CAS 2014/A/3642 Erik Salkic v Football Union of Russia & Professional Football Club Arsenal

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Mark A. **Hovell**, Solicitor, Manchester, England

Arbitrators: Mr. Manfred P. **Nan**, Attorney-at-Law, Arnhem, The Netherlands
Dr. Michael **Gerlinger**, Attorney-at-Law, Munich, Germany

in the arbitration between

ERIK SALKIC, Sezana**,** Republic of Slovenia

Represented by Mr. Ilya N. Bolotskikh, Attorney-at-Law, Moscow, Russia

- Appellant -

and

FOOTBALL UNION OF RUSSIA, Moscow, Russia

- First Respondent -

and

PROFESSIONAL FOOTBALL CLUB ARSENAL, Tula, Russia

Represented by Mr. Yuri Zaytsev, Attorney-at-law, Moscow, Russia

- Second Respondent -

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I. PARTIES

1. Mr. Erik Salkic (hereinafter referred to as the "Player" or "Appellant") is a Slovenian football player.

2. The Football Union of Russia (hereinafter referred to as the "FUR" or "First Respondent") is the governing body of football in Russia and is affiliated to the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").

3. Professional Football Club Arsenal (hereinafter referred to as the "Club" or "Second Respondent") is a professional football club with its registered office in Tula, Russia and is affiliated to the FUR.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The Club is a football club in Russia which plays in the Russian Football National League (hereinafter referred to as the "FNL Championship") which is also commonly referred to as the '1 Division Championship'. For the avoidance of confusion, this is not the highest division of football in Russia (that is the Russian Football Premier League) but the second level. Nevertheless, players in the second level are mostly professional football players.

6. On 22 July 2013, the Player signed an employment contract with the Club for the period 22 July 2013 to 30 June 2015, as a "professional football player" (hereinafter referred to as "the Contract").

7. Clause 7.1 of the Contract provided that:

> *"The Player was entitled to a monthly gross salary, excluding compensatory, incentive and social payments, in the amount of 333 000 (Three hundred and thirty-three thousand) rubles."*

8. Clause 3.1 of the Contract established a number of duties that the Player was obliged to fulfil, including:

> *"3.1.3. to participate in the training activities and other events conducted by the Club (including commercial activities, meetings, press conferences, etc.)*
>
> ...

3.1.16. to continue regular training and training sessions in accordance with the Head Coach and/or coaches of the Club's football team in cases of temporary non-participation in football matches, including where due to disqualification;

…

3.1.23. to unquestioningly obey the commands (instructions) of the General Director of the Club, Head Coach and coaches of the Club's football team, to comply with the decisions passed by the management bodies of the Club."

9. Clause 3.4 of the Contract provided that:

"The Player agrees that upon the decision of the Club he may be assigned to the backup team of the Club's football team for the performance in football matches of lower sporting level without affecting the substantial terms and conditions of this contract."

10. In the first part of the FNL Championship for the 2013/14 season, the Player participated in seven matches as both a starting player and a substitute, for a combined total of 194 minutes. The first match the Player participated in during this period was on 12 August 2013 and the last match was on 27 October 2013.

11. The Club held training sessions in Turkey from 4 January 2014 until 18 January 2014 (i.e. during the winter break of the FNL Championship) in which the Player participated.

12. On 21 January 2014, the Player and his agent had a meeting with the President and General Director of the Club to discuss his future.

13. On 22 January 2014, the Director General of the Club issued a decree on the Player (hereinafter referred to as "the Decree") on the temporary assignment of the Player to the backup team of the Club. According to the English translation of the Decree, the Player was to be assigned to the backup team of the Club for the period 22 January 2014 to 5 March 2014 (i.e. 43 calendar days).

14. On 22 January 2014, the first team of the Club went to Turkey for further training sessions, but the Player was not part of that team and remained behind in Russia to train with the backup team.

15. On the same day, the Player sent (by email) a statement to the Club stating that he believed the Club's actions constituted a breach of the Contract and a violation of his rights and thereby requested the Club to remedy this breach. The Club did not respond to this statement.

16. On 27 January 2014, the Player emailed a second request to the Club to remedy the alleged breach of the Contract. During the period in between the two letters, the Player was training with the backup team.

17. On 29 January 2014, the Player filed a statement of termination of the Contract citing the Club's material breach of the Contract. In the letter, the Player requested to be

discharged on 30 January 2014 (i.e. the next day). However, on 29 January 2014, the Player failed to appear at the training sessions of the Club's backup team and left the Club's premises.

III. PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF THE FOOTBALL UNION OF RUSSIA

18. On 30 January 2014, the Player lodged a claim against the Club before the Dispute Resolution Chamber of the FUR (hereinafter referred to as "Russian DRC"), requesting the Russian DRC to establish the following:

- an infringement of the Player's rights (i.e. discrimination) in the form of unjustified long-term trainings outside the first team of the Club;
- the infringement of the Player's rights via a material breach of the Contract by the Club;
- that the Player had just cause to terminate the Contract; and
- that the Club should pay compensation to the Player for breaching the Contract, in the amount of RUB 5,661,000.

19. On 31 January 2014, the Club sent a telegram to the Player to request a written explanation as to his absence from work on 29 and 30 January 2014. The Player did not reply to this telegram.

20. On 3 February 2014, the Club sent the Player a second telegram to request confirmation that the statement of termination dated 29 January 2014 was filed by the Player. The Player did not respond to this telegram either.

21. On 12 February 2014, the Club sent the Player a letter requesting an explanation for his long absence from the team (i.e. between 29 January and 12 February 2014) and requested the Player to remedy the breach within two working days. The Player did not reply to this letter.

22. On 19 February 2014, the Club sent the Player a contract termination notification, explaining that the Contract was terminated due to the Player's long absence from work.

23. On 19 February 2014, the Club also lodged a counter claim against the Player before the Russian DRC, requesting them to establish the following:

- there was a material breach of the Contract by the Player;
- that the Player should pay compensation to the Club for terminating the Contract without just cause, in the amount of RUB 5,435,028; and
- that the Player should be banned from playing for a period of 4 months for terminating the Contract without just cause during the protected period.

24. On 20 February 2014, the Russian DRC rendered a decision as follows:

> *"1. To dismiss in full the statement of professional football player Erik Salkić vis-à-vis Professional Football Club "ARSENAL" Tula city.*

2. To up hold in part the counterclaim of PFC "ARSENAL" Tula vis-à-vis professional football player Erik Salkić.

3. To condemn professional football player Erik Salkić to the payment of compensation for the termination of Employment contract owing to culpable act of the Footballer in the amount of RUB 1,000,000 (One million) payable to the Club within two (2) months after this Decision coming into force.

4. To disqualify professional football player Erik Salkić for a term of four (4) months for the commitment of culpable act resulted in the early termination of Employment contract on the initiative of PFC "ARSENAL" Tula ."

25. On 14 March 2014, the Player lodged a statement of appeal against the Russian DRC decision at the Players' Status Committee of the FUR (hereinafter referred to as the "Russian PSC").

26. On 15 May 2014, the Russian PSC rendered its decision (hereinafter referred to as the "Appealed Decision") as follows:

"1. To dismiss the statement of appeal of professional football player Erik Salkić against Decision N 028-14 rendered by the Dispute Resolution Chamber on 20 February 2014.

2. To uphold the Decision N 028-14 rendered by the Dispute Resolution Chamber on 20 February 2014."

27. On 5 June 2014, the Player was notified of the Appealed Decision.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 25 June 2014, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code"). In the Statement of Appeal, the Player made the following requests for relief from CAS:

"1. To accept the present Statement of Appeal against the decision N 048-14 rendered by the Players' Status Committee of the Football Union of Russia on 15 May 2014 with grounds notified to the Appellant on 5 June 2014.

2. To annul the said decision in full and to render an award declaring that:

(a) The Club had committed an act of discrimination vis-à-vis the Appellant by breaching the Appellant's rights in the form of unjustified long-term trainings outside the regular team of the Club during the period of pre-season training.

(b) The infringement of the Appellant' rights constitutes a material breach of Employment contract by the Club;

(c) The Appellant shall have the right to terminate Employment contract on its own initiative owing to just cause;

(d) To condemn the Club to the payment of compensation due to material breach of Employment contract by the Club for the remaining balance of the term of Employment contract (as from 1February 2014 until 30 June 2015) in the amount of RUB 5,661,000 (Five million six hundred and sixty one thousand) Rubles.

3. To condemn the Respondent(s) to the payment of the whole CAS administrative costs, the costs and fees of the arbitrators or, more generally, the final amount of the cost of the arbitration as per Article R64.4 of the CAS Code.

4. To condemn the Respondent(s) to the payment of reasonable legal fees incurred by the Appellant."

29. On 2 July 2014, in accordance with Article R51 of the CAS Code, the Player informed the CAS Court Office that his Statement of Appeal should also be deemed as his Appeal Brief.

30. Further, in accordance with R37 of the CAS Code, the Player requested provisional measures from the CAS, requesting the CAS to order a stay of execution of both the financial and disciplinary aspects of the Appealed Decision.

31. On 27 June 2014, the Player wrote to the CAS Court Office requesting a panel of three arbitrators and nominated Mr. Manfred Nan, attorney-at-law from Arnhem, the Netherlands.

32. On 15 July 2014, the Club wrote to the CAS Court Office and confirmed that its preference was for the case to be decided by a sole arbitrator based solely on the parties' written submissions. Alternatively, in the event that a panel of three arbitrators were to be appointed, the Club nominated Dr. Michael Gerlinger, attorney-at-law from Munich, Germany.

33. On 24 July 2014, the Club filed its Answer in accordance with Article R55 of the CAS Code. In their response, the Club made the following requests for relief from the CAS:

"1) To reject the appeal of Mr. Eric Salkic;

2) To order Mr. Eric Salkic to bear all arbitration costs incurred with the present procedure;

3) To order Mr. Eric Salkic to pay Respondents a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel."

34. The First Respondent did not file an Answer in this procedure.

35. On 5 August 2014, the President of the CAS Appeals Arbitration Division ruled that the Player's application for provisional measures was denied on the basis that he could not sufficiently establish the criteria required (namely that he would suffer irreparable harm) for provisional measures to be granted under R37 of the CAS Code.

36. By communication dated 18 August 2014, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that a panel of three

arbitrators had been constituted as follows: Mr Mark A. Hovell, President of the Panel and Mr. Manfred Nan and Dr. Michael Gerlinger, arbitrators.

37. On 29 September 2014, the Club wrote to the CAS Court Office questioning (but not officially challenging) the appointment of Mr. Hovell as President of the Panel and requested CAS to re-nominate another President in his place.

38. On 13 October 2014, after sending them copies of written responses by all three appointed members of the Panel as well as the Player, the CAS Court Office invited the Club to inform them by no later than 16 October 2014 whether it wished to proceed with a formal challenge of the appointment of Mr. Hovell as President of the Panel in accordance with Article R34 of the CAS Code.

39. On 15 October 2014, upon further consideration, the Club decided not to proceed with a formal challenge of the appointment of Mr. Hovell, who was thereby confirmed as the President of the Panel.

40. On 10 November 2014, the CAS Court Office wrote to the parties informing them that they were requested by the Panel to provide the CAS Court Office with copies of jurisprudence they wished to rely on in the hearing by no later than 17 November 2014. The Panel also brought to the attention of the parties the decision of the FIFA Dispute Resolution Chamber of *Player H. v Club T*, dated 28 March 2014. The parties were provided with a copy of the case, asked to review the award and be prepared to discuss the case at the hearing, if necessary.

41. On 14 November 2014, the Club acknowledged receipt of the CAS Court Office's letter and provided the CAS with copies of the jurisprudence that it intended to rely upon during the hearing.

42. On 17 November 2014, the Player acknowledged receipt of the CAS Court Office's letter and provided the CAS with copies of the jurisprudence that he intended to rely upon during the hearing.

V. THE HEARING

43. On 20 October 2014, the CAS Court Office informed the parties that the Panel had determined to convene a hearing.

44. A hearing was held on 9 December 2014 at the Hotel Lausanne Palace in Lausanne, Switzerland. The Panel was assisted by Mr. Antonio De Quesada, Counsel to the CAS. In addition to the Panel, the following persons attended the hearing:

    i. Player: Mr. Bolotskikh, Mr. Grammatikov and Mr. Studeeiklin, all counsel, with the Player himself present;

    ii. Club: Mr. Zaytsev and Mr. Prokopets, both counsel.

45. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. After the parties' final,

closing submissions, the hearing was closed and the Panel reserved their detailed decision to this written Award.

46. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in their subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

VI. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

In summary, the Player submitted the following in support of his Appeal:

47. He was hired by the Club in the capacity of a "professional player" but his assignment to the backup team (which he believed to be an amateur team) was an act of discrimination and a violation of his rights and was thereby a material breach of the Contract by the Club, which entitled him to terminate the Contract with just cause.

48. There had been a meeting between the Player, his agent and officials of the Club in between the two training camps on 21 January 2014, at which the Club offered to terminate the Contract mutually (so with no payment of compensation to the Player). The offer was rejected by the Player and the Player alleged that this was the reason he was discriminated against and sent to the backup team.

The backup team was an 'amateur' team and not a professional team

49. The Player alleged that the backup team of the Club plays against teams of the third division in Russia and "*the overwhelming majority of the players playing there are amateur and not professional*". At the hearing, the Player explained that there are 4 divisions in Russian football. The Club's main team plays in the 2nd level (called the First Division), whereas the backup team plays at the 4th level (called the Third Division). Under the Regulations of the All-Russian competitions 'Russian Football Championship between the teams of the III Division' (hereinafter referred to as "the Russian Regulations"), foreign players could only ever play for teams participating in either the 1st or 2nd levels, not in the 3rd or 4th levels. As such, the Player could never have played any matches for the backup team at that time.

50. Further, the Player asserts that the amateur status of the backup team is confirmed by the entity who holds the player passports of those players. Player passports of professional football players in Russia are held directly by the FUR whereas the player passports of amateur players are held by the Regional Football Federations (hereinafter referred to as the "RFF"). The player passports for the players in the backup team of the Club are held by the corresponding RFF of the region and not by the FUR. According to the Player, this clearly illustrates the difference between the professional status of the Club's first team and amateur status of the backup team.

Assigned to the backup team for training only vs. playing matches

51. Pursuant to Clause 3.4 of the Contract, the Club has the right to assign the Player to the backup team of the Club "*for the **performance in football matches** of lower sporting level without affecting the substantial terms and conditions of this contract*" [emphasis added by the Player]. However, the Decree issued by the Club on 20 January 2014 stated the Player was assigned to the backup team "***for the taking part in trainings** without affecting employment function and substantial change of terms of Employment contract dated 22 July 2013*" [emphasis added by the Player]. Accordingly, the Player asserted that the Decree is in express conflict with Clause 3.4 in the Contract because the Player can only be assigned to the backup team to play in matches, not for taking part in training.

52. Further, the Player alleged that the Club cannot argue that he was assigned to the backup team for both training and matches as it was impossible for him to ever participate in matches for the backup team, as detailed above.

53. Accordingly, the Player asserted that by assigning him to the backup team purely for training, the Club was not pursuing any sporting grounds or reasons, but rather, was merely an attempt to deprive the Player the opportunity to carry out the fundamental right of every player – the taking part in competitions. As such, the Player was of the opinion that such action by the Club constituted a material breach by the Club of the fundamental rights of the Player.

54. At the hearing, the Player submitted that he was aware of Article 3.4 in the Contract, but only agreed to it to add some flexibility to the Contract, in case the backup team was ever in the top 2 levels of Russian football during the term of the Contract and he was able to play matches for it. At the time of signing he knew nothing about the backup team, nor what level it played at.

Length of Assignment

55. At the hearing, the Player noted that the Decree (the Russian, original version) stated that the assignment to the backup team was for the period 22 January 2014 until 5 March 2015, whereas the translation referred to the assignment finishing on 5 March 2014. The Player acknowledged that he had not noted this before, but argued that an assignment of over a year could not be temporary, but even if that was a typo and the assignment was for around 43 days, then it was still too long to be "temporary" in the career of a professional footballer.

Breach of the Labour Code of the Russian Federation

56. Pursuant to Articles 56 and 57 of the Labour Code of the Russian Federation, the Club has an obligation to provide the Player with a job as specified in the Contract – in this case, it meant the performance of the Player in official and friendly football matches for the professional football team of the Club.

57. The Player alleged that the Club did not fulfil its obligation to him because it hired him as a "professional football player" to partake in training and matches for the first team, but then assigned him to an amateur team purely for the purposes of training. Further,

this exclusion from the first team "*seriously prejudiced the* [Player's] *future career development*."

Violation of the Player's rights / Discrimination

58. Having followed the directions of the Club to train with the backup team, the Player outlined in detail the different conditions under which a professional player for the Club and a player playing in the backup team had to endure.

59. Some of the more notable differences included:

First Team	Backup Team
Playing in **relevant climatic conditions** (January in Turkey)	Playing in **severe climatic conditions** (January/winter in Russia)
Training **outdoors** on **natural fields** with **fresh air**	Training mostly **indoors** on synthetic playing fields or on outdoor pitches affected by ice
Training under the **Head Coach of the Club**	Training under the **Head Coach of the backup team**
Being provided with **appropriate catering conditions and medical service**, recovery and rehabilitation conditions	Not being provided with any of these **medical and catering** conditions

60. The Player asserted that a combination of all these factors amounted to discrimination against him when compared to similar professional players employed at the Club.

61. The Player submitted that he followed the Club's directions and objected in accordance with the terms of the Contract and the FUR Regulations. He gave a first notice on 22 January 2014, which went unanswered, so he gave a second notice on 27 January 2014. These were sent by email to the Club's only email address.

62. Having heard nothing further, on 29 January 2014, the Player sent the request for the Club to terminate the Contract and to discharge him. The Player then followed the provisions in the Contract and addressed the same request to the Russian DRC.

Swiss Law and personality rights

63. The Player referred to CAS jurisprudence in cases such as CAS 2005/A/909, in which CAS had supported the Swiss law doctrines protecting an employee's personality rights, noting that there are categories of employees, such as footballers, that need to work in the area or position they have been employed to work in, in order to protect their future career. The Player additionally referred to CAS 2011/A/2428 to support his claim that the provision of inadequate training facilities could give rise to just cause to terminate the Contract.

B. First Respondent's Submissions

64. The First Respondent did not make any submission in defence nor participate at the hearing.

C. Second Respondent's Submissions

In summary, the Club submitted the following in its defence:

65. The Player freely signed the Contract containing a clear and unambiguous clause stating that the Player could be assigned to the backup team of the Club without the assignment affecting the substantial terms and conditions of the Contract (i.e. clause 3.4 of the Contract). Thus, the Club believed that assigning the Player to the backup team did not constitute a violation of his rights or a breach of the Contract and conversely, it was the Player who breached the Contract without just cause through his long term absence from the Club.

66. This is a case of the Club's coach having (and exercising) the right to determine which players he decides to work with and at what time. The Club fully respects that football is a team sport and that players should not be forced to train alone, unless in exceptional circumstances. It respected the CAS decision in CAS 2011/A/2428 in that regard, but differentiated its position, in that the Club continued to offer training facilities with a team and coach, it still paid the player in full and the assignment to the backup team was only temporary.

Professional vs. Amateur Status of 'backup' team

67. In response to the Player's claims relating to the amateur status of the backup team, the Club argued that a number of players on the back up team have a paid, written contract with the Club. Thus, these players are professional players, by FIFA's definition, so the Player's allegations that he was assigned to an amateur team are not valid.

Assigned to backup team for training only vs. playing matches

68. In response to the Player's claims that he would be unable to play for the backup team due to his nationality, the Respondent pointed out that the Player was assigned to the backup team for the period 22 January 2014 to 5 March 2014 (at the hearing, the Club maintained that the reference to 2015 in the Decree was a typo and clearly wrong). The first game in the FNL Competition following the winter break period in Russian football was on 9 March 2014. Thus, the Player was assigned to the backup team purely for the winter break period to improve his fitness, not during the time of official games of the first team.

69. Moreover, the Club asserted that the Player would have returned to the first team in the event that the parties failed to transfer the Player to another club. The Player was not deregistered from the Club's official playing list and would have had a chance to play in the Club's first team if he satisfied the coaches' expectations.

70. The Club did acknowledge that the Player could not have played in any matches for the backup team, in accordance with the Russian Regulations.

Breach of the Labour Code of the Russian Federation

71. With regards to the Player's arguments that the Club breached the Labour Code of the Russian Federation, the Club argued that they never deprived the Player of the opportunity to work and provided him with an adequate training facilities for a football player.

72. Further, the Player was not a leading player of the Club, so he could not count on regular appearances with the first team during the second part of the season. On this note, they pointed out that the Player only played a total of 194 minutes in 7 games in the first half of the 2013/14 season, in a mix of starting roles and as a substitute.

Violation of the Player's rights / Discrimination

73. In response to these allegations by the Player, the Club once again argued that they did not deprive the Player of the opportunity to work and provided him with adequate facilities for a football player. Moreover, they did not deregister him and paid him his salary in due course.

74. The Club again pointed to the fact that the Player had agreed, pursuant to clause 3.4 of the Contract, to "perform" with the backup team. The Club argued that "performing" covered training too, so the clause was drafted sufficiently widely to allow the Club to assign the Player to the backup team for training and/or matches. No player just plays matches. Training and learning tactics etc are all ultimately linked to playing.

Swiss Law and personality rights

75. The Club disputed the relevance of Swiss law in this matter, Further it produced a number of CAS and FIFA cases that it argued supported its position that the Player was wrong to treat the assignment to the backup team as grounds to terminate and in so doing, he stayed away from the Club in breach of the Contract, resulting in the Club terminating the Contract, with just cause.

Player's right to terminate the Contract with just cause

76. The Club argued that the Player did not have the right to terminate the Contract with just cause. The Club's defence to this was largely based on clause 3.4 of the Contract, which permits the Club to assign a Player to the backup team at its discretion. The Club also relies upon clause 3.1.23 of the Contract, pursuant to which the Player was obliged to obey the commands of the General Director (and others) at the Club.

77. Further, the Club asserted that being assigned to the backup team cannot be deemed as discrimination because being transferred to a football club's backup team is a common practice in football. Determining the team that a player should be playing in is the exclusive right of the coach of the club and not a breach of the player's rights. The club should always have the final say in how a team is composed and whether players are fit or ready to play in the first team. Moreover, the Club pointed out that the Player only trained with the backup team for seven days before leaving the Club on the eighth day. The Club believed that seven days is not a sufficiently long period of time for the Player to argue that his rights were violated for a long time. Therefore, the Club believes that

after 29 January 2014, the Contract was still valid as the Player did not have a right to terminate it with just cause.

The Club's right to terminate the Contract with just cause

78. The Club believed that they had just cause to terminate the Contract because the Player had an unexplained long term absence from the team (i.e. 22 days – from 29 January to 18 February 2014). During his absence, the Club sent the Player two telegrams and one letter and the Player did not respond to any of them. The Club also warned the Player of the consequences of not remedying his breach which he failed to respond to or act on. Consequently, the Player's actions from 29 January 2014 onwards amounted to a breach of the Contract by the Player without just cause.

VII. APPLICABLE LAW

79. Article R58 of the CAS Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

80. The Panel notes that the matter at hand originates from a contractual dispute between the parties and the Contract itself refers to the applicable laws in the preamble:

> "*…this contract is subject to the laws of the Russian Federation, the rights and duties of the parties are regulated by the labor laws and other regulations of the Russian federation containing rules of the labor laws, as well as by the local regulations adopted by the Club with due regard to the rules of the Football Union of Russia (FUR), by the regulations of the Fédération Internationale de football association (FIFA), Union des Associations Européennes de Football (UEFA) and those of FUR…"*

81. The Club submitted that sports-related issues should be governed by the various regulations of FUR (hereinafter referred to as the "FUR Regulations") and any employment related issues by Russian labor law. The Club, however, additionally referred to the regulations of FIFA in its Answer. The Player did not provide submissions on the applicable law, but did refer in its Statement of Appeal to the FUR Regulations, Russian labor law and Swiss law.

82. The Panel notes that the Contract refers to both Russian labor law *"as well as"* the rules of FUR, FIFA and UEFA that the Club and the Player have to follow. Further the Panel notes that the appeal is from the Russian PSC and the Panel is therefore satisfied to accept the application of the FUR Regulations with the subsidiary application of Russian labor law should the need arise to fill a possible gap in the FUR Regulations, but may refer to the FIFA Regulations and Swiss law, on a subsidiary basis, "as well" if it deems necessary.

VIII. THE JURISDICTION OF THE CAS

83. On 24 November 2014, the Club wrote to the CAS Court Office challenging the jurisdiction of the CAS in this dispute on the basis that there was no clear arbitration agreement giving CAS jurisdiction.

84. Article R47 of the CAS Code provides as follows:

> "*An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body."*

85. The Player submitted that the jurisdiction of the CAS, derives from Article 53 paragraph 2 of the FUR Regulations:

> *"The decisions of the Players' Status Committee may be appealed against only before the Court of Arbitration of Sport (Tribunal Arbitral du Sport) in Lausanne (Switzerland) within 21 calendar days after receipt of the decision in full."*

86. The parties, through the Contract, had to give due regard to these FUR Regulations as well as to Russian labor law. The Player additionally referred to Article 67 paragraph 1 of the FIFA Statutes that also gave jurisdiction to CAS to hear appeals from final decisions of its members' bodies, such as the Russian PSC.

87. The Club, on the other hand, submitted that the Contract did not provide for contractual disputes to be settled by arbitration, instead, it was to be settled by Russian labor law, through the State Courts. The Club made reference to CAS jurisprudence on the issue, namely CAS 2012/A/3007. During the hearing, the Club acknowledged that it had participated in the proceedings before the Russian DRC and the PSC, yet likened these to a type of "non-binding mediation", an attempt to "settle" the dispute. If no settlement was reached, then the Contract, at clause 11.1, stipulated that the dispute would be determined in accordance with "current legislation", which would be Russian labor law, which did not allow for arbitration, rather that the dispute be dealt with by the State Courts.

88. The Panel notes that the CAS is a Swiss institution and as such determines to use the CAS Code and the Swiss Private International Law Act (hereinafter referred to as the "PILA") as the applicable law to settle any disputes relating to its own jurisdiction.

Is the dispute arbitrable?

89. The starting point is found within Article 177.1 of the PILA:

> *"All pecuniary claims may be submitted to arbitration."*

90. The dispute at hand is a monetary claim. Both parties are seeking clarification that the other breached the Contract and ultimately compensation for such breach. As such, the nature of the dispute is arbitrable. The Panel notes the recent Swiss Federal Tribunal

decision in the case *4A_388/2012* arrived at the same conclusion, as indeed did that CAS panel in the decision in CAS 2012/A/3007.

91. However, the Panel next has to consider the effect of Article 382 of the Labor Code of the Russian Federation. That provision, on the face of it, prohibits the parties from submitting disputes concerning the *"employment relationship"* to arbitration and instead provides for the mandatory jurisdiction of the labor courts in Russia. The Club has submitted that clause 11.1 of the Contract directs the parties to settle their dispute through negotiation, but if they can't, then *"... in accordance with the current legislation".*

92. The Panel has serious doubts as to whether submitting the dispute to the Russian DRC and then to the Russian PSC, on appeal, could really be seen as attempting to settle *"through negotiations."* Both bodies are sports tribunals, not mediation bodies and, if there is no appeal (to the Russian PSC or to the CAS) then their decisions become final and binding and would, presumably, be enforced by the FUR. Further, the Panel notes that the original English translation of the Contract, produced by the Club for the Player, refers to the parties to settle their dispute through negotiation, but if they can't, then *"... in accordance with the applicable laws".* As set out above, the applicable laws include the FUR Regulations "as well as" Russian labor law, as such a choice exists, so neither arbitration taking precedence over the State Courts nor vice versa.

93. However, the Panel shall also consider the position if there was mandatory application of labor law in Russia. Article 19.1 of the PILA sets out the circumstances in which the mandatory provisions of a foreign (that is not Swiss) law may be taken into account. In short *"the legitimate and manifestly preponderant interests of a party so require"* and *"if the circumstances of the case are closely connected with that law."* Article 19.2 of the PILA also demands that the application of a foreign law would *"result in an adequate decision under Swiss concepts of law."*

94. The Panel has to consider the public policy issues here. Has the Club demonstrated that the "*preponderant interests of a party so require"* that Russian labor law and the exclusive jurisdiction of the State courts are needed? The Panel determines it has not. The national dispute resolution system established in Russia has to respect the directives of FIFA in Circular 1010 and in its later guidance – there is equality of representation between clubs and players, there is the right of an initial appeal to the PSC and a final appeal to CAS. All bodies are able to deal with breach of contract cases and are specialized in the specificity of sport, when a State Court might not be.

95. As noted above, the Contract offers two sets of applicable laws to follow. If the dispute had centred around paternity rights of the Player, for example, then perhaps the best solution may lie within Russian labor law and the best forum may well be the State Courts. For a breach of contract dispute, the Panel notes the Club and the Player clearly preferred the FUR Regulations to apply to the dispute, as they both took the dispute to the Russian DRC and the Player appealed that decision to the Russian PSC. The Club never queried or questioned the jurisdiction of the Russian DRC or the Russian PSC. The Panel sees no preponderant interests of either party that require a mandatory application of Russian labor law in the matter at hand.

96. The Panel is comforted by the judgment of the SFT in *4A_388/2012* which at para 3.3 stated *"this cannot be understood to mean that mandatory provisions of a foreign legal system, with which the lawsuit has a connection and which possibly interpret the term "arbitrability" more narrowly, must automatically be taken into account."* Therefore, the Panel is satisfied that the dispute is arbitrable.

Did the parties agree to arbitration?

97. The Panel notes there is no express arbitration clause in the Contract, rather a reference to the "applicable laws". The Panel has noted that this leads to a choice of applying the FUR Regulations, which in turn involves the Russian DRC and then the Russian PSC as the initial forums; or, alternatively, applying the Russian labor law through the State Courts.

98. If there is any doubt, then the Panel must look to construe the parties' intentions, using the principle of *"good faith"*. If any party should have wished to have this dispute heard before the state Courts, then it is the Club, yet it was the Club that chose to counterclaim before the Russian DRC. The Panel notes that the Player is not Russian, whereas the Club is. It would be aware of the FUR Regulations and the dispute resolution system of the FUR. It would be aware that if neither party appeals against the decision of the Russian DRC, it would become final and binding upon the parties; that if either party chose to appeal, it would then go before the Russian PSC. Again, if neither party appeals against the decision of the Russian PSC, it would become final and binding upon the parties; and that if either party chose to appeal, it would then go before the CAS. The Panel is satisfied that the parties wished to apply the FUR Regulations to determine their dispute, as opposed to taking it to the State Courts, and that for the Club to at the last stage seek to change tact, demonstrates bad faith on its behalf. The Panel are satisfied that the parties have agreed to apply the FUR Regulations and to refer their contractual dispute to arbitration.

99. The Panel noted the jurisprudence cited by the Club from CAS 2012/A/3007. The Panel considered that decision, however, was also aware of a wealth of CAS jurisprudence that supported the ultimate jurisdiction of the CAS where at least one of the parties was Russian (by way of example: CAS 2009/A/1874, CAS 2010/A/2204, CAS 2010/A/2344, CAS 2011/A/2428, CAS 2011/A/2477, CAS 2011/A/2478, CAS 2012/A/2792, CAS 2012/A/2977, CAS 2012/A/2792 and CAS 2013/A/3268) That noted, looking at the CAS 2012/A/3007 decision, there were also a number of distinguishing features between the facts of that case and the one at hand. Firstly, the player and the club in that case were both Russian and there was no international dimension. The Panel notes that in football it is common for disputes with an international dimension to be dealt with independently by FIFA unless a satisfactory national dispute resolution system exists. With clubs and players from the same country, the national dispute resolution system may still apply, but this is usually part of a collective bargaining system. Where none exists, it could then be an option for the parties to refer their disputes to the State Courts.

100. Secondly, the dispute resolution wording in the contract in CAS 2012/A/3007 expressly referred to an initial attempt to mediate, but failing that then to settle the dispute in accordance with the applicable laws of the Russian Federation. There was no alternative

option to apply the FUR Regulations. Further, as the Panel has noted above, referring the dispute to the Russian DRC was not a referral to "mediation" – that body could issue a final and binding decision, or a decision that was ultimately appealable to the CAS, in accordance with the FUR Regulations. Mediation is a non-binding procedure.

101. Finally, the Panel notes that neither party has referred this dispute to the State Court and that, in the absence of *lis pendens*, the CAS is free to render a decision on the merits.

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

IX. ADMISSIBILITY

103. The Appeal complied with all the requirements of Articles R47 and R48 of the CAS Code, including the payment of the CAS Court Office fee. Further, in accordance with Article R49 of the CAS Code, the Appeal was lodged by the Player within 21 days of being notified of the Appealed Decision.

104. It follows that the Appeal is admissible.

X. MERITS OF THE APPEAL

A. The Main Issues

105. In view of the above, the main issues to be resolved by the Panel are:

a) Can the assignment of a player to a club's back up team and to be prevented from training with the first team amount to a violation of the player's rights?

b) If so, and on the facts of this case, did the Club violate the Player's rights and/or discriminate against him?

c) Was the Contract terminated with or without just cause?

d) Is any party entitled to compensation and how much?

Breach of a player's rights in principle?

106. On the one hand, the Panel notes that the Club stated the matter at hand was of fundamental importance to football – shouldn't the coach of a football team be entitled to select which players formed his first team squad and which players should be in the reserve team? To allow players to overrule the decision making of the coach would "open the floodgates" and allow all dissatisfied players to claim playing and/or training with the reserves would be a breach of their contracts and allow them to move to another club. On the other hand, the Panel also notes that many clubs seem to banish players to the reserves as a way to "persuade" them to leave the club, be it because they are no longer wanted, injured or just too expensive. These types of clubs tend to disguise the economic reason for dropping the player behind sporting or medical grounds that can be legitimate. As with most rights, there is a line that can be crossed or not and any judging

body has to look carefully at the facts before it to determine whether that line has been crossed.

107. The Panel certainly recognises the role of the coach to make such selections, on proper football related or sporting grounds, but also recognises at times some clubs abuse this right and then infringe on the player's own rights.

108. The Panel notes there are contractual rights – what is actually expressly written in or what might be implied in the contract between the parties; and statutory rights, be under the statutes and/or regulations of the sports governing bodies, or even under the national laws that may apply or fill a lacuna in such governing bodies' statutes or regulations; as well as custom and practice that has developed in the sport of professional football over the years. In the matter at hand the Panel has also been provided with a large number of decisions and jurisprudence from FIFA, Swiss Tribunals and the CAS that considered whether a player has the right to perform in the first team, as opposed to in the reserves.

109. From a review of these various cases, this "right" can be an express contractual right, but in other circumstances it can be implied. There have been many references in the jurisprudence to the statutory "performance rights" of a player, which will be looked at below. There have been cases where the club and the player have expressly agreed that the player is employed "as a first teamer" (SFT 137 III 303), but in the majority of the other cases cited, the wording was not as clear. Sometimes the player was employed as a "professional", where the reserve team was amateur. However, in most of the cases cited, there was no express contractual wording that the club must field, or train the player in the first team, rather by not doing so it had a negative effect on the player and his future career.

110. The jurisprudence in CAS 2013/A/3091, 3092 & 3093, the CAS panel thoroughly considered, inter alia, whether the deregistration of a player from the first team squad constituted a breach of his "performance rights", under Swiss law. The Panel notes and concurs with its comments:

> *"222. With regard to the deregistration as such, the Panel agrees with the FIFA DRC's position in the Appealed Decision, that it may infringe upon the Player's personality rights.*
>
> *223. According to Articles 28 et seq. of the Swiss Civil Code (hereinafter referred to as "CC"), any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption.*
>
> *224. As stated by FC Nantes, it is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27, 2012) and among legal scholars (Margaret Baddeley, Le sportif, sujet ou objet?, in: Revue de droit Suisse; 1996 II, pp. 135 et seq., p. 162; Kai Ludwig/Urs Scherrer, Sportsrecht, eine Begriffserläuterung, Zürich, 2010, p. 212; Regina Aebi-Müller/Anne-Sophie Morand, Die personlichkeitsrechtlichen Kernfragen der "Causa FC Sion", in: CaS 2012, p. 234-235) that personality rights apply to the world of sport. For*

athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom (Baddeley, op. cit, p. 171). Under this definition, personality rights protect the right of movement, which comprises in particular the right to practice a sports activity at a level that accords with the abilities of the athlete (Andreas Bucher, Personnes physiques et protection de la personnalité, Basel 1999, N 467). When the sport is practised professionally, a suspension or any other limitation on access to the sport may impede the economic development and fulfilment of the athlete, the freedom of choosing his professional activity and the right to practice it without restriction (Denis Oswald, Le règlement des litiges et la repression des comportement illicities dans le domaine sportif; in: Mélanges Grossen, Basel 1992, p. 74). This freedom is particularly important in the area of sport since the period during which the athlete is able to build his professional career and earn his living through his sporting activity is short (Aebi Müller/Morand, op. cit. 236). In football in particular the length of a career is appreciably shorter than in other sports (Aebi Müller/Morand, op. cit. 237).

225. *Professional freedom, in particular for professional athletes, therefore includes a legitimate interest in being actually employed by their employer (Rehbinder/Stockli, Berner Kommentar, 2010, N 13 to Art. 328). Indeed, an athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities (Judgment of the Cantonal Court of Valais, decision of November 16, 2011, in: CaS 2011, 359). It is thus widely accepted in jurisprudence and among legal scholars that athletes have a right to actively practice their profession (ATF 137 III 303). To the extent that Articles 28 et seq. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law (ATF 137 III 303).*

226. *Upholding this approach, the Swiss Federal Tribunal stated with regard to a professional football player that "it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level" (Judgment 4A_53/2001 of March 2011).*

227. *Furthermore, legal scholars (Baddeley, op. cit., p. 182), and jurisprudence (ATF 137 III 303; ATF 120 II 369) acknowledge that decisions relating to selection, qualification and suspension, as well as licensing refusals, may constitute an infringement of the personality rights of the athlete from the standpoint of his economic freedom (Baddeley op. cit., p. 182).*

228. *In view of the above-mentioned jurisprudence of the Swiss Federal Tribunal and Swiss legal scholars, the Panel agrees with the FIFA DRC, which, in the case at hand, concluded that "among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the*

possibility to compete with his fellow team mates in the team's official matches" and that "by "de-registering" a player, even for a limited period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player" and that therefore "the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club". "

111. The Panel notes that there is no specific article within the FUR Regulations that refer to the rights of players in these terms, however Article 11 para. 2.3 of the FUR Regulations treats discrimination or breach of the player's rights in the form of unjustified long-term trainings without soccer, as grounds for terminating the playing contract. Further, in Russian labor law, Article 56, the employer is obliged to provide the employee with work of the type he was employed for. These give further comfort to the Panel that a player has certain rights, be it personality rights, or the right to train long-term in the correct environment or the right to expect to perform his trade, that of a football player.

112. Ultimately, and on the facts of CAS 2013/A/3091, 3092 & 3093, that CAS panel determined that the club had not breached the player's personality rights entitling him to terminate his contract with just cause, although the Panel notes that that case related to de-registration of the player concerned – to which he did not complain - and that he was still allowed to train with the first team squad. The key factors that can be drawn from that case, and from the other cases cited by the parties in the matter at hand, include:

- Why was the player dropped to the reserve team?
- Was the player still being paid his full wage?
- Was it a permanent or temporary measure?
- Were there adequate training facilities for the player with the reserve team?
- Was there an express right in the contract for the club to drop the player to the reserve team?
- Was the player training alone or with a team?

113. In principle, this Panel, like others, notes that the parties can expressly agree for a player to play in a certain team, but that if the contract is silent, then the player does in principle have certain fundamental rights, such as his "personality rights", but that a coach and the club also have the right, in certain sporting circumstances, to move players between the first team and other teams. These rights may conflict and when they do, a review of the above points and of the facts of each case needs to be undertaken.

Did the Club violate the Player's rights?

The Contract

114. The Panel notes that, pursuant to clause 2.1 of the Contract, the Player was employed as a "*professional player*"; that pursuant to clause 3.1.23, he would "*unquestioningly obey*

the commands (instructions) of the General Director of the Club, Head Coaches and coaches of the Club's football team, to comply with the decisions passed by the management bodies of the Club"; and pursuant to clause 3.4 of the Contract, the Player agreed "*that upon the decision of the Club he may be assigned to the backup team of the Club's football team for the performance in football matches of lower sporting level without affecting the substantial terms and conditions of this contract."*

115. The Player submitted that the backup team was an amateur team, not a professional team. He was employed as a "professional player", so assigning him to an amateur team breached the Contract.

116. The Panel notes that in the world of football, as best demonstrated by FIFA's Regulations on the Status and Transfer of Players (hereinafter the "RSTP"), players are either amateur or professional. Article 2 of the RSTP stipulates that professional players have written contracts and are paid more than just their expenses, with all other players being amateurs.

117. The Panel notes that the Player remained on his written Contract and was still being paid whilst assigned to the backup team. The Panel further notes that the Club had provided evidence that the other members of the backup team were being paid more than just their expenses. The Panel in this instance does not consider labelling a player as a "professional" in his contract would be sufficient grounds for interpreting that as meaning he could only play for the first team.

118. The Panel however finds that a distinction must be made between a club's right to assign a player to play matches with the second or backup team and a club's right to prevent a player from training with the first team. It is common in the world of professional football that a first team of a club does not only train with the, say 16 players, that are either starting players or substitutes that take place on the bench during matches of the first team. Indeed, first teams usually train with a larger group consisting, besides the above-mentioned players, of young talented players and players that usually play in the second team, but are close to the first team. The Panel recognises that one club's set up may differ from another's, but believes that a squad of players tend to train together as the first team squad, only some of which will actually play in the first team on match days. In view of this, the Panel finds that a measure to prevent a player from training with the first team squad is potentially a much harsher measure than solely assigning a player to play matches with the second team while being allowed to train with the first team squad. The former seriously prejudices the player's future perspectives with the first team, since such measure is of a more definite nature than the latter. There may be individual reasons, such as recovery from injury, which may dictate that a player trains away from the first team squad, which would need reviewing in each particular case.

119. The Panel feels comforted in making such distinction by the decision of another CAS Panel (CAS 2013/A/3091/3092/3093, para. 243) where that panel in evaluating whether the employment relationship was terminated with just cause or not, considered it important that the player could continue training with the first team squad.

120. It is undisputed that the General Director instructed the Player to train with the backup team, as opposed to traveling out with the first team squad, to the second training camp in Turkey. The Club stated that this Decree was given following the determination of the

Head Coach on footballing or sporting grounds, whereas, the Player submitted that the Head Coach had been happy with his sporting performance at the first training camp in Turkey and that this Decree was based on economic grounds i.e. the Club no longer wanted him on his expensive Contract, so assigned him to train with the backup team to force him out. The Panel notes the provisions of clause 3.1.24 of the Contract. While the Panel notes the Player is to follow instructions "unquestioningly", it would still require such instructions to be reasonable. It is unfortunate that the Player did not bring his agent to the hearing to provide the Panel with his evidence, nor did the Club bring either of its representatives to the hearing, so the Panel could examine what was said when the Player and his agent met the General Director and the President of the Club on 21 January 2014. The Player did testify that he was told the Club no longer wanted him and offered him the "opportunity" to leave, but without any compensation for an early termination of the Contract. The Club acknowledged the meeting occurred, but disputed the Player's version of events. Even though the Panel prefers the Player's version of events regarding this meeting, the Panel can leave it moot as to whether the Club gave the Decree to assign the Player to train with the backup team pursuant to the Head Coaches' view of the Player's fitness or gave the Decree on purely economic grounds.

121. The Panel next examines clause 3.4 of the Contract. The Club submitted that this clause signified the Player's "written consent" to be assigned to the backup team. Not only did the Contract contain no express clause ensuring the Player must play in the first team, it had an express clause allowing the Club to assign him to the backup team. The Player accepted this assignment. He trained with the backup team for 7 days.

122. On the other hand, the Panel notes that the Player examined the wording of clause 3.4 in more detail. At the hearing, the Player acknowledged that he was aware of the clause when signing the Contract, but was not aware what league the backup team played in. It might have being playing (or might at some stage during the term of the Contract) at a level that foreign players could play matches for it, so he accepted the clause. However, the clause is just in relation to the assignment for "matches", not training. In contrast, the Decree from the General Director referred to the assignment "for the taking part in trainings". Further, with the backup team playing at level 4, pursuant to the Russian Regulations, as a foreign player, the Player could not play in any matches, so the clause was irrelevant to his circumstances.

123. In response, the Club submitted that clause 3.4 covered "performances" i.e. both any matches, but also the training involved that leads up to matches. The training that is necessary for fitness, learning new skills, new tactics etc that would all be used in the matches. The Club also submitted that at the time of the assignment, there were no matches being played. It was the winter break in the season, so it was irrelevant what level the backup team was playing at.

124. The Panel has already noted above that the coach at a club, unless expressly barred from doing so under the contract, should have the right to choose his first team squad, the Panel however finds that the measure to prohibit a player from training with the first team shall not be taken lightly, particularly since clause 3.4 does not specifically contemplate such discretion.

125. On balance, the Panel determines that clause 3.4 of the Contract does entitle the Club to assign the Player to the backup team for matches, without any reason being required as a pre-condition, but that there must be limits to such assignment, so as not to infringe the Player's rights and so as not to breach the FUR Regulations or Russian labor law. The Panel determines that the coach can issue instructions to the Player, irrespective of clause 3.4, to train with the reserves, but as the Panel finds such instruction must be reasonable and shall not be taken lightly, it can only be taken if the specific circumstances of the case so justify. As such, the limits and effects of that type of assignment must next be considered:

Effect on wages?

126. The Panel notes that in previous CAS jurisprudence (CAS 2013/A/3091/3092/3093 and CAS 2012/O/2991) the panels had considered whether a player that was deregistered or dropped to the reserves was effected financially. While the Panel notes that there could be an effect on bonuses in dropping a player, it is primarily concerned with the basic wage of the Player. In the case at hand, the Club would have to continue to pay the Player his basic wage under the Contract. Further, as there were no matches being played, he did not lose out on any performance related bonuses, such as for appearances or for scoring goals.

Term of assignment?

127. The Panel notes that at the hearing a new point was raised regarding the term of the assignment. Was it for 43 days or for 1 year and 43 days? The Panel notes that the Club stated the assignment was "temporary" – the instruction itself expressly referred to that. The extra year was an innocent typo (2015, instead of 2014) that didn't appear in the translation of the instruction, nor was it ever considered by the Russian DRC nor the Russian PSC, who both reached their decisions on the "temporary" assignment for the 43 day period, which was aligned to the winter break.

128. The Player submitted that even if the Panel accepts it was a typo, 43 days was too long and infringed on the Player's rights.

129. The Panel cannot state that a certain number of days tips the balance and infringes on a player's rights – the context needs considering. The Panel notes that no games were being played, by either the first team or the backup team at that time. Perhaps 43 days during the middle of the playing season would be considered too long and a breach of a player's rights, but perhaps not if he was coming back from injury and needing a period of rehabilitation, followed by training with the reserves, before re-joining the first team. Every case will be different. In the case at hand, the Panel notes that the Player followed his instructions from the Club, but only for 7 days. He then left. The Club failed to bring the Head Coach to the hearing. The Panel would have been interested to know if there could have been any opportunity for the Player to improve his fitness and be moved back before the 43 days expired? Was the Player set a set of milestones that if he'd achieved, he could have been reintegrated with the first team earlier?

130. Faced with the limited evidence before it and the submissions by the Club that the Player would have re-joined the first team after his training with the backup team,

during the winter break when no one was playing any matches, the Panel is just satisfied that this assignment was temporary.

131. As to whether a termination of a fixed-term contract, as in the present case, is justified, the Panel observes that there is ample CAS jurisprudence on this issue. For example, in the case CAS 2006/A/1062, the Panel stated that since *"the FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause' (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations ("CO") states - in loose translation: 'Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause.' The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72)" (CAS 2006/A/1062, para. 13). Additionally, another CAS Panel ruled that "according to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (...). Particular importance is thereby attached to the nature of the obligation. The Swiss Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded are no longer present (...). In other words, it may be deemed as a case of application of the clausula rebus sic stantibus. According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (...). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties such as serious breach of confidence (...). Pursuant to the jurisprudence of the Swiss Federal Supreme Court, the early termination for valid reasons shall be however restrictively admitted"* (CAS 2006/A/1180, para. 8.4)

132. In addition, the Commentary on the RSTP states the following with regard to the concept of "just cause": "*The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally*" (RSTP Commentary, N2 to Article 14).

133. The Panel finds that this jurisprudence regarding the application of the RSTP regarding termination of a fixed-term employment contracts is also applicable to the present matter. The parties contractually agreed that the regulations of FIFA are applicable and the Panel finds that there are no arguments presented by the parties that would justify another approach under the FUR Regulations or Russian law.

134. On this basis, the Panel finds that the question whether the Club could legitimately assign the Player to train with the second team can be left unanswered as, even assuming that this constituted a breach, the Panel finds that, in any event, this breach was not of such a severity that it would justify a unilateral termination of contract by the

Player after only 7 days, during the winter break. In particular, such breach should have persisted over such a period of time that it could no longer be reasonably expected from the Player to continue the employment relationship.

Adequate facilities?

135. It was undisputed by the parties that forcing a player to train alone in circumstances as the player in CAS 2011/A/2428 faced would breach a player's rights, but in the case at hand, the Player trained with the backup team on a proper pitch (perhaps with some ice or frost on it, but not in feet of snow), in a team environment and with a qualified coach (perhaps not as qualified as the Head Coach, but suitably qualified nonetheless).

136. There was no evidence before the Panel that there was any danger for the Player that he couldn't train with a ball and with a team. As such, the Panel determines there was nothing in the facilities provided that infringed upon the rights of the Player.

Discrimination?

137. The Panel would draw a distinction between breaching a player's rights and discriminating against him. The Panel would expect to see some form of different treatment being applied to a player due to his nationality, his race, his religion, his colour, his sexuality, his beliefs, etc. for discrimination to be a factor that could give rise to that player terminating his contract with just cause.

138. The Panel certainly notes there are differences between the training with the first team and with the backup team, as summarised in the table above, however, failed to see why this was labelled by the Player as "discrimination". The Panel notes at the hearing that the Club confirmed that other Russian "professional" players were also assigned to the backup team, so this had nothing to do with the Player's nationality or race.

Was the Contract terminated with or without just cause?

139. The Panel is satisfied that the temporary assignment of the Player, at a time when there were no matches being played, potentially on the basis of the Head Coaches' view of the Player's footballing condition and with no loss in contractual benefits, such as pay, to the backup team, to train with other players in a team environment, could potentially have breached the Player's rights or discriminate against him, but did not give rise to sufficient grounds (especially after just 7 days) for the Player to terminate his Contract with just cause. As a result of him leaving the Club on the 8th day and failing to return, after notifications from the Club requesting him to return, resulted in the Club then terminating the Contract, with just cause.

140. The Panel would also have had some concerns regarding the notification process, had the Player had just cause to terminate the Contract. Whilst the use of emails is not a problem per se, unless a "read receipt" is obtained, if the email is met with silence, it leaves evidential difficulties in proving it was received and not automatically consigned to "spam", as the Club contended it was in this case.

141. The Panel also notes that the Player believed he followed the process laid down in the FUR Regulations. In particular, the Player referred to Article 11 para. 2.3 of the FUR

Regulations, which treats discrimination or breach of the player's rights in the form of unjustified long-term trainings without soccer, as grounds for terminating the playing contract. For the reasons stated above, the Panel is not convinced that there was any discrimination, nor that the training the Player was assigned to would have triggered this Article. However, if the Player was of that view, the procedure is for the player to provide the club with a warning – 5 days to remedy the breach. Thereafter to lodge a statement with the Russian DRC. The Panel also has some concerns regarding the decision of the Player to walk away from the Club after 8 days. The Player may have been better advised to have seen out the assignment, before treating it as a "long-term training without soccer" and to have maintained his complaint in parallel with his training.

Compensation?

142. The Panel now returns to the meeting on 21 January 2014. While it has determined that the Player did not have sufficient grounds to terminate the Contract 8 days after his assignment to the backup team, the Panel has serious doubts as to whether the Club made such assignment on the Head Coaches' advice on footballing grounds or whether they saw an opportunity to make life difficult for the Player and were motivated by economic grounds. That remains moot, however, the Panel believes the Player when he says he was offered the opportunity to walk away there and then, but with no payment of compensation to him. As such, the Club placed no value on his services and were willing to let the Player walk away. Although, in general, compensation is due in case of a breach of contract without just cause, the fact that the Club placed no value on the Player's services in this case questions the existence of any damage for the Club. The Club apparently considered it favourable to save the payments of salary in exchange of losing the Player's services. Then, it cannot argue that there was a damage to be compensated when losing such services while saving the salary. The Panel, therefore disagrees with the finding of the Russian PSC in the Appealed Decision in awarding any compensation to the Club. If the Club placed no value on the Player, then it cannot be awarded any value or compensation for the Player, regardless of whether he breached the contract or not. The Club wanted the Player to end the Contract on 21 January 2014, mutually, with no money changing hands.

B. Conclusion

143. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel:

a. partially upholds the Player's appeal;
b. amends part of the Appealed Decision and awards no compensation to the Club; and
c. otherwise confirms the remainder of the Appealed Decision.

144. Any further claims or requests for relief are dismissed.

XI. COSTS

145. Article R64.4 of the CAS Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

146. Article R64.5 of the CAS Code reads as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

147. Having taken into account the outcome of the arbitration, in particular the fact that whilst the Appeal was unsuccessful in annulling the Appealed Decision and the compensation awarded was reduced to zero, the Panel determines that the costs of the arbitration, (as notified by the CAS Court Office) should be borne 60% by Appellant and 40% by the Second Respondent, which reflects the parties' overall success in this case, including the Appellant's unsuccessful request for provisional measures.

148. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties, the Panel rules that each party shall be responsible for its own legal costs and expenses incurred in connection with these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 June 2014 by Erik Salkic against the Decision issued on 15 May 2014 by the Players' Status Committee of the Football Union of Russia is partially upheld.

2. The Decision issued on 15 May 2014 by the Players' Status Committee of the Football Union of Russia is amended and Erik Salkic shall pay no compensation to Professional Football Club Arsenal, despite Professional Football Club Arsenal having terminated the contract with Erik Salkic with just cause.

3. All other aspects of the Decision issued on 15 May 2014 by the Players' Status Committee of the Football Union of Russian are confirmed.

4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne 60% by Mr. Erik Salkic and 40% by the Professional Football Club Arsenal.

5. Each party shall be responsible for its own legal fees and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland

Date: [ ] 2015

THE COURT OF ARBITRATION FOR SPORT

Mark A. **Hovell**
President of the Panel

Manfred P. **Nan**
Arbitrator

Michael **Gerlinger**
Arbitrator