Arbitration CAS 2017/A/5354 Neagu Cosmin Florin v. Dacia Uniera Braila Sport Club Association & Romanian Football Federation (RFF), award of 7 February 2019

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Football
Claim for outstanding salaries
First instance forum
CAS scope of review under Article R57 CAS Code
Article 38 Romanian Labour Code
Waiver of salary arrears

1. **In case of ambiguity in a player's employment contract regarding the question whether disputes between the player and his club are to be submitted to state courts or to the judicial bodies of the club's and player's national federation, the starting point of analysis regarding the competent forum are the FIFA rules and regulations as well as the rules and regulations of the club's and player's national federation. In this context, the fact that *e.g.* the FIFA Statutes foresee that FIFA associations, in their regulations, shall make provision for arbitration instead of recourse to ordinary courts of law, and that disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS, is strongly suggestive of a philosophy that football-related matters (such as disputes resulting from players' employment contracts) should be submitted to "football bodies" and that only non-football related disputes should be referred to the state courts.**

2. **Pursuant to Article R57 of the CAS Code, a CAS panel may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. If the first instance has never addressed the merits of a case, the CAS, reviewing that case is *de facto* the first instance tribunal to review the merits. However, public policy does not require that a case be heard at two levels. Therefore, and if none of the parties' requests that the case be referred back to the previous instance(s) and in view of the full power of review conferred to CAS panels by Article R57 CAS Code, the CAS can rule directly on the merits of the case.**

3. **Article 38 Romanian Labour Code which provides that *"Any transaction aimed at the limitation of the rights granted to the employees under law or waiving such rights shall be void"* contains an inhibition on enforceability which more naturally refers to rights conferred by state law than to rights conferred by contract only.**

4. **Under Romanian law and the RFF's Regulations on the Status and Transfer of Football Players, by entering into a transfer agreement, a football player may validly waive any arrears of salary.**

I. INTRODUCTION

1. This is an appeal by a player ("the Appellant") whose claim against his former club ("the First Respondent") for, *inter alia*, arrears of salary was denied by adjudicative bodies of the national football federation ("the Second Respondent") on grounds that it was brought in the wrong forum and that it had in any event been extinguished by agreement.

II. PARTIES

2. The Appellant, a Romanian citizen, is a 26-year old professional football player who was duly registered with the First Respondent by the Second Respondent.

3. The First Respondent is a Romanian football club, which plays in the second league of the Romanian national championships and is a member of the Second Respondent.

4. The Second Respondent is the governing body for football in Romania, affiliated to both UEFA and FIFA.

III. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the analysis of the merits set out in section IX below. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 1st July 2016, the Appellant entered into a service agreement ("the Service Agreement") with the First Respondent which contained, inter alia, the following terms:

"SPORTS SERVICE AGREEMENT

I CONTRACTING PARTIES

(…)

II OBJECT OF THE AGREEMENT

(…)

III CONTRACTUAL PRICE

For the provision of sports services provided in art. 2.1 the Provider Player has the following financial rights, depending on the FULFILMENT OF THE OBJECTIVE provided in the appendix to this Agreement,

respectively the RULES OF INTERNAL PROCEDURE OF THE CLUB for the current competition season, as follows:

3.1 The monthly performance benefit of the Sports Service Agreement – will be paid exclusively on the basis of the tax invoice issued by a certified natural person type legal structure to which the Provider Player is associated and will amount to Lei 3.000 (three thousand), as negotiated between the Parties. The Provider Player shall indicate in writing, by the date of issue of the first invoice, the legal structure he agrees to, and the related IBAN account.

3.2.1 Payment of the contractual price shall be made in accordance with the conditions set out in the Appendix to this Agreement.

(…)

3.5 OTHER CLAUSES

(…)

3.7 The payment of the monthly performance benefit shall be made on the basis of the tax invoice drawn up on the order of the Provider Player on the last day of the month for the current month and shall have a maturity of 30 days from the date of issue.

(…).

IV DURATION OF THE AGREEMENT

4.1 This agreement is concluded as of 01.07.2016 and is valid until 30.06.2017.

4.2 Depending on the player's evolution, the Beneficiary Club shall have the right to unilaterally renew the Agreement for a further year, by an Addendum concluded and communicated to the Provider Player at his home address until the end of the period stipulated in art. 4.1, with the possibility of renegotiating the monthly performance benefit stipulated in art. 3.1 renegotiations representing a minimum 5% increase in the monthly performance benefit.

V RIGHTS AND OBLIGATIONS OF THE PARTIES

(…)

VI SEVERANCE AND TERMINATION OF THE AGREEMENT

6.1 This Agreement ceases as of right without the need for a court intervention in the following cases:

a) ….

b) upon expiration of the Agreement duration.

6.2 ….

6.3 The severance of the Agreement will also work in the following situations:

a) in the case of a transfer to another club, for an amount set by the Beneficiary Club and paid to them;

(…).

VII OTHER CLAUSES

7.1 The Parties may, by common agreement of will, modify the contracted terms during the period of validity of this Agreement, in writing, by an Addendum.

7.2 Amendments, completions, or cancellations of this Agreement are only valid in writing, through addenda, collateral discussions (conventions, arrangement, etc.) having no validity.

(…).

7.4 The clauses in the Appendix to this Agreement are binding on both Parties.

(…).

VIII FINAL PROVISIONS

8.1 The Parties shall make every effort to settle amicably, through direct negotiations, any misunderstanding or dispute that may arise between them within or in connection with the performance Agreement.

8.2 If the amicable settlement is not possible, any Party can ask for the dispute to be settled by the competent courts.

8.3 This Agreement has been concluded in accordance with the laws in force in Romania and is supplemented with the provisions of the RFF Regulations, the Internal Rules of Procedure of the Beneficiary Club, as well as any legislative amendments.

(…)".

7. On 20th June 2017, the First Respondent communicated to the Appellant an ADDENDUM ("the Addendum") purporting to extend the Appellant's employment with the First Respondent until 30th June 2018. It contained, *inter alia*, the following terms:

"ADDENDUM No. 04
to the Sports Service Agreement No. 398/01.07.2016 concluded with the player

NEAGUCOSMIN FLORIN
Registered with Braila County Football Association under No. 354/04.08.2016

I. PARTIES

A.C.S. "DACIA UNIREA" BRAILA (…)

and

Mr. NEAGU COSMIN FLORIN (…).

II. OBJECT OF THE ADDENDUM

II.1 according to the provisions of art. 4.2 in Chapter IV. – Duration of the Agreement – Agreement no. 398/01.07.2016, the Beneficiary Club hereby activated the clause of Agreement extension by another additional year. Therefore, the Agreement no. 398/01.07.2016 concluded between the two Parties becomes valid until 30.06.2018.

II.2 according to the provisions of the same article in the Agreement, starting with 01.07.2017 the monthly performance benefit mentioned in art. 3.1 of the Agreement becomes Lei 3,800 (three thousand eight hundred).

II.3 any other contract provisions or addenda to the Agreement that contravene the provisions of this Addendum shall become null and void as of the date of this Addendum.

II.4 the other provisions of the Agreement remain unchanged; this Addendum shall be communicated to the Provider Player by mail/courier to their home address. (…)".

8. The validity of the ADDENDUM is disputed by the Appellant.

9. On 24th August 2017 the Appellant and the First Respondent were parties to a tripartite agreement ("the Transfer Agreement") whereby the Appellant was transferred to AFC Hermannstadt, which contained, *inter alia*, the following terms:

"No./date of registration with the transferee club: 294/24.08.2017

Illegible signature

Transfer Agreement
Concluded today, 24.08.2017, between
(day, month, year)

Art. 1 THE PARTIES

1.1 ***THE CLUB*** *ACS DACIA UNIREA BRAILA as transferor, represented by (the full name of the club transferring the player – THE TRANSFEROR CLUB)*

(…)

1.2 ***THE CLUB*** *AFC HERMANNSTADTT as transferee, represented by (the full name of the club receiving the player – THE TRANSFEREE CLUB)*

(…)

1.3 ***THE FOOTBALL PLAYER*** *NEAGU COSMIN FLORIN, born on 19.07.1991*

(…)

Art. 2 OBJECT OF THE AGREEMENT

The above-mentioned parties have agreed upon the transfer of the player respectively from the transferor club to the transferee club for an indefinite period as from 25.08.2017.

Art. 3 OBLIGATIONS OF THE PARTIES

3.1 The transferor club undertakes to:

(…)

c) the club and the player are aware that by signing this Transfer Agreement any mutual obligations shall cease (in the event of a definitive transfer) except for the obligations provided in this agreement.

3.2 The transferee club undertakes to:

a) pay the transferor club the amount of 10.000 lei + VAT, as transfer compensation, in a single payment, until 25.08.2017;

b) conclude an individual employment contract (…) (for professional players) with the player;

c) submit to the competent forum for it to make the transfer all the documents provided by the Romanian Football Federation regulations in force, including the proof of payment of the transfer fee to The Romanian Football Federation/The Professional Football League/The County Football Association/Bucharest Football Association, as appropriate.

3.3 The player undertakes to:

a) conclude an individual employment contract (…) (only the professional players) with the transferee club; (…)

Art. 4 OTHER CLAUSES AGREED BY THE PARTIES

4.1 ALL THE PAST, PRESENT AND FUTURE FINANCIAL OBLIGATIONS OF ACS DACIA UNIREA BRAILA TOWARDS THE PLAYER NEAGU COSMIN HAVE BEEN EXTINGUISHED AND ARE NO LONGER EFFECTIVE.

Art. 5 FINAL PROVISIONS

5.1 The signing parties of this Transfer Agreement undertake to observe and apply the provisions of the Romanian Football Federation regulations in force concerning the status and transfer of players.

5.2 Litigations resulting from or related to this Transfer Agreement shall be solved exclusively by the jurisdictional courts provided by the Romanian Football Federation Status.

(…)".

10. The effect of the Transfer Agreement is disputed between the parties.

B. Proceedings at National Level

11. On 16th June 2017, the Appellant brought a claim against the First Respondent for allegedly unpaid salary in the sum of 14,300 lei before the National Dispute Resolution Committee ("NDRC"") of the Second Respondent.

12. On 29th June 2017, the Appellant added a claim for a declaration of nullity of the ADDENDUM.

13. On 13th July 2017, the NDRC rejected the claim on the basis that it should have been brought in the State Courts ("the NDRC decision").

14. On 19th July 2017, the Appellant appealed the NDRC decision to the RFF appeal Committee.

15. On 16th August 2017, the RFF Appeal Committee rejected the claim on the same grounds as had the NDRC ("the Appealed Decision").

16. On 17th August 2017, the Appellant's right to appeal the Appealed Decision to CAS was confirmed by a certificate given by the RFF Appeal Committee.

17. On 8th September 2017, the grounds of the Appealed Decision were notified to the Appellant.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 29th September 2017, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), the Appellant filed his statement of appeal.

19. On 9th October 2017, the Appellant asked that a Sole Arbitrator be appointed and nominated the Sole Arbitrator ("the Appellant's proposal").

20. On 13th October 2017, both Respondents agreed with the Appellant's proposal.

21. On 13th October 2017, in accordance with Article R51 of the Code, the Appellant filed his appeal brief.

22. On 26th October 2017, in accordance with Article R55 of the Code, the First Respondent filed its answer.

23. On 8th January 2018, the parties were informed that the Panel appointed to decide the present matter was constituted by the Sole Arbitrator.

24. On 30th January 2018, in accordance with Article R55 of the Code, the Second Respondent filed its answer.

25. On 13th February 2018, the Sole Arbitrator gave, exceptionally, permission to the Appellant to file further submissions on the issue of the effect of the Transfer Agreement this having been raised in both the Respondents' Answers and not addressed hitherto by the Appellant. Both Respondents were also given permission to respond to the Appellant's further submissions on that point.

26. On 23rd February 2018, the Appellant filed further submissions on the issue of the effect of the Transfer Agreement.

27. On 5th March 2018, the Second Respondent filed further submissions in response. The First Respondent did not do so.

28. On 9th March 2018, the Sole Arbitrator determined, pursuant to Article R57 of the Code, that he was sufficiently informed by the parties' comprehensive written submissions to determine the appeal without an oral hearing.

29. On 17th March 2018, the Appellant signed the Order of Procedure.

30. On 29th March 2018, the Second Respondent signed the Order of Procedure. The First Respondent did not submit a signed Order of Procedure.

V. SUBMISSIONS OF THE PARTIES

31. The Appellant's main submissions may be summarized as follows:

- The sums claimed against the First Respondent for the period from February (partially) to August 2017 are unpaid and indeed partially admitted;
- The claims were not and could not be waived by the Appellant's entry into the Transfer Agreement;
- The ADDENDUM was unenforceable because the Appellant had not consented to it.
- On a proper reading of the RFF statutes and regulations the claim was brought before the correct body; *i.e.* the NDRC which was properly characterised as a competent (arbitral) court within the meaning of Article 8.2 of the Service Agreement;
- By the same token the RFF Appeal Board (and the NDRC below) were wrong to hold that the Appellant should have had recourse to the state courts; such was in fact prohibited.

32. The Appellant accordingly requested the Sole Arbitrator

"1. To set aside and annul the Decision no. 145/13 July 2017 passed by National Dispute Resolution Chamber of R.F.F. and the Decision no. 47/16 August 2017 passed by Appeal Committee of R.F.F.

2. To establish the competence of arbitral courts of R.F.F. and, in appeal, of CAS, to solve the claims arising from and in connection with the civil convention no. 398/01.07.2016.

3. To order the First Respondent to pay Mr. Neagu Cosmin the amount of 18.587 lei representing financial rights due, according to civil contract no. 398/01.07.2016, for the period February (partially) – 24 August 2017;

4. In accordance with article 23 letter v and article 24 letter C point 9 from Regulation on the Statutes and Transfer of Football Players of R.F.F. to sanction the First Respondent with ban on registration of new players for the next two registration periods, following the notification of the CAS decision.

5. To declare the absolute nullity of no. 4 addendum of the contract for provision of services no. 398/01.07.2016, for lack of consent of the football player to the conclusion of the legal act in question.

6. To order the Respondents to bear jointly and severally all the costs incurred with the present procedure.

7. To order the Respondents to pay the Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the Panel".

33. The First Respondent's main submissions may be summarized as follows:

- Any financial claims that the Appellant might have had against it were waived by his entry into the Transfer agreement;

- The phrase in the Service Agreement "competent court" could only refer to state courts and not to a private arbitral tribunal.

34. The First Respondent accordingly requested the Sole Arbitrator that the appeal should be dismissed as unfounded.

35. The Second Respondent's main submissions may be summarized as follows:

- The Transfer Agreement (which satisfied the formal requirements of the Regulations) constituted a waiver of all financial obligations of the First Respondent owed to the Appellant;

- The jurisdictional bodies of the RFF were not Courts at all. It was the State Courts which had the requisite competence within the meaning of the Service Agreement;

- Given that by reason of Article 25.2 of the RFF Regulations, use of the jurisdictional bodies of the RFF was the default position, Article 8.2 of the Settlement Agreement construed as allocating jurisdiction to those bodies, would lack purpose; hence that could not be its meaning. The Second Respondent accordingly requested the Sole Arbitrator

  "A. to dismiss the appeal lodged by the Appellant against the challenged Decision(s) rendered by the Committee(s) of the Romanian Football Federation;

  B. to maintain and consider the challenged Decision(s) undisturbed;

  C. subsequently, to deny all the prayers for relief made by the Appellant;

  D. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Second Respondent".

36. Further reference to the parties' submissions (all of which have been fully considered by the Sole Arbitrator) may be made in the section on Merits below.

VI. JURISDICTION

37. Article R47 of the 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.*

38. CAS' jurisdiction is provided by the RFF statutes at Article 18 and RFF Regulations at Article 36.17. The Respondents have not contested jurisdiction. The Second Respondent confirmed that it accepted CAS' jurisdiction by its signature of the Order of Procedure.

VII. ADMISSIBILITY

39. 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 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.*

40. The Statement of Appeal was filed within 21 days of the receipt by the Appellant of the Appealed Decision, being the 8th September 2017. The Respondents have not disputed admissibility.

VIII. APPLICABLE LAW

41. Article R58 of the Code provides 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.*

42. The applicable regulations are the RFF statutes and RFF Regulations. Both the Respondents are domiciled in Romania and Romanian law applies subsidiarily.

43. The RFF statutes provide, so far as material, as follows:

> *"**STATUTES OF THE ROMANIAN FOOTBALL FEDERATION***
>
> ***DEFINITION OF TERMS***
>
> *For the purpose of these Statutes of FRF (**Statutes**), the terms hereunder shall have the following meaning:*

(…)

*k) **Romanian Football Federation (FRF)** – a national interest sporting entity set up as a result of the association of football clubs, county football associations and the Bucharest Municipality Football Association;*

(…).

CHAPTER II

MEMBERSHIP

Article 12 – Affiliation

[1] *Affiliation means the admission of a sporting entity into FRF membership.*

(…).

Article 18 – Obligations of the members of FRF

[1] *The members of FRF shall have the following obligations:*

(…).

e) to incorporate a statutory clause specifying that any international or national dispute involving themselves or one of their members in connection with the Statutes, regulations, directives and decisions of FIFA, UEFA, FRF or the League(s) may only be referred in the last instance to the Arbitration Court of FRF (if applicable) or to the Court of Arbitration for Sport in Lausanne whose jurisdiction is expressly recognised as per the relevant provisions contained in the FIFA Statutes, or to an independent and impartial court of arbitration which shall finally settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by the Romanian legislation;

(…).

Article 57 – Judicial committees of FRF

[1] *The judicial committees of FRF are permanent arbitration bodies. They are:*

a) the Disciplinary and Ethics Committee;

b) the National Dispute Resolution Committee;

c) the Review Committee.

[2] *All these committees shall be impartial and independent arbitration bodies. Their composition shall comply with the relevant FIFA provisions. Their members shall base their decisions exclusively on the Statutes, regulations and directives of FRF, UEFA and FIFA and the applicable legislation.*

[3] *The members of the judicial committees must meet the following requirements:*

- *To have completed an undergraduate law programme and hold a Bachelor's Degree or to have completed a long-term law programme and hold a Bachelor's Degree or equivalent;*
- *To have worked for at least eight years within the legal profession.*

(…).

[4] The judicial committees of FRF shall be authorised to settle any disciplinary disputes, litigations or complaints as follows:

a) In the first instance:

- *The Disciplinary and Ethics Committee of FRF;*
- *The National Dispute Resolution Committee.*

b) The decisions passed by the first instance committees may be challenged, as applicable, before the last instance bodies as follows:

- *The decisions passed by the Disciplinary and Ethics Committee and the National Dispute Resolution Chamber may be challenged before the Review Committee of FRF, which shall act as body of last instance at national level;*
- *The decisions passed by the Review Committee of FRF may be challenged before the Court of Arbitration for Sport in Lausanne, which shall act as body of last instance at international level.*

(…).

[5] The decisions passed by the Review Committee of FRF are final and binding at national level for all affiliated members, their players and officials, the officials of FRF/AJF/AMFB, as well as for all match and players' agents.

[6] The decisions passed by the Review Committee of FRF may be challenged only before the Court of Arbitration for Sport in Lausanne, in accordance with applicable legislation.

(…).

Article 75 – Jurisdiction

[1] Any dispute arising from or in connection with football in Romania between affiliated clubs and their officials, officials of FRF/LPF/AJFs/AFMB, players, players' agents or match agents shall be settled exclusively by the judicial committees of FRF.

[2] FRF, its affiliated members, players, officials, match agents and players' agents shall not refer said disputes to ordinary courts of law unless the relevant legislation expressly stipulates the obligation to refer the dispute to any competent court of law.

[3] The Court of Arbitration for Sport in Lausanne shall settle any dispute between FIFA, UEFA, regional confederations, national associations, leagues, clubs, players, officials, players' agents, licensed match agents unless the FIFA/UEFA/FRF Statutes provide otherwise.

[4] The appeal must be lodged with the Court of Arbitration for Sport in Lausanne within 21 days as of the serving of the decision.

(…)".

44. The RFF Regulations provide, so far as material, as follows

"REGULATIONS ON THE STATUS AND TRANSFER OF FOOTBALL PLAYERS
Bucharest 2016

PREAMBLE

1. *These regulations govern the status, registration, right to play and transfer of football players between clubs at national level, as well as the release of players to their national representative teams.*

2. *These regulations were prepared in accordance with articles 2 – 8, 10, 11, 18, 18 bis, 19 and 19 bis and the principles set out in articles 13 – 17 of the Regulations on the Status and Transfer of Players, which were adopted by the FIFA Executive Committee on 18 December 2004 and which came into force on 1 July 2005, as well as the amendments approved by the FIFFA Executive Committee on 29 October 2007, which entered into force on 1 January 2008, and the amendments approved by the FIFA Executive Committee on 18 December 2008, 19 March 2009 and 29 September 2009, which entered into force on 1 October 2009, respectively.*

3. *The provisions of these regulations are binding on all clubs affiliated to the Romanian Football Federation (FRF) …. Any and all disputes shall be resolved pursuant to these regulations.*

(…).

Article 5. Rights and obligations of players

(…)

3. *Professional players have, beside the rights of amateur players, the following rights:*

a) *To enter into an individual employment contract or a civil contract, with a club affiliated to FRF/CFA, according to the law in force;*

b) *To receive their due salary or remuneration, as well as bonuses, pay rises, compensations and other financial rights agreed upon in the individual employment contract or civil contract, and to benefit from all financial rights stipulated in said contracts;*

c) *To be guaranteed contractual stability, the contract being terminated or amended only in the cases and under the terms and conditions stipulated by these regulations;*

(…).

Article 6. Obligations of clubs

1. *Clubs have the following obligations toward registered players, either amateur or professional:*

(…)

c) *to carry out their contractual obligations regarding professional players in good faith;*

(…)

(…).

19.12. All material and financial rights and obligations of the two clubs and of the transferred player are regulated through the transfer agreement. Any contractual obligation of the former club toward the player subject to a final transfer or of the transferred player toward the former club shall expire as of the date of the transfer, except for obligations provided for in the transfer agreement.

(…)

Article 25. Disputes

(…)

25.5. According to the provisions of the FRF Statutes, any dispute arising from or in connection with the football activity in Romania, in which clubs and club officials, FRF/LPF/CF/BMFA officials, players, players' agents or match agents are involved, shall be resolved exclusively by the FRF jurisdictional commissions. Turning to the jurisdiction of common courts for the settlement of disputes arising from the sporting activity is prohibited, except for disputes arising from the construing and enforcement of civil contracts or individual employment contracts entered into by clubs and players or by clubs and coaches. In these exceptional cases, the competence belongs, as stipulated in the employment/civil contract, to the jurisdictional bodies or courts of law. If the employment/civil contract does not include such clauses, the competence belongs to the jurisdictional body/court of law to which the claimant resorts. The investing of a commission with jurisdictional powers precludes the possibility of either party resorting to a court of law.

25.6. In the case of disputes arising from the enforcement of these regulations between clubs or players from different categories/divisions, the competent body shall be the NDRC of FRF.

Article 26. Jurisdiction for the settlement of disputes

26.1. As per the provisions of the FRF Statutes, the competence with regard to the resolving of disputes is held by the FRF/LPF/CFA commissions, as follows:

a) First instance: the FRF/LPF National Dispute Resolution Chamber (NDRC) or the CFA Players' Status Commission (PSC), as appropriate;

b) The first instance decisions may be challenged against with:

(…)

- The FRF Review Commission, against decisions of the NDRC of FRF;

(…).

c) The decisions of the FRF/LPF/CFA Review Commissions may be challenged against exclusively before the Court of Arbitration for Sport, under the provisions of the FRF Statutes.

26.2. The National Dispute Resolution Chamber (NDRC) has the competence to resolve cases regarding:

a) the execution, construing and performance of contracts entered into by clubs and players, as well as the maintenance of contractual stability;

(…).

26.3 With a view to the exercising of its jurisdiction, the NDRC shall apply the FRF Statutes and regulations. When said provisions are insufficient, the FIFA/UEFA Statutes and regulations shall apply by analogy.

26.4 The NDRC shall take into consideration the specificity of the sports law in relation to other branches of law.

(…)".

IX. MERITS

45. There are five main issues:

(i) Did the Appellant make his claim for arrears of salary and for unenforceability of the Addendum in the correct forum or should he have made it in the national courts? ("the Forum issue");

(ii) Does the First Respondent owe to the Appellant arrears of salary and, if so, how much? ("the Arrears issue");

(iii) Has the Appellant waived any such claim, even if otherwise sound by entry into the Transfer Agreement? ("the Waiver issue");

(iv) Was the Addendum enforceable against the Appellant ("the Addendum Issue");

(v) Is the First Respondent liable to sanctions pursuant to the Regulations for its failure to honour its obligations towards the Appellant ("the Sanctions issue").

(i) The Forum Issue

46. The Sole Arbitrator will consider the forum issue first since if it is determined in favour of the First Respondent the Arrears, Waiver and Sanctions issues become moot.

47. Under Article VIII of the Service Agreement FINAL PROVISIONS it is provided (after specifying in Article 8.2 that amicable settlement should be the primary route to dispute resolution between the Appellant and the First Respondent):

> *"8.2. If the amicable settlement is not possible any party can ask for the dispute to be settled by the competent courts".*

48. There is, as all sides accept, no definition of "competent courts" in the Agreement itself, nor does either party claim that it is a recognized term of art. The choice rests between the state courts (the Respondents' position) and the RFF's own judicial bodies (the Appellant's position).

49. The Sole Arbitrator cannot help but notice that, whereas the Appellant states that Article 57 of the RFF statutes describes the RFF's judicial commissions as *"arbitral courts"* (sic) (Appeal Brief para 4.8) the Second Respondent notes, initially at any rate, that they are characterised as *"RFF jurisdictional bodies"* not *"RFF sports arbitration courts"* (Answer para 18).

50. The RFF statutes are of course written in Romanian and the Sole Arbitrator is not in a position to determine the accuracy of the translation from the Romanian into English of the relevant phrase *"de catre instantele competente"*. In any event to place such emphasis on purely linguistic considerations is, in his view, to elevate form above substance. After all CAS itself is variously described as (in English) the Court of Arbitration for Sport and (in French) as Le Tribunal Arbitral du Sport (see the Code C).

51. The Sole Arbitrator discerns the purpose of Article 8.2 of the Agreement as being to identify the body which is vested with the jurisdiction to resolve disputes of the kind identified in Article 8.1 (*i.e.* is competent to do so) being a body of a judicial character (*i.e.* is capable of being described as a court).

52. The Sole Arbitrator considers that the starting point of the analysis as to what body that is must be the requirements of FIFA, the world governing body of the sport, of which the Second Respondent is a member, and whose rules it must accordingly respect.

53. Article 59 para 3 of FIFA's Statutes (2016 ed.) specifies *"The Associations shall insert a clause in their by-laws or regulations, stipulating that it is prohibited to take disputes affecting clubs' players to ordinary courts of law unless the FIFA Regulations specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made by arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the association or confederation or to CAS".*

54. Against that influential background, in reaching his decision on the forum issue, the Sole Arbitrator regards the following provisions of the RFF statutes as being of particular importance:

    (1) Article 18 which is concerned with the obligations upon member clubs of the RFF and which obliges them

    at 1 e), *inter alia*, to incorporate a statutory clause specifying that *"any national dispute involving themselves … in connection with the Regulations of FRF may only be referred … to an independent and impartial court of arbitration which shall finally settlement the dispute to the exclusion of any ordinary court, unless expressly prohibited by the Romanian legislation".*

    and at 1 l) *"to undertake to refer in the last instances any national dispute arising from or in connection with the regulations of FRF to an independent and impartial arbitration which shall finally settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by the Romanian legislation as applicable from time to time".*

    These provisions are strongly suggestive of a philosophy that one should render unto football bodies the things that are football's and to the state courts only the things that are theirs.

    (2) Article 57 which is concerned with the judicial committees of RFF and

    at 1 b) identifies the NDRC as a permanent *"arbitration body".*

    at 2 specifies that it shall also be *"impartial and independent".*

    at 4 authorises it *"to settle any … complaints"* and locates it in a hierarchy which leads to the RFF review (or appeal) committee and ultimately to CAS (see also 6 and 8).

    These provisions are strongly suggestive of those committees being court-like bodies.

(3) Article 75 (under the rubric DISPUTES) which is concerned with jurisdiction and

at 1 gives jurisdiction over *"any dispute arising from or in connection with football in Romania between affiliated clubs and their … players exclusively (sic)(to) the judicial committees of FRF"*.

at 2 obliges, *inter alia*, players *"not (to) refer disputes (with clubs) to ordinary courts of law, unless the relevant legislation expressly stipulates the obligation to refer the disputes to any competent court of law"*.

These provisions are in complete contradiction to the Second Respondent's submission.

55. While adhering to his approach of prioritising purpose above language, the Sole Arbitrator notes also that in the part of Article 75 where a state court is envisaged it is described as a *"competent court of law"* being on its face different from the concept of a *"competent court"* in the Service Agreement which lacks such additional words as "of law".

56. In summary, the above survey of relevant extracts from the relevant legal instruments persuades the Sole Arbitrator that use of the RFF jurisdictional bodies for football disputes is the rule, use of the state courts the exception.

57. Article 25.5 of the Regulations reinforces the above analysis. It also gives prime place for dispute resolution of disputes between club and player to the RFF jurisdictional bodies. The Sole Arbitrator bears in mind the Second Respondent's argument that Article 25.5. is itself a competence-awarding clause which, if the Service Agreement had been silent on the issue, would itself have ensured that those bodies had jurisdiction, and therefore that the inclusion in the Service Agreement of its own competence awarding clause must have been intended to designate another forum; *i.e.* the state courts for dispute resolution or would otherwise be otiose. The Sole Arbitrator does not consider that this consideration can outweigh all the other considerations. Contracting parties often insert on agreements provisions which are strictly unnecessary *ex abundanti caulela*.

58. It is notable in this context that by the First Respondent's own Statutes Chapter XVIII Article 72 it *"undertake(s) to respect the following obligations stipulated art 13 paragraph 2 from RFF statute* … (c) *to recognize the authority of the jurisdictional bodies of the RFF"*. There is, in the Sole Arbitrator's view, no reason why the First Respondent should have preferred to utilize the facilities of the state courts for a purely footballing dispute (nor indeed why the Appellant should have done so).

59. Finally, no overriding provision of Romanian state law which would oblige the parties to utilize the state courts for a dispute of the present kind has been relied upon by the Respondents or drawn to the attention of the Sole Arbitrator. Indeed, in its further submission (para 8) the Second Respondent expressly states that the Service Agreement was *"**not** subject to labor law"*.

60. While the Sole Arbitrator naturally accepts it as axiomatic that to exclude jurisdiction of state courts *"The arbitration agreement must be clear and definite about the private jurisdiction in the sense that the arbitral tribunal appointed must either be clearly defined or at least definable"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary Cases and Materials, p. 29), he notes

that there is no question but that the judicial committees of the RFF are competent to deal with disputes such as the present, and that the perceptible tendency of modern sports law, exemplified by CAS itself, is to abstract sporting disputes from the jurisdiction of the Courts and assign them to specialist arbitral bodies.

61. It is not without significance that the Transfer Agreement at para 5.2 stipulates that it is the jurisdictional courts of the RFF (*"catre instantele jurisidictionale prevazute de Statutul FRF"*), not the state courts which will resolve any litigation over its terms. This fits in with the pattern of allocation of jurisdiction discerned by the Sole Arbitrator.

62. Pursuant to Article R57 of the Code, the Panel/Sole Arbitrator may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Considering that the jurisdiction of the RFF authorities has been affirmed in the present matter but that these RFF authorities have not been in position to entertain the case on the merits, the Sole Arbitrator must determine whether he can decide the case on the merits or whether the present matter shall be referred to the RFF bodies.

63. In a CAS award of 2016 (CAS 2016/A/4581, §55), the Panel emphasized that *"as FIFA never addressed the merits of the case, the CAS would de facto be the first instance tribunal to review them. The Panel however also notes that public policy does not require that a case be heard at two levels and that none of the parties requests that the case be referred back to FIFA"*. In the present case, none of the parties requested that the matter be referred back to the previous instance. Therefore, in view of the parties' expectations that the case be decided by CAS as a sole instance, the Sole Arbitrator will now examine the merits of this case.

(ii) The Waiver Issue

64. In the Sole Arbitrator's view whatever sums, if any, were outstanding when the Appellant made his claim before the NDRC he agreed that his right to pursue the same was extinguished by his entry into the Transfer Agreement, for the reasons set out below.

65. The language of Article 3.1 c) of the Transfer Agreement is unambiguous. The mutual obligations between the First Respondent and the Appellant are to cease. If further reinforcement for this conclusion were required, it is provided by the imperative language of the capitalized Article 4 which expressly extinguishes all financial obligations, past, present and future owed by the former to the latter.

66. Even if, as averred by the Appellant in the further submission para 4.1 *"It is undisputed by the First Respondent that the financial rights due to the player for the period February (partially)-24 August 2017 in the amount of Lei 18.587 remain unpaid until today"*, the Articles of the Transfer agreement cited above constitute an insuperable roadblock to his claim.

67. The Appellant does not challenge the validity of the Transfer Agreement but only the meaning ascribed to it by the Respondents. He ingeniously avers that the Articles relied upon by the First Respondent cannot be construed as a waiver of those rights which have already been the subject of an extant claim. The Sole Arbitrator cannot agree with this attempt to read into provisions,

which on their face cancel any or all financial obligations under the Service Agreement, an implied - and inconsistent - exception to that effect.

68. The Appellant also prays in aid Article 38 of the Romanian Labor Code ('RLC") which provides *"Any transaction aimed at the limitation of the rights granted to the employees under law or waiving such rights shall be void"*. In the Sole Arbitrator's view, this inhibition on enforceability more naturally refers to rights conferred by state law, than to those conferred by contract only.

69. The Appellant has not drawn to the attention of the Sole Arbitrator any provision of Romanian law which gives statutory underpinning to a footballer's entitlement to salary. That entitlement arises under contract only, as appears from Article 5.3.b of the RFF Regulations which gives professional players the right, *inter alia "-- to receive their due salary or remuneration … and other financial rights agreed upon in the individual employment contract"*. Article 38 of the RLC is therefore not engaged.

70. No doubt in principle a national law might provide that parties, who had agreed on their mutual obligations, could nevertheless not also by agreement alter or cancel them but the Appellant has not drawn the attention of the Sole Arbitrator to any provision of Romanian law which has such exorbitant effect.

71. But even if (*quod non*) there are viable arguments both ways as to the meaning and reach of the Labor Code article read in isolation, the Sole Arbitrator finds Article 19.12 of the RFF Regulations compulsive against the Appellant since it provides in unambiguous language *"… Any contractual obligation of the former club toward the player subject to a final transfer … shall expire as of the date of the transfer, except for the obligations provided for in the transfer agreement"*. This is a provision which is sport specific, indeed football specific, and directly pertinent to the waiver issue. That which the RFF Regulations can give in Article 5.3 b they can take away in Article 19.12. It has not been suggested, still less established, that this Article is *ultra vires* because offensive to Romanian law.

72. The Appellant also prays in aid two CAS decisions. The first, cited in further submission para 4.7, CAS 2005/A/937 is based on Swiss not Romanian law and deals with a discrete situation, the relationship of employer/employee during an employment relationship (and for one month after termination), and not to provisions in a transfer agreement. The Sole Arbitrator also notes that what cannot be waived under Swiss law are *"claims resulting from mandatory provisions of law"* rather than mere contractual claims without a statutory underpinning. The second, cited in further submission para 4.10, CAS 2015/A/4296 is concerned with the consequences of a termination agreement, not a transfer agreement again under Swiss not Romanian law, and where the player's adherence to the termination agreement was doubtful and his right to basic salary was conferred by the national law (para 81).

(iii) The Arrears Issue

73. Since the Sole Arbitrator considers that the Appellant by entry into the Transfer Agreement waived (and was able to waive) any arrears of salary, if any, the Sole Arbitrator need not consider the existence or extent of any such arrears or deal at all with the arrears issue.

(iv) The Addendum Issue

74. Because of its decision on the forum issue, the RFF Appeal Committee did not specifically address the Addendum issue but therefore *ex hypothesi* did not accede to the Appellant's claim that it was invalid. For the self-same reason neither Respondent has addressed it. Nonetheless it is maintained as a live issue by the Appellant (on whom the obligation lies to make it good), and the Sole Arbitrator considers that, in the interest of all parties and of arbitral economy, he both can and should address it himself.

75. As noted above, the Service Agreement provides, *inter alia*, as follows:

> *"4.1 This Agreement is concluded as of 01.07 2016 and is valid until 30.6.2017.*
>
> *4.2. Depending on the Players evolution, the Beneficiary Club shall have the right to unilaterally renew the Agreement for a further year by an addendum concluded and communicated to the provider Player at his home address until the end of the period stipulated in Art 4.1. with the possibility of renegotiating the monthly performance benefit stipulated in art .3.1. renegotiations representing a minimum 15% increase in the monthly performance benefit".*

76. In the Sole Arbitrator's view this provision on its face gives the First Respondent the right to renew the Agreement for a further year subject to the conditions that such renewal in the form of an Addendum must be (a) communicated to the Player (b) at his home address (c) before 30.6.17. It is not suggested that any of these conditions were not fulfilled. The Appellant's argument is rather that the Player consent to this extension was not sought or accordingly given and it is therefore *"an absolute nullity"* (see Appeal Brief para V1 *passim*).

77. In the Sole Arbitrator's view this argument is misconceived for two main reasons; first because the right accorded to the First Respondent was a unilateral right to extend; second because the Player's consent to the First Respondent's exercise of such a right, in so far as required, was given by his entry into the Service Agreement of which Article 4 was a component part.

78. As noted above Article VII of the Service Agreement provides:

> *"7.1. The parties may by common agreement of will modify the contractual terms during the period of validity of this Agreement in writing by an Addendum.*
>
> *7.2. Amendments of this Agreement are only valid in writing through addenda".*

79. The Addendum under consideration is not an Amendment of the Service Agreement but rather an implementation of it. Article VII complements rather than overrides Article IV which is free standing of it.

80. Moreover, the Appellant did not argue, let alone establish, that an option, which has been contractually agreed to between the parties, granting a right to unilaterally extend an employment contract would be prohibited by any applicable rules or regulations or provisions of Romanian state law.

81. Article 4.2, as the Sole Arbitrator interprets it, (although the language on this aspect is not crystal clear) envisages that the extension of the contractual term should be accompanied by a minimum increase in monthly performance benefit of 15% with the possibility of a further uplift being negotiated by the parties. The Addendum itself specifies that the monthly performance benefit in Article 3.1 of the Service Agreement of 3000 lei be increased to 3800 lei, which is consistent with Article 4.2. Nothing, however, turns on this aspect; *i.e.* of uplift in salary as opposed to extension of term.

82. This variation increased the claimed shortfall of salary for a brief period between the 1st July 2017 when the Addendum came into effect and the 25th August 2017 when the Transfer Agreement came into effect but, for reasons articulated above, can no longer be claimed by reason of the transfer agreement itself.

(v) The Sanctions Issue

83. Given the Sole Arbitrator's conclusion that the Appellant has no subsisting claim for arrears of salary against the First Respondent this issue does not arise: no Breach, no sanction. In any event the Sole Arbitrator notes that the Appellant was originally anxious to seek mediation which, if successful, would have avoided exposing the First Respondent to such sanction.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Neagu Cosmin Florin on 29th September 2017 against the decision of the Romanian Football Federation Appeal Committee dated 16th August 2017 is dismissed.

(…)

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