.e.* an additional amount of RUB 1'725'000) to the Player.

B. Outstanding installments according to Article 7.4. of the Contract

46. The Sole Arbitrator notes that the Player refers to Article 24 of the FUR Regulations which provides as follows:

"4. The party is obliged to prove the circumstances which it refers to as a justification of its demands and objections".

47. The Sole Arbitrator considers the distribution of the burden of proof outlined in the applicable FUR Regulations is congruent with general rules and principles and consistent with the well-established CAS jurisprudence: Facts pleaded have to be proven by the party who derives rights from these facts, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based (CAS 2017/A/5277, para. 56). Hence, it is well established that any party wishing to prevail on a disputed issue must discharge its burden of proof, *i.e.* must give evidence of the facts on which its claim has been

based. In order to fulfil its burden of proof, a party must provide the Sole Arbitrator with all relevant evidence that it holds, and, with reference thereto, convince the Sole Arbitrator that the facts it pleads are true, accurate and produce the consequences envisaged by the party. If these requirements are complied with, the party has fulfilled its burden and the burden of proof is transferred to the other party.

48. To that effect, the Player bears the burden of proving the agreement between the Player and the Club regarding the amount owed of RUB 1'725'000 and that such payment is due. The Player submitted the Contract according to which the Player is entitled to the payments claimed (Article 7.4). Based on the documents on file, the Sole Arbitrator finds it established that the Player and the Club validly concluded the Contract. Article 7.4. of the Contract lines out clearly the Club's obligation to pay four separate installments, each in the amount of RUB 862'500. The second installment became due on 1 March 2017. The third installment became due on 5 September 2017. Accordingly, the Player has proven that he is entitled to the second and third installments and that they are due.

49. The Sole Arbitrator therefore considers whether the Club provided evidence for the payment of the second and third installments.

50. In the Appealed Decision, the FUR DRC considered the following: The Club has proven the payment of the second and the third installments with three bank payment orders (No. 136 of 23 March 2017, No. 717 of 3 October 2017 and No. 41 of 20 February 2018; together the "Payment Orders"). From these Payment Orders, the FUR DRC concluded that the Club paid more than the agreed salaries for certain time periods. Further, the FUR DRC established that these alleged overpayments are considered set off with the second and third installments.

51. Based on the documents submitted by the Player in the proceeding before CAS, it is the overall impression of the Sole Arbitrator that the Club organized its salary payment procedures in an incomprehensive and non-transparent manner. These documents raise substantial doubts if the Club paid the second and third installments. In particular:

- The Sole Arbitrator notes that the presented Payment Orders contradict Article 4.1.1 of the Contract, which obligates the Club to pay the salary monthly, timely and in full to the Player. It appears from the Payment Orders that the Club paid the Player several monthly salaries in default of the Contract with delay. For example, the Club paid the salary for January 2017 together with the salary for June 2017 on 27 July 2017 (payment order No. 540). Further, it paid the salary for November and December 2017 only on 20 February 2018. In addition, the Club lined out the purpose of the payments in the Payment Orders unclearly and in a non-transparent way creating difficulties in tracking these payments.

- The alleged overpaid amounts noted in the Payment Orders do not match the amount of the second and third installments of a total amount of RUB 1'725'000 or a partial amount of RUB 862'500 each. Even if this alleged overpayment would be considered set off with the second and third instalments, a substantial amount of these installments remained unpaid.

- According to the Pay Slip, the Club itself accounted for an amount owed of RUB 3'335'988 by May 2018. This obviously included the second, third and fourth installments based on Article 7.4. of the Contract. In consequence, the Club stated in the Pay Slip that it owes the amount of RUB 3'385'198.36 by the end of May 2018.

- In essence, the Sole Arbitrator recognizes the increased evidential quality of the Pay Slip according to Russian labor law as credibly explained by the Player and uncontested by the Club.

52. In summary, it remains unclear which payments were made in which period for which obligation under the Contract. As an employer, the Club has all the pertinent evidence in its hand to prove all payments made to its employee and therefore provide an explanation for all payments that can be retraced and recalculated based on the Contract. The fact that the Club issued payments in an incomprehensible manner cannot be blamed on the Player. The Sole Arbitrator concludes that the Club failed to prove the payment of the second and third installments.

53. The Sole Arbitrator ordered the Club to provide full documentation regarding the payments made to the Player during his employment from June 2016 to June 2018, including all payment orders and all pay slips. The Club failed to produce this evidence without any excuse. In accordance with generally accepted principles of international arbitration (cf. para. 39 *et seq.* here above), the Sole Arbitrator infers that the full documentation regarding all payments made to the Player during his employment would be adverse to the interests of the Club, *i.e.* would show that the Club in fact did not pay the second, third and fourth installments according to Article 7.4. of the Contract.

54. According to the concept of burden of proof, the Club bears the risk if the payment of the amounts owed remains unproven. Therefore, the Sole Arbitrator concludes that the Club failed to prove the payment of the second and third installments. In conclusion, the Player is entitled to a payment in the amount of RUB 2'587'500 according to Article 7.4. of the Contract comprising the second, third and fourth installment. The appeal is therefore upheld and para. 5 of the Appealed Decision is set aside. The Club is obliged to pay RUB 2'587'500 (comprising the second, third and fourth installments of RUB 862'500 each) to the Player.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Maxim Astafiev on 24 September 2018 against the decision rendered on 9 August 2018 by the FUR Dispute Resolution Chamber is upheld.

2. Para. 5 of the decision rendered on 9 August 2018 by the FUR Dispute Resolution Chamber is set aside.

3. FC Mordovia shall pay RUB 2'587'500 to Maxim Astafiev.

(…)

6. All other prayers for relief are dismissed.