Arbitration CAS 2018/A/5587 Juan Carlos Real Ruiz v. Fotbal Club CFR 1907 Cluj S.A., award of 20 February 2019

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football
Termination of the employment contract by mutual agreement
Subsidiary application of Swiss law
Method of interpretation of contracts
Prohibition of one-sided waiver and validity of settlements with reciprocal consequences

1. **In the absence of rules governing interpretation of contracts in the primarily applicable regulations of FIFA, CAS panels subsidiarily apply Swiss law.**

2. **When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of an agreement.**

3. **Settlements with reciprocal consequences are valid. However, for the period of an employment contract relationship and for one month after its end, an employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract.**

I. PARTIES

1. Mr Juan Carlos Real Ruiz (the "Appellant" or the "Player") is a professional football player of Spanish nationality.

2. Fotbal Club CFR 1907 Cluj S.A. (the "Respondent" or the "Club") is a professional football club with its registered office in Cluj, Romania. The Club is registered with the Romanian Football Federation (the "RFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

II. FACTUAL BACKGROUND

3. 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 information is given for the sole purpose of providing a synopsis of the matter

in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background facts

4. On 18 January 2016, the Player and the Club entered into a *"Legal Agreement"*, valid as from 1 February 2016 until 30 June 2016.

5. On 3 March 2016, the Player and the Club entered into a new *"Legal Agreement"* (the "Legal Agreement") for one sporting season, *i.e.* valid as from 1 July 2016 until 30 June 2017, determining, *inter alia*, as follows:

> *"**IV. PRICE OF AGREEMENT***
>
> ***5.1. lit. a) The value of this Agreement** shall be a net amount of **EUR 88.050** and shall be paid as follows:*
>
> - *from the value of the agreement the player will receive in advance EUR 10.050 net which will be paid until 01.08.2016.*
> - *for the period: **01.07.2016 – 30.06.2017**, the player will receive the net amount of **78.000,00** EUR which will be paid in **12** equal instalments as follows:*
> - *For the period 01.07.2016 – 30.06.2017, the player will receive a net amount of 6.500 euros/month.*
>
> *(…)*
>
> ***V. PAYMENT***
>
> ***6.1.** Any sums worked out and due to the Player under this Agreement, except the bonuses, shall be paid in equal monthly installments, for each season separately, until the 25th of next month, in Romanian currency at the official exchange rate of the National Bank of Romania on the day such payment is made".*

6. Also on 3 March 2016, an *"Addendum to Legal Agreement"* (the "Addendum to the Legal Agreement") was concluded between the parties, determining, *inter alia*, as follows:

> *"The parties mutually agree, as follows:*
>
> *(…)*
>
> - *2 airline tickets/season for route Romania – Spain – Romania".*

7. Also on 3 March 2016, another *"Addendum"* (the "Addendum") was concluded between the parties, determining, *inter alia*, as follows:

> *"Pursuant to the provisions of Art. 1270(2) of the Romanian Civil Code, as well as to the provisions of Art. 13.2 of* [the Legal Agreement]*, registered with PFL under no.* […]*, complemented and amended through addendums,*
>
> *Hereby, the parties jointly agreed the amendment of the provisions contained by the* [Legal Agreement]*, registered with PFL under no.* […] *in the sense of:*
>
> ***I.A)** The postponement and making the payment on 05.04.2017, for the financial rights due to the player, in amount of 15.930,45 euros net, amount representing bonus for the 2015-2016 competitive season amounting to 5.000 euros net and 10.050 euros net advance from the value of* [the Leal Agreement]*, registered at LPF with no.* […].
>
> *The remaining net amount of 880,45 euro net represents the value of airline tickets.*
>
> ***II.** The remainder of the provisions stipulated within* [the Legal Agreement]*, registered at LPF with no* […]*, complemented and amended through addendums, remains unchanged".*

8. On 12 May 2017, Mr Gustavo De la Parra, a representative of the Player, exchanged text messages with Mr Ionut Ivascu, a representative of the Club, regarding the Player's future:

> Mr De la Parra: *"Hi Ionut, (…) Apart from this, honestly, we think that it doesn't any sense he come back to Cluj for pre season, so he is not going to continue with you, in spite of theoretically according to his contract he finish 30.06.2017.*
>
> *Please confirm us this doubt because we don't want to have any problem with you, as well as the 3 months that he has to receive, or the proportional part of June 2017, if he doesn't train.*
>
> *We wait your news about it".*
>
> Mr Ivascu then tried to call Mr De la Parra.
>
> Mr De la Parra: *"Sorry I am in a meeting IONUT".*
>
> Mr Ivascu: *"3 months he has to receive what?".*
>
> Mr De la Parra: *"April and May sorry, if he doesn't train in June".*
>
> Mr Ivascu: *"Gustavo April is not due!! Only in 25 May. If he want to go and don't come back we can sign one resignation with 31 may".*
>
> Mr De la Parra: *"Ok, but anyway he has to receive April and May".*

Mr De la Parra: *"In spite of he has to receive April next 25th May, you had to pay these two months in spite of he doesn't come back in June for pre season because it doesn't has any sense. Does it?"*.

Mr Ivascu: *"He will receive april and may"*.

Mr De la Parra: *"Ok"*.

9. On 13 May 2017, the Club played its last match of the 2016/2017 sporting season. At that time, the Player was allegedly informed by the Club that he would not be continuing his career with the Club the next sporting season.

10. On 9 June 2017, further text messages were exchanged between Mr De la Parra and Mr Ivascu. Mr De la Parra repeated all messages exchanged on 12 May 2017 and then the following discussion ensued:

Mr De la Parra: *"So send me the document and he resign to receive June obviously but as we agreed and you can see, it doesn't any sense Juan has to return to Cluj, and honestly and after all, we don't worth your threats"*.

Mr Ivascu: *"Gustavo, if everybody understand and also this is fair situation and the player don't come to train until 30.06.2017 he must sign a termination addendum with 31.05.2017. He must receive in this situation 1 month salary.- may 2017! Otherwise he can be sanctioned by the club with 25% from the entire value of his agreement for one year according the internal regulation registered at the PFL!!!"*.

Mr De la Parra: *"Then, Send us this termination addendum"*.

Mr De la Parra: *"Juan is in USA and we try he sign the document when he come back next Monday"*.

Mr Ivascu: *"Ok"*.

Mr De la Parra: *"To my mail please"*.

11. On 12 June 2017, the Club sent the Player a termination agreement (the "Termination Agreement"). In the accompanying email, the Club states the following:

"To be able to pay the salary for may and to not have any other problems with your delay on training you find attached the termination addendum which must be sign by the player

Waiting asap this sign".

12. On 12 June 2017, further text messages were exchanged between Mr De la Parra and Mr Ivascu:

Mr Ivascu: *"Check your e-mail and spike with Juan to sign fast this"*.

Mr De la Parra: *"Ok"*.

Mr De la Parra: *"Perfect"*.

13. On 13 June 2017, the discussion between Mr De la Parra and Mr Ivascu continued:

Mr De la Parra: *"Sorry Ionut. At the end Juan will send you the addendum tomorrow because today he is at a hotel in Formentera and he hasn't access to a printer and scanner. Juan told me that tomorrow without lack, he will send you ok?"*.

Mr Ivascu: *"Ok"*.

Mr De la Parra: *"Ok. When does he receive May?"*.

Mr Ivascu: *"In 25 june"*.

Mr Ivascu: *"Normally"*.

Mr De la Parra: *"Ok"*.

14. On 14 June 2017, the Player retuned a signed copy of the Termination Agreement to the Club, determining as follows:

"with the terms from art. 1270 paragraph (2), Romanian Civil Code and paragraph 11.1 b.) from the [Legal Agreement]*, registered at the Professional Football League with the number* […]*, both sides have agreed together the following:*

1. The cancellation with the agreement of both parties of the [Legal Agreement] *registered at the Professional Football League with the number* […] *and of all the contractual relations between the two parties starting with the date of 31.05.2017.*

2. Both parties have commonly agreed and certify through the signing of this addendum, that they do not have other obligations, financial or any other, for past, present or future, as a result from and in relation with the [Legal Agreement]*, registered at the Professional Football League with the number* […]*"*.

15. Between 26 June and 27 July 2017 several other text messages were exchanged between Mr De la Parra and Mr Ivascu.

16. On 19 July 2017, the Club provided the Player with a document titled *"Proof of last contract end date"*, indicating that the Player's Legal Agreement with the Club expired on 30 June 2016.

17. On 19 July 2017, a representative of the Player informed a representative of the Club as follows:

"As we know, [the Player] *signed that addendum, starting on the date of 31.05.2017,* ***therefore and with our good will to sign it so that*** **[the Player]** ***did not have to start the trainings of pre-stage 17/18, because as we agreed it hadn't any sense.***

We insist, with our good will, as with the rest of the addendums you ask for several times, as you know, we've always signed them in order to cooperate, always, with [the Club].

Therefore, beyond the registered document in the Romanian Federation, which we understand, ***if there is good will among us, as we have always been our company with you, and you with us, we can sign another addendum which clarify, even more,*** **[the Player]** ***signed it, and all this misunderstanding, will be resolved and by 6,500€ we are not going to have problems, and our personal and proffesional*** **[sic]** ***relationship continue as until now.***

With the confidence that this situation will be solve as soon as possible*, and as I told you this morning,* ***if you want, you can do it and solve it****"* (emphasis in original).

18. On 24 July 2017, the Player notified the Club as follows:

"Due to our good will and trust on Ionut, as always we do, after his call phone to us and above all his mail below that Ionut sent us last 12th June 2017, and in order to collaborate, always, with Cluj, we ask for [the Player] *to sign that* [Termination Agreement]*, also in order to avoid,* ***as Ionut referred in his mail, any other problems with*** **[the Player]** ***delay on training, and Cluj could pay him as soon as possible****, as the club did with the rest of the players that they had received this month, and apart from this and finally, as we agreed many times of word by phone (****see mail below that Ionut sent us last 12th June 2017 to the player and me.)***

So, we insist as a sample of our good will always with your club, and after seeing Ionut's mail, our company asked for [the Player] *that he had to sign this document, as you know, starting with the date 31.05.2017, so previous to this date,* ***the player has the right to receive May (6.500€), and for that reason, we don't understand this misunderstanding, so this document deploys its effects from that date onwards, not to payments pending receipt before that date, as as*** **[sic]** ***is clearly shown by Ionut's explanation in the mail that he sent to us and to the player****"* (emphasis in original).

B. Proceedings before the FIFA Dispute Resolution Chamber

19. On 2 August 2017, the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting payment of a total amount of EUR 13,088.41, corresponding to the Player's salaries for May and June 2017, as well as an air ticket for the amount of Romanian Leu ("RON") 800 (according to the Player equivalent to EUR 175.90), plus 5% interest *p.a.* as from 25 June and 25 July 2017 respectively.

20. The Club primarily contested the competence of the FIFA DRC, arguing that the matter should be referred to *"the competent bodies of the FRF and/or the Professional Football League"* and, subsidiarily, requested the Player's appeal to be dismissed on the merits.

21. On 25 January 2018, the FIFA DRC rendered its decision (the "Appealed Decision") with the following operative part:

> *"1. The claim of the* [Player] *is admissible.*
>
> *2. The claim of the* [Player] *is rejected".*

22. On 14 February 2018, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:

- With regard to the competence of the FIFA DRC, *"*[t]*he Chamber emphasized that in accordance with art. 22 lit. b) of the 2016 and 2018 editions of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the association and/or a collective bargaining agreement. With regard to the standards to be implemented on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to the FIFA Circular no. 1010 dated 20 December 2005. Equally, the members of the Chamber referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.*

- *In relation to the above, the Chamber also deemed it vital to outline that one of the basic conditions that needs to be met in order to establish that another organ that the DRC is competent to settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant national arbitration tribunal or national court derives from a clear reference in the employment contract.*

- *Therefore, while analysing whether it was competent to hear the present matter, the Dispute Resolution Chamber considered that it should, first and foremost, analyse whether the employment contract at the basis of the present dispute contained a clear jurisdiction clause.*

- *In this respect, the Chamber recalled that clause 12.1 of the contract stipulated the following:*

  > *"Any dispute between the Parties arising from or in connection with this Agreement, including its validity, interpretation, execution or termination, shall be settled amiably. Unless the Parties shall reach an amiable resolution then any such dispute shall be submitted to the competent bodies of the Romanian Football Association and the Professional Football League with respect of the Romanian legislation".*

- *Having examined the relevant provision, the Chamber came to the unanimous conclusion that clause 12.1 of the contract does not constitute a clear jurisdiction clause in favour of one specific court or*

arbitration tribunal in Romania, since it only appears to be a generic reference to "the competent bodies of the Romanian Football Association and the Professional Football League with respect of the Romanian legislation". In particular, the Chamber highlighted that it remains unclear from the aforementioned stipulation whether said bodies are part either of the Romanian Football Association and/or the [Romanian] *Professional Football League.*

- *On account of all the above, the Chamber established that the* [Club's] *objection towards the competence of FIFA to deal with the present matter has to be rejected, and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance".*

- As to the substance of the case, *"*[t]*he Chamber acknowledged that, on 3 March 2016, the parties to the dispute had signed an employment contract valid as from 1 July 2016 until 30 June 2017.*

- *Subsequently, the Chamber noted that the* [Player] *lodged a claim against the* [Club]*, maintaining that the latter had outstanding salaries towards him for the amount of EUR 13,088.41 and corresponding to the salaries for May 2017 and June 2017, in addition to the refund of certain air tickets (cf. point I.7 above).*

- *In this respect, the members of the Chamber further observed that the* [Player] *acknowledged that, on 14 June 2017, he signed and returned via email to the* [Club] *a "termination agreement" (cf. points I.5 and I.6 above).*

- *In relation to the aforementioned agreement, the Chamber took note of the* [Player's] *argument, according to which the termination agreement should not be deemed as valid since the* [Club] *never returned a countersigned copy.*

- *As a preliminary remark, the members of the Chamber noted, however, that the* [Player] *acknowledged that he signed said termination agreement. Consequently, they unanimously understood that there are no doubts that the* [Player] *accepted, for his part, the terms and conditions of said agreement.*

- *For the sake of completeness, the members of the Chamber further observed the documentation provided by the* [Club]*, and observed that the latter provided, during the course of the procedure, a countersigned copy of said termination agreement. In view of the above, the members of the Chamber unanimously agreed that the termination agreement was valid and binding between the parties.*

- *Subsequently, the members of the Chamber observed the terms and conditions agreed between the parties. In particular, the Chamber noted the contents of art. 2 of said agreement, which stipulates the following:*

> *"2. Both parties have commonly agreed and certify through the signing of this addendum, that they do not have other obligations, financial or any other, for past, present or future, as a result from and in relation with the* [Legal Agreement]*".*

- *In this respect, the members of the Chamber concluded that the contents of the aforementioned stipulation are clear and leave no room for interpretation, since it is clearly established that, by signing the termination agreement, the* [Player] *abdicated from all his rights arising from the* [Legal Agreement]*, including his pending salaries and any other (financial) obligation.*

- *In view of the above, the members of the Chamber unanimously agreed that the claim of the* [Player] *had to be rejected in full".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 26 February 2018, the Player filed a combined Statement of Appeal / Appeal Brief with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Article R47 and R48 of the 2017 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Player requested the CAS Court Office to assign the arbitration to a Sole Arbitrator.

24. On 12 March 2018, FIFA renounced its right to requests its possible intervention in the arbitration proceedings.

25. On 13 March 2018, despite an invitation from the CAS Court Office to this effect, and in view of the Club's failure to respond to the Player's request to appoint a Sole Arbitrator, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division, or her Deputy, would decide on the number of arbitrators, pursuant to Article R50 CAS Code.

26. On 14 March 2018, the Deputy President of the CAS Appeals Arbitration Division decided to submit this matter to a Sole Arbitrator.

27. On 15 March 2018, the Club requested to submit the arbitration to a panel of three arbitrators and that it had not received the Player's combined Statement of Appeal / Appeal Brief.

28. Also on 15 March 2018, the CAS Court Office referred to a courier report confirming that the Player's combined Statement of Appeal / Appeal Brief was delivered to the Club on 6 March 2018 and that the Club's late submission on the number of arbitrators would be forwarded to the Division President, or her Deputy.

29. Also on 15 March 2018, the Deputy President of the CAS Appeals Arbitration Division, taking into account all the circumstances of the case, decided to confirm his decision to submit this procedure to a Sole Arbitrator.

30. On 14 May 2018, in accordance with Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as Sole Arbitrator.

31. On 25 May 2018, the Club informed the CAS Court Office that it *"paid the Player the sum asked in its combined Statement of Appeal and Appeal Brief"*. The Club however insisted that *"we would like to mention the fact that the payment does not represent an acknowledgement of the Player's appeal before the Court"*.

32. On 29 May 2018, the Player confirmed receipt of the payment made by the Club and suggested to resolve the dispute by means of a consent award, determining the following:

> *"- The Appellant confirms having been paid the amounts requested through his appeal. The FIFA DRC decision of 25 January 2018 is therefore, set aside.*
>
> - *The Respondent shall return the Appellant the Court office fee of 1.000 CHF.*
>
> - *The Respondent assumes at it own charge any and all costs related to the present proceedings, so that after the determination of the costs incurred by the CAS, the Appellant receives back such amount from the Respondent, and the remaining balance – until the full amount paid as advance of costs – from the CAS.*
>
> - *The Respondent shall pay the Appellant a contribution towards the legal costs incurred in connection with the present proceedings to be determined at the discretion of the Sole Arbitrator (cf. art. 64.5 CAS Code)"*.

33. Also on 29 May 2018, the Club informed the CAS Court office that it had to *"respectfully decline the Appellant's terms and conditions for a consent award. The club is not able to have additional costs in the present matter (such as the player's legal costs with his attorney, etc.) as it already paid an amount of money which was not due, i.e. the amount which formed the object of the appeal"*.

34. Also on 29 May 2018, the CAS Court Office, on behalf of the Sole Arbitrator, strongly advised the parties to make their best efforts in finding an amicable agreement to solve the dispute.

35. On 5 June 2018, the Player informed the CAS Court Office that no amicable agreement was reached.

36. On 8 June 2018, the Club confirmed that no amicable agreement was reached.

37. On 11 June 2018, the Player requested a second round of written submissions to be held.

38. On 13 June 2018, the Club informed the CAS Court Office that it had no objection to a second round of written submissions, provided that they would be limited to the development of the grounds of appeal specified within the appeal and as long as no new claims would be raised.

39. On 18 June 2018, the Club filed its Answer in accordance with Article R55 CAS Code.

40. On 29 August 2018, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a second round of written submissions.

41. On 30 August 2018, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

42. On 5 September 2018, the Player filed his second written submission.

43. On 14 September 2018, the Club filed its second written submission. Within this submission, the Club indicated that it did not consider it necessary to hold a hearing.

44. On 17 September 2018, the Player informed the CAS Court Office that he did not deem it necessary to hold a hearing.

45. On 24 September 2018, the CAS Court Office informed the parties that the Sole Arbitrator deemed himself sufficiently well-informed and therefore decided that no hearing was needed.

46. On 24 and 25 September 2018 respectively, the Club and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming their agreement that the Sole Arbitrator would decide this matter on the basis of the parties' written submissions and that their right to be heard had been respected.

47. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. REQUESTS FOR RELIEF

48. The Player submitted the following requests for relief:

> *"(1) The Respondent is ordered to pay the Claimant the amount of EURO 6.588 NET representing the pending salary for May 2017 and the air ticket, in all cases plus interest of 5% p.a. as from 25 June 2017 until the date of effective payment.*
>
> *(2) In all cases, to fix a sum, to be paid by the Respondent to the Appellant, in order to pay its defence fees in the amount to be determined at the full discretion of the Panel, and to condemn the Respondent to the reimbursement of any and all advance of costs and court office fee paid by the Appellant".*

49. The Club submitted the following requests for relief:

> *"I. To dismiss the appeal lodged by the Appellant against the Decision of F.I.F.A. Dispute Resolution Chamber passed in Zurich, Switzerland, on 25 January 2018 in the case ref. 17-01287/aos and to uphold the challenged decision.*

II. To order the Appellant to bear all the arbitration costs and expenses with the proceeding incurred by the Respondent, including the contribution toward the Respondent's legal costs".

V. SUBMISSIONS OF THE PARTIES

50. The Player's Appeal Brief, in essence, may be summarised as follows:

- The Player submits that the present matter circles around the obligation of the Club to pay the outstanding remuneration to the month of May 2017 and the value of the plane ticket. The Player contends in essence that the Termination Agreement does not include the amounts due for May 2017 and that, in any case, he could never have legally waived his right to receive the remuneration he had worked for under the mandatory provisions in protection of employees provided for in Swiss labour law, in particular Article 341 of the Swiss Code of Obligations (the "SCO").

- The Player maintains that the FIFA DRC inexcusably failed to address most of the legal arguments raised by him during the first instance proceedings. Contrary to the unfounded opinion of the FIFA DRC, the text in the Termination Agreement is vague and does not constitute a waiver of the Player's right to receive the salary for May 2017 and the plane ticket. The reference to *"other obligations"* leads to the conclusion that any presumed waiver would exclusively refer, in good faith, to potential *"performance bonuses"* but never to the salaries he had worked for up to such moment.

- The Player also argues that the text messages exchanged before and after the conclusion of the Termination Agreement support such interpretation.

- The Player submits that the application of general principles of interpretation of contracts (cf. Article 18 SCO) in conjunction with *in dubio contra stipulatorem* and *in dubio pro operario* also point towards this conclusion. The acts and messages exchanged prior to and after the conclusion of the Termination Agreement reveal without doubt that the true intention of the parties was that the Player would be exempted from training during June 2017, but that the Club assumed the payment of May 2017 and the plane tickets. Any other interpretation would lead to an abuse and would render the clause ineffective and null and void, mainly because the Player was prevented by law from waiving such rights, pursuant to Article 341(1) SCO. The Player also refers to CAS jurisprudence and Swiss legal doctrine in this respect.

- The Player argues that he obtained no consideration whatsoever from the Club in exchange for the alleged waiver of his right to be paid his salary. The Player worked during the month of May 2017 and he should be paid for the work performed.

- Although the Player objects to the application of Romanian law in this case, he maintains that also Romanian Labour Code explicitly provides for the impossibility for an employee to waive his rights.

51. The Club's Answer, in essence, may be summarised as follows:

- The Club maintains that the Legal Agreement does not have the legal nature of an individual employment contract, but rather of a *"civil convention"*. Specifically in respect of professional athletes, Romanian law provides for the possibility of concluding an employment contract or a civil convention.

- Also the Regulation on the Status and Transfer of Football Players adopted by the RFF (the "RFF RSTFP") distinguish between the two types of contracts.

- With reference to jurisprudence of the High Court of Cassation and Justice, the Bucharest Court of Appeal and the Bucharest Tribunal, the Club argues that athletes cannot rely on labour law if they conclude a "civil convention" with a club.

- Since the Player and the Club concluded a *"civil convention"*, Romanian labour law is not applicable. The legal regime of the *"civil convention"* allows the Player the possibility to waive his contractual rights.

- The Club further submits that an extremely important element of the Termination Agreement is that it provides for the waiver of any past, present or future claims by both parties. The Club agreed to waive the transfer rights to the Player as well as the benefits of his sporting performance, one month earlier than the date set for the conclusion of the contract.

- The Club submits that, at the time of termination, the Club waived the Player's under-contract value of at least EUR 47,916. The Player agreed to waive only the allowance for May 2017, in the amount of EUR 6,588. In the worst-case scenario, the Termination Agreement is, in fact, a transaction through which the parties agreed to clear their reciprocal claims against each other, so that by free consent, they decided that the amount of EUR 6,588 was to be set-off against the Club's claim towards the Player's early release in the amount of EUR 47,916.

- The Player now no longer recognises the validity of the Termination Agreement, attempting to unjustly obtain an amount of money that he had waived, although the Club fulfilled its obligation to terminate the Legal Agreement prematurely.

- The Club also argues that the Club's right to have the Player under contract until the end of its normal duration, which has an economic component (regardless of the value at which it would be set), was lost considering the Player's waiver to the remuneration of May 2017 and that the Player had already benefitted from the Club's concession. The early termination is indissolubly linked to the Player's waiver of the May 2017 remuneration.

52. The Player's second written submission, in essence, may be summarised as follows:

- The Player maintains that the Club submitted for the first time in its Answer that the Legal Agreement is a *"civil agreement"*. Such stance contradicts the Club's behaviour during the FIFA DRC proceedings.

- The Player submits that he is convinced that the Legal Agreement is a veritable employment contract. With reference to a judgment issued by the European Court of Justice (the "ECJ"), the Player maintains that if it can be deduced that Uber drivers are not considered to be self-employed, then it is also undisputable that football players in Romania are employees.

- The Player argues that the Club's arguments in this respect are not tenable, because the Club made several references to *"salary"* and *"employment contract"* in its correspondence with the Player. The Club also did not object to the competence of the FIFA DRC, while the jurisdiction of the FIFA DRC derived from Article 22(b) FIFA RSTP, which refers to employment-related disputes. The position of the Club merits no protection because of the doctrine of *venire contra factum proprium*.

- The Player further submits, with reference to CAS jurisprudence, that the key features to elucidate the question regarding the legal nature of the relationship regardless of its denomination will be the subordination, dependency and the work performed by the employee under the direction of the club. If these criteria are met, the relationship will be of an employment nature.

- Although disputing the applicability of Romanian law and regulations issued by the RFF, the Player submits that Romanian law explicitly foresees the obligation of clubs to conclude employment contracts with foreign players.

53. The Club's second written submission, in essence, may be summarised as follows:

- The Club reiterated that, under the Romanian law applicable at the time, the parties were free to conclude *"civil agreements"* or employment contracts.

- The Club refers to the Legal Agreement and the Addendum to the Legal Agreement to argue that both parties fully assumed the legal nature thereof, namely the *"civil convention"*.

- The Player's arguments in respect of the qualification of the Legal Agreement as an employment contract would only have been applicable if the national law would not have allowed to conclude two different types of contracts, but only an employment contract.

- The Club submits that the Player's reference to the obligation to conclude employment contracts with foreign football players is only applicable to non-EU citizens. Since the Player is a Spanish citizen, such rule is not applicable to him.

- The Club denies that it had a stronger bargaining position at the time of concluding the Legal Agreement. The Player, at the time of signing, had the possibility to choose between two types of contracts and the Player declared that he understood the content of the agreement.

VI. JURISDICTION

54. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2016 Edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by both parties.

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

VII. ADMISSIBILITY

56. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

57. It follows that the Player's appeal is admissible.

VIII. APPLICABLE LAW

58. The Player submits that, pursuant to Article R58 CAS Code, in conjunction with Article 57(2) FIFA Statutes[1], CAS shall primarily apply the regulations of FIFA and, additionally, Swiss law.

59. The Club submits that, in accordance with the Legal Agreement, Romanian law is applicable.

60. The Legal Agreement contains the following provisions regarding the regulations and law applicable thereto:

> ***"II. LEGAL GROUNDS THE AGREEMENT IS BASED ON***
>
> *2.1. The above parties have entered into this Agreement in consideration of the provisions and regulations of Romanian Law for Physical Education and Sport, no. 69/2000, and rules and Regulation of FRF.*

[1] The Player refers to Article 66(2) FIFA Statutes in his submissions. The Sole Arbitrator understands that the Player mistakenly referred to the 2015 edition of the FIFA Statutes. The content of Article 66(2) FIFA Statutes (2015 edition) is identical to the content of Article 57(2) FIFA Statutes (2016 edition).

II.* [sic] *SCOPE OF AGREEMENT

1.1. The scope of this Agreement shall consist in the supply of sport services by the Player for the benefit of the Club, for the training in view of and participation to football competitions, namely, participation to training sessions and actual participation (in accordance with the referee's records) to football matches played by the Club's teams, in compliance with the articles and statutes of the Romanian Football Association and of the Professional Football League.

(…)

XII. FINAL PROVISIONS

(…)

13.4. This Agreement shall be supplemented accordingly with the provisions under the Regulation on the status and transfer of football players and other regulations of the Romanian Football Association and Professional Football League".

61. Article R58 CAS Code determines as follows:

"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".

62. Article 57(2) FIFA Statutes determines the following:

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

63. In view of the Player's choice to refer the dispute to the FIFA DRC and noting that, while the Club initially objected to the competence of the FIFA DRC, it does not raise such objection again in the present appeal arbitration proceedings before CAS, the Sole Arbitrator finds that the parties chose to refer their dispute to the FIFA DRC and thereby accepted the applicability of Article 57(2) FIFA Statutes. In accordance with this provision, the regulations of FIFA are primarily applicable, and subsidiarily, if necessary, Swiss law.

IX. PRELIMINARY ISSUES

64. The Sole Arbitrator took note of the fact that the Club on 24 May 2018 transferred an amount of EUR 6,889.40 (EUR 6,500 for the May 2017 salary, EUR 88 for the flight tickets, and EUR 301,40 for interest at a rate of 5% *per annum* between 25 June 2017 and 24 May 2018) to the Player.

65. The Sole Arbitrator however finds that this has no bearing on how the case is to be resolved, as the Club indicated that this did not *"represent an acknowledgement of the Player's appeal before the Court"*.

66. The parties failed to fully settle the matter as they did not reach an agreement on the costs of the proceedings.

67. The Sole Arbitrator therefore has no other option but to rule on the substance of the dispute. In doing so and in spite of the fact that whatever the decision on the substance of the dispute will be, this will have no practical consequences on the alleged debt since it was already paid in full, the Sole Arbitrator will be able to reach a decision determining in which proportion the costs of the proceedings are to be shared.

X. MERITS

A. The Main issues

68. The main issue to be resolved by the Sole Arbitrator is to determine whether the Player is entitled to receive his May 2017 salary (EUR 6,500 net) and the value of the flight tickets (EUR 175.95) from the Club.

69. While the Club maintains that the Player waived his entitlement to these amounts by signing the Termination Agreement, the Player submits that the Termination Agreement does not constitute a waiver of his right to receive these amounts. The dispute between the parties therefore principally concerns the interpretation of the Termination Agreement.

70. The interpretation of contracts is not specifically governed by the primarily applicable various regulations of FIFA, as a consequence of which the Sole Arbitrator deems it necessary to resort to the subsidiary application of Swiss law in this respect.

71. Article 18(1) SCO determines as follows in a free translation into English:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement"*.

72. On the one hand, the Termination Agreement unequivocally determines that *"[b]oth parties have commonly agreed and certify through the signing of this addendum, that they do not have other obligations, financial or any other, for past, present or future, as a result from and in relation with the* [Legal Agreement]".

73. On the other hand, the Club clearly informed the Player by email dated 12 June 2017 enclosing the Termination Agreement that *"to be able to pay the salary for may and to not have any other problems with your delay on training you find attached the termination addendum wich* [sic] *must be sign* [sic] *by the player"*.

74. This latter interpretation is reinforced by the text messages exchanged between Mr De la Parra and Mr Ivascu as set out *supra*. In particular, Mr Ivascu's statements that *"He will receive april and may"* and Mr Ivascu's reply (*"In 25 june"*) to Mr De la Parra's question (*"Ok. When does he receive May?"*) are telling.

75. In view of the plain assurances made by Mr Ivascu, who represented the Club at the relevant moment in time, both in the text messages exchanged with Mr De la Parra, as well as in the email sent to the Player and Mr De la Parra on 12 June 2017, the Sole Arbitrator has no doubt to conclude that the true intention of the parties was to sign the Termination Agreement in order to facilitate the early termination of the Legal Agreement as per 31 May 2017 and that the Player would receive his salary for May 2017. Such interpretation should therefore prevail over the language used in the Termination Agreement.

76. Accordingly, the Sole Arbitrator finds that, notwithstanding the language of the Termination Agreement, the Player is entitled to receive his May 2017 salary in the amount of EUR 6,500 net.

77. As to the value of the flight tickets, the Sole Arbitrator notes that, in principle, according to the Addendum to the Legal Agreement, the Club was supposed to reimburse the Player for the expenses made in this respect and this remained undisputed by the Club.

78. However, unlike with the May 2017 salary, no specific assurances were made by Mr Ivascu that the Player was entitled to be reimbursed with the value of the flight tickets.

79. In the absence of any evidence to the contrary, the Sole Arbitrator finds that the Player, by signing the Termination Agreement, validly confirmed that the Club had no more financial obligations towards him. As such, although it may well be true that the Player was in principle entitled to be reimbursed with the value of the flight tickets, he waived such entitlement by way of signing the Termination Agreement.

80. As to the legality of such waiver, the Player invokes Article 341(1) SCO, which determines as follows in a free translation into English:

> *"For the period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract".*

81. It is however established jurisprudence of the Swiss Federal Tribunal that Article 341 SCO only prohibits the one-sided waiver, but not the settlement (BGE 4C.190/2005, E. 3.1).

82. The Sole Arbitrator finds that the Player's waiver of his right to be reimbursed with the value of the flight tickets is not null and void as argued by the Player, because it was not a waiver *strictu sensu*, but it rather formed part of an arrangement with reciprocal consequences, *i.e.* by concluding the Termination Agreement the Player waived his right to be reimbursed with

the value of the flight tickets and his June 2017 salary, whereas the Club waived its right to enjoy the services of the Player during the month of June 2017.

83. It was indeed the Player who, through Mr De la Parra, contacted the Club to see if it would be possible to terminate the Legal Agreement earlier. The Club ultimately agreed to this, subject to the condition that the Player would confirm that the Club had no more obligations towards him.

84. Indeed, it does not appear from the evidence on file that the reimbursement of the flight tickets was ever an issue in the discussions between Mr De la Parra and Mr Ivascu, which is not strange considering the almost negligible value of the flight tickets (*i.e.* EUR 175.95). The Sole Arbitrator finds that the Club did not in any way pressure the Player into waiving his entitlement to the flight tickets, but that both parties made equal and fair concessions by signing the Termination Agreement.

85. Consequently, the Sole Arbitrator finds that the Player is entitled to receive his May 2017 salary in the amount of EUR 6,500 net, but not the value of the flight tickets.

86. Since the Player's May 2017 salary fell due on 25 June 2017, in accordance with Article 104(1) SCO, the Player is entitled to interest over the amount of EUR 6,500 net at a rate of 5% *per annum* as from 26 June 2017 until 24 May 2018 (*i.e.* the date the Club paid the Player the amount of EUR 6,889.40).

87. However, the Sole Arbitrator takes note of the fact the Club paid this amount in full after the initiation of the arbitration and that this was confirmed by the Player. As a consequence, the matter has become moot, save for the costs, and the Sole Arbitrator does not need to make any order as to the payment of EUR 6,889.40.

88. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 February 2018 by Mr Juan Carlos Real Ruiz against the decision issued on 25 January 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 25 January 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.

3. Fotbal Club CFR 1907 Cluj S.A. shall pay to Mr Juan Carlos Real Ruiz outstanding remuneration in an amount of EUR 6,500 net, with interest at a rate of 5% (five per cent) *per annum* accruing as from 26 June 2017 until the actual date of payment. Such payment by Fotbal Club CFR 1907 Cluj S.A occurred on 24 May 2018 and the debt in favour of Mr Juan Carlos Real Ruiz is no longer outstanding.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.